

## **SUMMARY:**

# **The USDA National Organic Program Requirements for Food Retailers and Distribution Centers<sup>1</sup>**



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## Introduction

By October 21, 2002, all organic products sold in the U.S. must comply with the Organic Food Production Act of 1990 (the Act) and the National Organic Program (NOP) implementing regulations. These U.S. Department of Agriculture (USDA) regulations are complex and accompanied by a lengthy explanation in the *Federal Register*. This paper summarizes the basic regulatory requirements for food retailers and distribution centers (DCs). Retailers and DCs may implement additional measures for non-regulatory reasons.

- ◆ The Act prohibits all entities – including **retail food establishments** and DCs – from knowingly selling or labeling a product as organic, unless it meets the Act’s requirements. Violators are subject to penalties of up to \$10,000 per violation.
- ◆ Retail food establishments and most DCs are not required to undergo the certification process that is required of most other entities involved in the production and distribution of organic food products. Retailers and DCs may choose to obtain organic certification for marketing or other business reasons.
- ◆ Retail food establishments or portions thereof that **process** organic foods on the premises and DCs that **handle** but do not repackage or process organic foods are “excluded” from the certification requirement, but still must follow certain specific regulations related to maintaining organic integrity and labeling. USDA recommends that retail food establishments that only handle organic foods (known as “exempt” establishments) follow these procedures, too, even though exempt establishments are not required to do so by regulation.

## Maintaining Organic Integrity

“Excluded” facilities are required by regulation to prevent commingling and to prevent organic products from contacting prohibited substances. Some steps that may be used are identified below. USDA recommends that “exempt” facilities also take steps to maintain the integrity of organic products.

Defined terms are in **bold italics**.

The NOP regulations are codified at 7 C.F.R., Part 205. (see “Additional Resources” below.)

**Retail food establishment** is defined as a grocery store, delicatessen, bakery, restaurant, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

Exemptions and exclusions from certification are fully described in Section 205.101 of the NOP regulations.

**Processing** is defined as “cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.”

**Handle** is defined, in relevant part, as “to sell process, or package agricultural products.” USDA advises that handling includes the following activities:

- ◆ Displaying agricultural products for sale
- ◆ Selling prepackaged organic foods
- ◆ Bagging or packaging loose organic produce for customer convenience and
- ◆ Refrigerating organic products

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<sup>1</sup> This document should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only.

**Prevent commingling** – Do not allow unpackaged organic products to contact unpackaged conventional ones.

Although not required, physical barriers between bins may be used in display areas to prevent commingling. USDA advises that allowing a space between organic and conventional products may also be sufficient.

In storage, USDA recommends using separate pallets. For boxed products, the barriers provided by the boxes should be sufficient if separate pallets are not possible. Separate shelves and stacking areas may also be used to minimize the likelihood that commingling may occur but are not required.

**Prevent contact with prohibited substances** – Implement measures to prevent organic products from contacting **prohibited substances**.

Do not use packaging materials, storage containers or bins that contain synthetic fungicides, preservatives or fumigants to hold organic foods.

Thoroughly rinse bags or containers that previously held conventional products (or any substance that might compromise the integrity of an organic product) before using them to hold organic products. Use clean water or a permitted cleanser.

Thoroughly rinse surfaces and utensils that have been cleaned or sanitized with prohibited substances, such as products that contain synthetic substances not cleared for contact with organic products. Use clean water or a permitted cleanser.

Alternatively, choose leave-on sanitizers without prohibited substances for cleaning and sanitizing areas that will contact organic products (e.g., storage bins, sinks and cutting boards). Ask suppliers for guaranty letters and indemnification.

Establish procedures to ensure that organic products are not washed in water used for cleaning conventional products.

Surfaces and utensils that have contacted conventional products should be thoroughly rinsed with clean water or a permitted cleanser before they are used with organic products.

Do not store nonorganic products above organic ones if the former are packed on ice that could melt and drip or otherwise transfer prohibited substances to organic products.

**Commingling** is defined as “physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, processing, transportation, storage or handling, other than during the manufacture of a multiingredient product containing both types of ingredients.”

**Prohibited substance** is defined as “a substance the use of which in any aspect of organic handling or production is prohibited or not provided for in the Act or the regulations of this part.” Prohibited substances include any synthetic or nonagricultural substance, unless permitted by regulation, as well as nonsynthetic substances that are prohibited by regulation. Sections 205.105 and 205.600 through 205.606 of the NOP regulations list allowed and prohibited substances.

The regulations identify some chlorine materials that may be used to sanitize food-contact surfaces, including calcium hypochlorite, chlorine dioxide and sodium hypochlorite; hydrogen peroxide and ozone are also permitted. See 7 C.F.R. 205.605.

Do not display conventional products above organically produced products if misting systems are used.

Do not add prohibited substances to produce sprays or misting systems that will be used on organic produce.

When using pest-control substances in areas where organic products are or will be located, follow the usage directions carefully, and ensure that organic products and packaging will not contact prohibited substances.

Use clear labeling to distinguish between organic and conventional products.

## **Labeling**

Do not sell or label a product as “organic” if you know it does not meet the Act’s requirements. The civil penalty for doing so is up to \$10,000 per violation. The Act does not require retailers to investigate suppliers to ensure that products labeled “organic” comply with the law. Retailers are not subject to penalties if they sell an organic product — even a private label item — that is later found to be mislabeled, unless the retailer knew the product was mislabeled. Mislabeled products that have already entered the supply chain will not be recalled.

### *Labeling Rules*

Retailers that process organic foods on the premises (“excluded” operations) must comply with the following regulations for products labeled “organic” at retail; USDA recommends that retailers that handle, but do not process, organic foods (“exempt” operations) also follow these rules.

The regulations define four categories of organic products:

- ◆ “100% organic” — Raw or processed agricultural products that contain 100 percent organic ingredients.
- ◆ “Organic” — Agricultural products that contain not less than 95 percent organic ingredients.
- ◆ “Made with [organic ingredients]” — Multiingredient products that contain at least 70 percent organically produced ingredients.
- ◆ Less than 70 percent organic ingredients — Multiingredient products that contain less than 70 percent organically produced ingredients.

The general labeling requirements for each category are summarized in Table 1 (attached).

Although neither exempt nor excluded retail food establishments or DCs are required to follow the NOP facility pest management regulations, these operations may refer to the standards in Section 205.271 of the NOP regulations for means to achieve pest control in areas in which organic products are held.

### *USDA Seal and 'Certified' Organic Status*

USDA's regulations allow a new USDA seal to be used on organic agricultural products that are certified 100 percent organic or products that are certified as containing at least 95 percent organic ingredients.

The USDA seal may not be used in any way that implies that a store is certified as an organic production or handling facility unless it has been certified in accordance with the NOP regulations. Do not use the USDA seal or represent in any other way that a food or ingredient processed at the store is "certified organic" unless the store has been certified.

The regulations distinguish between products that are "organic" and those that are "certified organic." A product may be identified as "certified organic" only if all of the facilities that processed the product are certified. Some handlers may be exempt or excluded without altering the ability to label the product "certified organic," provided that the exempt or excluded handlers do not process the product. An organic product that was processed at an exempt or excluded facility may be identified as "organic" if it otherwise meets the definitional standards, e.g., contains at least 95 percent organic ingredients, but may not be identified as "certified organic."

### *Labeling 'Bulk' Organic Agricultural Products*

The following rules apply to agricultural products, whether raw or processed, that are sold at retail in unpackaged form, such as unpackaged fresh produce or bulk granola offered for sale from a bin.

You may provide the same information to consumers as was provided on the original container or shipping documents (e.g., labels, signs or placards).

You may use the USDA seal or the seal, logo or other mark of the certifying agent in the retail display or labeling for "100% organic" or "organic" (95 percent) bulk products prepared in a certified facility. If used, the seal, logo or other mark of the certifying agent must not be more prominent than the USDA seal. Organic ingredients must be identified as such.

You may use the phrase "made with [organic ingredients]" in the display of bulk foods with between 70 and 95 percent organically produced ingredients, provided that no more than three organic ingredients or food groups are listed and the organic ingredients



USDA Organic Seal

are identified as such. If the “made with...” product was prepared at a certified facility, you may also display the certifying agent’s seal, logo or other identifying mark; you may not display the USDA seal with the product.

Even if permitted, you are not required to use or display the USDA seal or the seal, logo or other mark of a certifying agent with any bulk products.

### *Labeling Products Prepared at Retail*

When preparing products on the premises of the retail food establishment that will be labeled “100% organic,” “organic” or “made with [organic ingredients],” make sure that you:

- ◆ Do not include organic and nonorganic forms of the same ingredient.
- ◆ Do not use any nonorganic ingredients in products labeled “100% organic.”
- ◆ Do not use nonorganic ingredients in products labeled “organic” when organic alternatives are available.
- ◆ Do not use ionizing radiation (food irradiation) or unapproved processing aids.
- ◆ Do not use sulfites or nitrates.

An agricultural product processed by a retailer may be labeled “organic” or “made with [organic ingredients]” if the original product was certified organic when the retailer received it. This product, however, may not be identified as “certified organic” unless the retail facility has been certified in compliance with the NOP regulations.

Example: You may prepare chicken salad on the premises of a retail food establishment and label it “made with organic chicken, celery and grapes” if the specified ingredients were certified organic by your supplier and they make up at least 70 percent of the product. Do not represent the chicken salad as “certified organic” or use the USDA seal or the seal or name of any certifying agent unless the store has been certified and the salad is made with at least 95 percent organic ingredients.

If you use or sell organic products from facilities that are exempt or excluded from certification, do not label them “certified organic.” They may be identified as “organic” if they are not further processed at retail.

Nonorganic ingredients may be used in products that will be labeled “made with [organic ingredients],” even if organic alternatives are available, if the nonorganic ingredients are not identified as “organic” on the label.

*Example:* If you purchase apples labeled “organic” from a farm that is exempt from the certification requirement, the apples may be displayed for retail sale as “organic” (although not “certified organic”). Applesauce prepared from the apples may not be identified as “organic,” nor may the apples from which the applesauce was prepared be identified as organic ingredients.

Do not use “organic” to describe a nonorganic ingredient in the product.

*Example:* Do not label a product as “organic macaroni salad” if the macaroni does not meet the standards for “organic.”

## **Recordkeeping**

The NOP regulations do not mandate recordkeeping for retail food establishments or DCs exempt or excluded under the provisions discussed above. USDA recommends, however, that all operations keep records to demonstrate compliance with the NOP. In addition, USDA has suggested that it may audit exempt or excluded firms for compliance with the regulations. You may decide to keep records to demonstrate compliance with the labeling and organic integrity standards, including:

- ◆ Proof of organic certification for direct suppliers.
- ◆ Procedures for processing organic products such as grinding organic meat or preparing deli salads.
- ◆ Contracts with your private label suppliers, affirming that the manufacturers and their products meet the NOP requirements.
- ◆ Pest-management or sanitation records.

## **General Implementation Framework**

You may find the following steps helpful in implementing the NOP regulations discussed above.

1. Identify all products within your store or DC that are identified in any way as “organic,” including private label packaged products, bulk products, fresh meats or produce, and foods prepared in-store, such as in the deli department or bakery.
2. Identify the manner in which each organic product is handled or processed at different stages, such as receiving, storage, preparation and display. If organic product is processed during any stage, you must implement measures to maintain organic integrity and ensure that labeling is properly applied.

Even if processing will not occur, you should identify steps to maintain organic integrity of the product and ensure proper labeling.

- ◆ Consider proximity of organic products to conventional products at each stage and possibility for commingling (i.e., contact between unpackaged products) or misidentification of product.
  - ◆ Consider non-food substances and surfaces that organic products might contact at each stage, such as cleaning or sanitizing agents, storage bins, packaging, fumigants, wash water, cutting boards, and serving bowls/utensils or bulk scoops.
  - ◆ Consider appropriate labeling for each aspect of display, e.g., at produce bins, in deli case, with bulk products.
3. Review contracts with organic food suppliers to ensure that contracts properly identify supplier responsibilities, e.g., labeling; certification, if necessary.
  4. Consider keeping records to verify your compliance with the Act and NOP regulations.

### **Additional Resources**

USDA's Web site on the National Organic Program includes links to the complete text of the regulations, as well as USDA's Frequently Asked Questions (FAQ) document on the organics program. See [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop).

[www.fmi.org](http://www.fmi.org)

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**TABLE 1: LABELING CONSUMER PRODUCT PACKAGES**

Labeling category	Principle display panel	Information panel	Ingredient statement	Other package panels
“100 percent Organic” (Entirely organic; whole, raw or processed product)	“100 percent organic” (optional)  USDA seal and certifying agent seal(s) (optional)	“100% organic” (optional)  Certifying agent name (required); business/Internet address, tele. # (optional)	If multiingredient product, identify each ingredient as “organic” (optional)	“100 percent organic” (optional)  USDA seal and certifying agent seal(s) (optional)
“Organic” (95% or more organic ingredients)	“Organic” (plus product name) (optional) “X% organic” (optional) USDA seal and certifying agent seal(s) (optional)	“X % organic” (optional)  Certifying agent name (required); business/Internet address, tele. # (optional)	Identify organic ingredients as “organic” (required if other organic labeling is shown)	X% organic” (optional)  USDA seal and certifying agent seal(s) (optional)
“Made with Organic Ingredients” (70 to 95% organic ingredients)	“made with organic (ingredients or food group(s))” (optional)  “X % organic” (optional)  Certifying agent seal of final product handler (optional)  <u>Prohibited: USDA seal</u>	“X % organic ingredients” (optional)  Certifying agent name (required); business/Internet address, tele. # (optional) <u>Prohibited: USDA seal</u>	Identify organic ingredients as “organic” (required if other organic labeling is shown)	“made with organic (ingredients or food group(s))” (optional) “X % organic” (optional) Certifying agent seal of final product handler (optional) <u>Prohibited: USDA seal</u>
Less-than 70% organic ingredients	<u>Prohibited: Any reference to organic content of product</u> <u>Prohibited: USDA seal &amp; certifying agent seal</u>	“X % organic” (optional)  <u>Prohibited: USDA seal &amp; certifying agent seal</u>	Identify organic ingredients as “organic” (optional) (required if % organic is displayed)	<u>Prohibited: USDA seal &amp; certifying agent seal</u>