

**DEPARTMENT OF AGRICULTURE**

Agricultural Marketing Service

**DEPARTMENT OF THE TREASURY**

Bureau of Alcohol, Tobacco and Firearms

Memorandum of Understanding

Following is the text of the Memorandum of Understanding between the Agricultural Marketing Service (AMS) and the Bureau of Alcohol, Tobacco and Firearms (ATF) in which both agencies clarify and delineate the enforcement responsibilities of each agency with respect to the labeling and advertising of alcohol beverages produced under the Organic Foods Production Act of 1990; and for other related purposes.

For further information contact the following offices:

Bureau of Alcohol, Tobacco and Firearms, Chief, Alcohol Labeling and Formulation Division, 202-927-8140.

Agricultural Marketing Service, Transportation and Marketing Programs, Program Manager, National Organic Program, 202-720-3252.

**Memorandum of Understanding Between the Agricultural Marketing Service and the Bureau of Alcohol, Tobacco and Firearms**

*1. Purpose*

This agreement between the Agricultural Marketing Service (AMS) and the Bureau of Alcohol, Tobacco and Firearms (ATF) clarifies and delineates the enforcement responsibilities of each agency with respect to the labeling and advertising of alcohol beverages produced under the Organic Foods Production Act of 1990, and for other related purposes. Specifically, this Memorandum of Understanding:

- (A) Establishes a more efficient system of communication and exchange between AMS and ATF;
- (B) Confirms AMS policy with respect to the labeling and advertising of alcohol beverages as "100% organic," "organic," or "made with organic (specified ingredients)."
- (C) Confirms AMS policy with respect to the use of

nonagricultural substances allowed as ingredients in or on the labeling and advertising of alcohol beverages labeled or advertised as "100% organic," "organic," or "made with organic (specified ingredients)."

- (D) Clarifies and coordinates the responsibilities of each agency with respect to the identification, review, and approval of label applications and representations or advertisements for alcohol beverages sold, labeled, represented or advertised as "100% organic," "organic," or "made with organic (specified ingredients)," to facilitate enforcement of the laws under the respective agencies' jurisdiction.

## 2. Background

- (A) Pursuant to the Organic Foods Production Act of 1990 (OFPA), as amended, 7 U.S.C. 6501 *et seq.*, the United States Department of Agriculture (USDA) has authority over agricultural products to be sold, labeled, or represented as organically produced, both domestic and imported. In particular, section 6503 of OFPA (7 U.S.C. 6503) vests USDA with authority to promulgate regulations establishing a National Organic Program for the organic production and handling of agricultural products to assure consumers that organically produced products meet a consistent standard.

Section 6506 of OFPA provides that an agricultural product to be sold or labeled as organically produced must be produced and handled, and labeled and represented (including advertised) in accordance with the National Organic Program. The National Organic Program provides at 7 CFR 205.102, that any agricultural product that is sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be produced and handled in accordance with the National Organic Standards. Section 205.105 prohibits the use of synthetic substances, methods, and ingredients in the production and handling of organically produced products, unless allowed on the National List of Allowed and Prohibited Substances.

- (B) Pursuant to the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 201, *et seq.*, and the Internal Revenue Code of 1986 (IRC), Title 26, U.S.C., Chapter 51, ATF

has authority over, *inter alia*, the labeling and advertising of distilled spirits, wines, and malt beverages, both domestic and imported. In particular, section 105 of the FAA Act (27 U.S.C. 205) vests ATF with the authority to promulgate regulations regarding the labeling and advertising of alcohol beverages to insure that they provide the consumer with adequate information concerning the identity and quality of such products and prevent deception of the consumer.

Section 105(e) also makes it unlawful to sell or ship or deliver for sale or shipment, or otherwise introduce into interstate or foreign commerce, or to receive therein, or to remove from customs custody for consumption, any distilled spirits, wine, or malt beverages in bottles, unless such products are bottled, packaged, and labeled in conformity with regulations prescribed by the Secretary of the Treasury. This provision also requires that, in order to prevent the sale, shipment, or other introduction of mislabeled products in interstate or foreign commerce, the particular distilled spirits, wine or malt beverages must be covered by a certificate of label approval (or certificate of exemption in limited situations). Unlike labels, ATF does not pre-review or approve advertisements except on a voluntary basis. ATF is charged with the administration and enforcement of the FAA Act and does this through, *inter alia*, the issuance of permits and through procedures that require the prior approval of labels. In addition, ATF is charged with the administration and enforcement of Chapter 51 of the IRC, relating to distilled spirits, wines and beer. This chapter, in conjunction with the FAA Act, establishes a comprehensive system of controls over alcohol beverages, including on-site inspections and procedures that require the advance approval of statements of process and of formulas showing each ingredient to be used in the product. The IRC also vests authority in ATF to detain any container that will be removed in violation of law (26 U.S.C. 5311) and vests ATF with seizure and forfeiture authority (26 U.S.C. 7302).

### 3. Agreement

It is understood and agreed between the parties, as follows:

- (A) ATF will amend the implementing regulations of the FAA Act to require compliance with the NOP when organic claims are made on labels or in advertisements.
- (B) ATF will be responsible for enforcement of such FAA Act regulations with respect to the labeling and advertising of distilled spirits, wine, and malt beverages making organic label claims. ATF authority under FAA Act regulations shall not preclude AMS' enforcement of the NOP under the OFPA.
- (C) ATF will forward label applications that make organic claims to AMS for review and a determination as to whether the proposed labels comply with the NOP. Likewise, to the extent that ATF undertakes a review of particular advertisements containing organic claims, ATF will seek and obtain a determination from AMS as to whether the organic claims in the advertisements comply with the NOP prior to taking enforcement action under the FAA Act with respect to such organic claims.
- (D) Within five business days of receipt, AMS will provide ATF with a written determination on each proposed label and each advertisement submitted for review as to whether it complies with the NOP. The written determination will state whether the organic claim(s) on the label or advertisement meets the requirements of the NOP. If the organic claim does not meet the requirements of the NOP, AMS' response will identify what changes are necessary to make the claim(s) comply with the NOP. Organic claims upon labels and advertisements that are changed to exactly conform with AMS' comments, and that are resubmitted to ATF, will not be resubmitted to AMS for final review but will instead be considered approved by AMS. However, organic claims on labels or advertisements that are changed but do not exactly conform with AMS' recommendations will be forwarded to AMS as if for initial review.
- (E) AMS' determination as to whether an organic claim complies with the NOP will constitute the final determination as to compliance with the NOP. Based upon ATF regulations requiring that organic claims on labels comply with the NOP, ATF will not approve label applications that contain organic claims that AMS has determined do not comply with the NOP. Notwithstanding AMS' determination that a particular organic claim

complies with the NOP, ATF may determine that the context in which such a claim is presented on a particular label or advertisement is deceptive or misleading in violation of the FAA Act. ATF will amend its regulations to provide that any appeals as to AMS' determinations concerning compliance with the NOP shall be made to the AMS. ATF will also amend the implementing regulations of the FAA Act to require that appeals of AMS' determinations that an organic claim on a label does not comply with the NOP shall be made in accordance with the NOP regulations at 7 CFR 205.680.

- (F) AMS acknowledges the proprietary and confidential status of label applications received from ATF and will treat all label applications as proprietary and confidential business information. Any FOIA requests seeking copies of such labels will be referred to the Chief, Disclosure Division of ATF within five business days.
- (G) AMS will issue a fact statement, to address the additional labeling requirements applicable to wine, malt beverages, and distilled spirits labels that contain organic claims, as provided under the NOP. The fact statement will be updated to reflect pertinent changes.

#### *4. Parties to Agreement*

The parties to this agreement are:

The Bureau of Alcohol, Tobacco and Firearms  
U.S. Department of the Treasury  
650 Massachusetts Avenue, NW  
Washington, D.C. 20226

and

The Agricultural Marketing Service  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, D.C. 20250

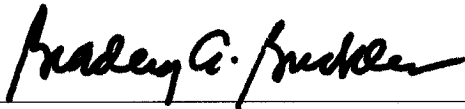
5. Duration of Agreement

This agreement becomes effective upon acceptance by both parties and shall remain in effect indefinitely. This agreement may be modified by mutual consent or terminated by either party upon a thirty (30) day advance written notice to the other.

6 Liaison Officers

For ATF: Chief, Alcohol Labeling and Formulation Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Room 5200, Washington, D.C. 20226, Telephone Number: 202-927-8140.

For AMS: Program Manager, National Organic Program, 1400 Independence Avenue, SW, USDA-AMS-TMP-NOP, Room 4008-So., Ag Stop 0268, Washington, D.C. 20250, Telephone Number: 202-720-3252.



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Director  
Bureau of Alcohol, Tobacco  
and Firearms

Date: JUL 25 2002



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Administrator  
Agricultural Marketing Service

Date: 8/6/02