



**AGREEMENT ON THE COORDINATION OF ORGANIC LABELING AND
ADVERTISING BETWEEN THE ALCOHOL AND TOBACCO TAX AND TRADE
BUREAU, UNITED STATES DEPARTMENT OF THE TREASURY AND THE
AGRICULTURAL MARKETING SERVICE, UNITED STATES DEPARTMENT OF
AGRICULTURE**

Memorandum of Understanding

1. *Purpose*

This agreement between the Agricultural Marketing Service (AMS) and the Alcohol and Tobacco Tax and Trade Bureau (TTB) 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 (OFPA) (P.L. 101-624, Title XXI, Organic Certification (1990)) and for other related purposes.

Specifically, this Memorandum of Understanding:

- (A) Establishes a more efficient system of communication and exchange between AMS and TTB;
- (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 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 OFPA, as amended, codified at 7 U.S.C. 6501, *et seq.*, the United States Department of Agriculture (USDA) has authority over domestic and imported agricultural products to be sold, labeled, or represented, as organically produced. Section 2104 of OFPA (7 U.S.C. 6503) requires the Secretary of Agriculture to establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods in accordance with the OFPA. Under this authority, on December 21, 2000, the USDA published a final rule in the **Federal Register** (65 FR 80548) establishing the National Organic Program (NOP) under the direction of AMS. This national program facilitates domestic and international marketing of fresh and processed food that is organically produced and assures consumers that such products meet consistent, uniform standards.

Section 2107 of OFPA (7 U.S.C. 6506) provides that agricultural products to be sold or labeled as organically produced must be produced and handled in accordance with the NOP. Section 205.102 of the NOP regulations (7 CFR 205.102), provides 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 NOP. Section 205.105 of the NOP regulations (7 CFR 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), codified at 27 U.S.C. 201, *et seq.*, the Internal Revenue Code of 1986 (IRC), as amended, Title 26, U.S.C., Chapter 51, and the Alcohol Beverage Labeling Act of 1988 (ABLA), codified at 27 U.S.C. 213, *et seq.*; TTB has authority over, among other things, 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 the Secretary of the Treasury with the authority to promulgate regulations regarding the labeling and advertising of alcohol beverages to ensure 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 beverage must be covered by a certificate of label approval (or certificate of exemption in limited situations).

TTB is charged with the administration and enforcement of the FAA Act and does this through, among other things, the issuance of permits and through procedures that require the prior approval of labels. In addition, TTB has authority under the FAA Act to regulate alcohol beverage advertising. Unlike labels, advertisements are not subject to mandatory prior review or approval. Pre-review of advertisements exists on a voluntary basis. In addition, TTB is charged with the administration and enforcement of Chapter 51 of the IRC, relating to distilled spirits, wine, and beer (malt beverages). 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. Additionally, under the IRC, TTB has the authority to detain any container that will be removed in violation of law (26 U.S.C. 5311) and has seizure and forfeiture authority (26 U.S.C. 7302).

3. *Agreement*

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

TTB previously issued implementing regulations of the FAA Act regarding use of the term “organic” at 27 CFR 4.101, 5.71 and 7.81; stating that use of the term “organic” is optional and is treated as “additional information on labels” under TTB’s FAA Act labeling regulations. Any use of the term “organic” on a label or in advertising of

alcohol beverages, on and after October 21, 2002, must comply with the USDA's NOP regulations (7 CFR part 205) as interpreted by the USDA.

TTB 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. TTB's authority under FAA Act regulations shall not preclude AMS' enforcement of the NOP under the OFPA.

TTB will review alcohol beverage label applications that include organic claims. TTB will consider label applications consistent with relevant guidance as approved by AMS. Such guidance includes: TTB Publication (TTB P) 5190.11, Guidelines for Labeling Wine with Organic References; TTB P 5190.21, Guidelines for Labeling Distilled Spirits with Organic References; TTB P 5190.31, Guidelines for Labeling Malt Beverages with Organic References; and other general guidance. TTB will make a determination as to whether the proposed labels comply with the NOP regulations and labeling policies. Label applications found compliant with the NOP will be qualified with this statement:

APPROVED SUBJECT TO COMPLIANCE WITH THE ORGANIC
FOODS PRODUCTION ACT OF 1990 AND THE NATIONAL
ORGANIC PROGRAM REGULATIONS AT 7 CFR PART 205,
ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE-
AGRICULTURAL MARKETING SERVICE

TTB will not approve proposed alcohol beverage labels that contain organic claims that do not comply with the NOP. If the organic claim does not meet the requirements of the NOP, TTB will identify to the applicant what changes are necessary to make the organic claim compliant with the NOP.

To the extent that TTB undertakes a review of particular advertisements containing organic claims, TTB 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.

Any appeals as to TTB's determinations concerning proposed organic labels and advertisements shall be made directly to the AMS. See 27 CFR 13.1 and 13.101 regarding label appeals. Appeals regarding organic claim(s) on a label or in an advertisement shall be made in accordance with regulations set forth at 7 CFR 205.680. If the appeal overturns TTB's decision, the applicant must re-apply for label approval with documentation from AMS supporting the application in order to obtain label approval from TTB.

In the event AMS receives proposed labels from TTB, AMS acknowledges the proprietary and confidential status of label applications received from TTB and will treat all label applications as proprietary and confidential business information. Any Freedom of Information Act requests seeking copies of such labels will be referred to the TTB Director, Regulations and Rulings Division, within five business days.

AMS reserves the right to review TTB's recordkeeping pertaining to organic labels on any given business day of the calendar year provided that notice is given to TTB not less than two weeks prior to the requested review date. Returns and return information, as defined by 26 U.S.C. 6103(b), will be subject to the restrictions of section 6103.

4. *Parties to Agreement*

The parties to this agreement are:

The Alcohol and Tobacco Tax and Trade Bureau
U.S. Department of the Treasury
1310 G Street, NW,
Washington, DC 20220

And

The Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW.
Washington, DC 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 TTB: Assistant Director, Advertising, Labeling, and Formulation Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Washington, DC 20226, Fourth Floor, Telephone Number: 202-453-2243.

