



May 27, 2014

Ms. Laura Koss  
Federal Trade Commission  
Office of the Secretary  
Room H-113 (Annex J)  
600 Pennsylvania Avenue NW  
Washington DC, 20580

**RE:** Green Marketing Consumer Perception Study, Project No. P954501

Dear Ms. Koss:

The Organic Trade Association (OTA) is pleased to provide comment on the Federal Trade Commission's (FTC) proposed research to explore consumer perceptions of certain environmental marketing claims, such as "organic" and "pre-consumer recycled content."

The Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic industry in the United States, representing organic businesses across 49 states. Its members include growers, shippers, processors, certifiers, farmers' associations, distributors, importers, exporters, consultants, retailers and others. OTA's mission is to promote and protect the growth of the organic sector to benefit the environment, farmers, the public and the economy.

FTC is seeking comment on its plans to conduct Internet based consumer research to explore consumer perception of organic claims in order to enhance the Commission's understanding of how consumers interpret such claims. Specifically, the study will examine whether respondents viewing organic and recycled content claims believe these products have particular environmental benefits or attributes, depending on the context in which they are presented.

OTA supports FTC in its efforts to further understand how consumers interpret organic claims, if this information will enhance FTC enforcement action on the inaccurate, misleading, or fraudulent use of the term "organic" on products that fall outside the United States Department of Agriculture's (USDA) National Organic Program (NOP) enforcement jurisdiction. OTA also believes that there is currently enough information available to inform and support oversight and enforcement of such action today.

Trust in the USDA organic seal is critical to the continued success of the U.S. organic industry. Many products making organic marketing claims, however, fall outside of the scope of authority and enforcement of USDA's NOP. In one aisle of the grocery store, agricultural products such as cereal and soup MUST be certified if an organic claim is used on the front display panel of the label. Fraudulent use of the term results in civil penalties. For these products, consumers can trust that the term "organic" reflects a codified and transparent set of production and handling standards that are verified through third-party certification and enforced by USDA.

However, in the next aisle, products such as dietary supplements, personal care products and textiles MAY utilize organic claims whether they are certified or not. These products *may* be NOP certified by virtue of their organic content (Appendix A: NOP Policy 11-2<sup>1</sup>). However certification is not required unless the product utilizes the USDA organic seal or makes reference to USDA organic certification. Thus, many of those products can use the term organic, but not the seal, with no regulatory enforcement. Many other products utilizing the term “organic” could never be certified (i.e. salt, water, non-agricultural fertilizers) because they are non-agricultural.<sup>2</sup> In all of these cases, if a product making an organic claim falls outside of NOP’s jurisdiction, it lacks federal oversight and enforcement.

In response to FTC’s request for comments that will enhance the quality, utility, and clarity of the information to be collected, OTA urges FTC to consider the following:

- OTA does not believe it will be practically useful to collect information on consumer perception of organic claims as it relates to environmental benefits. The term “organic” when used on agricultural products is clearly defined, regulated and enforced by USDA’s NOP. Since the term is defined, set to detailed production and handling standards and enforced by USDA, this survey information would not necessarily be useful to FTC’s role. Furthermore, collection of this information would be redundant, since OTA has for many years collected and published comprehensive information about consumers’ knowledge of organic products and perceived benefits. OTA’s 2014 consumer surveys will be available in June.
- In order to inform policy, OTA asks FTC to focus on collecting information that will help the Commission’s understanding of consumer trust in organic labeling as it relates to regulatory oversight of products not within USDA NOP jurisdiction. Enforcement of organic claims on all products is central to consumer trust of the USDA organic seal. Regardless of the perceived environmental benefits, consumers are quite familiar with the USDA organic seal which is presented under the Agricultural Marketing Service (AMS) as a labeling claim that is: 1) Tied to a transparent third-party certified standard; and 2) monitored and enforced by a federal government agency.
- OTA strongly believes that regulatory oversight and enforcement needs to be in place for organic claims made on all types of products, whether they be under NOP jurisdiction or not. To do otherwise dilutes the meaning of the “USDA Organic” seal. OTA urges FTC to confer with NOP and develop a draft enforcement policy. At the center of this policy should be guidance for consumers to look for organic claims that are third-party certified and enforced by NOP or FTC. We expect the information collected in this study will help this process. We look forward to a public comment period on the draft policy, and we request that “The Green Guides” be updated to reflect a final policy.
- OTA urges FTC to exercise its consumer protection authority, monitor the term “organic” on product claims that are not subject to USDA authority, and act on the misleading and fraudulent use of the term “organic” when used on products that are outside NOP’s scope of authority. This action should be based on an enforcement policy developed in conjunction with NOP.

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<sup>1</sup> See Appendix A: NOP Policy Memorandum 11-2 “Certification of agricultural products that meet NOP Standards”

<sup>2</sup> USDA NOP certification applies to agricultural products only. Some products may be certified by virtue of their agricultural content provided they comply with all NOP composition, production, handling and labeling standards.

- OTA has been conducting national surveys for many years on organic sales and consumer attitudes and beliefs in order to track trends, perceptions and knowledge of organic products. We believe there is already a significant body of information available that FTC can and should utilize today. We request that FTC utilize the information available in OTA's *2014 Industry Survey* as well as its *US Families' Organic Attitudes and Beliefs study in 2014*. Both studies will be available in June 2014.

We offer the following more detailed comments:

***1. FTC does not need to conduct research on the perceived environmental and health benefits of USDA NOP regulated products.***

The term "organic" is defined and regulated under the USDA NOP. There is a codified definition and corresponding requirements that apply to organic claims made on various agricultural products that are covered under the Organic Foods Production Act (OFPA) and included in the organic regulations found at 7 CFR 205. Research by FTC into consumer perceptions of the meaning of organic as it relates to environmental and health benefits is not necessary because the term is:

1. Defined by transparent standards;
2. Regulated and enforced by USDA; and
3. OTA has recent and comprehensive information available that reflects consumer knowledge, opinions, and perceptions of organic products.

Instead, OTA requests that FTC focus on consumer recognition and trust of the USDA organic seal, and the fact that USDA's NOP has been for 13 years marketing the term "organic" as a labeling claim that represents a third-party standard regulated and enforced by the federal government. Consumers should be able to trust that the term "organic" is regulated and enforced by the federal government regardless of what product it refers to. To operate otherwise for any subset of products dilutes consumer trust in the USDA organic seal.

***2. FTC should collect information that will further its understanding of consumer trust in organic labeling.***

OTA urges FTC to focus on analyzing information that will help the Commission's understanding of consumer trust in organic labeling, and the action that needs to be taken to ensure that consumer trust in the USDA organic seal continues to increase. Survey results for OTA's 2014 *US Families' Organic Attitudes and Beliefs study*<sup>3</sup> show that familiarity of the "USDA Organic" label ranks among the top 3 seals for consumers after the Better Business Bureau and Good Housekeeping. Furthermore, consumers by and large trust organic adherence to specific requirements and trust that the requirements are being enforced. *OTA's 2014 U.S. Consumers' Organic Attitudes and Beliefs Study* found that 82%

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<sup>3</sup> *US Families' Organic Attitudes and Beliefs study in 2014*. The target audience consists of KIWI Magazine's Parents' Advisory Board (PAB), supplemented with a national online panel of U.S. households. Panelists were invited to participate in a web survey via e-mail. All respondents were screened to be 18 and over with at least one child under the age of 18 in the household and to have sole or shared responsibility for household grocery store purchases. Data collection took place between February 25, 2014, and March 3, 2014. A total of 1,209 usable surveys were completed, including 600 KIWI PAB panelists and 609 national panelists. Data from both panels were combined and weighted to reflect the demographics of U.S. households online. The total sample of 1,209 reflects the target population of U.S. households online at a confidence interval of +/- 3% at the 95% confidence level.

of parents believe that all organic label claims must be certified by an organization accredited by USDA. However, we continue to be concerned by the proportion of consumers that “have no trust” that products labeled as “organic” actually meet specific organic requirements and that those requirements are enforced. We believe this is largely due to the *unenforced* use of the term “organic” on products that are outside NOP’s scope of enforcement. It is critical that we send a uniform message to consumers about the regulatory oversight and enforcement of organic claims, regardless of what kind of product the claim relates to.

### ***3. FTC should confer with NOP and develop a policy on organic claims for products outside NOP’s jurisdiction.***

The organic food industry in the United States has grown in annual sales from \$3 billion in 2001 to \$35.1 billion today. Organic food sales in 2013 accounted for roughly 92% of the total organic sales. Non-food organic products—including flowers, fiber, household products and pet food—are currently a very small part of the total organic market, but are making quick in-roads. Sales of non-food organic products, at almost \$2.8 billion, have jumped nearly eight-fold since 2002, and have almost doubled in market share. A niche industry in the huge food sector just a decade ago, consumer purchases of organic food first broke through the \$30 billion mark in 2012 and now account for more than 4% of the \$760 billion annual food sales in the United States. More telling, the growth rate of organic food sales, which has averaged almost 10% every year since 2010, has dwarfed the average annual growth of just over 3% in total food sales during that same period.

There is no question that the term “organic” is well established in the marketplace. After thirteen years of operating under a thriving USDA organic program that promotes and regulates the term “organic,” consumers have come to believe that “organic” is a regulated term held to strict standards, and they are willing to pay more for it.

Many consumers believe that all organic products – whether agricultural or not – are held to specific production and handling standards, verified through third-party certification and federally regulated.

According to *OTA’s 2014 U.S. Consumers’ Organic Attitudes and Beliefs Study*, a high percentage of category buyers, believe they have purchased an organic product at least once in the past six months in the following areas:

- Supplements – 78%
- Personal Care – 74%
- Flowers – 68%
- Pet Food – 65%
- Fiber, Linens / Clothing – 63%

However, *OTA’s 2014 Organic Industry Survey* shows that the combined annual sales for these categories totals about \$2.7 billion, or just over 7% of total organic sales. Furthermore, total market penetration for organic products in these categories does not exceed 2.6% (in supplements), and dips as low as .4% (for flowers). Thus, it would appear that consumers of these products often perceive they are making an organic purchase when the market reality makes it clear that this is simply not possible.

It should be a fact that consumers can trust when they purchase organic products, regardless of the grocery store aisle they are shopping in. Consumers believe there are benefits to buying organic products and they expect a guarantee.

**The inconsistent oversight and failure to enforce the use of the term “organic” creates consumer confusion, can be misleading or inaccurate, and can lead to consumers mistrusting the integrity of the word “organic” when used on USDA certified products.**

OTA urges FTC to confer with NOP and develop a draft policy on the use of organic claims on products that are outside NOP’s jurisdiction. We request a public comment period on the draft policy, and we request that The Green Guides be updated to reflect a final policy. There is little information in the Green Guides concerning standards and requirements for third-party certifications and seals. OTA considers this to be an important gap that needs correcting. OTA strongly supports the following information be included in a draft policy:

*General*

OTA requests that FTC acknowledge that there are some product categories, including personal care, textiles, and others, that include some amount of organically produced agricultural ingredients, that may also fall outside USDA-NOP’s jurisdiction for product labeling. In such cases, FTC should recommend private third-party certification. Consumers will then know and trust they are buying a product that is defined by specific standards and has undergone an independent third-party review. See Textiles and Personal Care Products below.

FTC should also clarify that for products containing agricultural ingredients labeled “organic,” the ingredients must meet the NOP rule. NOP’s position is that any agricultural ingredient that claims to be organically produced, in any product, must be certified to the USDA-NOP standard.

*Personal Care*

FTC is the Federal agency responsible for consumer protection, and as such, should take action in the area of organic labeling on personal care products. OTA supports USDA-NOP regulation of personal care products that use the term “organic” in the product description and is working to further this end. However, at this time personal care products fall outside of NOP’s jurisdiction unless they make reference to USDA certification. OTA also recognizes that there are other organic personal care certifications, such as NSF/ANSI 305, that are available now. OTA requests that FTC refer to NOP’s Policy Memorandum 11-2 and communicate through the *Green Guides* that USDA-NOP organic certification for personal care products is possible, provided the product fully complies with NOP requirements. We also request that in the absence of certification to NOP standards, FTC recommend private third-party certification and provide a list of personal care product certifications and seals that are verified through third-party audits.

*Textiles*

USDA-NOP has explained that raw natural fibers, such as cotton, wool, and flax are agricultural products and are covered under the NOP crop and livestock production standards. However, USDA organic standards for processed textiles do not exist, and NOP has not indicated that the development of such a standard is a current priority. In the meantime, textiles and other processed fiber products are being marketed as “organic” without any certification.

FTC is the Federal agency responsible for consumer protection, and as such, should take action in the areas of fiber and textiles that are not certified to the NOP regulations or other private standards. Similar to the situation with NSF International’s development of its organic personal care standard NSF/ANSI 305, there is recognition both within the United States and internationally that the Global Organic Textile Standard (GOTS) is the premier organic textile processing standard worldwide. GOTS is the stringent voluntary global standard for the entire post-harvest processing

(including spinning, knitting, weaving, dyeing and manufacturing) of apparel and home textiles that are made with organic fiber. Approximately 3,016 facilities in 62 countries were certified to GOTS in 2012. The standard and the list of companies are available at <http://www.global-standard.org/>.

On May 20, 2011, NOP announced a [Policy Memorandum](#) (See Appendix B) addressing the labeling of textile products containing organic ingredients (such as organic cotton, organic wool, and organic linen). This NOP Policy Memo 11-14, titled “Labeling of Textiles that Contain Organic Ingredients,” clarifies that while the NOP regulations do not include specific processing or manufacturing standards for textile products, a product can be labeled as “organic” and make reference to NOP certification if it is produced in full compliance with both the NOP production standards (crops and livestock for raw materials) and the NOP handling standards (processing for the finished product). However, as most of these methods and ingredients are not applicable to textile processing, NOP labeling is likely unachievable for most garments and textile products that use a variety of dyestuffs and auxiliary agents.

As a practical alternative, the policy memo explicitly confirms that textile products produced in accordance with the [Global Organic Textile Standard](#) (GOTS), such as apparel, mattresses, or socks, may be sold as “organic” in the U.S., though they may not refer to NOP certification or carry the USDA organic seal.

As with personal care products, FTC should make clear to marketers that in the absence of government standards, private standards have been developed. OTA requests that FTC expressly acknowledge GOTS, defer to NOP’s Policy Memorandum on Textiles, and monitor and enforce the use of the term “organic” on textiles that are not certified either under NOP or GOTS. For products that are making organic content claims only, OTA requests that FTC include reference to the Textile Exchange [Organic Content Standard](#)<sup>4</sup>.

***4. OTA requests that FTC exercise its consumer protection authority and act on the misleading and fraudulent use of the term “organic” when used on products that are outside NOP’s scope of authority.***

The inconsistent oversight and failure to enforce the use of the term “organic” on all products across the board creates consumer confusion, can be misleading or inaccurate, and can lead to consumers mistrusting the integrity of the word “organic” on USDA- NOP regulated products. This in turn negatively impacts the success and growth of the USDA certified organic industry. Regardless of the perception a consumer may have about the meaning of “organic,” the key element that must be in place is that the term is tied to a transparent third-party verified standard, and its use is monitored and enforced by a government agency.

***5. OTA Surveys***

OTA’s primary organic industry research projects are its *U.S. Families’ Organic Attitudes and Beliefs Study* and its *Organic Industry Survey*. Both documents are being finalized for 2014, and will be published and made available to FTC in June.

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<sup>4</sup> The Organic Exchange “organic content” standards are chain-of-custody standards that give third party verification to a final product containing a given amount of organically grown cotton. The OE 100 and OE Blended are voluntary standards and do not address the use of chemicals or any other aspects of production beyond the integrity of the organic fiber.

OTA has conducted its *U.S. Families' Organic Attitudes and Beliefs Study* annually since 2009. The primary objectives of the Study are to identify any changes in:

1. The degree to which families are incorporating organic choices into their lifestyle
2. Parents' knowledge, opinions and perceptions of organic
3. Parents' knowledge about organic products and perceived benefits
4. The importance and use of labels when shopping for and choosing organic products
5. Families' food shopping budget and retail channel preferences.

*OTA's Organic Industry Survey* has been in publication since 1998. A primary objective of this project is to collect and compile data from the manufacturing community in the organic industry. To maximize the amount of information collected, OTA assesses the "universe" of manufacturers in organic products so that survey data can be most effectively modeled into total industry statistics. Distinct efforts are made to obtain responses from the top manufacturers and private label brands to maximize the "revenue capture" of the survey database and industry model. Direct survey responses are augmented with syndicated data and interviews with industry insiders to create a snapshot of the industry and its key sectors.

### **Conclusion**

USDA NOP sets the standards for use of the term "organic" on agricultural products, and is responsible for enforcing those standards. However, the term "organic" is also used on non-agricultural products, such as finished textiles, mattresses, and personal care products. In those situations, no government agency enforces any standards on the use of the term "organic." NOP reports that the majority of complaints it receives regarding inaccurate or misleading use of the term "organic" falls into this category - and outside of its enforcement jurisdiction.

Consumers have received consistent messaging from USDA's NOP since the implementation of the regulations in 2002. For example, the following two quotes taken from NOP's website reflect the common statements found on NOP's consumer fact sheets, blogs and related materials:

"The USDA organic label assures consumers that products have been produced through approved methods and that prohibited substances, like synthetic pesticides, have not been used."

"In order to sell, label, or represent products as organic in the United States, operations must be certified. The National Organic Program, part of USDA's Agricultural Marketing Service, accredits private, foreign, and State entities called certifying agents to certify and inspect organic operations."<sup>5</sup>

Many consumers have come to trust and understand that organic products are certified to strict standards and that those claims are regulated and enforced by the federal government. Failure to enforce the use of the term "organic" on all products creates consumer confusion, can be misleading or inaccurate, and can lead to consumers mistrusting the integrity of the word "organic." This is in no one's interest - not USDA, which administers the National Organic Program, nor the FTC, which has a consumer protection mandate.

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<sup>5</sup> <http://blogs.usda.gov/tag/organic-101/>

OTA believes existing survey information along with NOP marketing materials can adequately support FTC enforcement of organic claims on products that fall outside of NOP's jurisdiction.

OTA urges FTC to:

- Analyze existing information and collect additional information as needed that will help the Commission's understanding of consumer trust in organic labeling as it relates to regulatory oversight.
- Confer with NOP and develop a draft enforcement policy. At the center of this policy should be guidance for consumers to look for organic claims that are third-party certified and enforced by NOP or FTC.
- Issue a draft enforcement policy for public comment and update the Green Guides with guidance on the use of the term "organic" on non-agricultural products based on the final policy.
- Exercise its consumer protection authority, monitor the use of the term "organic" on non-agricultural products in the marketplace, and act on the misleading and fraudulent use of the term "organic" when used on products that are outside NOP's scope of authority.

All of this would significantly help prevent misleading or fraudulent organic claims, ensure consumer confidence in the term "organic," and help protect the USDA National Organic Program and the 18,500 certified organic operations nationwide.

Again, on behalf of our members across the supply chain and the country, OTA thanks FTC for the opportunity to comment.

Respectfully submitted,

Gwendolyn Wyard  
Regulatory Director of Organic Standards and Food Safety  
Organic Trade Association (OTA)

CC: Laura Batcha  
Executive Director  
Organic Trade Association (OTA)

**Appendix A:** NOP Policy 11-2 "Certification of agricultural products that meet NOP Standards"  
**Appendix B:** NOP Policy 11-14 "Labeling of Textiles That Contain Organic Ingredients"



United States Department of Agriculture  
Agricultural Marketing Service  
National Organic Program

1400 Independence Avenue SW.  
Room 2646-South Building  
Washington, DC 20250

Policy Memo 11-2

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## Policy Memorandum

**To:** Stakeholders and Interested Parties

**From:** Miles McEvoy, Deputy Administrator

**Subject:** Retained Memo: “Certification of agricultural products that meet NOP standards”

**Date:** Original Issue Date – January 31, 2011

Attached is the “Certification of agricultural products that meet NOP standards” memo issued by former Transportation and Marketing Programs Deputy Administrator Barbara C. Robinson on August 23, 2005. This memo is being retained by the NOP as a new policy memo and remains in effect. This document has been assigned the control number “PM 11-2”.

Enclosure: “Certification of agricultural products that meet NOP standards” August 23, 2005 memo

August 23, 2005

MEMORANDUM

TO: All USDA Accredited Certifying Agents

FROM: Barbara C. Robinson  
Deputy Administrator  
Transportation and Marketing Programs  
Agricultural Marketing Service

SUBJECT: Certification of agricultural products that meet NOP standards

The National Organic Program (NOP) has received numerous inquiries regarding its current thinking on the issue of products that meet the NOP program standards for organic products based on content, irrespective of the end use of the product. This statement is intended to clarify the NOP's position with respect to this issue, and will be provided to all of our accredited certifying agents.

Agricultural commodities or products that meet the NOP standards for certification under the Organic Foods Production Act of 1990, 7 U.S.C. §§ 6501-6522, can be certified under the NOP and be labeled as "organic" or "made with organic" pursuant to the NOP regulations, 7 C.F.R. part 205.300 et seq. To qualify for certification, the producer or handler must comply with all applicable NOP production, handling, and labeling regulations.

Operations currently certified under the NOP that produce agricultural products that meet the NOP standards to be labeled as "organic" and to carry the USDA organic seal, or which meet NOP standards to be labeled as "made with organic", may continue to be so labeled as long as they continue to meet the NOP standards. Such certification may only be suspended or revoked after notice and opportunity for hearing.

There are agricultural products, including personal care products, that, by virtue of their organic agricultural product content, may meet the NOP standards and be labeled as "100 percent organic", "organic" or "made with organic" pursuant to the NOP regulations. Businesses that manufacture and distribute such products may be certified under the NOP, and such products may be labeled as "100 percent organic", "organic" or "made with organic" so long as they meet NOP requirements. Additionally, products that may be labeled "100 percent organic" or "organic" may also carry the USDA organic seal. If additional rulemaking is required for such products to address additional labeling issues or the use of synthetics in such products, the NOP will pursue such rulemaking as expeditiously as possible.



United States Department of Agriculture  
Agricultural Marketing Service  
National Organic Program

1400 Independence Avenue SW.  
Room 2646-South Building  
Washington, DC 20250

Policy Memo 11-14

## Policy Memorandum

**To:** Stakeholders and Interested Parties

**From:** Miles McEvoy, Deputy Administrator 

**Subject:** Labeling of Textiles That Contain Organic Ingredients

**Date:** May 20, 2011

The USDA regulates the term “organic” as it applies to agricultural products through the National Organic Program (NOP) Regulation, 7 CFR Part 205. Raw natural fibers, such as cotton, wool, and flax are agricultural products and are covered under the NOP crop and livestock production standards. The NOP regulations do not include specific processing or manufacturing standards for textile products. However, in keeping with NOP’s inclusive scope policy, any textile product produced in full compliance with the NOP regulations may be labeled as NOP certified organic and display the USDA organic seal.

The NOP does not restrict the use of the term “organic” in the labeling of textile products that are certified under third-party certification bodies as long as all of the fibers identified as “organic” in these textile products are produced and certified under the NOP regulations. Textile products that are produced in accordance with the Global Organic Textile Standard (GOTS) may be sold as organic in the U.S. but may not refer to NOP certification or display the USDA organic seal.

Textile products that are labeled as “organic” may:

- Use label claims that identify specific types of organic fibers
- Use statements identifying the percentage of organic fibers

Textile products that are labeled as “organic” must not:

- Use the USDA organic seal unless they are certified in accordance with the NOP regulations.
- Imply or lead the consumer to believe that the final product is certified under the NOP regulations unless they are certified in accordance with the NOP regulations.
- Use a combination of both organic and non-organic sources for a single fiber that is identified as “organic” in the final product.

These policies do not supersede requirements of other Federal and State laws. The NOP labeling requirements are in addition to those required by the Federal Trade Commission’s (FTC) Textile and Wool Acts.



**References:**

Information on FTC labeling requirements for textiles can be found at the following website:  
<http://www.ftc.gov/os/statutes/textilejump.shtm>

**Document Control:**

This document supersedes the NOP fact sheet titled “Labeling of Textiles Under National Organic Program (NOP) Regulations” dated July 2008, which is now obsolete.