

The “Age of Organics”

Advocates want the public to take back organic and build trust in the organic label

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Some in the organic industry point to the extraordinary growth of the organic sector—over 10% a year for the last decade to a \$30 billion industry—as proof of consumer support. Many consumer advocates say that industry should not confuse current organic demand with long-term trust in the organic label, which requires public faith in the underlying organic standards. Ensuring trust in the process by which standards are developed is central to sustained growth of the organic brand and all it offers for the protection of health and the environment.

When Congress shut down the government in October last year, one of the casualties of the political posturing over the *Affordable Care Act* was the fall meeting of the National Organic Standards Board (NOSB). The meeting was cancelled amid a series of controversial public decisions by the National Organic Program (NOP) that challenge the authority and responsibility of the NOSB and the publicly vetted policy and procedures of the board—which establish the decision making process and opportunities for public involvement in crafting organic standards. NOP announced in a May 3, 2013 *Federal Register* (78 FR 25879) notice that it would not follow a NOSB recommendation to take the digestive irritant and cancer causing carrageenan out of soy baby formula. Then, in a September 16 *Federal Register* notice (78 FR 56811), NOP, shocking those long involved in organic standards decision making, reversed the longstanding NOSB synthetic substance review process, known as sunset. To incentivize alternatives to allowed synthetics in organic production, the NOSB process has historically required a decisive two-thirds vote of the NOSB in order to keep synthetic substances on the National List of approved and prohibited materials after five years. Under the NOP edict, it will now require a two-thirds vote to delist a material. In addition, NOP recently told the NOSB that it will be taking over many of the policy decisions heretofore left to the NOSB. This includes taking

control of the NOSB workplan, agenda, and meeting gavel, as well as limiting the scope of advice that the board can give to USDA.

These decisions come at a bad time for the organic sector, as public confidence in the value of the organic label seems to be fragile. Environmentalists and public health advocates, not to mention small farmers who have been the backbone of core organic values and principles, fear that an undermining of the public decision making process could hurt the wide scale transition to agricultural management practices that are essential to protecting the safety of air, land, water, food and workers—as chemical-intensive agriculture becomes increasingly reliant on controversial bee-killing pesticides and chemicals like sulfur fluoride, which are linked to adverse impacts on brain development in children.

Consumer polling suggests that there is an urgent need to build consumer confidence in the organic label. A recent National Marketing Institute poll found that 63% of consumers are not sure products labeled as organic are actually organic. It is not unusual to walk through a farmers’ market and hear comments like, “Organic has been taken over by big government.”

Building Public Trust with Rigorous Standards
Advocates of organic production are steadfast in the belief that if the organic law was followed by USDA—if the NOP and NOSB operate as required by law and decisions on controversial materials are discussed publicly with public input, public investment in the importance of organic methods will grow. One of the organic law’s requirements is that all synthetics allowed by regulation as exceptions are subject to a sunset provision. Sunset law, as a matter of definition and history, requires an automatic termination of the decision after a fixed period unless it is extended. In the case of the *Organic Foods Production Act* (OFPA), since 2007, synthetic materials approved by the board remained on the National List only if a decisive two-thirds of the 15-member board voted to retain its use on a five-year cycle.

Comparison of organic and chemical-intensive agriculture regulation

Organic Agriculture

Precautionary
Preventive
Democratic
Stakeholder driven and collaborative

Chemical-intensive Agriculture

Mitigating risk
Crisis driven
Autocratic or bureaucratic
Dominated by industry profits

Distinguishing Organic from Chemical-Intensive Agriculture

Organic standards and public procedures for its long-term stewardship were purposefully created by the law's drafters. Organic law was not adopted by accident or as a market niche to carve out a higher price point, like gourmet food. It was established as a commitment to a way of farming that challenges the abuses of chemical-intensive, or "conventional," agriculture, that threaten the biological relationships in nature that are necessary for survival. Yes, there is concern about the ingestion of chemicals through the diet that are known to be hazardous, but there is also an urgent concern about contamination of air, water, soil microbial activity, global climate change, and those who handle deadly pesticides. Organic practices are distinguished from chemical-intensive methods because the drafters of the organic law understood that the system in place that regulates pesticides is biased toward the allowance of toxic chemicals as tools for productivity and profitability. For instance, the U.S. Environmental Protection Agency (EPA) for decades has interpreted the *Federal Insecticide, Fungicide and Rodenticide Act* as prohibiting an assessment of pesticide essentiality. Is the chemical needed to achieve pest management goals? Are there less toxic means of achieving productivity? These essential questions are addressed in organic agriculture.

Organic advocates have urged organic growth with the core values and principles embodied in OFPA. They include:

- **Maintain or improve** the natural resources of the operation, including soil and water quality. [7 CFR §205.200. General]
- **Produced and handled without the use of synthetic chemicals**, except as otherwise provided [7 U.S.C. 6504. National Standards for Organic Production] and subject to sunset [6517(e) Sunset Provision]
- **Compatibility or suitability of synthetics as exception in defined categories** [7 U.S.C. 6517(c)(1)(B). National List, Guidelines for prohibitions or exemption NOSB PPM, Guidance on Compatibility, p32]
- **Not harmful to human health or the environment** [7 U.S.C. 6517(c)(1)(A)(i)]
- **Protect from environmental contamination** during manufacture, use, misuse or disposal of such substance [7 U.S.C. 6518(m). Evaluation]
- **Satisfy expectation of consumers** [Policy and Procedures Manual (PPM), p32] "Most consumers believe that absolutely no synthetic substances are used in organic production. For the most part, they are correct and this is the basic tenet of this legislation. But there are a few limited exceptions..." Senate Report, p298]
- **The substance is essential** for the handling of organically produced agricultural products. [7 CFR 205.600(b)(6)]
- **Sunset materials on the National List** [7 U.S.C. 6517(e)] within 5 years of allowance. Allowed materials under §205.601 and §205.603, §205.605, and §205.606 sunset or are removed from the National List unless the Board takes affirmative

action to retain their uses. Similarly, prohibited uses under sections §205.602 and §205.604 will sunset unless the Board takes action to relist. [Board adopted policy, October 2010]

The organic law requires that the list of exceptions –that is, allowed synthetic and prohibited natural materials– be based on recommendations of the NOSB. Additionally, the board is empowered to advise the Secretary on any matters related to the implementation of the statute. The law stipulates the following mechanisms through which the organic law is implemented:

- **Independent National Organic Standards Board** [7 U.S.C. 6518]
- **Independence** "not be inappropriately influenced by the appointing authority" [Federal Advisory Committee Act §5(b)(3)]
- **Consultation** [7 U.S.C. 6503(c). National Organic Production Program, Consultation. "The Secretary shall consult with the National Organic Standards Board."]
- **NOSB-National Organic Program Collaboration** [PPM, p25] "Maintaining, enhancing, and promoting integrity of organic products, principles and products is accomplished through team work and collaboration of the NOSB and the NOP, as well as others in the organic community."
- **Public participation** [7 U.S.C. 6517(d)(4) National List, Procedure for Establishing National List, Notice and Comment]
- **Striving for agreement among stakeholders** [7 U.S.C. 6518(i). Decisive Votes]

Threats to the Organic Label

Recent actions of the USDA, imposed without NOSB consultation and contrary to established procedures, serve to undermine the credibility and integrity of the organic label.

Annotation, or restrictions at sunset review. The board policy to allow the adoption of chemical restrictions during the sunset review process was overturned by NOP in the September 16, 2013 *Federal Register*. The board in 2010 found that, "Since the statute subjects the sunset process to the same review standards as the original National List process, it follows that the same tools for restricting the use of those materials should be available to the Board. In an attempt to best protect against disruption in the organic market, annotations rather than complete prohibitions are called for in the face of available data." A procedure was established to ensure that the NOP conducted rulemaking on new chemical use restrictions adopted by the board without interrupting access to the material. (McEvoy, 9-27-12)

Sunset review. The NOP in its September 2013 *Federal Register* notice issued a directive changing the sunset process established in 2005, now allowing a synthetic material to remain on the National List unless two-thirds of the board votes to delist. The original sunset process, which embodied the model of many state laws (that declare a provision invalid unless it has been extended by

the same process by which it was originally approved), requires the board to affirm the listing by the same decisive majority that approved it through the original petition process.

The National Organic Coalition, a diverse group of organizations representing farmers, consumers, environmentalists, processors, handlers, and retailers, adopted the following policy statement in January:

“The sunset review by the NOSB should subject the national list material under review to as rigorous an evaluation and standard of allowance as the process used for its initial listing in response to the original petition. This means that since the petition process requires a decisive vote to put a material on the national list, it should take a decisive vote of the board to keep it on the national list at the end of the sunset period.”

Public participation. Despite a statutory requirement for USDA to consult with the NOSB in implementing OFPA, the decisions on restricting synthetics and the sunset process were made without consulting the NOSB or public notice and comment.

Advice to the Secretary of Agriculture. By controlling items that it allows to be placed on the NOSB workplan and its public meetings, the NOP stifles the development of board advice to the Secretary on matters of concern to the organic community—issues directly relevant to the implementation of OFPA, such as the NOSB’s effort to provide suggestions on ways to protect organic farmers victimized by genetic drift from genetically engineered crops.

NOSB Policies and Procedures

In a wide-ranging attack on NOSB authority, the NOP abolished the NOSB Policy Development Subcommittee and took over control of NOSB policies and procedures. Activities affected include the NOSB’s vision statement; the NOSB’s self-description as a link to the organic community and defender of organic integrity; roles of subcommittee members and decisions within subcommittees; election of officers; criteria for a large number of decisions. The USDA continues a trend of announcing decisions without identifying criteria.

Conclusion

When USDA proposed undermining the value of organic standards in 1998 by proposing the allowance of genetic engineering, sewage sludge, and irradiation, the public sent 275,000 outraged comments. The established procedures of the NOSB and NOP have historically established organic policy decision making as a transparent process, which has built public trust in the organic label. Recent USDA directives could threaten that trust and undermine the value of the label in the marketplace. It is time for the public to make its voice heard and ensure that organic production grows to replace chemical-intensive practices with those that protect and nurture life. Specifically:

- The NOSB must demand the right to set its agenda and hire a staff director for the board.
- The NOSB must oppose the NOP’s unilateral action that reverses the meaning of sunset.
- The NOSB must require that decisions on the classification of materials be made in a transparent manner in accordance with NOSB-adopted criteria.
- The NOSB must demand to be heard on meaningful actions to protect organic producers from contamination by genetically engineered organisms.
- The NOSB must require the NOP to provide public explanations and criteria for its actions.

Action

Follow Beyond Pesticides’ program to protect and strengthen the integrity of the organic label by going to our webpage *Save Our Organic*, www.beyondpesticides.org/SaveOurOrganic. There you will find ways to join the campaign for strong standards based on public participation and effective organic production practices that protect health and the environment.

