



BEYOND PESTICIDES

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Statement before the

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We would like to address Compliance and Enforcement Directive (NOP C&E #04.01) on Pesticide Use [7CFR Sections 205.201(2), 205.206(e), and 205.601(m)] because it directly impinges on the statutory authority of the National Organic Standards Board (NOSB) under the Organic Foods Production Act (OFPA) and its responsibility to ensure compliance with standards of the act.

As we understand this directive from the National Organic Program (NOP) on allowable inert ingredients in pesticide products used in organic production, we believe it is in violation of the law. The directive does not ensure that the materials introduced into organic production are in compliance with the standards set forth and the process of review. This failure to comply with the statute goes to the very heart of a law that is intended to establish reasonable production practices and consumer confidence that organically labeled products are held to a clear standard of review distinct from other laws and programs.

The directive, as we understand it, would allow inert ingredients listed by EPA as List 2 or 3 inerts to be used in certified organic production “if the certifying agent and producer, after reasonable effort (contacting the manufacturer, EPA, and other USDA accredited certifying agents) are unable to ascertain whether inerts in a pesticide are allowed under the NOP. . .” This approach erodes the clear standard of the act and allows hazardous and potentially hazardous materials to be added to organic production.¹

¹ The *Organic Foods Production Act's* (OFPA) §2118(c)(1)(B)(ii) (National List) specifically prohibits inerts "of toxicological concern" (not referencing specific EPA lists), while the regulation (§ 205.601 Synthetic substances allowed for use in organic crop production) specifically allows only EPA's List 4 inerts. OFPA was intended to impose a higher standard of safety than EPA uses under the *Federal Insecticide Fungicide and Rodenticide Act* (FIFRA) and referenced "toxicological concern" generally without reference to EPA categories or lists. A strict reading of OFPA prohibits the inclusion of active

As the NOP knows, OFPA mandates that only the NOSB may propose substances for inclusion on the National List of synthetic substances permitted in the production of organic products. By its action, USDA fails to understand the purpose of the National List. OFPA Section 2118 requires that the list contain “an itemization, by specific use or application of each synthetic substance permitted...” It also states, “The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if:

- “(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances:
 - (i) would not be harmful to human health or the environment;
 - (ii) is necessary to the production or handling of the agricultural product because of unavailability of wholly natural substitute products; and
 - (iii) is consistent with organic farming and handling; . . .”

Use of the language "only if" mandates the Secretary to determine that each requirement identified in Section 2118(c)(A)(i), (ii) and (iii) is met, before a synthetic substance is considered for inclusion on the National List.

Thus, the National List cannot be a list of synthetic substances “generally recognized as safe,” or registered by EPA, or under review, *and* can only be considered if identified in Section 2118(c)(B)(i) for use in farm production *or* as a synthetic inert, Section 2118(c)(B)(ii) in an approved pesticide and must be based on case-by-case determinations of safety, need, and consistency with organic methods.

As designated by OFPA, the NOSB and the Secretary are directed to consider on only three classes of substances for inclusion on the National List. The managers of the Senate-House Confere Report on OFPA stated that the National List may include exemptions for substances otherwise prohibited but which the National Organic Standards Board and the Secretary determine are harmless to human health and the environment, are necessary because of the unavailability of wholly natural substitute products, and are determined to be

synthetic ingredients on the national list except for ten specified categories delineated in the statute (copper and sulfur compounds, toxins derived from bacteria, pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals, livestock parasiticides and medicines, and production aids § 2118(c)(1)(B)(i)). Then the synthetic ingredients may only be used when it is determined that it "is necessary to the production or handling of the agricultural product because of unavailability of wholly natural substitute products . . ." (OFPA, § 2118(c)(A)ii). It is critical to note that inert ingredients may be biologically and chemically active and therefore must be held to the standard of active synthetic ingredients.

consistent with organic farming practices. Such exemptions, however must meet one of the following three criteria:

- (1) the substance is used in production and contains a synthetic active ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers;
- (2) the substance contains synthetic inert ingredients; or
- (3) the substance is used in processing and is non-synthetic but not organically produced.

Why is the "inert" issue important for organic growers and consumers?

The organic industry is successful because of the trust that exists between the industry and consumers. Consumers are willing to pay a premium price for organic food in order to provide healthy food for themselves and their families and to support sustainable agricultural practices. In order to maintain this trust, consumers must feel confident that practices and materials used by organic growers and processors adhere to the highest standards and provide labeling disclosure when that is not possible. The standards and the National List, however, need to remain strong in order to maintain the consumer trust on which the organic industry is based and thrives.

Thank you.