

Joint Statement of Plaintiffs on USDA Change to Organic Rule without Public Comment

8 April 2015

When a USDA rule implementing a section of the Organic Foods Production Act as important as the “sunset provision” is changed, why are we concerned about process? Since its origins, the sunset provision has been interpreted under the USDA organic rule to require allowed synthetic materials to cycle off the National List of Allowed and Prohibited Substances every five years unless the National Organic Standards Board (NOSB) decisively votes by a two-thirds majority to relist them. In making its decision, the NOSB is charged with considering public input, new science, and new information on available alternatives. In September, 2013, without public comment, and in a complete reversal of the customary public process, USDA announced a change in the rule it had been operating under since the inception of the organic program, now allowing synthetic materials to remain on the National List unless the NOSB votes it off.

The organic label is built on a history and solid foundation of holding public hearings and soliciting extensive public participation. Many of us remember when the original proposed rule – which would have allowed GMOs, sewage sludge, and irradiation – resulted in a large outpouring of public input. It was important that the public had an opportunity to be heard before the rule was adopted. This opportunity created the public belief that the process behind the organic label was something that could be trusted. Ever since then, whether there was agreement on a decision or not, we could believe in a decision-making process and the high integrity of the organic label.

We are deeply concerned that the decision-making process on allowed synthetic materials in organic production and processing is being undermined by USDA. The lawsuit we are filing challenges the unilateral agency action on the sunset procedure for synthetic materials review, which represents a dramatic departure from the organic community’s commitment to an open and fair decision making process that is subject to public input. Legally, the agency’s decision represents a rule change and therefore must be subject to public comment. But equally important, it is a departure from the public process that we have built as a community. This process has created a unique opportunity within government for a community of stakeholders to come together, hear all points of view, and chart a course for the future of organic. It is a process that continually strengthens organic, supports its rapid growth, and builds the integrity of the USDA certified label in the marketplace.

The failure of USDA to comply with public hearing and comment procedures on the sunset rule change serve to usurp a process and label that the organic community began building long before the agency even recognized the legitimacy of organic systems as a viable and productive form of agriculture. It is our hope that the filing of our lawsuit will help set the process straight again, as the organic sector faces important questions of practices and synthetic material use in the future. We believe in the value of the public voice in that process, as we seek to grow the organic sector through public trust in the organic label.

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We must take a stand –together, and hold USDA accountable to the public process that helped establish and grow organic. If we do not hold the line on public process, we fear that in decision-after-decision, organic will lose its meaning. And, USDA will cause the demise of this treasured sector built by farmers, food producers, and the public at large, with a vision that embodies the values and principles that have made the organic label trusted and strong.

Consumers and farmers working together have helped to grow organic from the beginning. We are at a critical and historic moment when the stakeholders must lead in ensuring that our government respects what we have built and remains true to the public process and the legal framework that give organic its integrity.

The plaintiffs in the case include: Beyond Pesticides, Center for Food Safety, Equal Exchange, Food and Water Watch, Frey Vineyards, La Montanita Co-op, Maine Organic Farmers and Gardeners Association, New Natives, Northeast Organic Dairy Producers Alliance, Northeast Organic Farmers Association Massachusetts, Ohio Ecological Food and Farm Association, Organic Consumers Association, Organic Seed Growers and Trade Association, PCC Natural Markets, and The Cornucopia Institute.