

November 18, 2005

TO OTA and THE ORGANIC COMMUNITY:

In late October 2005, the Organic Trade Association (OTA) successfully lobbied for a significant change to the Organic Foods Production Act (OFPA). We, the undersigned are very disappointed in the process used to achieve this change and concerned about the outcome of this action.

OTA took this action after a U.S. Court of Appeals ruled in agreement with a lawsuit filed by Arthur Harvey, an organic blueberry grower, that the USDA organic regulations were inconsistent with the OFPA on several counts. Specifically, the court ruled that OFPA did not permit synthetic substances in processed foods, that all non-organic agricultural ingredients used because of commercial availability issues must appear on the National List, and that dairy farms must feed their cows organic feed for a minimum of 12 months prior to sale of organic milk.

The following letter provides analysis of these actions and begins to identify the challenges that lay ahead for all stakeholders in the organic community.

OTA's decision to seek amendment to the OFPA was taken without consultation with OTA members (including many of us) and without consultation with other vital stakeholders in the organic community. Amendments to the OFPA were accomplished through closed-door deliberations, through efforts funded by a small number of OTA member corporations. Republican members of the House-Senate Agriculture Appropriations Conference Committee inserted the OTA amendment language after the full conference committee had adjourned. The process allowed no input from Democratic members who had objections to the amendment and had drafted compromise language.

What the changes do, and why some object

1. Synthetics in processing: The OTA sponsored amendment will preserve use of all synthetics now used in organic processing. Before the Harvey ruling, the "status quo" NOSB-supported position was that all ingredients and minor processing aids must be reviewed by NOSB, using established criteria, and included on the National List in order to be used "in or on" organic food. The OTA amendment leaves the door open, however, as to which new synthetic substances can be considered and added to the National List. The amendment places no restrictions on the types of synthetics (while crop and livestock materials are now restricted to certain limited categories) and does not expressly include the criteria adopted by NOSB for reviewing these materials.

OTA also refused to incorporate a suggested change to their amendment that would have required all "substances" used in processing to appear on the National List. The OTA amendment refers to "ingredients" that must be on the National List, as opposed to the language struck from OFPA that referred to all "substances." The change is important because the term "substances" would have ensured that the category of "processing aids" (materials used during processing that do not have to appear on the final label) would still have been subject to NOSB review and the National List process. The USDA has issued a policy statement that permits indirect additives and processing aids to be used in processing that do not appear on the National List by declaring that they are not "ingredients," and OTA's amendment reinforces this viewpoint, weakening the original OFPA.

OTA claims their intent was to require NOSB review for all synthetics used in processing, yet they refused to make this important change to guarantee this review.

Although OTA argues that the basis for its amendment allowing synthetics in processing is “10 years of notice and comment rulemaking” many organizations and members of the public never did agree or sanction the broad allowance of synthetics in food labeled “organic.” By choosing to change the law in this manner, without any public discussion or consensus-building regarding the basis for allowing limited synthetics in organic food, OTA risks alienating and confusing many consumers who do not necessarily expect synthetic ingredients in products labeled “USDA organic.”

2. Commercial availability – Prior to the recent court case, certifiers required processors to justify their need for up to 5% of non-organic ingredients, based on lack of commercial availability of an organic ingredient. The Court struck down this process and ruled that all non-organic ingredients must appear on the National List of Allowed and Prohibited Substances. OTA’s amendment gives the Secretary unprecedented authority to write rules to allow emergency use of non-organic agricultural ingredients, if organic forms are not commercially available. This new approach was suggested without any explanation or precedent and the Congressional report language provides no detail. Under the OFPA, NOSB has always had the clear authority to develop procedures to expedite review of materials needed on the National List, and authority regarding the National List. OTA claims to support the role of the NOSB, however the amendment does not require a role for NOSB or public participation in this new process.

3. Dairy transition. The OTA’s new amendment allows third year transitional feed produced on farm to be fed as organic to a herd of animals converting with the farm, avoiding a four-year transition (crops and then livestock). This provision is non-controversial, and part of the current regulation. However, it does not return to pre-Harvey “status quo” which allowed the use of up to 20% conventional feed during the first 9 months of the last year of conversion.

Some have questioned why public interest groups have raised the concern that this change will allow cows to be treated with antibiotics and fed genetically engineered feed prior to conversion. Unfortunately, the regulation struck down by the Court allowing the use of non-organic feed is the same section that requires organic management of young dairy stock after conversion. USDA could write the new regulations to eliminate this organic management requirement, and allow all dairy farms to bring in 12-month old heifers that spent their early lives in conventional management. This would allow non-organic animals as replacement stock on a continuing basis; thus allowing the use of non-organic feed and drugs for young animals.

Since May 2003, the NOSB has been on record with a position requiring organic management from last third of gestation once a herd has converted to organic production. The OTA amendment did not address this significant issue, yet an outcome of the Harvey ruling could be a permanent loophole regarding young stock. We hope that the attention and discussion focused on this issue will lead toward the strengthening, and not weakening of this requirement.

In short, these changes have not strengthened or improved the OFPA in any way: they have only retained the allowance for synthetics that previously existed in the regulation, added a potential loophole for non-organic ingredients, added ambiguity on the issue of processing aids, removed authority from the NOSB, and failed to strengthen dairy standards.

Setting the Record Straight, Again

Despite an active attempt by public interest, consumer and retail sector groups to hold discussions and find common ground with the trade, after a few initial meetings, OTA, through its legal counsel, refused to discuss any positions other than law changes, and then refused to discuss the content of proposed law changes. After OTA sent its OFPA changes to Congress, OTA refused to discuss any compromise language, including a version drafted by Senator Harkin, ranking Democrat on Senate Agriculture committee. Finding no alternative, the public interest sector activated its membership, and Congress received over 320,000 calls and letters from consumers, farmers, and businesses opposing OTA's amendment. Those concerns were ignored by OTA and the members of Congress who carried their amendment. We find it troubling that many traditional Congressional allies for organic issues were disregarded.

On November 2, Senator Harkin spoke against the conference committee report on the Senate floor: **“Mr. President, I am also concerned about this same quiet back door process used to amend the Organic Foods Production Act. ...I urged the organic community to come together, reach a consensus on what was needed to respond to the court decision, and then come to Congress. Unfortunately, that did not completely happen, and some people were left out of the process.**

Again, behind closed doors and without a single debate, the Organic Foods Production Act was amended at the behest of large food processors without the benefit of the organic community reaching a compromise. To rush provisions into the law that have not been properly vetted, that fail to close loopholes, and that do not reflect a consensus, only undermines the integrity of the National Organic Program.”

Where do we go from here?

This OTA sponsored law change will require USDA to promulgate new organic regulations to bring the current organic rule into line with OTA's changes to the law. We appreciate OTA's public statements recently made in support of the NOSB process for review of all synthetic substances used in organic processing and production, and expect that they will honor this commitment by advocating for NOP regulations and policy that accomplish this goal.

It will take a collaborative public pressure to maintain strong standards at the regulatory level and to require that all substances used in or on processed organic products be subject to NOSB review. A remedy for the dairy replacement stock issue is long overdue (as are clarifications of pasture requirements, which were not part of this amendment).

The organic movement was founded on the principle that we all are stakeholders in the organic food system, and promises that we would all have a meaningful say in defining what it means to be organic. Something fundamental has changed when a few large corporations can weaken the law over the protests of the hundreds of thousands of the very community members whose trust is most vital to the integrity of the organic label. The organic industry must do better than this, or risk losing the consumer base that has made organic a viable alternative for producers, processors, and retailers.

Our challenge now is to look forward. We, the undersigned, pledge to demand a public process and public accountability for any future changes to organic standards. We commit to continuing to reach out to all stakeholders in the organic food and farming system. In addition, we will continue to vigorously work for the consumers, farmers and companies whose shared vision in a safe and healthy farming system created and sustains the organic movement.

Respectfully yours,

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