

PROPOSAL:

OTHER/AUXILIARY INGREDIENTS

SUMMARY

The Organic Foods Production Act of 1990 (OFPA), USDA organic regulations, previous USDA statements, and case law (Harvey II) have all made it indisputably clear that **all ingredients** in an organic product must either be organically produced or appear on the National List. No distinction exists between ingredients and “other ingredients.”

We urge the NOSB to use the organic law and regulations for setting policy regarding “other ingredients.” OFPA states that every synthetic and non-organic ingredient must be listed for its specified purpose. For example, if rennet cannot be made without sodium benzoate, a currently unapproved synthetic, then sodium benzoate should be petitioned for the specific purpose of use in rennet.

The current practice of allowing ingredient suppliers to use any synthetic preservative, stabilizer or other ingredient, and justify this because these suppliers are not certified organic handlers, is a violation of OFPA and must end.

BACKGROUND

The law (Organic Foods Production Act of 1990) is clear: a synthetic ingredient not appearing on the National List may not be added to an organic product during processing or any post-harvest handling.

SEC. 2111. [7 U.S.C. 6510] HANDLING.

(a) IN GENERAL.—For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title—

(1) add any synthetic ingredient not appearing on the National List during the processing or any postharvest handling

The law does not distinguish between ingredients and “other ingredients,” it simply and straightforwardly states that **all ingredients** in certified organic foods must meet the law’s criteria for inclusion in organic foods.

The organic standards state:

7CFR§ 205.301(b) “Products sold, labeled, or represented as “organic.”

A raw or processed agricultural product sold, labeled, or represented as “organic” must contain (by weight or fluid volume, excluding water and salt) not less than 95 percent organically produced raw or processed agricultural products.

Any remaining product ingredients must be organically produced, unless not commercially available in organic form, or must be nonagricultural substances or nonorganically produced agricultural products produced consistent with the National List in subpart G of this part. If labeled as organically produced, such product must be labeled pursuant to §§ 205.303

To address any potential confusion, the National Organic Program specified in 2007 in a notice published in the Federal Register that “only single substances may be petitioned for evaluation; formulated products cannot appear on the National List.”⁸⁹

When challenged in court during the Harvey case, the courts agreed that all non-organic non-agricultural ingredients must be on the National List:

In the final ruling on the Harvey II case the Courts determined that Congress did not distinguish between the general term “ingredients” and “processing aids,” and authorized the use of synthetic substances, whether ingredients or processing aids, for the use in handling operations so long as they appear on the National List.

Risking consumer confidence in organics

The success and continued growth of the organic industry depends in large part on consumer trust in the organic label, which in turn depends on the NOSB, USDA and industry’s adherence to the organic law and regulations.

Without question, if organic consumers knew that the organic products they buy could contain unapproved ingredients such as polysorbate 80, sodium benzoate, polyacrylamide, etc. and processed with materials such as hexane and propylene glycol (and these are just a few of the “other ingredients” that are mentioned in past materials petitions and TRs), they would undoubtedly feel deceived—and rightfully so.

Survey data from PCC Natural Markets in Seattle, the largest cooperative grocer in the country, support our claim that organic consumers expect ***all ingredients*** in organic foods to be free from unapproved ingredients and processing aids. PCC Natural Markets surveyed 1,432 consumers and published its results in August

⁸⁹ Federal Register / Vol. 72, No. 11 / Thursday, January 18, 2007

2011.⁹⁰ The survey found that products containing an added nutrient (in this case, algal oil) containing unapproved “other ingredients” would not be purchased by an overwhelming majority of organic shoppers.

For example, 78.3% of shoppers would not purchase products with algal oil containing synthetic stabilizers, and 88.6% would not purchase products containing algal oil with glucose syrup solids. Both ingredients are currently found in certain brands of organic baby food containing algal oil. And 88.6% would not purchase an organic product with algal oil if it were extracted with hexane (currently the case with organic infant formula).

Yet, since these “other ingredients” are not required to be listed in the ingredients lists of a processed food, most consumers likely do not realize that when they buy an organic product with “algal oil,” they are buying a product with glucose syrup solids (possibly derived from genetically engineered corn), synthetic stabilizers and additional unapproved synthetic “other ingredients.” These “other ingredients” do have to be listed on algal oil sold as a supplement. A consumer who would not buy an algal oil supplement that lists ingredients such as modified starch, glucose syrup solids, mannitol and sodium polyphosphate might buy an organic product listing “algal oil,” not knowing that the algal oil in the organic food contains the exact same ingredients as the algal oil in the supplements aisle.

Clearly, the failure of past Boards, and the National Organic Program, to fulfill the law’s requirements has created an unfortunate situation of massive consumer misinformation and widespread violations of the law. Consumers expect all ingredients in their foods to be organic or carefully reviewed and approved, as stated in the law, but the opposite is the case. Ingredients such as polysorbate 80, sodium benzoate, polyacrylamide and countless others, are routinely added, as “ingredients of ingredients,” to organic foods.

While an organic parent would likely avoid any food listing sodium benzoate as an ingredient, given its documented potential link to ADHD in children, these same parents may unknowingly be feeding foods with sodium benzoate to their children; for example, sodium benzoate is listed as an ingredient in rennet, which appears in many organic cheeses. Since it is not listed in the ingredients list, parents have no way of knowing whether the organic cheese they buy contains sodium benzoate or not; most parents likely, and mistakenly, assume that because it is organic, it does not contain this potentially harmful synthetic substance.

It is unclear what has been the legal basis for the NOSB, USDA and industry’s assumption that “other ingredients” are allowed unless prohibited in an annotation, when the law states the exact opposite: OFPA requires that all

⁹⁰ PCC Natural Markets. Nutrient Additives PCC Shopper Survey. August-September 2011. Submitted to the NOSB through regulations.gov

ingredients are prohibited unless they are produced in accordance to the organic standards or are present on the National List.

According to the current *modus operandi* of the organic industry and the USDA, an ingredient containing multiple unapproved sub-ingredients, which could include anything ranging from artificial sweeteners, to GMOs, to synthetic preservatives, could be added to organic foods.

For a vast number of materials currently on the National List, neither the petition nor the TR identifies the ingredients and processing aids used, despite the clear requirement in OFPA that the Board work with manufacturers of petitioned materials to obtain a full list of ingredients.

Alarming, a handful of petitions and Technical Reviews even mention that ingredients and processing aids cannot be disclosed because of “trade secrets” or “Confidential Business Information,” yet the materials were approved. As a result, it is unclear whether anybody actually knows whether potentially harmful ingredients, like artificial sweeteners and preservatives, are appropriately kept out of organic foods, as the law requires.

We are disappointed that the Handling Subcommittee continues to ignore the law, and is now attempting to institutionalize the massive consumer deception perpetuated by the organic industry with its proposal. We should be moving forward, toward closer adherence to the law and to organic integrity, not backward.

If the NOSB fails to turn this ship around, this issue will likely end up being adjudicated in federal court.

CORNUCOPIA’S POSITION

The law and regulations are clear: no synthetics or non-organic ingredients may appear in organic foods unless they appear on the National List. Organic processors currently purchase non-organic ingredients from conventional suppliers, who face no restrictions in terms of synthetic preservatives, flavors, stabilizers, carriers, binders and other ingredients.

OFPA clearly states that synthetics should be listed on the National List “by specific use or application.”

We propose that the only solution to these past mistakes is to use OFPA and the organic standards moving forward. Any other policy would be illegal. We propose Option D, which we and other public interest groups proposed in our public comments for the Fall 2012 meeting. Option D is explained again below.

Response to the Handling Subcommittee Proposal

The Handling Subcommittee's proposal does not correct the OFPA violations. The proposed baseline criteria are woefully inadequate. To use the FDA's GRAS (Generally Recognized as Safe) or EAFUS (Everything Added to Food in the United States) status as baseline criteria is simply illegal, since OFPA specifically states that every synthetic appearing in organic foods should be held to higher standards. Virtually anything is allowed as GRAS or EAFUS by the FDA, including artificial sweeteners, synthetic dyes, etc. The FDA does not consider independent research on human health effects or environmental impacts before granting an ingredient GRAS status. The agency depends on chemical manufacturers and food processors to do their own due diligence. These baseline criteria are meaningless.

The HS proposes that a checklist be developed and used, to make clear which "other ingredients" were reviewed, and which restrictions the Board decided on. We reject this proposal. Again, OFPA requires that every ingredient must be organic or approved; the way to move forward is to review every ingredient.

In addition, a checklist currently exists for evaluation criteria, yet it has routinely been disregarded. In the most current example, the Handling Subcommittee incorrectly answered many questions regarding environmental impacts, and even in cases where it acknowledges that the material fails the criteria, the subcommittee voted to approve the material anyway. We doubt that a "checklist" will lead to a correction of the violations of OFPA.

Option D

We strongly urge the NOSB to use OFPA and the current standards as the legal basis for developing the "other ingredients" policy, rather than incorporating FDA's terminology, which keeps consumers in the dark regarding the full list of ingredients in their foods.

The USDA's organic regulations clearly state that an "ingredient" is "any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed." We see no reason to change this definition.

We propose the following policies be adopted:

- In accordance with OFPA (SEC. 2111. (7 U.S.C. 6510)), all non-organic non-agricultural ingredients and processing aids used during organic handling must appear on the National List.
- The NOSB uses OFPA's criteria for evaluating petitioned materials (SEC. 2118 7 USC 6517(c)).

- Only single substances can be petitioned, formulated products cannot appear on the National List.
 - Example: “algal oil” contains other types of conventionally-produced edible oil, sweeteners and synthetic preservatives. “Algal oil” can appear in an organic product only if all ingredients are either organic (e.g. organic sunflower oil) or on the National List (e.g. tocopherols).
- During the petition process, the NOSB works with manufacturers to obtain a full list of ingredients, in accordance with OFPA (7 USC 6518(l)(2))⁹¹ to allow the NOSB to determine whether all ingredients meet OFPA’s requirements.
- No petition will be approved unless all ingredients have been disclosed and deemed legal by the NOSB.

Additional Comments in Response to the HS Proposal

We do not support the proposal to create a separate list for cleaners, sanitizers and boiler additives. In some cases, direct steam injection used in food processing applications may lead to residues in the food.⁹² These materials should be held to the same standards in terms of human health/environmental effects.

CONCLUSION

- OFPA states that every ingredient appearing in an organic product must be either organic or on the National List.
- OFPA states that the National List should contain an “itemization, by specific use or application, of each synthetic substance.”
- The NOP has declared that only single substances, not multi-component materials, may appear on the National List.
- The law states that the NOSB must work with petitioners to obtain a full list of ingredients.

In future petition reviews and sunset reviews, the NOSB must adhere to the above criteria of the law. If an organic handler would like to include a multi-component

⁹¹ 7 USC 6518(l)(2): Requirements – In establishing the proposed National List or proposed amendments to the National List, the Board shall work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced

⁹² Theuer, R (2012) Getting Steamed Up Over Boiler Additives

ingredient in an organic product, every ingredient of that multi-component material must be either organic or on the National List.

For any “minor” ingredients that the industry believes are absolutely essential to organic handling, like sodium benzoate for rennet, we propose that these be petitioned for their specific use.