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Reject Sec. 10104 (e) National Organic Standards Board S. 3042 Senate Farm Bill

Background

The Organic Foods Production Act (OFPA), incorporates language that attempts to ensure that the process for allowing synthetic chemicals in organic production, handling, and processing is rigorous. This meets a public expectation that food labeled organic is subject to a higher degree of scrutiny than food produced in the conventional market. This distinguishes food labeled under OFPA from food produced with chemicals registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

National List of Allowed and Allowed and Prohibited Substances

If synthetic materials are allowed in organic production, they, by law, are subject to a no adverse effects standard, a cradle-to-grave analysis, a determination of essentiality (necessity) of the material, and a sunset clause that forces a reevaluation every five years. This time-limited sunset contains a default assumption that continued allowance of the synthetic substance will not be permitted until the NOSB votes to recommend its allowance, or continued allowance, to the Secretary of Agriculture.

OFPA implements a belief that growers will continue to adopt methods not dependent on outside inputs, that there would be continuous improvement. At the same time, new science as it emerges, and is subject to Technical Review documents prepared for the NOSB, informs the board's deliberations on the allowance of a synthetic substance. This process, by design, contrasts dramatically with the allowance of pesticides under FIFRA where, once a decision is made to allow a chemical with relatively little public oversight and input, it is extremely difficult, or virtually impossible, to reverse that decision without serious political or public pressure –typically as a result of a crisis event or litigation.

In essence, the continued allowance of a synthetic chemical is subject to the same rigorous review that was conducted when the substance was first permitted on the National List, which requires that two-thirds of the board must vote to list. As intended by Congress, this review process repeats at the end of a five-year cycle, when the board again must vote by two-thirds to relist the synthetic chemical.

A Change in NOSB Process will Weaken Oversight of Synthetic Chemicals in Organic

This Senate Farm Bill provision brings uncertainty to the five-year sunset process and may undermine a basic tenet of the law. Without this sunset provision, synthetic materials may remain on National List, and attempts to introduce alternative materials and find new creative management practices would be disincentivized.

The Senate provision may seem like it does not do anything (changes in law always do something, whether intended or not): “Any vote on a motion proposing to amend the national list shall be considered to be a decisive vote that requires 2/3 of the votes cast at a meeting of the Board at which a quorum is present to prevail.” One likely interpretation of this provision is that any change to the National List is an amendment to the list (or amends the national list) requiring a 2/3 vote to make a change – whether taking the synthetic off or putting it on the National List-- whereas, OFPA as written has been historically implemented with the default assumption that synthetic materials come off the list after five years unless the board votes decisively (2/3) to keep it on the list.

This NOSB process has worked for two decades to help grow the organic sector to a \$53 billion industry. With the erosion of this basic tenet of the law under the Senate Bill provision, consumer trust in the USDA organic label is seriously threatened.