

**Uphold and Defend Organic Standards  
Send Your Message by Monday, June 3, 2013**



The Agricultural Marketing Service (AMS) on May 3, 2013 published a proposed rule in the Federal Register (FR) that proposes to overrule (i) a National Organic Standards Board (NOSB or Board) finding of potential hazard under the *Organic Foods Production Act* (OFPA) by using a standard under the *Federal Food, Drug, and Cosmetic Act* as the basis for superseding a Board recommendation, and (ii) Board policy to recommend restrictions (or annotations) during the sunset review process. These proposed actions do not follow the legal process that the NOSB, the National Organic Program (NOP), and the public are required to follow and should not be contained in a proposed action by AMS.

This proposed rule reflects a dramatic change in process, one that undermines the intent and letter of OFPA and public trust in the process in which stakeholders have participated. Rejecting a Board recommendation and allowing a material use based on the standard of another statute—the *Federal Food Drug and Cosmetics Act*—that does not specifically supersede OFPA for public safety reasons denies the Board its basic function to determine the potential human health and environmental effects of substances considered for inclusion on the National List. As you know, according to the statute, “[t]he Secretary may not include exemptions for the use of specific synthetic substances in the National List other than exemptions contained in the Proposed National List or Proposed Amendments to the National List.” 7 U.S.C. 6517(d)(2). Rejecting a restriction, as the one the NOSB recommended for infant formula and carrageenan, constitutes an addition of a use and a clear violation of OFPA.

This proposed rule overrides Board policy that enables National List material annotations to be revised or added during the sunset review process. OFPA clearly provides that it is the responsibility of the NOSB to develop the National List, stating “The Board shall develop the proposed National List or proposed amendments to the National List... .” 7 U.S.C. § 6518(k). The NOSB’s sunset review process, established by the Board in 2011, provides for a continuation of the existing listing pending the completion of the rulemaking process, should it extend beyond the sunset date. As explained by the NOP, “The NOSB recommendations to renew the listings are provided to the NOP to allow for a continuation of the current use of a substance *if it is not possible to amend* the annotation during the sunset rulemaking.” (M. McEvoy, Memorandum to the National Organic Standards Board, September 27, 2012, p1) (emphasis added). The NOP proposal to adopt the “second recommendation” for carrageenan, cellulose, and List 3 inerts overrules this process and rejects Board recommendations to establish annotations or an expiration date.

**Message to USDA:** Let USDA know that you want the *Organic Foods Production Act* to be followed because it offers us a higher level of health and environmental protection not provided by other statutes. USDA cannot defer to other standards or laws that do not meet the organic standards.

**Where to send you message:** Send your message to the Federal Register <http://www.regulations.gov/#!submitComment;D=AMS-NOP-11-0003-0029> where AMS is accepting comments on the May 3 FR notice. **The deadline for docket entries in June 3, 2013.**