

Congress of the United States
Washington, DC 20515

April 24, 2014

The Honorable Thomas J. Vilsack
Secretary
Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Secretary Vilsack:

As the principal authors of the Organic Foods Production Act of 1990, we are writing to raise concerns about the recent sunset policy change made by your agency, which we believe to be in conflict with both the letter and intent of the statute. We are particularly concerned that such a substantive policy change was made without the benefit of full notice and comment.

The Organic Foods Production Act (OFPA) of 1990 establishes the overall principle that in order for any organic product to be labeled as “organic”, it must be “produced and handled without the use of synthetic chemicals.” In recognition that there may be circumstances where a synthetic chemical is needed, and no non-synthetic material is available to address the need, the law also establishes a very thorough review process whereby certain synthetic chemicals could be permitted for use in organic products under a temporary exemption to the synthetic prohibition but would sunset after 5 years.

This process requires the National Organic Standards Board (NOSB), a citizen oversight board established by OFPA, to review each material based on a stringent list of science and market-based considerations that analyze its impact on human and environmental health, its compatibility with the principles of organic agriculture, as well as an analysis of the existence of viable non-synthetic alternatives. Further, the law specifies that two-thirds of the full NOSB must vote in favor of allowing the synthetic material to be used, and the proposal be forwarded to the Secretary of Agriculture for a formal rulemaking to add the material to the “National List” of allowed and prohibited substances.

In addition to establishing a very high hurdle for allowing the short-term (5-year) exemption to the synthetic chemical prohibition, the law also establishes a sunset process under Section 2118(e) whereby all materials on the National List become invalid unless the material is re-reviewed under the same statutory review procedures within 5 years of its previous adoption, and renewed by the Secretary of Agriculture. As with the initial listing, two-thirds of the full Board must vote in favor of that recommendation for it to be valid. This long-standing interpretation of this crucial aspect of OFPA is not only in keeping with our intent in writing OFPA, but is also in keeping with the plain reading of the statute.

Therefore it was with great concern that we learned about a policy change implemented by your agency this past September which turns the sunset policy of OFPA on its head, to create a presumption that all synthetic materials on the National List will be automatically renewed at the

agency this past September which turns the sunset policy of OFPA on its head, to create a presumption that all synthetic materials on the National List will be automatically renewed at the 5-year sunset mark, and to establish a high hurdle (two-thirds vote) to remove the material from the list. This is a complete reversal of the statutory and long-standing policy on the burden of proof that has required a two-thirds majority vote in order to re-new the material on the National List. Further, the policy change relegates the sunset review to a Subcommittee, and imposes major roadblocks to the review of the material by the full NOSB as part of the sunset process.

Perhaps the most alarming part of this sunset policy announcement was the decision by the agency to not subject this substantive policy change to full notice and comment rulemaking, a critical step to allow the public to provide scientific and market information to aid the Secretary and the NOSB in fulfilling its statutory review duties. Had the agency engaged in a full rulemaking process for the policy change, it would have given the Secretary the benefit of hearing about the strong objections to this change from the public, from many in the affected organic community, and from Members of Congress, such as ourselves.

Therefore, we are urging you to reverse this policy change. If, after consulting with Congress and the full spectrum of the affected organic community, you still believe this change is necessary, we strongly recommend that you use the full notice and comment rulemaking procedures to do so.

The OFPA is one of our proudest legislative accomplishments and we are extremely concerned by this significant and unwarranted policy change. It is counter to the key principals of public involvement and oversight in the organic certification process as well as adhering to the highest standards possible for organic food production.

Thank you for your consideration of our views. We look forward to hearing from you soon.

Sincerely,



PATRICK LEAHY
United States Senator



PETER DeFAZIO
United States Representative