

Equal Exchange Joins in Challenging Major USDA Change to Organic Rule: Customary Public Comment Process Averted to the Chagrin of Petitioners

Washington, DC, April 8, 2015 – Equal Exchange has joined other stakeholders in the organic farming movement to file a lawsuit in federal court, maintaining that the U.S. Department of Agriculture (USDA) violated the federal rulemaking process when it changed established procedures for reviewing the potential hazards and need for synthetic chemicals in certified organic food. The coalition of 15 organic food producers and farmer, consumer, environmental, and certification groups asked the court to require USDA to reconsider its decision on the rule change and reinstitute the agency’s customary public hearing and comment process.

When it comes to organic food production, consumers and producers expect a high level of scrutiny and are willing to pay a premium with the knowledge that a third-party certifier is evaluating compliance with organic standards. The burgeoning \$35+ billion organic market relies heavily on a system of public review and input regarding decisions that affect organic production systems and the organic label. The multi-stakeholder National Organic Standards Board (NOSB)¹, appointed to a 5-year term by the Secretary of Agriculture, holds bi-annual meetings to solicit public input and to write recommendations to the Secretary on organic policy matters, including the allowance of synthetic and non-organic agricultural materials and ingredients.

In adopting the Organic Foods Production Act of 1990 (OFPA), Congress created standards for organic certification and established the NOSB to oversee the allowance of certain non-harmful and essential synthetic materials in organic for a period of five years, with a procedure for relisting if consistent with OFPA criteria. Plaintiffs in this case maintain that the USDA organic rule establishes a public process that creates public trust in the USDA organic label, which has resulted in exponential growth in organic sales over the last two decades. The unilateral agency action taken to adopt major policy change without a public process violates one of the foundational principles and practices of OFPA —public participation in organic policy-making.

At issue in the lawsuit is a rule that implements the organic law’s “sunset provision,” which since its origins has been interpreted to require allowed synthetic materials to cycle off the National List of Allowed and Prohibited Substances every five years unless the NOSB votes by a two-thirds majority to relist them. In making its decision, the NOSB is charged with considering public input, new science, and new information on available alternatives.

In September, 2013, in a complete reversal of the accepted process, USDA announced a definitive change in the rule it had been operating under since the inception of the organic program, without any public input. Now, synthetic materials can remain on the National List in perpetuity unless the NOSB takes initiative to vote it off the List.

¹ The NOSB is a 15 member Board comprised of farmers, consumers, environmentalists, retailers, certifiers and food producers who advise the Secretary of Agriculture and the National Organic Program on all matters related to organic food and agriculture policy.

In a joint statement, the plaintiffs, representing a broad cross-section of interests in organic, said:

We are filing this lawsuit today because we are deeply concerned that the organic decision making process is being undermined by USDA. The complaint challenges the unilateral agency action on the sunset procedure for synthetic materials review, which represents a dramatic departure from the organic community's commitment to an open and fair decision making process, subject to public input. Legally, the agency's decision represents a rule change and therefore must be subject to public comment. But equally important, it is a departure from the public process that we have built as a community. This process has created a unique opportunity within government for a community of stakeholders to come together, hear all points of view, and chart a course for the future of organic. It is a process that continually strengthens organic, supports its rapid growth, and builds the integrity of the USDA certified label in the marketplace.

The plaintiffs in the case, represented by counsel from Center for Food Safety, include: Equal Exchange, Beyond Pesticides, Center for Food Safety, Food and Water Watch, Frey Vineyards, La Montanita Co-op, Maine Organic Farmers and Gardeners Association, New Natives, Northeast Organic Dairy Producers Alliance, Northeast Organic Farmers Association Massachusetts, Ohio Ecological Food and Farm Association, Organic Consumers Association, Organic Seed Growers and Trade Association, PCC Natural Markets, and The Cornucopia Institute.

About Equal Exchange

Equal Exchange, a pioneer and U.S. market leader in Fair Trade since 1986, is a \$60 million importer and wholesaler of high quality, organic coffee, tea, olive oil, bananas and other foods to customers across the United States. 100% of Equal Exchange products are fairly traded, benefiting more than 50 small farmer co-operatives in 40 countries around the world. In keeping with its Fair Trade mission Equal Exchange is a worker co-operative, owned and democratically controlled by its employees. Headquartered in West Bridgewater, Mass., the company also has offices in St. Paul, Minn., Portland, Ore., and cafés in Boston, Mass., and Seattle, Wash.

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