

Holding On to Organic!!

A Grassroots Perspective Concerning Big Food's Threat to Organic Standards

by Steve Gilman

Back-Door Deal Weakens Organic Standards

Last October, Republican leadership tacked a tiny rider loaded with big repercussions onto the massive 2006 Agricultural Appropriations bill. Inserted at the behest of lobbyists working for the Organic Trade Association (OTA), the rider benefits large food processors -- altering provisions of the 15-year-old Organic Food Production Act (OFPA) and weakening organic standards in a single stroke. The secretive deal also pulled an end-run around the democratic process -- excluding the minority Democrats on the conference committee and attaching the rider without debate or vote after the meeting was adjourned.

Written in obscure legal language, the rider effectively nullifies a 2005 Court decision affirming OFPA's ban on "synthetic ingredients" in processed organic foods while reinforcing a loophole allowing the use of hundreds of synthetic processing substances without review. It also allows dairies to use non-organic replacement animals and gives the U.S. Department of Agriculture (USDA) unprecedented power to grant "emergency exemptions" to allow non-organic ingredients without citizen review when organic ones are deemed not commercially available.

The integrity of the USDA green-and-white organic label is at stake. Many members of the grassroots organic community have fought long and hard to maintain the spirit and substance of organic standards. Despite OTA's justifications, this action is viewed as a brazen attempt by Big Food processors to water down regulations and muscle in on organic's good name.

The organic community learned of the rider only after OTA privately circulated the amendment in Congress shortly before its enactment. The public reacted quickly to alerts from the National Campaign for Sustainable Agriculture, Center for Food Safety, Organic Consumers Association and other public-interest group allies, flooding Congress with over 320,000 letters, phone calls and emails in opposition. Even though the insider rider strategy prevailed, there is still opportunity for action by the organic community to influence the final outcome. There is an upcoming rulemaking phase that will be open to public comment, as well as direct action initiatives underway to persuade Congress to repeal the legislation. Thanks to the current lobbying scandals in this election year, representatives are also particularly vulnerable to ethics issues. Although the OTA action seems like a done deal at this point, there is still much we can do.

What We Can Do About It!

- Remember – we vote with our wallet on a daily basis. Conventional food manufacturers regularly use thousands of unlabeled synthetic processing substances in everyday foods. Buy Organic, but read organic labels carefully. Choose "100% Organic" products and select fresh, local, whole foods over processed ones. Support "Fair Trade" items in the marketplace.
- The Interstate Council is planning to expand the NOFA website (www.nofa.org) to present more information and talking points.
- Strategies are still being considered by organic groups on how best to address the OTA action, including: repealing the rider; modifying it in the upcoming rulemaking process; and initiating new legislation. Bookmark the "Organic Allies" websites for updates and stay tuned for Action Alerts.
- Contact your representatives in Congress to protest the corporate attack on Organic standards. Urge House members to join the Organic Caucus (sample letter and talking points will be on NOFA website). Protest the undemocratic rider action. Demand real ethics reform in Congress.
- Write to food manufacturing companies: protest the OTA processors' action and hold them to the spirit and substance of higher organic standards.
- Support your local Food Coops, Farmers Market, CSA (Community Supported Agriculture) Farm, and restaurants sourcing local produce.
- Encourage school and college food programs to purchase local and organic produce and products.
- Encourage consumers to join and support your local NOFA

Who's What --Acronyms used in this Article

GMOs - Genetically Modified Organisms
NOP – National Organic Program
NOSB – National Organic Standards Board
OFPA – Organic Food Production Act of 1990
OTA – Organic Trade Association
USDA – United States Department of Agriculture

Organic Label At Risk

The big food companies clearly understand how much consumers have come to trust the organic label. The Court rulings would have required them to use the lesser "Made with Organic" designation, which OTA claims does not command the higher premiums they are seeking in the marketplace. To qualify for the full "USDA Organic" label they would be required to replace synthetic chemical ingredients like pectin (used in making organic jams and jellies) with naturally occurring versions such as those derived from fruit waste by-products.

Even though the Court decision gave manufacturers until July, 2007 to comply, OTA argued processors would find it too difficult to reformulate their ingredients - - hurting farmers, putting companies out of business and limiting the availability of organic food in the marketplace. Heavily influenced by their newer Big Food members, OTA unilaterally rushed into the rider action to rewrite the law instead.

The Background

This legislative intrigue is just the latest round in a continuing struggle over defining and preserving organic standards. In 1998, for instance, a huge public reaction forced USDA's National Organic Program (NOP) to rescind and revamp their first attempt at a Rule, which included the use of GMO's, sewage sludge and food irradiation as acceptable organic practices. Some organic insiders contend that these obviously non-organic items were put in as a red herring, designed to deflect attention from a number of questionable rulings made by the NOP, including a 1995 processor-friendly interpretation of the organic law approving a National List of 38 synthetic processing chemicals that could qualify for the organic label. A NOP interpretation also created a loophole allowing a category of processing chemicals called "substances not needing review" that are not on the National List.

The National Organic Standards Board (NOSB) was created as a citizen review panel to safeguard organic standards by the Organic Food Production Act of 1990 and was given sole legal responsibility for determining additions to the National List. Despite warnings from observers (some within NOSB itself) that synthetics were not allowed under OFPA, the list took shape with considerable input from the processor representatives on the NOSB as well as open participation from the greater organic community.

Despite the underlying legal controversy, the National List of Synthetic Substances was instituted as part of the NOP's final Rule, which went into effect in October 2002. Two days after the Rule was launched, an organic farmer from Maine took the matter to court. Arthur Harvey, an organic blueberry grower, processor and farm certification inspector, filed suit at his own expense against the Secretary of Agriculture to turn things around. But as the lawsuit began its slow journey through the courts, the synthetic provisions of the new Rule became the status quo for the big food processors' "business as usual."

In 2002, a Maine District Court ruled against Harvey. But he persisted, filing an appeal with the help of a growing list of Amici (friends of the court). Finally in early 2005, a Circuit Court of Appeals ruled substantially in Harvey's favor, throwing the organic industry into turmoil.



There are four organic labeling designations permitted by USDA:

- "100% Organic" means that no synthetic or non-organic ingredient may be added to a product. The name of the USDA accredited certifier must appear on the label, and it may bear the USDA seal.
- "Organic", which means at least 95% of the packaged ingredients are certified organic. The remaining non-organic ingredients must be approved on the USDA list. The name of the USDA accredited certifier must appear on the label, and it may bear the USDA seal.
- "Made with Organic" means at least 70% of the product's ingredients are organic. The remaining non-organic ingredients must be approved on the USDA list. The product must be certified and bear the name of the USDA accredited certifier on the label, but it may not bear the USDA seal.
- Processed products containing less than 70% organic ingredients are not allowed to make organic claims on the front of the package but may list specific organic ingredients on the side-panel. These products cannot be certified or bear the USDA seal.

In a reply to criticism from OTA consultant, Grace Gershuny, (www.restoreorganiclaw/gershuny_andreply.html) Harvey maintains: "If industry people succeed in stamping out this principle [of no synthetics added] there will be nothing to stop industry lobbyists as they team up with USDA to convert organic standards into nothing more than a label which takes advantage of gullible consumers."

Groups of stakeholders met repeatedly in summer 2005 to deal with the fallout. Processors in OTA claimed the industry needed to return to the pre-Harvey status quo to maintain production and insisted that changing OFPA was the only way to do it. They also argued (legal issues aside) that using the courts to change policy was "undemocratic" because acceptable standards had been worked out by a number of participants through the rulemaking process. This argument overlooks the considerable organic community input that went into the formulation of OFPA in the late 1980's, however, before Big Food had much interest in organic markets.

Many other groups were reluctant to open the law to legislative changes

because they saw it as an opportunity for further tampering by special interests. Discounting the Rule modifications suggested by the National Campaign for Sustainable Agriculture Organic Committee, OTA hardened its position and left the bargaining table -- secretly launching a preemptive strike aimed at permanently changing the organic law instead. In September, the US Senate passed a resolution requiring USDA to study the ramifications of the Harvey suit, giving more time for the organic community to reach consensus. Refusing to compromise, however, OTA unilaterally set out on its own strategy, culminating in the placement of the rider into the appropriations bill in October.

Despite the claims of OTA, the rider goes much further than simply restoring the pre-lawsuit status quo. The following is a brief comparison of the three items changed by the Rider, showing: (a) the USDA/NOP Rule; (b) the Harvey Appeals Court ruling, based on OFPA and (c) the OTA Rider changes to OFPA -- which still must go through a public rulemaking phase.

1) Synthetics

a) The USDA rule allowed a NOSB-approved National List of 38 synthetic ingredients to qualify for the organic label, as long as they constitute 5% or less of the total ingredients in the product.

b) Under the Harvey judgment, the Court invalidated the USDA regulation, ruling that OFPA prohibits the use of synthetics.

c) The OTA Rider language reinstates the use of the NOSB-approved National List *ingredients* -- but also builds in a loophole allowing the use of over 500 synthetic *substances* such as processing aids and food contact chemicals with no restrictions or review.

2) Dairy Herd Conversion

a) The USDA rule allowed dairy herds to be converted to organic production in one year by feeding them at least 80% certified feed for 9 months and shifting to 100% certified feed for the last 3 months of the conversion.

b) Based on OFPA, the Harvey ruling negated USDA's 80/20 provision and required dairy farms to convert to 100% organic feed for one year prior to the sale of milk products as organic.

c) The OTA Rider changes OFPA to allow farmers to feed their herds farm-grown, third-year transitional feed, so that the milk could be sold as organic as soon as the land qualifies for organic certification -- but also allows replacement animals to be fed conventional feed containing Genetically Modified Organisms (GMOs), antibiotics, hormones, etc. even after farmers had converted their farms and herds to organic, up to one year before the cows' milk products are marketed as organic.

3. Commercial Availability

a) The USDA rule empowered accredited certifiers to allow processors to substitute non-organic ingredients if the processor can demonstrate the organic form is not available.

b) The Harvey ruling ordered that only NOSB-approved ingredients placed on the National List could be considered for commercial availability determinations.

c) The OTA Rider changes OFPA by creating a new, open-ended allowance that bypasses NOSB citizen review and enables food companies to appeal directly to the Secretary of Agriculture to substitute non-organic ingredients whenever organic sources are ruled not "commercially available."

A Small Victory

Another contentious issue arose in early 2006 concerning USDA's latest appointments to the NOSB. Even though the selection process is open to public input, the procedure is secretive and USDA has the final say over who is placed on the Board. The panel consists of 4 organic farmers, 3 consumer/public interest advocates, 3 environmentalists, 2 handlers/processors, 1 retailer, 1 scientist, and 1 certifying agent whose positions are filled for three-year terms on a rotating basis.

In January, USDA-watchers were startled to find that the new NOSB appointees included a bureaucrat from General Mills (a Big Food rider supporter) in the consumer advocate category and an OTA founder/rider supporter in the certifier slot. Created by the 1990 Organic Act, the NOSB was clearly intended as an independent citizen review panel. USDA's ability to potentially pack its ranks with industry insiders represents a threat to legitimate decision-making and organic standards.

This time USDA's action was thwarted, however, but by a circular route. Consumers Union, in league with other national consumer groups, sent letters to both USDA and General Mills protesting the processor's appointee. While there was no response from USDA, General Mills, fearful of public backlash in the marketplace, ended up withdrawing its candidate. The process demonstrates that consumer pressures sometimes have a better chance of challenging governmental actions when they are directed at business entities instead.

Overall, the organic community has been well-represented by the NOSB appointees. There have always been some outstanding people with the public interest at heart serving on the board. However, only organic policies that are approved and adopted by USDA are official. Currently, over 30 NOSB recommendations based on extensive public comment, molder away unacknowledged by the NOP.

Organic Allies

A number of consumer and public-interest groups are long-time supporters of organic standards:

-- **National Campaign for Sustainable Agriculture**

www.sustainableagriculture.net sign up for Action Alerts in the "Get Involved" pages.

-- **Consumers Union**

www.consumersunion.org Publishers of Consumers Reports; information on Eco-Labels; sign up for Action Alerts

-- **Center for Food Safety**

www.centerforfoodsafety.org Action alerts and legal action

-- **Organic Consumers Association**

www.organicconsumers.org Action alerts; mail campaigns; position papers

-- **Cornucopia Institute**

www.cornucopia.org Support for family-style farming; dairy ratings for organic milk – factory farms or family farms?

-- **Arthur Harvey's website:**

www.restoreorganiclaw.org

Wag the Dog

Organic farming has long been treated like an unwanted stepchild by the Department of Agriculture – sometimes referred to as the "Department of Agribusiness" because of its domination by big chemical fertilizer, pesticide and seed manufacturers. Relegated to the niches, the organic movement's pioneers developed networks of small-scale growers, concerned eaters, health food stores and grassroots advocacy organizations. NOFA, founded in 1971, is one of the oldest organic farming educational groups in the nation.

Because of its proven beneficial environmental and health effects organic is becoming even more of a threat to the toxic practices of agribusiness-as-usual. Big Food corporations got a taste of the organic pie in the late 1990's, however, and have been going after a bigger slice ever since. While growth in overall grocery sales has been flat for decades, the market for organic food has racked up a growth rate of over 20% a year over the same time frame. Fueled by bona fide consumer demand instead of pricey food industry advertising campaigns, organic food sales have exploded -- from \$3.5 billion in 1997 to \$15 billion in 2004. It's not lost on food corporations that the organic market's prospects are the brightest light on the horizon: sales are projected to more than double by 2009.

The covert rider action was devised and executed by Big Food processors working through the Organic Trade Association and carried out by corporate lobbyists with insider connections. Although the OTA Board gave Executive Director Katherine DiMatteo a broad go-ahead to fix the law, a small cadre of executive and processing committee members oversaw the rider details. The action came as a complete surprise to the overall OTA membership (including NOFA-NY and NOFA-VT) who was never consulted. Over 200 OTA members signed a letter protesting OTA's executive action. Executives at Earthbound Farm, the leading supplier of organic lettuce and greens in the U.S., publicly announced their dismay at finding their name on an OTA letter supporting the rider.(1)

OTA was founded by a handful of fledgling small-scale organic food companies and farm groups twenty years ago and currently represents over 1600 business and farmer organizations. OTA's ranks have grown substantially over the past decade and the association recently restructured to better accommodate the higher membership level of giant food processors that are relative newcomers to the organic world. The association's dues schedule is based on gross annual organic revenue with members making under \$50,000 paying \$100 and ranging to a \$20,000 fee for companies selling \$200 million and over. For corporations looking to be first among equals, there's a special "Leadership Circle" category with membership dues set at \$100,000 a year.

According to OTA's own research, the organic processors' sales of packaged food, snack food and sauces/condiments represent less than 20% of overall organic industry activity. Further, the Big Food corporations are a distinct minority within OTA's membership. This is therefore a case of a small special-interest "tail" trying to wag a very large "dog", which includes a wide range of organic consumers, big and small farmers, farming organizations, environmentalists, social justice advocates, health practitioners, congressional supporters, food organizations, food distributors, campus food purveyors, health food stores and food retailers big and small.

Who Done It?

To maneuver their secret legislation through the back halls of Congress, OTA retained a well-connected litigator, William "Jay" Friedman, a government affairs attorney with the Washington D.C. based law firm, Covington & Burling -- an international law firm with a long history of representing food and tobacco corporations as well as "most of the major biotechnology and pharmaceutical companies in the United States and Europe" with "a large team of seasoned deal lawyers who spend substantially all their time engaged in life sciences transactions throughout the world."(2) Jay Friedman also had previous insider experience as an appointee to the National Organic Standards Board (NOSB) in the mid-1990's and has emerged as Covington's go-to guy to handle organic regulatory issues brought to the firm for litigation and lobbying.

Although their tracks were well covered, reportedly(3) Abigail Blunt, a lobbyist for Kraft Foods, played a major role in getting the rider attached to the appropriations bill. She also happens to be the wife of Roy Blunt (R-Mo), the Republican Whip who temporarily took over House leadership position when Tom Delay was forced to step down due to ethics charges. Roy Blunt is well known for establishing Republican fund-raising networks with special interest lobbyists on K Street in Washington. He was deemed too closely allied with special interests, however, and in February his Republican colleagues elected John Boehner (R-OH) to permanently fill the Majority Leader post instead.

Thanks to recent plea deals in the Abramoff lobbying scandal, Congressional political machinations are finally being exposed and ethics have become a major campaign issue in the upcoming midterm elections. Many of the proposed "reforms" proposed by Republicans and Democrats alike are laden with loopholes and are designed to mollify public opinion and get congressional corruption out of the limelight, back to politics-as-usual. As further revelations emerge from the lobbying scandals, however, voters in the upcoming election have the opportunity to hold Congress to a higher standard by demanding substantive changes guaranteeing transparency, ethical behavior and integrity in governmental affairs.

Sleazy Is as Sleazy Does

For the grassroots community the sneak attack on organic standards by the OTA rider was just the latest in a series of insider attempts to co-opt organic standards. Back in February, 2003 a Georgia congressman working on behalf of campaign supporter, mega poultry producer Fieldale Farms Corp, buried a one-sentence rider in a 3,000 page, \$397 billion omnibus spending bill that created a loophole in organic standards allowing poultry and dairy producers to use non-organic feed. The rider was attached surreptitiously and without debate by Rep. Nathan Deal, R-GA with backing from Georgia's seven other House members.

When discovered, there was a huge outcry from the organic community, OTA included. Advocates mustered a barrage of over 20,000 communications to Senators and Representatives. Since the deal had already gone through, it took an act of Congress to repeal the loophole. The Organic Restoration Act, introduced by Senators Patrick Leahy (D-VT) and Olympia Snowe (R-ME) put together a bi-partisan coalition and defeated the back-door provision. The price of this repeal, however,

was another change in OFPA -- allowing the organic label on wild fish, a payoff to Senator Ted Stevens of Alaska for his critical support. Positively, the political activity also created the Congressional Organic Caucus, currently with 48 Representatives from around the country, Republicans and Democrats alike.

Commenting on the Deal rider a spokesperson for the Organic Trade Association reportedly said, "It was such a sleazy way of going about it because consumers wouldn't know what they were buying." (4) Katherine DiMatteo, OTA's executive director at the time said, "OTA feels strongly that it is more important to meet the requirements of national organic standards to safeguard the integrity of organic than have the market flooded by products that fall short of what consumers want." (5)

Insider pressures from USDA itself also have a history of skewing organic standards. In 1997, the first Rule proffered by the NOP allowing genetic engineering, sewage sludge and food irradiation was resoundingly sent back to the drawing board by a record number of responses from the greater organic community. Currently, a battle is on over OFPA's requirements for "access to pasture" for ruminant livestock. Despite NOSB recommendations to uphold the grass-fed standard, USDA is allowing huge western dairies like Horizon and Aurora to confine their cows with a grain-fed diet during lactation and then put them out to pasture when they are no longer milking.

OTA recently announced a change in leadership in response to the long-planned retirement of Katherine DiMatteo. The new Executive Director is Caren Wilcox, who has extensive policy experience in USDA and the U.S. House Appropriations Committee. This shift gives OTA the opportunity to mend fences and to work with the organic community in an open and transparent manner. While their recent policy proposals on upcoming Farm Bill provisions would benefit farmers and processors alike, they also strongly emphasize new business research saying a shortage of organic supply is stifling sales -- resulting in empty supermarket shelves, food companies leaving the market and increasing importation of organic produce from other countries. It's still an open question whether Big Food will push USDA to use the new powers granted by the third part of the OTA rider, allowing them to substitute non-organic ingredients whenever organic items are deemed commercially unavailable.

Growing Organic

As veterans of many battles upholding organic standards, members of the organic community sporadically question the wisdom of being involved with the agribusiness-influenced USDA bureaucracy in the first place. The issue comes back to verification of practices and prevention of fraud to protect consumers. For years, farming organizations and some state governments ran independent certification programs that verified farmer practices for consumer certainty without federal government involvement.

Although NOFA supported the concept of a National Organic Program early on to promote organic agriculture and provide research, statistical and extension services, we warned against placing USDA in the certification-accreditation role. Indeed, USDA has primarily promoted the interests of the big industrial players. Its accreditation is uneven, the NOP has never appointed the "Peer Review Panel" that OFPA mandated to oversee the fairness of accreditation and no inspections have ever been conducted on any of the off-shore certifiers.

While organic certification is mandatory for interstate sales, a number of farmers who market locally (including some original grassroots pioneers) have decided to opt out of the certification system altogether, relying instead on their local reputation in the community. The Farmers Pledge™ is an alternative approach where farmers promise to follow bona fide organic practices and open their farms to community verification. The NOP governs the legal use of the organic label, however, and only certified farmers are allowed to sell their produce as "organic". Very small-scale producers are protected by a provision allowing them to market as organic without being certified if their sales are under \$5,000 a year.

Despite recent growing pains, the grassroots NOFAs would like to see the entire agricultural system transition to organic and welcomes new farmers and businesses into the organic community. Farmers are finding expanding markets supplying the new organic product lines of previously conventional food companies. Faced with going out of business, a number of grain and dairy operations have found a new organic lease on life. Newly arrived practitioners attracted solely by the prospect of higher prices are cautioned, however, that organic does not just mean substituting some organic inputs for chemical ones. Organic agriculture represents a complete

paradigm shift to non-toxic, holistic, ecological practices requiring substantial soil fertility enhancements as well as considerable farmer between-the-ears adjustments.

Further, the transition to organic doesn't stop at the farm. Consumers understand the spirit as well as the substance of organic. It is not just a marketing label -- it stands for a broader "green" food system with social justice, environmental protection, fair trade, ethical behavior and healthy nutritious food free of pesticides and other toxic synthetics. The hallmark of the grassroots organic community has always been open and transparent dealings between farmers, businesses and consumers. Big Companies who are just looking for a slice of the organic pie are put on notice: they are being held to higher standards all around, not only for food quality but also of ethics, in the way they do business.

Sources: (hot links available on NOFA website)

(1) Consumer Reports; "When it Pays To Buy Organic", Feb '06, www.ConsumerReports.org

(2) SourceWatch, a project of the Center for Media and Democracy,

(3) Melanie Warner, "What Is Organic? Powerful Players want a Say"; New York Times; November 1, 2005

(4) Mike Lee, "True To Its Roots - Organic Industry Wins Fight on U.S. Standards"; Sacramento Bee; April 18, 2003

(5) Jeff Nesmith, "Agribusiness & USDA Ponder Degrading Organic Standards"; Atlanta Journal-Constitution; June 5, 2002

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