

Organic Melee: USDA Loses Latest Round in Legal Challenge Over Synthetics in Organic Production

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A district court judge has denied USDA’s motion to dismiss a lawsuit alleging that the Agency illegally changed its process for reviewing synthetic substances used in organic production.

- By way of background, the U.S. Department of Agriculture (USDA) administers the National Organic Program (NOP), which includes standards for “organic” food in the United States. The use of synthetic substances generally is prohibited in organic foods, with the exception of specific materials that have been evaluated and added to a National List of allowed and prohibited substances. On September 16, 2013, USDA published a notice in the Federal Register, indicating a change in its listing process for synthetic substances. Prior to September 2013, synthetic materials were removed by default from the National List after a five-year “sunset” period, absent a specific vote to keep them on the list. Post-September 2013, the new process permits synthetic materials to remain by default on the national list, absent a specific vote to remove them. In response to this change, the Center for Food Safety (CFS) and other groups sued USDA in a California federal court, asserting that USDA’s change in policy — which did not allow for public comment — violates the Administrative Procedure Act and the Organic Food Production Act.
- On September 8, 2016, U.S. District Judge Haywood Gilliam for the Northern District of California issued a [ruling](#) denying USDA’s motion to dismiss the lawsuit. In denying the Agency’s motion, Judge Haywood determined that the Plaintiffs adequately established injury-in-fact, finding that Plaintiffs alleged a concrete and particularized harm resulting from the revised sunset procedure. More specifically, Judge Haywood noted that the Plaintiffs cited specific substances that they allege remain used in organic production because of the revised procedures, and contend that as a result of the continued presence of these substances on the National List, Plaintiffs must use increased effort to advocate for changes to the National List due to the revised sunset notice procedure.
- Should the court ultimately overturn USDA’s revised sunset notice, certain substances relied upon by many in the production of organic foods will automatically expire in the absence of

NOSB review and approval. Given increasing consumer demand for organic foods, and the corresponding increasing market share for such products, the disposition of this case continues to be of great interest to industry and consumers alike.

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