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Organic Agriculture Under the Trump Administration

Marne Coit*

Introduction

This essay will examine the implications of the policies of the Trump administration on the regulations promulgated under the Organic Foods Production Act (OFPA) known as the National Organic Program (NOP). Since the inception of the organic standards, advocates have been wary that they will be weakened. Even as other spheres of food and agriculture have enjoyed heightened public awareness and support under the Obama administration, the previously high standards for organic regulation and oversight have been eroded. Given Donald Trump's call to roll back environmental standards generally and decrease federal regulations, overall, it seems likely federal support of organic agriculture will be decreased.

The only path to continued support of organic farming may be the extent to which it is emerging as a high dollar industry. However, this is inherently problematic. Over the past few years, there has been a negative correlation between larger agribusinesses entering the organic market and the erosion of the organic standards. Examples include the NOP's 2013 decision to change the review process for substances allowed for use in organic production, seemingly done in violation of the Administrative Procedures Act. In addition, there is concern about the integrity of the process by which members are appointed to the National Organic Standards Board (NOSB). It seems likely that a Trump administration will continue down the

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path of supporting larger agribusinesses – to the detriment of not only smaller, more sustainable farms and businesses, but possibly to the organic regulations themselves.

Trump's Position/Policies on Food and Agriculture

To start, it must be stated outright that the conclusions drawn here are based largely on supposition. That is to say, in order to discern what organic agriculture may look like under the Trump administration, one must piece together a variety of factors without being able to point to direct statements or positions specifically on this topic. The reason for this is that Donald Trump has not made food, agriculture or farming pivotal issues of his platform. These topics simply have not been given the focused attention, thought and policy analysis that they deserve. In fact, Trump only made one speech, in August of 2016 in Des Moines, Iowa, in which he mentioned farm policy during the Presidential campaign.¹ This is surprisingly little for such an important topic. Agriculture and agriculture-related industries contributed \$985 billion to the U.S. gross domestic product (GDP) in 2014² Agriculture is, after all, one of those rare industries that does, in fact, impact everyone in the country, from farmers to consumers. Even so, this is the only time farm policy generally was discussed. There has been even less focus on organic agriculture in particular. As a result, what we about Trump's position on organic agriculture must be gleaned from looking to other, less direct factors.

First, since certification of organic agriculture is regulated by the United States Department of Agriculture (USDA), a federal agency, under the authority of the OFPA, we can look at Trump's actions thus far regarding the scope of authority of federal agencies. While campaigning for office, he made it clear that he intended to cut back the reach of federal regulations.³

1. Helena B. Evich, *What Trump Win Means for Agriculture*, POLITICO (Nov. 9, 2016), <http://www.politico.com/tipsheets/morning-agriculture/2016/11/what-trump-win-means-for-agriculture-217319>.

2. *Ag and Food Sectors and the Economy*, USDA, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy.aspx> (last updated Apr. 25, 2017).

3. Laura Entis, *Trump Demands Federal Agencies Cut Two Regulations for Every*

Upon taking office, he acted on this quickly, signing an executive order titled “Reducing Regulation and Controlling Regulatory Costs” on January 30, 2017.⁴ Also known as the “2-for-1” order, it compels federal agencies to eliminate two regulations for every new regulation issued.⁵ The specifics of how this mandate operates is beyond the scope of this essay. It is sufficient to say that if one of Trump’s main objectives is to mandate the indiscriminate reduction in federal regulations, there is no reason to believe that the regulations that make up the National Organic Program would fall outside of this mandate. In other words, it puts organic certification at risk.

The heart of the NOP is a carefully crafted set of regulations. Specifically, “[t]he National Organic Program (NOP) develops the rules & regulations for the production, handling, labeling, and enforcement of all USDA organic products. This process, referred to as rulemaking, involves input from the National Organic Standards Board (a Federal Advisory Committee made up of fifteen members of the public) and the public.”⁶ If the goal of the administration is to reduce regulation, then a national certification program such as the NOP is inherently at risk. This concern is amplified even more if one looks at some of the issues that have plagued the NOP in the recent past.

On the surface, the organic sector in the United States (U.S.) looks to be thriving. “USDA does not have official statistics on U.S. organic retail sales, but information is available from industry sources. U.S. sales of organic products were an estimated \$28.4 billion in 2012—over 4 percent of total food sales—and will reach an estimated \$35 [in the next two years], according to the *Nutrition Business Journal*.”⁷

New One, FORTUNE (Jan. 30, 2017), <http://fortune.com/2017/01/30/trump-regulation-executive-order/>.

4. Exec. Order No. 13,771, 82 Fed. Reg. 9,339 (Jan. 30, 2017).

5. *Id.*

6. *Organic Regulations*, USDA, <https://www.ams.usda.gov/rules-regulations/organic> (last visited Apr. 30, 2017).

7. *Organic Market Overview*, USDA, <https://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview/> (last updated Apr. 4, 2017).

“Consumer demand for organically produced goods continues to show double-digit growth, providing market incentives for U.S. farmers across a broad range of products. Organic products are now available in nearly 20,000 natural food stores and nearly 3 out of 4 conventional grocery stores.”⁸ Consumers prefer organically produced food because of their concerns regarding health, the environment, and animal welfare, and they show a willingness to pay the price premiums established in the marketplace. Organic products have shifted from being a lifestyle choice for a small share of consumers to being consumed at least occasionally by a majority of Americans. National surveys conducted by the Hartman Group and Food Marketing Institute during the early 2000s found that two-thirds of surveyed shoppers bought organically grown foods.”⁹

Consumers affirmed these facts in 2015 spending \$43.3 billion in that year alone.¹⁰ In addition, as is evidenced by the past three Farm Bills, there has been a steadily increasing amount of financial and government support for organic research and programs.¹¹

Despite this growth (or, perhaps as a result of it), there are serious concerns about the integrity of the program. Since its inception, organic advocates have been concerned that, over time, the standards would be watered down, and that they would be changed to cater to the needs of larger, more corporate agricultural operations, moving the standards away from their original intent. Two issues in particular have arisen that point in this direction. The first issue is a procedural change related to

8. *Id.*

9. *Id.*

10. Press Release, Statement from Agriculture Secretary Tom Vilsack on the Organic Trade Association Report (May 19, 2016).

11. *Organic Provisions in the 2014 Farm Act*, USDA
<https://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-provisions-in-the-2014-farm-act/> (last updated Apr. 4, 2017).

substances that are permitted in organic agriculture. The second issue is about the composition of the National Organic Standards Board (NOSB) and the way in which members are placed on this 15-member advisory board.

The first issue is the procedural change that impacts substances on the National List of Allowed and Prohibited Substances (the National List) under what is known as the sunset provision.¹² One of the tasks of the NOP is to provide a list of substances that are permitted to be used in the production of certified organic crops and products. “The National List of Allowed and Prohibited Substances identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic crop and livestock production. Additionally, it identifies a limited number of non-organic substances that may be used in or on processed organic products. In general, synthetic substances are prohibited for crop and livestock production unless specifically allowed whereas non-synthetic substances are allowed for crop and livestock production unless specifically prohibited.”¹³ Organic farmers follow what is on the National List closely, lest they risk losing their organic certification.

When the NOP first went into effect in 2000, the procedure was that substances on the National List came up for review every five years. In order to stay on the National List, an individual substance would come up for review, at which time there would have to be an affirmative vote by 2/3 of the National Organic Standards Board (NOSB). If the substance did not reach the requisite vote, it would be removed from the National List.

In 2013, an abrupt change was made to this procedure.¹⁴ On September 13, 2013, NOP Deputy Administrator Miles McEvoy announced that, upon review, if it was determined that a substance no longer met the required criteria, then a 2/3 vote of

12. 7 U.S.C. § 6517 (2012).

13. *The National List*, USDA

<https://www.ams.usda.gov/rules-regulations/organic/national-list>
(last visited Apr. 30, 2017).

14. *Id.*

the NOSB would be required to remove it from the List.¹⁵¹⁶ In other words, substances now stay on the National List unless action is taken to affirmatively remove them. This essentially, makes it more difficult to remove substances once they are on the National List.

There is concern that such a change diminishes the authority of the NOSB and, additionally, opens the door to a growing list of “allowed” substances, both of which will be detrimental to the integrity of the organic standards in the long run. The Consumer Reports National Research Center states that this change is one among other “questionable practices” in organic regulation.¹⁷ This shift also appears to be at odds with consumer perception and preference for certified organic products. “Consumer Reports has long opposed the proliferation of exemptions and says that their renewed listing does not represent what consumers expect from the organic label.” According to a public opinion poll conducted by Consumer Reports, “[a]n overwhelming percentage of consumers (84 percent) think the use of artificial ingredients in organic products should be discontinued, if not reviewed, after 5 years; few consumers (15 percent) endorse continued use of the artificial ingredient without review.”¹⁸ The change to the sunset provision also caused alarm to two legislators who helped to craft the organic standards originally, Sen. Patrick Leahy (D-VT) and Rep. Peter DeFazio (D-OR). They said that it “turns the sunset policy of the Organic Foods Production Act on its head” and is “in conflict with both the letter and the intent of the statute.”¹⁹ Concern about this change to procedure was grave enough to prompt a lawsuit by organic stakeholder groups in April of 2015.²⁰ The case is still pending.

15. *Id.*

16. *Sunset Review Process*, USDA

<https://www.ams.usda.gov/rules-regulations/organic/nosb/sunset-review> (last visited Apr. 30, 2017).

17. Dan Flynn, *Survey: Consumers Might Read Organic Label Differently Than Organic Standards Board*, FOOD SAFETY NEWS (Apr. 29, 2014), <http://www.foodsafetynews.com/2014/04/consumers-might-read-organic-label-differently-than-organic-standards-board/#.WMSs7hiZOu4>.

18. *Id.*

19. *Id.*

20. Gene Summerlin, *Lawsuit Challenges USDA Changes to Sunset Provisions of*

The second issue is how members are placed onto the NOSB, which is authorized under the national Organic Food Production Act (OFPA) to be an advisory board to the NOP. One of the main purposes of the NOSB is to make recommendations to the Secretary of Agriculture, with a particular focus on reviewing materials and making recommendations about the National List.

The statute sets out the composition of the advisory board to include fifteen members. In addition, the statute specifically dictates that the backgrounds of members, be as follows: “four organic farmers/growers, three environmental/resource conservationists, three consumer/ public interest representatives, two organic handlers/processors, one retailer, one scientist (toxicology, ecology or biochemistry), and one USDA accredited certifying agent.”²¹ At issue is who is being appointed to these positions and whether they may have potential conflicts.

For example, in December 2005, Katrina Heinze, an executive from General Mills, was appointed as a consumer representative. “The outcry over her appointment by advocates and independent organic consumers was so intense that she resigned in February 2006 – but rejoined the board late that year after Mr. Johanns appointed her to the seat designated by law for an expert in toxicology, ecology or biochemistry. During her second stint on the board, which ended last December, critics said they were shocked when she did not recuse herself from the vote to add DHA to the list, since its manufacturer sometimes uses technology licensed from General Mills in making it.”²²

More recently, an issue has been raised regarding two of the appointments for the farmer/grower category. On its face, it seems that someone who is actively farming would fill this position. Instead, executives who were working for

Organic Rules, HUSCH BLACKWELL (Apr. 8, 2015), <http://www.organicaglaw.com/2015/04/lawsuit-challenges-usda-changes-to-sunset-provisions-of-organic-rules/>.

21. *Id.*

22. Stephanie Strom, *Has Organic Been Oversized?*, N.Y. TIMES (July 7, 2012), <http://www.nytimes.com/2012/07/08/business/organic-food-purists-worry-about-big-companies-influence.html>.

agribusinesses were appointed. The first is Carmela Beck, National Organic Program Supervisor and Organic Certification Grower Liason for Driscoll's, an organic berry producer. Ms. Beck was appointed in 2011.²³ The second is Ashley Swaffar, who was appointed in 2014. She was the Director of Special Projects at Arkansas Egg Company.²⁴

In a lawsuit filed by the Cornucopia Institute, the plaintiff alleges that "two of the board's four farmer seats are occupied by full-time agribusiness executives, rather than farmers. Congress explicitly reserved four seats on the board for individuals who 'own or operate' organic farms." Under a FOIA request, Cornucopia received applications for these NOSB positions. The documents "revealed that neither Carmela Beck (a full-time Driscoll's employee) nor Ashley Swaffar (then a full-time employee of Arkansas Egg) provided any documentary evidence indicating that they owned or managed an organic farm."²⁵ This suit is also still pending.

How these suits are decided will determine the path of the organic standards into the future. Further, their disposition will dictate the level of integrity and transparency that the program will have as it moves forward.

Conclusion

In conclusion, there is very little to suggest that organic agriculture will fare well under a Trump administration. Despite the ever-increasing public interest and support, there is no indication that this sector of agriculture will receive the same level of consideration as it did from the previous administration. By all accounts, organic agriculture – and sustainable agriculture in general – was supported by and thrived during the previous administration. Even so, there are serious issues with the organic

23. *USDA Appoints New Members to the National Organic Standards Board*, USDA <https://www.ams.usda.gov/press-release/usda-appoints-new-members-national-organic-standards-board> (last visited Apr. 30, 2017).

24. *Id.*

25. *Organic Farmer and Sunset Lawsuits Update*, CORNUCOPIA INSTITUTE (Jan. 18, 2017), <https://www.cornucopia.org/2017/01/organic-farmer-sunset-lawsuits-update/>.

certification program and the direction it is currently headed in. Given that these issues, discussed above, occurred during a time when organic agriculture and research was supported by the administration, and given that there is little indication that the current administration places a high priority on agriculture and farming in general, never mind the organic sector in particular, there is no reason to believe that it will be supported by the new administration. If anything, it could be considered a favorable outcome if the organic standards remain at the status quo. At worst, there could potentially be a dismantling of the certification standards.