

ing or handling operation that are otherwise allowed under this chapter only if—

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency, that the use of such substances—

(i) would be harmful to human health or the environment; and

(ii) is inconsistent with organic farming or handling, and the purposes of this chapter; and

(B) the specific prohibition is developed using the procedures specified in subsection (d).

(d) Procedure for establishing National List

(1) In general

The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board.

(2) No additions

The Secretary may not include exemptions for the use of specific synthetic substances in the National List other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

(3) Prohibited substances

In no instance shall the National List include any substance, the presence of which in food has been prohibited by Federal regulatory action.

(4) Notice and comment

Before establishing the National List or before making any amendments to the National List, the Secretary shall publish the Proposed National List or any Proposed Amendments to the National List in the Federal Register and seek public comment on such proposals. The Secretary shall include in such Notice any changes to such proposed list or amendments recommended by the Secretary.

(5) Publication of National List

After evaluating all comments received concerning the Proposed National List or Proposed Amendments to the National List, the Secretary shall publish the final National List in the Federal Register, along with a discussion of comments received.

(6) Expedited petitions for commercially unavailable organic agricultural products constituting less than 5 percent of an organic processed product

The Secretary may develop emergency procedures for designating agricultural products that are commercially unavailable in organic form for placement on the National List for a period of time not to exceed 12 months.

(e) Sunset provision

No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Sec-

retary has renewed such exemption or prohibition.

(Pub. L. 101-624, title XXI, §2118, Nov. 28, 1990, 104 Stat. 3946; Pub. L. 102-237, title X, §1001(6), Dec. 13, 1991, 105 Stat. 1893; Pub. L. 109-97, title VII, §797(b), Nov. 10, 2005, 119 Stat. 2165.)

AMENDMENTS

2005—Subsec. (c)(1). Pub. L. 109-97, §797(b)(1)(A), inserted “in organic production and handling operations” after “substances” in heading.

Subsec. (c)(1)(B)(iii). Pub. L. 109-97, §797(b)(1)(B), (C), struck out cl. (iii) which read as follows: “is used in handling and is non-synthetic but is not organically produced; and”.

Subsec. (d)(6). Pub. L. 109-97, §797(b)(2), added par. (6).

1991—Subsec. (c)(1)(B)(i). Pub. L. 102-237 substituted “parasitocides” for “paraciticides”.

§ 6518. National Organic Standards Board

(a) In general

The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act) (hereafter referred to in this section as the “Board”) to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this chapter.

(b) Composition of Board

The Board shall be composed of 15 members, of which—

(1) four shall be individuals who own or operate an organic farming operation;

(2) two shall be individuals who own or operate an organic handling operation;

(3) one shall be an individual who owns or operates a retail establishment with significant trade in organic products;

(4) three shall be individuals with expertise in areas of environmental protection and resource conservation;

(5) three shall be individuals who represent public interest or consumer interest groups;

(6) one shall be an individual with expertise in the fields of toxicology, ecology, or biochemistry; and

(7) one shall be an individual who is a certifying agent as identified under section 6515 of this title.

(c) Appointment

Not later than 180 days after November 28, 1990, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) (and under subsection (b)(7) at an appropriate date after the certification of individuals as certifying agents under section 6515 of this title) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

(d) Term

A member of the Board shall serve for a term of 5 years, except that the Secretary shall appoint the original members of the Board for staggered terms. A member cannot serve consecutive terms unless such member served an original term that was less than 5 years.

(e) Meetings

The Secretary shall convene a meeting of the Board not later than 60 days after the appoint-

ment of its members and shall convene subsequent meetings on a periodic basis.

(f) Compensation and expenses

A member of the Board shall serve without compensation. While away from their homes or regular places of business on the business of the Board, members of the Board may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5 for persons employed intermittently in the Government service.

(g) Chairperson

The Board shall select a Chairperson for the Board.

(h) Quorum

A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

(i) Decisive votes

Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

(j) Other terms and conditions

The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this chapter, as determined appropriate by the Secretary.

(k) Responsibilities of Board

(1) In general

The Board shall provide recommendations to the Secretary regarding the implementation of this chapter.

(2) National List

The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 6517 of this title.

(3) Technical advisory panels

The Board shall convene technical advisory panels to provide scientific evaluation of the materials considered for inclusion in the National List. Such panels may include experts in agronomy, entomology, health sciences and other relevant disciplines.

(4) Special review of botanical pesticides

The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.

(5) Product residue testing

The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

(6) Emergency spray programs

The Board shall advise the Secretary concerning rules for exemptions from specific re-

quirements of this chapter (except the provisions of section 6511 of this title) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(l) Requirements

In establishing the proposed National List or proposed amendments to the National List, the Board shall—

(1) review available information from the Environmental Protection Agency, the National Institute of Environmental Health Studies, and such other sources as appropriate, concerning the potential for adverse human and environmental effects of substances considered for inclusion in the proposed National List;

(2) work with manufacturers of substances considered for inclusion in the proposed National List to obtain a complete list of ingredients and determine whether such substances contain inert materials that are synthetically produced; and

(3) submit to the Secretary, along with the proposed National List or any proposed amendments to such list, the results of the Board's evaluation and the evaluation of the technical advisory panel of all substances considered for inclusion in the National List.

(m) Evaluation

In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider—

(1) the potential of such substances for detrimental chemical interactions with other materials used in organic farming systems;

(2) the toxicity and mode of action of the substance and of its breakdown products or any contaminants, and their persistence and areas of concentration in the environment;

(3) the probability of environmental contamination during manufacture, use, misuse or disposal of such substance;

(4) the effect of the substance on human health;

(5) the effects of the substance on biological and chemical interactions in the agroecosystem, including the physiological effects of the substance on soil organisms (including the salt index and solubility of the soil), crops and livestock;

(6) the alternatives to using the substance in terms of practices or other available materials; and

(7) its compatibility with a system of sustainable agriculture.

(n) Petitions

The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.

(o) Confidentiality

Any confidential business information obtained by the Board in carrying out this section shall not be released to the public.

(Pub. L. 101-624, title XXI, §2119, Nov. 28, 1990, 104 Stat. 3947; Pub. L. 102-237, title X, §1001(7), Dec. 13, 1991, 105 Stat. 1893.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1991—Subsec. (a). Pub. L. 102-237 substituted “to assist” for “(to assist)”.

§ 6519. Recordkeeping, investigations, and enforcement

(a) Recordkeeping

(1) In general

Except as otherwise provided in this chapter, each person who sells, labels, or represents any agricultural product as having been produced or handled using organic methods shall make available to the Secretary or the applicable governing State official, on request by the Secretary or official, all records associated with the agricultural product.

(2) Certified operations

Each producer that operates a certified organic farm or certified organic handling operation under this chapter shall maintain, for a period of not less than 5 years, all records concerning the production or handling of any agricultural product sold or labeled as organically produced under this chapter, including—

- (A) a detailed history of substances applied to fields or agricultural products;
- (B) the name and address of each person who applied such a substance; and
- (C) the date, rate, and method of application of each such substance.

(3) Certifying agents

(A) Maintenance of records

A certifying agent shall maintain all records concerning the activities of the certifying agent under this chapter for a period of not less than 10 years.

(B) Access for Secretary

A certifying agent shall provide to the Secretary and the applicable governing State official (or a representative) access to all records concerning the activities of the certifying agent under this chapter.

(C) Transference of records

If a private person that was certified under this chapter is dissolved or loses accreditation, all records and copies of records concerning the activities of the person under this chapter shall be—

- (i) transferred to the Secretary; and
- (ii) made available to the applicable governing State official.

(4) Unlawful act

It shall be unlawful and a violation of this chapter for any person covered by this chapter to fail or refuse to provide accurate information (including a delay in the timely delivery of such information) required by the Secretary under this chapter.

(5) Confidentiality

Except as provided in section 6506(a)(9) of this title, or as otherwise directed by the Sec-

retary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public any information, statistic, or document obtained from, or made available by, any person under this chapter, other than in a manner that ensures that confidentiality is preserved regarding—

- (A) the identity of all relevant persons (including parties to a contract); and
- (B) proprietary business information.

(b) Investigations

(1) In general

The Secretary may take such investigative actions as the Secretary considers to be necessary—

- (A) to verify the accuracy of any information reported or made available under this chapter; and
- (B) to determine whether a person covered by this chapter has committed a violation of any provision of this chapter, including an order or regulation promulgated by the Secretary pursuant to this chapter.

(2) Specific investigative powers

In carrying out this chapter, the Secretary may—

- (A) administer oaths and affirmations;
- (B) subpoena witnesses;
- (C) compel attendance of witnesses;
- (D) take evidence; and
- (E) require the production of any records required to be maintained under this chapter that are relevant to an investigation.

(c) Violations of chapter

(1) Misuse of label

Any person who knowingly sells or labels a product as organic, except in accordance with this chapter, shall be subject to a civil penalty of not more than \$10,000.

(2) False statement

Any person who makes a false statement under this chapter to the Secretary, a governing State official, or a certifying agent shall be punished in accordance with section 1001 of title 18.

(3) Ineligibility

(A) In general

Except as provided in subparagraph (C), any person that carries out an activity described in subparagraph (B), after notice and an opportunity to be heard, shall not be eligible, for the 5-year period beginning on the date of the occurrence, to receive a certification under this chapter with respect to any farm or handling operation in which the person has an interest.

(B) Description of activities

An activity referred to in subparagraph (A) is—

- (i) making a false statement;
- (ii) attempting to have a label indicating that an agricultural product is organically produced affixed to an agricultural product that a person knows, or should have reason to know, to have been produced or