

Report for Congress

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Organic Foods and the USDA National Organic Program

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Summary

Although sales of organically produced foods are barely 2% of U.S. consumers' purchases of conventional foods, the rate of growth in sales of organic products has averaged more than 20% per year since 1989. In part because of this, Congress passed a law in 1990 requiring that organic foods be certified as having been produced and handled according to uniform national standards. The program, which became fully operational in October 2002, is widely expected to have a positive effect both on the rate of growth in organic sales and on the portion that organic products constitute of total food sales.

In December 2000, the U.S. Department of Agriculture (USDA) published in the *Federal Register* the final rule establishing a National Organic Program (NOP).¹ The program originally was authorized in 1990 by the Organic Foods Production Act (OFPA), which was Title 21 of P.L. 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990. The National Organic Program became fully effective on October 21, 2002. Producers, processors, and handlers who wish to market their products as organic must demonstrate to USDA-accredited certification agents that their operations meet the NOP standards. Once an operation is certified, its products must carry the USDA organic seal in order to carry the word 'organic' on the label. The purpose of the program is to give consumers confidence in the legitimacy of all products sold as organic, permit legal action against those who use the term fraudulently, increase the supply and variety of available organic products, and facilitate international trade in organic products.

Congress has appropriated cost-share money to help alleviate the financial burden of USDA accreditation and certification during the implementation phase leading up to the program's effective date. The Farm Security and Rural Investment Act of 2002 (P.L. 107-171, the 2002 farm bill) authorizes mandatory funding for certification cost-sharing and for research. The Act also contains marketing provisions intended to help the organic industry as it grows into a more mainstream component of the farm sector.

A major controversy erupted in February 2003 when a last-minute amendment (Section 771) to the conference report accompanying the Consolidated Appropriations Resolution for FY2003 (P.L. 108-7/H.J.Res. 2; H.R. 5263 and S. 2801, the USDA appropriations bills) effectively eliminated a major NOP standard by allowing livestock producers to provide non-organic feed for their animals and still qualify for USDA organic certification. The provision was repealed in April 2003 by an amendment (Section 2104) to the conference report accompanying P.L. 108-11, an act making emergency wartime supplemental appropriations for FY2003.

This report provides information on the organic products industry; the Organic Foods Production Act of 1990; the history of the rule-making process for the program; implementation; and subsequent Congressional action on federal policies regarding production and marketing. It will be revised as events warrant.

¹ In 65 FR 80548-01, December 21, 2000.

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Organic Foods and the USDA National Organic Program

Background

Organic farming, as defined in the final rule establishing the USDA National Organic Program (NOP), is “a production system that is managed in accordance with the [Organic Foods Production] Act and regulations...to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.” This definition indicates that organic agriculture is both an approach to food production based on biological methods that avoid the use of synthetic crop or livestock production inputs (spelled out in detail in the December 2000 rule), and a broadly defined philosophical approach to farming that puts value on resource efficiency and ecological harmony.

Interest in organic farming emerged in both the United States and Europe in the early 1900s. Beginning in the 1950s, as the U.S. public became more concerned about the potential adverse environmental and public health effects of agricultural chemicals and so-called “factory farming” methods, private research organizations, such as the Rodale Research Institute in Pennsylvania, began to conduct scientific investigations into non-chemical and non-intensive farming techniques. Farmers — particularly small farmers — increasingly began experimenting with and adopting organic production practices. Currently, according to USDA, the number of organic farmers is increasing by about 12% per year and stands at about 12,200 nationwide, most of them small-scale producers. According to a recent USDA study, certified organic cropland more than doubled from 1992 to 1997. Two organic livestock sectors, eggs and dairy, grew even faster.

In the 1980s, the U.S. market for organic foods was small, but measurable, with annual sales of around \$200 million. Beginning in 1989, sales of organic products took off, growing on average more than 20% per year, according to industry sources. Total retail organic food sales in the United States rose from \$1 billion in 1990 to \$7.8 billion in 2000, according to a market research firm that tracks organic sales. Conventional grocery stores began offering a greater selection of organic foods in the late 1990s, and now account for almost half of total organic sales; natural food stores account for about 48%; farmers’ markets and exports account for the balance.² Despite the rapid growth, organic food sales are only about 1.8% of the level of that

² USDA. Economic Research Service. *Food Review*, Vol. 24, Issue 1. Pages 31-37.

of conventionally produced food (\$425.4 billion estimated in 2001³). Industry analysts credit the 1990s' growth in the number of retail outlets for organic food and non-food products (e.g., cosmetics) — which coincided with heightened consumer concerns about chemical residues — for the substantial growth in U.S. sales. The export market is growing more slowly, with annual exports estimated at about \$200 million, primarily to European Union (EU) countries and Japan, according to industry sources.

For most of its history, the organic industry has established its own organizations to set standards and used independent certification agents to verify that producers, processors, and handlers adhered to them. There are currently 71 private and state organic programs and certification operations, according to USDA (there were considerably fewer before the Organic Foods Production Act became law). Although there has been general agreement among these entities on the basic principles of organic food production, the standards have differed from each other in the details. The potential for consumer confusion with so many different standards was one of the primary arguments that proponents made in favor of establishing a single national standard.

The rule-making process leading to implementation of the National Organic Program marked the first major effort by USDA to promote organic farming. Except for a brief period at the very end of the 1970, USDA until recently has not operated any programs to support the organic sector of the U.S. food and fiber system. In the 1977 farm act (P.L. 95-113, the Food and Agriculture Act of 1977), Congress commissioned USDA to do a study on potential uses of organic wastes.⁴ In 1980, USDA, under its own initiative, published a *Report and Recommendations on Organic Farming*. In follow-up to one of the report's recommendations, the Department also established an Office of Organic Resources Coordinator. The Reagan Administration abolished the position in 1981, and organic agriculture disappeared as an official research area for USDA. In 1998, however, Congress amended the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624, the 1990 farm bill) to authorize a new competitive grant program to support research and extension activities on organic production, processing and international marketing (P.L. 105-185, Section 244). No funds were appropriated for the program under this authority. In Section 7218 of the most recent farm law (P.L. 107-171), Congress extended the authority for the grant program and authorized mandatory annual transfers of \$3 million from the U.S. Treasury to USDA to support it. Permission for USDA to use the mandatory funds for the purpose for which it was authorized is still under the control of the appropriations committees, however.

Although organic agriculture *per se* has not been on USDA's agenda for some time, the Department since about 1990 has shown gradually increasing support for a related alternative farming concept known as sustainable agriculture, which includes a focus on reducing, but not necessarily eliminating, chemical inputs. Since

³ U.S. Department of Commerce. Economics and Statistics Administration. *Annual Benchmark Report for Retail Trade and Food Services, January 1992-March 2002*. Table 2, page 4.

⁴ *Improving Soils with Organic Wastes*, U.S. Department of Agriculture, 1978.

1988, Congress has appropriated funds (averaging \$13 million annually in recent years) for the Sustainable Agriculture Research and Extension program. USDA's in-house research agency (the Agricultural Research Service) states that it spends more than \$300 million – roughly one-third of its total budget – on research related to sustainable agriculture. Some of the approaches being researched are common to organic farming — crop rotations, green manure crops, and biological pest control, for example. However, foods produced using “sustainable” practices do not meet either the organic industry's standards for organic production methods or those contained in the December 2000 NOP final rule.

The Organic Foods Production Act of 1990

Congress passed the Organic Foods Production Act (OFPA) of 1990 (Title 21 of P.L. 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990) in response to requests and petitions from several organic industry groups as well as from the National Association of State Departments of Agriculture, the American Farm Bureau Federation, and the Center for Science in the Public Interest. These groups gave a variety of reasons for seeking federal regulation. First, the organic industry was concerned that the multiplicity of standards was causing consumer confusion and undermining confidence in the integrity of organic products over the long term. Second, manufacturers of multi-ingredient organic food products reported labeling and marketing difficulties due to the differences among standards. Third, in the absence of federal organic standards for meat, poultry and seafood, USDA's Food Safety and Inspection Service (which is responsible for meat and poultry inspection) and the Food and Drug Administration (FDA, which is responsible for seafood inspection) did not permit these products to be labeled as organically produced, thus limiting consumer choice and the industry's market opportunities. Finally, industry analysts asserted that the lack of a consistent U.S. organic standard complicated and slowed access to a potentially lucrative international organic market.

The Organic Foods Production Act of 1990 authorized a National Organic Program to be administered by USDA's Agricultural Marketing Service (AMS). Under the program, producers, processors and handlers who wish to market their products as organic are required to follow production practices as spelled out in detail in the rule (7 CFR 205). USDA accredits private and state certification agents, who visit producers, processors, and handlers to certify that their operations abide by the standards. Once certified, these operations must affix a “USDA Organic” seal on their product. It will be illegal for anyone to use the word “organic” on a product if it does not meet the standards set in the law and regulations.⁵ The regulations under the OFPA are intended to set uniform *minimum* standards for organic production. States may adopt additional requirements after review and approval by USDA. Furthermore, private organic organizations are permitted to affix their private labels in addition to the USDA label, indicating that the product meets their own standards as well. The label, however, may indicate only that the organization's standards are in addition to (but not superior to) the national standards. AMS will periodically re-

⁵ Farms and handling operations that sell less than \$5,000 a year in organic agricultural products are exempt from certification; however, these producers and handlers must abide by the national standards for organic products and may label their products as organic.

accredit the program certification agents and maintain federal oversight to assure that labeling is truthful and that imported organic products have been produced under standards that are equivalent to the U.S. standards. The OFPA stipulates that the costs of the National Organic Program, once fully operational, will be paid for entirely by fees that USDA will charge for accrediting certification agents. Organic farmers, manufacturers and handlers will, in turn, pay fees to certification agents for their services.

How the Rule Progressed

The 1990 Act established a 15-member National Organic Standards Board (NOSB) to “assist in the development of standards for substances to be used in organic production” (referred to as the “national list”) and to “provide recommendations to the Secretary regarding implementation” of the Act. Congress expected implementation to be complete and the program in operation by October 1, 1993. However, the Board was hampered at the beginning by a lack of funds, among other factors. Neither departmental nor appropriated funds were available in FY1991; in FY1992 and FY1993, USDA made \$120,000 available under the Federal Advisory Committee Act. Congress began making direct appropriations for AMS’s National Organic Program activities in FY1994.

During the period from June 1994 to September 1996, the NOSB submitted its recommendations for national standards and the National List to USDA’s National Organic Program staff. The staff drafted the proposed rule based on the Board’s recommendations but not in complete conformity with them. The first proposed rule appeared in the *Federal Register* on December 16, 1997.⁶

The Department received 275,000 responses to the 1997 proposed rule for the NOP. Most of the comments reflected a consensus between individual respondents and several organic trade associations that USDA had blurred the distinction between conventional and organic agriculture. The key points of contention were that the proposed rule would: (1) permit the use of genetically engineered crops and organisms in organic agriculture; (2) permit ionizing radiation (irradiation) of organically produced food; and (3) permit the use of potentially toxic municipal sewage sludge as fertilizer. In May 1998, then-Secretary Glickman publicly responded that USDA would make fundamental revisions to the proposed rule as a result of the comments received. The Secretary specified that GM crops, irradiation, and use of sewage sludge would not be permitted in the revised proposal, and that the Department would follow the NOSB’s recommendations on other issues of concern.

On March 13, 2000, USDA published the revised proposed rule.⁷ As the Secretary promised, this proposal eliminated the three key points of contention. In addition, among many other provisions, it: (1) set labeling standards based on the percentage of organic content; (2) prohibited selling or representing as organic any meat animal that has been treated with antibiotics (it can be sold as non-organic); (3) permitted producers

⁶ 62 *FR* 65868.

⁷ 65 *FR* 13512

to use “eco-labels” such as “pesticide-free farm” and “sustainably harvested” as long as they did not imply that a product met the USDA organic standards when in fact it did not. In the FY2000 agriculture appropriations act (P.L. 106-78), Congress provided \$1 million to complete final regulations for the program and an additional \$75,000 designated for developing national organic standards for seafood.

Between the publication of the first and second proposed rules, USDA announced in January 1999 an interim policy permitting most meat and poultry products to carry a label indicating they had been certified organic by a private or state certification entity. The agency followed up with a notice in the April 12, 1999, *Federal Register* that spelled out the requirements for USDA’s approval of private certification labels in greater detail.⁸ The intent of the policy was to put organic meats on a more level footing with organic fruits, vegetables, and other products, which have always been able to bear “certified organic” labels if they met the standards set by independent certifying agencies. The interim policy did not extend to certain meat-containing products inspected by the Food and Drug Administration or to seafood, for which FDA also has food safety inspection authority. Now that USDA has published the final rule, meat and poultry can carry the USDA organic label under the NOP. A proposed rule on national organic standards for seafood has not yet been published.

In addition to budgetary constraints, several other factors explain the length of time elapsing between the enactment of the 1990 OFPA, the publication of the first proposed rule in 1997, and the publication of the final rule in December 2000. USDA serves all of U.S. agriculture by law, but the characteristics of the Department’s constituency have changed over the decades, especially since the end of World War II. In the 1950s and 1960s, most farmers eagerly adopted the stream of new technologies that flowed from the research labs of the land grant colleges of agriculture and from private agribusiness firms (then primarily farm equipment companies). Significant advances in plant breeding created new crop varieties that performed better with applications of synthetic fertilizers and pesticides. These practices and technologies came to characterize mainstream agriculture, and users of them became the majority of USDA’s constituency. USDA, along with the Food and Drug Administration and the Environmental Protection Agency, became a part of the federal regulatory structure charged with the responsibility of assuring that foods produced with agricultural chemicals met U.S. environmental and food safety standards. This role put pressure on USDA to avoid establishing organic standards that might imply that the use of synthetic inputs is unsafe.

Another concern was trade. The United States is the world’s leading agricultural exporter, and the Department is continually involved in negotiations with foreign countries to assure that conventionally produced U.S. agricultural products are accepted in international markets. For example, for most of this decade USDA has been working with officials of the European Union (EU) to gain their acceptance of imports of genetically modified (GM) soybeans and corn. The Department bases its arguments on research that it maintains proves that the long-term environmental and health effects of GM crops are no different from non-GM varieties. This complicated the Department’s ability to promulgate regulations adopting an anti-GM position for a domestic program

⁸ 64 *FR* 17607.

like the NOP while seeking to validate a pro-GM position for U.S.-EU trade.⁹ However, in the end, after intensive negotiation between USDA's NOP officials and the organic industry during the rule-making process, the final rule reflected the latter's position that GM foods, along with other facets of conventional agriculture, should not be considered part of organic agriculture.

Implementation

The NOP final rule became effective on February 21, 2001. In the first step toward implementation, USDA began to accredit private and state certification agents, who then began certifying organic producers and handlers. Beginning October 21, 2002, all products sold as organic must be in compliance with the regulations and carry the "USDA Organic" seal (the seal may not be used before that date).

To facilitate implementation, Congress appropriated \$639,000 in the FY2001 USDA appropriations act (P.L. 106-387) for AMS to use for the first 18 months of the NOP in lieu of charging certification agents user fees to obtain USDA accreditation. Thereafter, the NOP is expected to be self-supporting through user fees. In FY2002, under the Agricultural Management Assistance Program authorized by the Federal Crop Insurance Act (P.L. 106-224), Congress made \$1 million available to help defray producers' and handlers' certification costs in 15 designated states.

Subsequent Legislative Action

The new omnibus law directing agriculture policy through 2007 (P.L. 107-171, the Farm Security and Rural Investment Act), which was enacted in May 2002, contains a number of provisions related to organic agriculture.

Cost-sharing, grants, and research. Title X of the farm act gives USDA authority to continue to defray the costs of producers and handlers seeking organic certification through FY2007. The act authorized a one-time, mandatory transfer of \$5 million from the Commodity Credit Corporation (CCC) to the Agricultural Marketing Service (AMS) to establish a national organic certification cost-share program under the NOP. AMS is to cover not more than 75% (\$500 maximum) of a producer's or handler's costs for becoming certified. The transfer occurred in FY2002 and will remain available until expended.¹⁰

⁹ For further information on food safety and trade issues concerning genetically modified products, see CRS Report RS20507, *Labeling of Genetically Modified Foods*; and CRS Report 98-861 RSI, *U.S.-European Agricultural Trade: Food Safety and Biotechnology Issues*.

¹⁰ The CCC is a wholly owned government financing institution for USDA agencies that administer mandatory programs, such as the farm price and income support commodity programs for wheat, cotton, rice, and certain other crops; agricultural export subsidies; and certain conservation programs. CCC funds are considered mandatory funds that must be made available for the purposes authorized. However, during the annual appropriations process, the appropriating committees have the authority to direct mandatory funds toward other purposes, or to add language prohibiting USDA from paying the salary and benefits

(continued...)

The rural development title of the 2002 farm act establishes a competitive grant program to promote research on the development and marketing of value-added agricultural products, to be funded through an annual transfer of \$40 million from the CCC to USDA through FY2006. The definition of a value-added agricultural product includes “[a] product that...is physically segregated in such a manner that results in the enhancement of the value of the...commodity or product.” A research project on organically produced commodities likely would be eligible to apply for a grant. The CCC transferred \$40 million in FY2002, but none was expended before the end of the fiscal year. Congressional appropriators have allowed the transfer of another \$40 million in FY2003 in the Consolidated Appropriations Resolution (H.J.Res. 2). However, report language retains \$10 million for the competitive grants program, and uses the remainder to offset funding increases elsewhere in USDA. Together with the unspent FY2002 transfer, USDA has \$50 million available for the program in FY2003.

The research title of the 2002 farm act renews expiring authority for research and extension programs on organic agriculture and adds language calling for an emphasis on classical and advanced research on genetics to improve organic crops; research to identify the marketing and policy constraints on the organic industry; and expanded on-farm research. The act authorizes \$3 million to be transferred annually from the U.S. Treasury to USDA, beginning in FY2004, to support this research. Other provisions in the research title: (1) require USDA’s Economic Research Service (ERS) to gather and maintain segregated data on the production and marketing of organic agriculture; and (2) require ERS and the National Agricultural Library to make it easier for U.S. organic producers, researchers and extension professionals to obtain the results of organic research conducted in foreign countries.

A check-off program for the organic industry? The 2002 farm law contains two provisions concerning issues related to the organic industry and USDA commodity research and promotion programs. These are programs that support generic advertising to promote an agricultural product (e.g., the milk mustache ads). They are funded by assessments that producers, processors, other handlers, and, frequently, importers, are required to deduct from revenue at the time of sale (thus they usually are called “check-off” programs). Congress has passed many laws authorizing national check-off programs for various farm commodities; there currently are 15 in operation.¹¹

The Senate version of the 2002 farm bill (S. 1731) contained a provision to establish a voluntary Organic Products Promotion check-off program for producers, handlers, and importers. In addition, if any of these people were currently participating in a USDA promotion program for a conventionally produced product (e.g., for milk, beef, cotton, and mushrooms, among others), they could request that their assessments on those products be credited to the Organic Products Promotion program instead of to

¹⁰ (...continued)
of employees to use the funds to carry out the program for which it was authorized.

¹¹ For more information on check-off programs, see CRS Report 95-353 (updated July 2002), *Federal Farm Promotion (“Check-off”) Programs*.

the program for conventionally produced commodities. The House measure (H.R. 2646) did not contain a similar provision.

In Title X of the act as passed, the conferees adopted language exempting producers and handlers who have a certified 100% organic operation from having to pay assessments under any existing commodity check-off programs in which they currently participate, but they did not establish either a voluntary or mandatory check-off program. USDA is to publish proposed rules to formalize the standards for eligibility for and compliance with the exemption provision by May 2003. Finally, the research title of the 2002 farm act contains a provision requiring ERS to prepare a report for Congress on: (1) the extent to which organic producers currently are participating in check-off programs and what they think about such programs; (2) whether existing check-off programs benefit organic producers; and (3) the strengths and weaknesses of various proposals to improve the treatment of organic products under USDA marketing orders and check-off programs.

Standards for organic livestock production. The conference report accompanying the Consolidated Appropriations Resolution for FY2003, which the President enacted on February 21, 2003 (H.Rept. 108-10; P.L. 108-7/H.J.Res. 2), contained a provision that made a controversial change in the National Organic Program. Section 771 of the law effectively deleted the NOP standard that requires livestock and dairy producers to provide 100% organically produced feed for their animals in order to qualify for USDA organic certification.

Section 771 provided that, if USDA surveys found that in some geographic areas organic feedstuffs cost more than twice what conventionally produced feed costs, then livestock and dairy producers in that area could be certified as organic without having to meet the NOP standard.

Reaction to this provision from several Members of Congress, the organic industry, and a few large food processors who had already committed resources to complying with the original rule, was swift and negative. Senator Leahy, who introduced the legislation to create the National Organic Program in 1990, and who championed its inclusion in the Food, Agriculture, Conservation, and Trade Act of 1990 (Title XXI of P.L. 101-624, the 1990 farm bill), circulated a "Dear Colleague" letter on February 12, 2003, urging Senators to remove Section 771 from H.J.Res 2, but without success. On February 26, 2003, Senator Leahy introduced S. 457, the Organic Restoration Act of 2003, and on February 27, Representative Farr introduced H.R. 955, a bill to repeal Section 771 of H.Rept. 108-10. The conference report accompanying emergency wartime supplemental appropriations for FY2003, which the President enacted on April 16, 2003, contains the language from H.R. 955 repealing the earlier action (Section 2104 of H. Rept. 108-76; P.L. 108-11).