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## **Organic Agriculture in the United States: Program and Policy Issues**

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# Organic Agriculture in the United States: Program and Policy Issues

## Summary

Congress passed the Organic Foods Production Act (OFPA) in 1990 as part of a larger law governing U.S. Department of Agriculture (USDA) programs from 1990 through 1996 (P.L. 101-624, the Food, Agriculture, Conservation, and Trade Act of 1990). The act authorized the creation of a National Organic Program (NOP) within USDA to establish standards for producers and processors of organic foods, and permit such operations to label their products with a “USDA Organic” seal after being officially certified by USDA-accredited agents. The purpose of the program, which was implemented in October 2002, is to give consumers confidence in the legitimacy of 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.

Policy issues affecting the National Organic Program since implementation largely reflect the differences in interpretation among stakeholders of the language and intent of OFPA and the actual operation of the program under the final rule. The NOP was challenged in 2003 by a lawsuit claiming that many of the regulations were more lenient than the original statute permitted. A resulting court order issued in June 2005 required USDA to rewrite regulations concerning the use of certain synthetic ingredients in organic-labeled foods and the conversion of dairy herds to organic production. Subsequently, however, conferees on the FY2006 USDA appropriations bill attached a provision that amended the OFPA in a way that largely permits the regulations on synthetics to stand as they were before the court decision. USDA published the final rule reflecting both the court order and the OFPA amendments in June 2006. Further rulemaking is necessary on the dairy herd conversion issue.

A second issue concerns USDA’s efforts to write a new regulation governing access to pasture for organic dairy cows (and other ruminants). Tight supplies of certain organic commodities, particularly dairy products, and the entry into the market of major grocery retailers wanting to sell organic foods are adding pressure to this debate. Critics charge that large organic dairy operations are not abiding by the intent of OFPA by feeding organic grain to cows in feedlots, and that the principle of grazing is central to consumers’ concept of organic milk. Supporters of existing regulations point to the need for flexibility in order to maintain an organic dairy sector that can meet growing demand.

There is wide consensus that no further amendments to the OFPA are necessary at this time. Nonetheless, some major industry groups would like Congress to consider other related policy matters when it takes up consideration of new, omnibus farm legislation in 2007. Among the policy recommendations that various groups have begun to draft are proposals to establish a National Organic Agriculture Initiative to provide policy direction for the industry, and to improve organic producers’ access to and benefits from federal crop insurance.

This report will be revised as events warrant.

## Contents

Background .....	1
Organic Sector Statistics .....	1
The Organic Foods Production Act of 1990 .....	3
Organic Provisions in the 2002 Farm Bill .....	5
Cost-Sharing Start-Up Costs .....	5
Value-Added Producer Grants .....	5
Research .....	5
Exemption from Check-Off Programs .....	6
USDA Regulatory Activity .....	7
Interpretive Issue Statements .....	7
“Access to Pasture” Controversy .....	8
<i>Harvey v. Veneman</i> .....	9
Current Status .....	11
Previewing Organic Agriculture Issues in the 2007 Farm Bill .....	12

# Organic Agriculture in the United States: Program and Policy Issues

## 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.”<sup>1</sup> 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 migrated from Europe to the United States 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 began to conduct scientific investigations into non-chemical and non-intensive farming techniques, and a small but slowly increasing number of farmers began to adopt organic production practices. Except for a brief period from about 1978 to 1981, USDA did not conduct any activities in support of organic agriculture until OFPA required the Department to begin rulemaking to establish the National Organic Program in 1990.

## Organic Sector Statistics<sup>2</sup>

The annual rate of market growth for organic foods and other products has remained steady at the 20% rate it achieved beginning in 1990, although analysts generally expect it to moderate over the next decade. The *Nutrition Business Journal* estimates that by 2010, sales of organic foods could reach \$23.8 billion, or 3.5% of total U.S. retail food sales (sales were \$10.4 billion in 2003, about 2% of total sales). About 47% of organic foods are sold through conventional retailers, 44% through natural food stores, and 9% through farmers’ markets, restaurants, exports, and other

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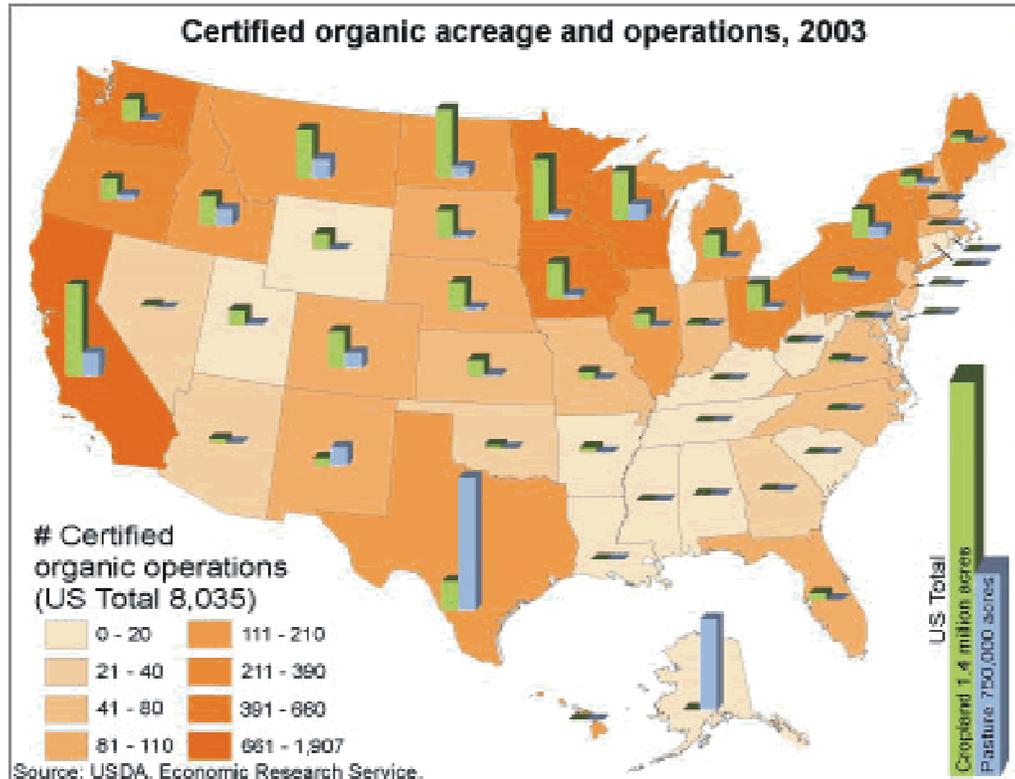
<sup>1</sup> 7CFR205.2.

<sup>2</sup> USDA, Economic Research Service. *Recent Growth Patterns in the U.S. Organic Foods Market*. Report No. AIB777. September 2002. Available online at [<http://www.ers.usda.gov/publications/aib777/>].

marketing channels.<sup>3</sup> Various sources of export data estimated U.S. exports of organic foods at between \$125 million and \$300 million in the 2000-2002 period.<sup>4</sup> The biggest export market is Canada; other major markets are Japan, the European Union, and other countries in Asia.

The number of acres of certified organic cropland and pasture/rangeland was 2.2 million in 2003 (most recent available), according to USDA. The number of certified crop, livestock, and handling operations was estimated to be 11,400 in 2004.

Fresh produce is the largest sector of the organic industry, with California, Washington, and Colorado having the greatest number of acres devoted to organic fruit and vegetable production (see map below). Colorado, Texas, and Montana have the most acreage of organic pasture for livestock. In the Northeast, Southeast, and Upper Midwest, small-scale growers of organic fruits, vegetables, herbs, and flowers are a significant component of individual states' agriculture industries.<sup>5</sup>



<sup>3</sup> USDA. Economic Research Service. Price premiums hold on as U.S. organic produce market expands. Report VGS-308-01. May 2005. Available online at [<http://www.ers.usda.gov>].

<sup>4</sup> Ibid.

<sup>5</sup> For a detailed graphic representation of the distribution of organic crop and pasture acreage and number of operations per state, see [<http://www.ers.usda.gov/Amberwaves/Feb03/pdf/indicators.pdf>].

The high growth rate in sales of organic products can be attributed in part to the higher prices that organic producers and processors receive for their products, according to USDA's Economic Research Service (ERS). ERS economists speculate that part of the price premium may be due to higher production costs and to higher demand relative to supply. For the 2000-2004 period, the annual average farmgate price premiums for fresh organic broccoli and carrots fluctuated from 75% to 133% above the prices of conventionally grown broccoli and carrots, according to ERS. Price premiums for the two vegetables at the wholesale level never went below 125% in the same period.<sup>6</sup> The ERS study goes on to say that:

Laws of supply and demand, however, make it unlikely that price premiums contributing to higher profits and market growth can coexist over the long run: as long as higher profits exist, new suppliers will enter the market, and once market supply increases faster than demand, price premiums and the commensurate level of higher profits are likely to decline.... Many organic industry participants and observers believe that the price premiums ... need to decrease if organic foods are to penetrate much beyond the 2- to 3-percent level into the mainstream.<sup>7</sup>

The consumer studies that ERS reviewed did not permit any clear estimate of future demand for organic products. The studies showed that price, size, packaging, appearance, and concerns about health and nutrition, taste, food safety, and the environment all play varying roles in consumer decisions to buy organic food. Surveys on race, ethnicity, and income levels showed significant diversity.<sup>8</sup>

## **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; the 1990 farm bill) with widespread support from organic industry groups, the National Association of State Departments of Agriculture, and other farm and consumer groups. The organic industry petitioned Congress to draft the act in the late 1980s, after it had been frustrated in its attempts to come to an internal consensus on production and certification standards. The industry maintained that federal standards would reduce consumer confusion over the many different state and private standards then in use, and would promote confidence in the integrity of organic products over the long term. Manufacturers of multi-ingredient organic food products stated that uniform standards would facilitate labeling. Others held that regulations would help the organic industry expand product lines and increase marketing opportunities. Industry analysts asserted that a consistent U.S. organic standard would facilitate 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). The

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<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

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.”

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 regulations (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; they conduct annual reviews to verify continued compliance. It is illegal for anyone to use the word “organic” on a product if it does not meet the standards set in the law and regulations.<sup>9</sup> The presence of the “USDA Organic” seal on a product means it is 95% or more organic. Labels on products having 70% to 95% organic content can say “made with organic (specified ingredients or food groups),” but cannot carry the seal. Foreign organic producers and handlers wishing to export products to the United States may be certified by a USDA-accredited certification agent in their own country, if there is one; or USDA may accept certification by agents accredited by a foreign government; or, USDA may negotiate an equivalency agreement with another nation’s organic program.<sup>10</sup>

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 own labels in addition to the USDA label, indicating that the product meets their standards as well as the national ones. The private label may indicate only that the organization’s standards are in addition to (but not superior to) the national standards. AMS reviews certification agents for re-accreditation every five years. AMS enforces the regulations by revoking or suspending a producer’s certification or an agent’s accreditation if a satisfactory solution to a program violation cannot be found.

The NOP final rule became effective on February 21, 2001; the program itself became fully operational on October 21, 2002. In the first step toward implementation, USDA accredited private and state certification agents, who in turn began to certify organic producers and handlers according to the standards found in 7 CFR 205. After October 21, 2002, all products sold as organic had to be in compliance with the regulations and carry the “USDA Organic” seal.

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<sup>9</sup> 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.

<sup>10</sup> A July 2005 audit by the USDA Office of Inspector General (OIG) states that USDA had 41 accredited certification agents in foreign countries. The report also found that as of August 2004, AMS had negotiated only one equivalency agreement with a foreign country (Japan). The OIG recommends implementation of internal operating procedures “to assure that the NOP is achieving its intended objectives to ensure that organic products meet consistent, uniform standards.” The audit report is available online by going to [<http://www.usda.gov/oig/audits.htm>] and following the links from “View Audit Reports and News Releases,” to the listing by “Agency Subject of Report.” It is under the Agricultural Marketing Service, July 2005.

## Organic Provisions in the 2002 Farm Bill

**Cost-Sharing Start-Up Costs.** Although the OFPA requires the cost of the National Organic Program to be fully supported by user fees collected for USDA accreditation and certification services, Congress has appropriated funds on several occasions to help the program in its initial stages. The FY2001 USDA appropriations act (P.L. 106-387) contained \$639,000 to cover accreditation costs. 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 state agriculture departments in 15 designated states to help defray the costs of certification for small-scale producers and processors.

The 2002 farm bill (P.L. 107-171, the Farm Security and Rural Investment Act), which was enacted in May 2002, also provided additional funds to support program start-up. Title X of the farm act gave USDA authority to continue to defray the costs of producers and handlers seeking organic certification through FY2007, and authorized a one-time, mandatory transfer of \$5 million from the Commodity Credit Corporation (CCC) to establish a national organic certification cost-share program under the NOP. Federal funds may not cover more than 75% (\$500 maximum) of a producer's or handler's costs for becoming certified. The transfer occurred in FY2002 and remained available until fully expended, which was earlier in 2006.<sup>11</sup>

**Value-Added Producer Grants.** The rural development title of the 2002 farm bill established 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. Projects on organically produced commodities are eligible for these grants. Congress authorized \$40 million in mandatory CCC funds to be made available each year through FY2007, but the actual funding levels so far have been volatile. The program received \$50 million in mandatory funds in FY2003, consisting of \$40 million in unspent funds from the first CCC transfer in FY2002 and \$10 million of the \$40 million CCC transfer for FY2003. In each year from FY2004 to FY2006, appropriators prohibited the spending of the mandatory funds. Instead, Congress appropriated about \$15 million annually in FY2004-FY2005 for making grants, and \$20.5 million for FY2006.

**Research.** The research title of the 2002 farm bill renewed expiring authority for a competitive grant program to support research and extension activities on organic production, processing, and international marketing. The conference report also added language calling for an emphasis on classical and advanced research on

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<sup>11</sup> The CCC is a wholly owned government financing institution for USDA agencies that administer mandatory programs, such as the farm commodity price and income support programs for wheat, cotton, rice, and certain other crops; agricultural export subsidies; and certain conservation and trade programs. CCC funds are considered mandatory funds that must be made available for the purposes authorized. In practice, however, appropriators sometimes prohibit or place restrictions on funding for mandatory programs in the annual appropriations bill.

genetics to improve organic crops; research to identify the marketing and policy constraints on the organic industry; and expanded on-farm research. The act authorized \$3 million to be transferred annually from the U.S. Treasury to USDA, beginning in FY2003, to support this research.<sup>12</sup> 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.<sup>13</sup>

Concerning the availability of production and marketing data on organic agriculture, an official of the Organic Trade Association (OTA) states that many gaps exist, and that the Economic Research Service still is relying extensively on external data sources for much of its information. As of September 2006, a comprehensive USDA survey of the entire organic sector, authorized in the 2002 farm bill, has not been conducted. USDA's Agricultural Marketing Service has not yet begun to provide market news on the organic sector, which would permit up-to-date price discovery. Separate export and import data for organic products are not being collected at the borders. These deficiencies hamper business planning and expansion, complicate crop insurance premium-setting and loss payments, among other issues, according to OTA.

**Exemption from Check-Off Programs.** The 2002 farm bill contained a provision 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. (For more information on check-off programs, see CRS Report 95-353, *Federal Farm Promotion ("Check-off") Programs*.)

The Senate version of the 2002 farm bill (S. 1731) would have established a check-off program for organic commodities, but the provision was not adopted in conference. The enacted bill instead included 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. For example, a producer who grows peaches on an entirely organic farm that has been certified under the NOP would be eligible to be exempted

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<sup>12</sup> Information on Integrated Organic Program research grants are available on the Cooperative State Research, Education, and Extension Service website at [<http://www.csrees.usda.gov/fo/funding.cfm>].

<sup>13</sup> ERS published a paper in August 2005 entitled, "Market-Led Growth vs. Government-Facilitated Growth: Development of the U.S. and EU Organic Agriculture Sectors." Available online at [<http://www.ers.usda.gov/Briefing/Organic/>]. Congress has not appropriated funds to date for a National Agricultural Library International Organic Research Collaboration.

from paying an assessment under the marketing order for peaches and nectarines, when he sells his crop to a wholesaler or other handler. The proposed rule on the exemption for producers appeared in the *Federal Register* in April 2004 (69 FR 22690). Final rules for both producers and handlers of organic commodities were published in January 2005 and became effective in February 2005 (70 FR 2744 and 2763, respectively).

## USDA Regulatory Activity

**Interpretive Issue Statements.** In April 2004, the National Organic Program headquarters in USDA released “issue statements,” i.e., guidelines for interpretation of program regulations in four areas. These were livestock feed, livestock health, inert ingredients in approved organic pesticides, and the inclusion of non-food items like lotions and cosmetics within the scope of the NOP. AMS issued the statements administratively (rather than through the *Federal Register*). Many program participants were immediately critical of the Department for not giving the issue statements to the National Organic Standards Board for advance review, since the critics viewed them as revisions of the regulations, not simply as clarifications. USDA rescinded the issue statements in May 2004, and asked the Board to provide feedback on them, which it did in October 2004.

Subsequently, on August 23, 2005, the Department issued a memorandum reversing its original position on the “scope of program” issue.<sup>14</sup> The memorandum states that, if all standards for organic agricultural ingredients are met, then the organic seal can be used on personal care products, supplements, and pet foods. This reversal was prompted by a lawsuit that was brought against USDA after it released the issue statement in April 2004 saying that nonfood organic products could not carry the “USDA Organic” seal.

The underlying issue here concerns the compatibility of the National Organic Program, whose regulations are quite prescriptive regarding production and manufacturing practices, with the operating procedures of AMS, which is accustomed to administering programs that deal with the marketing-related characteristics of products rather than with the practices by which they were achieved. It arguably could be expected that officials of a new program might on occasion take administrative action without thinking it necessary to consult the National Organic Standards Board, or might differ with the Board on the form and substance of a proposed regulation. From the perspective of the National Organic Standards Board and industry stakeholders, AMS’s failure to consult the Board on how certain regulations should be interpreted arguably could appear to be dismissive of their input. These fundamental differences in approach played a significant role in why it took 11 years to publish a final NOP rule after the OFPA was enacted in 1990.

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<sup>14</sup> Available online at [<http://www.ams.usda.gov/nop/TodaysNews.html>]; see August 24, 2005.

An audit report on the NOP released in July 2005 by USDA's Office of Inspector General (OIG) directly addressed these concerns.<sup>15</sup> The report found that "AMS has not established protocols for working with the National Organic Standards Board or resolving conflicts with them," and recommended that the NOP "establish procedures for receiving, reviewing, and implementing recommendations from the Board." The report stated that "AMS also needs to improve management controls for administering the NOP," and recommended that AMS "resolve and implement internal operating procedures for such things as the resolution of complaints to govern program operations." The OIG made 10 recommendations in all. AMS has submitted draft procedures addressing all the recommendations to the OIG for approval.<sup>16</sup>

### **"Access to Pasture" Controversy**

In January 2005 a newspaper article about a Colorado organic dairy operation shed light on a major controversy within the organic industry and certain consumer groups.<sup>17</sup> The article focused on a 5,300-cow organic farm where the animals were fed almost exclusively on grain and allowed outdoors into a feedlot for air and exercise.

The NOP regulation at the core of the dispute is 7 CFR 205.239(a)(1-2): "The producer of an organic livestock operation must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including (1) Access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to the species, its stage of production, the climate, and the environment; (2) Access to pasture for ruminants[.]"

The news article cited organic dairy producers who argued that the regulation means that organic cattle must get some of their nutrition, as well as fresh air and exercise, from grazing on pasture. The Colorado operator maintained that his animals have outdoor access, but that in an arid state like Colorado, providing sufficient pasturage for all his cows to graze would be an insurmountable requirement.

This issue is illustrative of the underlying tension between the National Organic Program as a system of production and AMS's administration of the NOP as a marketing program. Those in the industry who hold that organic farming *practices* are an integral part of the meaning of the term "organic," particularly with respect to standards for the treatment and feeding of livestock, argue that if the pasturage in

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<sup>15</sup> USDA, Office of Inspector General. *Audit Report: Agricultural Marketing Service's National Organic Program*. The audit report is available online by going to [<http://www.usda.gov/oig/audits.htm>] and following the links from "View Audit Reports and News Releases," to the listing by "Agency Subject of Report." It is under the Agricultural Marketing Service, July 2005.

<sup>16</sup> Conversation with Mark Bradley, NOP Administrator, September 8, 2006.

<sup>17</sup> "Organic Milk Debate; Dairies dispute 'organic' values; Ex-hippie farmers contest practices of big producers," *Chicago Tribune*, January 10, 2005. See [<http://www.organicconsumers.org/organic/milk011105.cfm>].

certain parts of the nation can support only small dairy or beef cattle herds, or none at all, then such farms should be small or nonexistent in those areas. AMS officials and some of the larger organic producers are concerned lest the regulations become so prescriptive that they deprive producers and processors of the opportunity to benefit from the expanding market for organic products. The recent entry into the organic market of some large supermarket chains is putting pressure on the industry to meet demand, particularly for organic dairy products.

At a February 2005 meeting of the National Organic Standards Board, members discussed and recommended new language for 7 CFR 205.239, which it forwarded to National Organic Program officials for approval.<sup>18</sup> The emphasis in the revised language was on allowing cows at the appropriate “stage of life” to graze pasture “during the pasture’s normal growing season.” At the August 2005 Board meeting, the NOP staff rejected the recommendation saying it lacked a “clear and concise regulatory objective,” and asked the Board to rework it.<sup>19</sup>

On April 13, 2006, AMS published an advanced notice of proposed rulemaking asking stakeholders to respond to a number of questions concerning access to pasture, including questions concerning whether consumers consider pasturing to be essential to organic milk production, and whether there is science-based information on ruminant animal nutrition and minimum pasture requirements, among other things.<sup>20</sup> NOP officials estimate that it could be early 2007 before the comments are evaluated and a proposed rule is published. A guidance document that the Board posted on its website for comment in March 2005 is serving unofficially as an interim interpretation of the current “access to pasture” requirement until a proposed revised standard can be published.<sup>21</sup>

### ***Harvey v. Veneman***

In June 2005, a First Circuit Court sided with an organic farmer who filed suit against USDA claiming that several provisions of the final NOP rule were more lenient than the underlying statutory language allowed.<sup>22</sup>

Specifically, the court determined that certain “natural” substances not commercially available in organic form had to be individually reviewed to determine their status for the National List of Approved and Prohibited Substances before they could be used in organic-labeled products. Second, the court determined that synthetic substances that heretofore had been approved in the regulations and used

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<sup>18</sup> Minutes of February 28-March 3, 2005, NOSB meeting available online at [<http://www.ams.usda.gov/nosb/meetings/meetings.html>].

<sup>19</sup> Minutes of August 15-17, 2005, NOSB meeting available online at [<http://www.ams.usda.gov/nosb/meetings/meetings.html>].

<sup>20</sup> 71 FR 19131.

<sup>21</sup> “NOSB Livestock Committee Recommendations for Guidance; Pasture Requirements for the National Organic Program,” National Organic Standards Board, March 2, 2005. Available online at [<http://www.ams.usda.gov/nosb/meetings/meetings.html>].

<sup>22</sup> *Harvey v. Veneman*, 396 F.3d 28 (1<sup>st</sup> Cir. 2005).

in commerce could not be used in the processing or handling of organic-labeled products. And third, it ruled that the USDA regulation on converting a dairy herd from conventional to organic production did not in any way reflect the statutory language and was thus invalid. The District Court in this case set a one-year time frame for USDA to develop new regulations and allowed another year beyond that (until June 2007) for the industry to come into compliance.

Stark differences of opinion within the organic industry on the impact of the court judgement became immediately apparent. Representatives of consumer groups and some food retailing groups welcomed the decision. They maintained that consumers consider the organic label to mean the absence of synthetic ingredients and that the new, stricter regulations would reconfirm consumer confidence in the OFPA as enacted. The consumer groups expressed strong opposition to resolving the court decision issue by amending the OFPA.

Conversely, a large number of organic food manufacturers were apprehensive that the ultimate outcome of the court decision would be to force the discontinuation of hundreds of existing, organic-labeled food and beverage products, and/or end manufacturers' ability to use the "USDA Organic" seal, which commands premium prices in the marketplace. These stakeholders supported the efforts of the Organic Trade Association to have Congress effect a legislative solution to the issues raised by the court decision.

In late September 2005, during floor debate on its version of the FY2006 USDA spending bill (H.R. 2744), the Senate adopted an amendment requiring the Secretary to conduct a survey to determine the impact of the decision and of various approaches to addressing it, including amending the OFPA to effectively undo the court's action.

In late October 2005, conferees on the FY2006 agriculture appropriations bill adopted a second provision in committee. In effect, this provision, which was in the USDA appropriations act that the President signed on November 10, 2005, changed the original statute to reduce the practical significance of two of the three court holdings. Specifically, the provision amended the OFPA (1) to allow "natural" but non-organic products to be used as long as they are subject to the National List evaluation process; and additionally, to permit USDA to develop an expedited procedure for approving the addition of such products to the National List for a limited time period; (2) to remove the original language that generally prohibits the inclusion of synthetic substances on the National List (although there are other requirements that must be met); and (3) to provide a statutory basis for a new regulation on converting dairy herds to organic that is related to on-farm production of organic feed and forage.<sup>23</sup>

Despite the rulemaking process that has begun to implement the results of the court ruling and OFPA amendments, continued legal activity concerning *Harvey v. Veneman* is likely, according to NOP officials.

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<sup>23</sup> For a legal analysis of the court decision and the OFPA amendments, see CRS Report RS22318, *Harvey v. Veneman and the National Organic Program: A Legal Analysis*.

**Current Status.** USDA published the final rule complying with the court order and partially reflecting the OFPA amendments on June 7, 2006.<sup>24</sup> The final rule revises 7 CFR 205.236 to eliminate the use of up to 20% non-organically produced feed during the first nine months of the conversion of a whole dairy herd from conventional to organic production. Instead, it permits whole herds undergoing conversion to consume feed produced from cropland (or graze on pasture) in its third year of organic management. According to the explanatory material accompanying the rule, “[i]n providing the transition language, entry into organic dairying may become easier.... Certainly it should help smaller dairy farmers ... who may be faced with having to purchase higher priced organic feed, by allowing them to graze dairy livestock on their land that is being transitioned to organic certification.”<sup>25</sup>

Although the revised rule complies with the court holding concerning conversion of *whole herds* from conventional to organic, and also reflects the amendment to OFPA in that area, further rulemaking will be necessary. The existing regulation still permits individual animals that are purchased as *replacement* cows to be fed less than 100% organic feed in the year leading up to their going into organic production, a situation that is at variance with the court’s ruling. USDA has stated that it will initiate the *Federal Register* process for solving this situation, but it has not given a timetable for doing so.

The June 2006 final rule also revises 7CFR 205.606 to clarify that the regulation does not establish a blanket exemption concerning the use of non-organic cornstarch, water-extracted gums, kelp, lecithin, and pectin in foods labeled as organic. Non-organic versions of these five ingredients may only be used in accordance with certain restrictions, and only when they are not commercially available in organic form. The amendments to OFPA also authorized the Secretary to develop an expedited process for placing additional ingredients that are not commercially available in organic form on the list of permitted substances on an emergency basis, for a period of not more than 12 months. USDA has not begun the rulemaking process to implement this amendment.

The final rule is silent on the court’s holding concerning 7 CFR 205.605, the regulation that allows processed products to be labeled as organic even if up to 5% of their content is not organic. The OFPA amendments added language to the statute that supports 7 CFR 205.605 as it appears in the final NOP rule issued in November 2001, and USDA states that no further rulemaking is necessary.

USDA reviewed the potential impacts of *Harvey v. Veneman* as required by the earlier provision added to the FY2006 USDA appropriations bill, and released a report in March 2006.<sup>26</sup> It cites a number of ERS and outside sources in support of the position that full compliance with the court ruling would have been costly to the industry and that “the amendments passed by Congress effectively restored order to

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<sup>24</sup> 71 FR 32803.

<sup>25</sup> 71 FR 32806.

<sup>26</sup> Available online at [<http://www.ams.usda.gov/nop/indexIE.htm>], under “Publications.”

the organic business community ... by eliminating uncertainty over labeling and other regulatory changes....”

## **Previewing Organic Agriculture Issues in the 2007 Farm Bill**

There is consensus among a broad range of stakeholders that no further amendments to the OFPA are necessary or desirable at this point. Instead, a number of interest groups have begun drafting policy recommendations to address other issues, particularly those related to helping the industry keep pace with growing demand. The groups are calling on Congress to consider these provisions for inclusion in a separate organic title in new, omnibus legislation to replace the 2002 farm bill, which expires toward the end of 2007.<sup>27</sup>

Some of the draft proposals recommend making mandatory funds available to implement certain 2002 farm bill provisions that have not become fully operational, such as (1) the AMS program to provide regular nationwide reporting of wholesale market prices for organic products; (2) the ERS effort to collect data on the organic sector; and (3) the authority for USDA’s Agricultural Research Service (ARS) to facilitate access to research on organic production and processing conducted outside the United States.

The proposals also recommend increasing support, with mandatory funds, for federal organic agricultural research, and for state research and extension programs related to organic agriculture and to the development of new public plant varieties derived from traditional plant breeding practices. Additional proposals concern making conservation, risk management, and crop insurance programs more amenable to organic producers.

The organic industry’s leading organization, the Organic Trade Association, has made public a more general statement of proposals that calls for an organic title in the upcoming farm bill to contain (1) a National Organic Agriculture Initiative to provide overall policy direction for the U.S. sector; (2) authority for an Organic Production Office within USDA to coordinate efforts across agencies; (3) provisions to increase and enhance existing authorities in OFPA and the 2002 farm bill; and (4) a provision to incorporate an organic focus into other USDA programs.<sup>28</sup>

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<sup>27</sup> National Campaign for Sustainable Agriculture, “Draft NCSA 2007 Farm Bill for Organic.” Available at [<http://www.sustainableagriculture.net/RAFINCSAJoint.php>]; and Organic Farming Research Foundation, “Initial Concepts for the 2007 Farm Bill.” Available at [<http://www.ofrf.org/policy/Federal%20Legislation/2007farmbillconcepts.html>].

<sup>28</sup> Organic Trade Association. “Organic Trade Association seeks organic title within next Farm Bill.” Available at [<http://www.organicnewsroom.com/>].