



Horticulture¹

Introduction

The purpose of this backgrounder is to educate readers about the history, context, and content of the farm bill's Horticulture Title. The first section briefly introduces the establishment and evolution of federal horticulture programs. The second section summarizes the programs included in the Horticulture Title (Title X) of the Agricultural Act of 2014 (2014 Farm Bill). The final section summarizes current issues and critiques within the Horticulture Title in contemplation of the next farm bill.

Title X of the 2014 Farm Bill covers federal programs to support specialty crops (fruits, vegetables, tree nuts, and floriculture and ornamental products), promote local and regional foods, and govern certified organic agricultural production. Horticulture first became its own title in the 2008 Farm Bill, but specialty crops have been addressed intermittently in farm bills over several decades.²

As of 2012, U.S. specialty crop production generated nearly \$60 billion in value—or about one-fourth of the total value of U.S. crop production.³ Retailers sell nearly \$100 billion of fruits and vegetables for at-home consumption annually.⁴ Yet, only about 3% of harvested cropland contains specialty crops.⁵ In addition, mandatory spending for specialty crops and organic agriculture accounts for a small share of total farm bill spending and falls well below spending levels for commodity programs.⁶ Between FY2014 and FY2018, the 2014 Farm Bill is expected to spend \$773 million in average annual mandatory spending, and an additional \$302 million in average annual appropriations, to support specialty crops and organics.⁷ By comparison, for major commodity crops, the bill is expected to average \$4.7 billion in annual mandatory spending.⁸

I. Horticulture Title: History

The Horticulture Title did not become part of the farm bill until 2008. While commodity provisions have been included in the farm bill since the 1930s, most of the programs addressing specialty crops were initially introduced outside of the farm bill in the Specialty Crops Competitiveness Act of 2004.⁹ Most of these programs were then reauthorized and expanded with the creation of the Horticulture Title in the 2008 Farm Bill¹⁰; however, specialty crops have been addressed in a peripheral way in farm bills since the 1930s.

¹ The following people contributed to this report: Josh Galperin (Yale Law School Environmental Protection Clinic), Alex Schluntz (Yale Law School), William Liang (Yale Law School), Christine Kwon (Yale Law School), Jennifer Benson (University of Colorado Law School), and Mary Stottele (Harvard Law School).

² RENÉE JOHNSON, CONG. RESEARCH SERV., SPECIALTY CROP PROVISIONS IN THE 2014 FARM BILL 4 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43632.pdf>.

³ RENÉE JOHNSON, CONG. RESEARCH SERV., FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS: SELECTED FARM BILL AND FEDERAL PROGRAMS 1 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R42771.pdf>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 5. In addition to Title X, the 2014 Farm Bill supports specialty crops through provisions in Titles I (commodities), II (conservation), III (trade), IV (nutrition), VI (rural development), VII (research), XI (crop insurance), and XII (miscellaneous).

⁷ *Id.* at 5.

⁸ *Id.* at 5.

⁹ Johnson, *supra* note 2, at 4.

¹⁰ *Id.* at 4.



A. 1st Phase: Fair Trade for the Produce Industry in the 1930s

Specialty crops were first addressed in the 1930s, when the Perishable Agricultural Commodities Act of 1930 (PACA) and the Agricultural Marketing Agreement Act of 1937 were enacted. These acts were billed as promoting fair trade and protecting the produce industry in the marketplace.¹¹ After those acts, specialty crops did not resurface within a farm bill context until the 1990s. The farm bills in the intervening decades largely focused on utilizing supply management policies to reduce surpluses in commodity crops.¹² In the 1960s, food policy shifted to include concerns about conservation and nutrition, including the 1964 Food Stamp Act.¹³

B. 2nd Phase: Promoting Healthy Food and Specialty Crops in the 1990s to 2000s

Specialty crops returned to the farm bill agenda during the 1990s with a focus on nutrition. Interest in promoting healthier food naturally involved the specialty crop industry, albeit in a peripheral way; the specialty crop industry received little direct attention. For instance, the 1992 WIC Farmers' Market Nutrition Act required USDA to help WIC participants obtain fresh fruit and vegetables from farmers' markets.¹⁴ Four years later, the 1996 Farm Bill established grants to develop Community Food Projects.¹⁵ The grants funded projects that aimed to increase low-income access to nutritious food and projects designed to aid community self-reliance in providing for their food needs.¹⁶

The early 2000s continued and expanded the trend toward promoting healthy food. In 2001, the USDA instituted the Senior Farmers' Market Nutrition Program, aimed at low-income seniors; the 2002 Farm Bill then authorized funding to implement and expand that program.¹⁷ The 2002 Farm Bill also reauthorized the Community Food Projects Competitive Grant Program and doubled its annual funding from \$2.5 million to \$5 million.¹⁸ In addition, the 2002 Farm Bill implemented several other pilot programs involving nutrition and specialty crops. One pilot program made free fruits and vegetables available in 25 schools across four states and one reservation.¹⁹ Another pilot program, the Fruit and Vegetable Domestic Promotion Program, provided \$10 million per year in cost-share funds to increase consumption of fruits and vegetables and promote healthy eating.²⁰ The 2002 Farm Bill also directed the Secretary of Agriculture to encourage schools to purchase locally produced foods, accompanied by \$400,000 to provide start up grants.²¹

Some provisions in the 2002 Farm Bill addressed the specialty crop industry more directly. For instance, the Secretary was required to use a minimum of \$200 million per year to purchase additional fruits, vegetables and specialty crops, of which a minimum of \$50 million would be used exclusively for child

¹¹ *Id.* at 4.

¹² See generally RONI NEFF, INTRODUCTION TO THE U.S. FOOD SYSTEM: PUBLIC HEALTH, ENVIRONMENT, AND EQUITY 194–98 (2014); JAMES L. NOVAK ET AL., AGRICULTURAL POLICY IN THE UNITED STATES: EVOLUTION AND ECONOMICS 77–83 (2015).

¹³ JAMES L. NOVAK ET AL., AGRICULTURAL POLICY IN THE UNITED STATES: EVOLUTION AND ECONOMICS 98 (2015).

¹⁴ *The 2002 Farm Bill: Provisions and Economic Implications*, ECON. RESEARCH SERV., U.S. DEP'T AGRIC. 36 (May 22, 2002), https://www.ers.usda.gov/webdocs/publications/42660/13780_ap022_4_.pdf?v=41879 [hereinafter *2002 Farm Bill*].

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 37.

²⁰ *Id.* at 62.

²¹ *Id.* at 37.



nutrition programs in schools and other institutions.²² The 2002 Farm Bill also authorized additional funding for an ad hoc emergency aid program, established in 2000, as well as funding for market loss assistance for certain onion producers.²³

After the 2002 Farm Bill, the specialty crop industry began to receive more direct attention from Congress. The Specialty Crops Competitiveness Act of 2004 sought to increase consumption of specialty crops and to increase the competitiveness of producers.²⁴ Among other things, it authorized specialty crop block grants through 2009 and provided technical assistance for specialty crop producers.²⁵ The block grants were first funded through appropriations in 2006,²⁶ and the 2008 Farm Bill provided mandatory funding for the program (raised further by the 2014 Farm Bill).²⁷ In addition, the Child Nutrition and WIC Reauthorization Act expanded and made permanent the 2002 Farm Bill's Fresh Fruit and Vegetable Program, and both the 2006 Agricultural Appropriations Act and 2008 Farm Bill expanded it further.²⁸

C. 3rd Phase: The Horticulture Title in the 2008 and 2014 Farm Bills

In 2008, the farm bill incorporated the Horticulture Title to specifically address specialty crops.²⁹ The title included provisions for pest and disease management, established programs to assist producers in transition to organic agriculture, and funded additional research on organic practices.³⁰ The title also provided funding for farmers' markets.³¹ In addition, specialty crops continued to be affected by other titles in the farm bill, such as by nutrition programs in Title IV.³²

The 2014 Farm Bill again reauthorized many of the provisions from the previous farm bill.³³ The scope of programs dealing with specialty crops involve marketing and promotion; organic certification; data and information collection; pest and disease control; food safety and quality standards; and local foods.³⁴ The Congressional Budget Office estimated a total increase in mandatory spending for Title X of \$338 million over 5 years. This projected increase does not account for spending on provisions affecting specialty crops but located in other titles of the bill, such as Research, Nutrition, and Trade.³⁵

Organics also form an important piece of Title X in the 2014 Farm Bill. The 2002 Farm Bill was the first farm bill to include provisions concerning organic produce.³⁶ It funded research on organic production

²² *Id.* at 37.

²³ *Id.* at 62-63.

²⁴ Specialty Crops Competitiveness Act of 2004, 108 P.L. 465, 7 U.S.C. § 1621 note.

²⁵ Specialty Crops Competitiveness Act of 2004, 108 P.L. 465, 7 U.S.C. § 1621.1-2.

²⁶ Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, 109 P.L. 97 § 773, 119 Stat. 2160 (2005) (codified at 7 U.S.C. § 1621 note).

²⁷ Food, Conservation, and Energy Act of 2008, 110 P.L. 246 § 10109, 122 Stat. 2100; Agricultural Act of 2014, 113 P.L. 79 § 10010, 128 Stat. 949.

²⁸ JOHNSON, *supra* note 3, at 41.

²⁹ MARY JANE ANGELO ET AL., FOOD, AGRICULTURE, AND ENVIRONMENTAL LAW 29 (2013).

³⁰ 2008 Farm Bill Side-by-Side, ECON. RESEARCH SERV., U.S. DEP'T AGRIC. 3 (Aug. 20, 2008), <https://wayback.archive-it.org/5923/20111128231053/http://ers.usda.gov/FarmBill/2008/2008FarmBillSideBySide041509.pdf> [hereinafter 2008 Farm Bill Side-by-Side] (archived webpage).

³¹ *Id.*

³² *See, e.g., id.* at 60.

³³ RALPH M. CHITE, CONG. RESEARCH SERV., THE 2014 FARM BILL (P.L. 113-79): SUMMARY AND SIDE-BY-SIDE 16 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43076.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ ECON. RESEARCH SERV., U.S. DEP'T AGRIC., *supra* note 14, at 101.



systems, created a national cost-share program to assist with the costs of organic certification, and exempted organic-exclusive producers from paying the commodity promotion assessment.³⁷ The 2008 Farm Bill increased funding levels for the cost-share program and the USDA's National Organic Program (regulating organic standards and certification), and provided first-time funding for organic data collection.³⁸ It also established programs to assist producers in transition to organic agriculture and funded additional research on organic practices.³⁹ The 2014 Farm Bill largely reauthorized the provisions addressing organic crops, as it did for specialty crops.⁴⁰

Although some argue that specialty crops continue to be “shortchanged” in the farm bill relative to commodity crops,⁴¹ specialty crops have achieved standing in the farm bill over the last twenty years. Given the growing position of specialty crops and organics, it seems likely that they will continue to play an important part of future farm bills.

II. Horticulture Title: The 2014 Farm Bill

The Horticulture Title of the 2014 Farm Bill addresses three main program areas: (1) specialty crops, (2) farmers' markets and local food promotion, and (3) organics.

A. Specialty Crops Programs

Title X of the 2014 Farm Bill created or reauthorized some important programs for specialty crops. Most notably, the Specialty Crop Block Grant Program (SCBGP), initially authorized in the Specialty Crops Competitiveness Act of 2004, was amended and reauthorized in the 2008 and 2014 Farm Bills.⁴² The SCBGP provides funds to states and U.S. territories for projects that enhance the competitiveness of specialty crops. The program is funded through USDA's Commodity Credit Corporation (CCC) with mandatory appropriations of \$72.5 million annually for FY2014-2017 and \$85 million for FY2018 and each year thereafter.⁴³ States receive a base grant of about \$180,000 plus an additional grant determined by the value of specialty crops production in the state and the number of acres of specialty crop production.⁴⁴ Consequently, California, Florida, and Washington receive over half of total grants.⁴⁵

Grants are administered by the state or territory agency responsible for agriculture. Project types include education, research, production, marketing and promotion, plant and pest health, and food safety. For example, in FY2016 the California Department of Agriculture awarded over \$22 million in grants to 73 projects.⁴⁶ A single large grant for \$1.5 million paid for advertisements to promote California-grown specialty crops.⁴⁷

³⁷ *Id.* at 36.

³⁸ ECON. RESEARCH SERV., U.S. DEP'T AGRIC., *supra* note 30, at 110-111.

³⁹ *Id.* at 3.

⁴⁰ CHITE, *supra* note 33, at 16.

⁴¹ NEFF, *supra* note 12, at 193.

⁴² JOHNSON, *supra* note 2, at 4.

⁴³ JOHNSON, *supra* note 3, at 15.

⁴⁴ *Id.* at 1.

⁴⁵ See *Fiscal Year 2016 Description of Funded Projects*, AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC. (2016), <https://www.ams.usda.gov/sites/default/files/media/SCBGP2016DescriptionofFundedProjects.pdf>.

⁴⁶ *Id.* at 10.

⁴⁷ *2016 Specialty Crop Block Grant Program Abstracts*, CAL. DEP'T FOOD & AGRIC., https://www.cdfa.ca.gov/Specialty_Crop_Competitiveness_Grants/pdfs/2016SCBGP_ProjectAbstracts.pdf.



In addition to the SCBGP, the 2014 Farm Bill reauthorized through 2018 an annual \$9 million appropriation to the Market News Service under the Food, Conservation, and Energy Act.⁴⁸ The specialty crops market news allocation provision directs USDA to provide timely price and shipment information of specialty crops in the U.S.⁴⁹

However, the 2014 Farm Bill repealed a grant program to improve movement of specialty crops authorized in the Food, Conservation, and Energy Act of 2008. Under the repealed program, Congress had authorized USDA to make grants to various public and private entities for the purpose of improving the cost-effective movement of specialty crops to markets and to address regional intermodal transportation deficiencies that adversely affect the movement of specialty crops to markets.⁵⁰

B. Farmers Markets and Local Foods Programs

The Horticulture Title of the 2014 Farm Bill also reauthorized several programs related to farmers' markets and local food promotion. The Farmers Market Promotion Program, which promotes direct-to-consumer marketing efforts, was renamed the Farmers' Market and Local Food Promotion Program (FMLFPP) and amended to include "local and regional food business enterprises" that act as intermediaries between producers and consumers "that process, distribute, aggregate, or store locally or regionally produced food products."⁵¹ The FMLFPP, administered by USDA's Agricultural Marketing Service (AMS), is a competitive grant program that allocates up to \$15 million annually for direct-to-consumer marketing grants and up to \$15 million annually for intermediate marketing grants.⁵² The Local Food Promotion Program, in particular, offers grant funds with a 25% match to support local and regional food business enterprises.⁵³

The Horticulture Title also requires USDA to evaluate local food programs, including collecting data on the production and marketing of locally or regionally produced agricultural food products; facilitating interagency data sharing and collaboration; and monitoring the effectiveness of programs designed to expand or facilitate local food systems.⁵⁴ At a minimum, USDA must collect and distribute comprehensive reporting of prices and volume of locally or regionally produced agricultural food products; conduct surveys, analyze, and publish reports relating to the production, handling, distribution, retail sales, and trend studies of or on locally or regionally produced agricultural food products; evaluate the effectiveness of existing programs in growing local and regional food systems; evaluate the impact of federal regulation of small commercial producers of agricultural food products intended for local and regional consumption; expand the Agricultural Resource Management Survey of the Department to include questions on locally or regionally produced agricultural food products; and seek to establish or expand private-public partnerships to facilitate the collection of data on locally or regionally produced agricultural food products. USDA also must submit annual reports to Congress describing the progress

⁴⁸ Agricultural Act of 2014, 113 P.L. 79 § 10001, 128 Stat. 649; JOHNSON, *supra* note 3, at 20.

⁴⁹ JOHNSON, *supra* note 3, at 20.

⁵⁰ Agricultural Act of 2014, 113 P.L. 79 § 10002, 128 Stat. 649; JOHNSON, *supra* note 3, at 18.

⁵¹ Agricultural Act of 2014, 113 P.L. 79 § 10003, 128 Stat. 649, 940 (2014) (codified at 7 U.S.C. § 3005(b)(2)) (amending Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976).

⁵² *Id.* The 2014 Farm Bill allocates \$30 million annually from 2014 to 2018. For more information on how AMS administers the FMLFPP, see *Farmers Market Promotion Program*, AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/services/grants/fmpp>, and *Local Food Promotion Program*, AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/services/grants/lfpp>.

⁵³ AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC., *supra* note 51, at 18.

⁵⁴ Agricultural Act of 2014, 113 P.L. 79 § 10016, 128 Stat. 649; JOHNSON, *supra* note 3, at 21.



that has been made in implementing local food programs and identifying any additional needs and barriers related to developing local and regional food systems.⁵⁵

C. Organics Program

The Horticulture Title amends a number of statutes related to organic agriculture, dealing with data collection, the National Organic Certification Cost Share Program (NOCCSP), an exemption for organic farmers from a commodity crop check-off program, and enforcement of the National Organic Program (NOP), among other issues.

First, under the 2014 Farm Bill, the Secretary of Agriculture (“the Secretary”) must “collect and report [segregated] data on the production and marketing of organic agricultural products,” including price and market data.⁵⁶ For the data collection program, the bill reauthorizes appropriations of \$5 million each year through fiscal year 2018 (available until expended), provides for funds “annually thereafter,” and provides an additional \$5 million in mandatory funds (available until expended).⁵⁷ According to USDA, the Organic Production and Market Data Initiatives cover about 250 different organic products and develop other market information tools within the AMS Market News Program.⁵⁸ In addition, the Title calls for the Secretary to “modernize database and technology systems of the national organic program,” appropriating \$15 million for each of the fiscal years from 2014 through 2018.⁵⁹

The 2014 bill more than doubles mandatory funding for the NOCCSP to \$57.5 million of mandatory funding—or \$11.5 million annually (up from just over \$5 million annually) – to assist organic producers and handlers with the cost of organic certification.⁶⁰

The Horticulture Title amends the Commodity, Promotion, Research, and Information Act of 1996 to exempt individuals who produce, handle, market, or import certified “organic” or “100% organic” products from the payment of an assessment for research and promotion programs (“check-off” program) for conventional agricultural products.⁶¹ The 2014 Farm Bill also authorizes USDA to create a check-off program specifically for organic products. In May 2015, the Organic Trade Association (OTA) formally petitioned USDA for a research and promotion check-off program for organic agriculture.⁶² The proposed check-off, the Generic Research and Promotion Order for Organic, or GRO, is “[r]ooted in a strong focus on research to make farmers successful and technical services to accelerate the adoption of organic practices.”⁶³

⁵⁵ See ECON. RESEARCH SERV., U.S. DEP’T AGRIC., ADMIN. PUB. NO. 068, TRENDS IN U.S. LOCAL AND REGIONAL FOOD SYSTEMS: REPORT TO CONGRESS (2015), <https://naldc.nal.usda.gov/naldc/download.xhtml?id=60312&content=PDF>.

⁵⁶ 7 U.S.C. § 5925c(a) (2014).

⁵⁷ JOHNSON, *supra* note 3, at 19-20.

⁵⁸ *Id.* at 46.

⁵⁹ 7 U.S.C. § 6522 (2014).

⁶⁰ 7 U.S.C. § 6523 (2014).

⁶¹ 7 U.S.C. § 7401 (2014).

⁶² *Organic Check-off*, ORGANIC TRADE ASSOC., <https://ota.com/resources/organic-check>; see also *Generic Research and Promotion Order for Organic (GRO Organic) Program Summary*, ORGANIC TRADE ASSOC. (2015), http://ota.com/sites/default/files/indexed_files/GRO%20Executive%20Summary.pdf. OTA maintains a website for its proposed check-off. See GRO ORGANIC, <http://groorganic.net/>.

⁶³ *Id.*



The 2014 Farm Bill also improves the enforcement authority of the USDA to investigate organic producers. It requires organic producers keep records and make them available to government officials.⁶⁴

III. Horticulture Title: Key Issues

Though the Horticulture Title is still relatively new, there are a number of key issues and criticisms of its programs. Criticisms include inadequate funding, poor representation of specialty crop and organic interests on committees and advisory boards, and a lack of enforcement of the National Organics Program.

A. Are horticulture program funding levels sufficient?

Despite the growing prominence of specialty crops and organics in the agricultural sector and consumer markets, Horticulture Title programs continue to receive a small share of farm bill funds when compared with commodity crop programs.⁶⁵ Insufficient funding is one of the most often cited criticisms of the Horticulture Title.

For example, the Local Food Promotion Program (LFPP) is a Horticulture Title program that provides 25% matching grants to support local and regional food business enterprises.⁶⁶ Currently, small-scale actors can have difficulty accessing markets for specialty crops. When choosing whether to plant commodity or specialty crops, farmers take into account the relative ease and certainty of selling the crop.⁶⁷ Aggregation points, often in the form of “food hubs,” are important actors in the supply chain for specialty crops.⁶⁸ While the LFPP provides important support, food hubs face other challenges that are not met by the current grant system.⁶⁹ Critics argue the farm bill should do a better job of ensuring the long-term economic stability of food hubs and aggregators and safeguarding the supply chain for small-scale specialty crop farmers.

For another example, the farm bill may not adequately leverage land grant universities to support small, local, and sustainable specialty crop producers through the Cooperative Extension System. The Cooperative Extension System is funded through a mix of federal, state, and local sources. Under the Smith-Lever Act of 1914,⁷⁰ formula funds account for almost two-thirds of the total federal funding for extension activities.⁷¹ The funding formula awards 20% to the states equally, 40% in proportion to the state’s rural population, and 40% in proportion to the state’s farm population.⁷² States can utilize formula funds for locally determined programs in addition to programs addressing high priority regional and national concerns. States are required to match on a dollar-for-dollar basis in order to receive federal formula funds.⁷³ In addition to the formula funds, the Smith-Lever Act also provides a mechanism that

⁶⁴ Agricultural Act of 2014, 113 P.L. 79 § 10003, 128 Stat. 649, 944-46 (2014). For more information on USDA’s organic enforcement, see *Organic Enforcement*, AGRIC. MARKETING SERV., U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/services/enforcement/organic>.

⁶⁵ JOHNSON, *supra* note 2, at 5.

⁶⁶ *Local Food Promotion Program*, AGRIC. MARKETING SERV., U.S. DEP’T OF AGRIC., *supra* note 52.

⁶⁷ Interview with John Boyd, Nat’l Black Farmers Assoc., and Kara Boyd, Assoc. Am. Indian Farmers, in New Haven, Conn. (Nov. 15, 2016).

⁶⁸ See Jill K. Clark & Shoshannah M. Inwood, *Scaling-up Regional Fruit and Vegetable Distribution: Potential for Adaptive Change in the Food System*, 33 AGRIC. & HUMAN VALUES 503, 506 (2016).

⁶⁹ *Id.*

⁷⁰ 7 U.S.C. §§ 341 *et seq.* (2014).

⁷¹ See NAT’L INST. FOOD & AGRIC., U.S. DEP’T AGRIC., 2017 EXPLANATORY NOTES 11 (2016), <http://www.obpa.usda.gov/19nifa2017notes.pdf>.

⁷² 7 U.S.C § 343(c)(2) (2014).

⁷³ 7 U.S.C § 343(e)(1) (2014).



allots funds to special programs on concerns of regional and national importance.⁷⁴ States are required to award these funds on a competitive basis.⁷⁵ Programs funded through this mechanism include, for example: the Farm Safety and Youth Farm Safety Education and Certification Program, the Federally-Recognized Tribes Extension Program, and the Beginning Farmer and Rancher Development Program. Critics argue that the Cooperative Extension Service funding mechanism could be streamlined and could be better funded and utilized in order to support the needs of specialty crop producers.

B. Are specialty crop and organic producers' interests being properly represented?

The USDA governance structure includes multiple advisory boards and committees that play an important role in farm bill program development and implementation. Critics argue that the makeup of the boards and committees that exercise control over Horticulture Title and other farm bill programs does not represent the interests of the specialty crop and organic producers and other stakeholders who are directly affected by the decisions of these boards and committees.

For example, the National Agriculture Research, Extension, Education, and Economics Advisory Board (NAREEEAB) is tasked with providing advice to the Secretary and to land grant institutions regarding research, extension services, education, and economics.⁷⁶ NAREEEAB has 25 members, each representing a specific category of stakeholders as mandated by the 2008 Farm Bill.⁷⁷ The Specialty Crop Committee (SCC) is a permanent subcommittee of NAREEEAB, and it studies issues specifically affecting the specialty crop industry. NAREEEAB appoints outside stakeholders to the SCC; the only statutory requirement regarding membership is that it “shall reflect diversity in the specialty crops represented.”⁷⁸ Current membership includes a representative from the J.M. Smucker Company.⁷⁹ Though their work directly affects small-scale, minority, and specialty crop growers, NAREEEAB is not required to have a representative from any of these demographics.

For another example, the National Organic Standards Board (NOSB) is an essential advisor to USDA on organic policy. The 15-member board took an active role in crafting the first organic standards, and the recommendations of the Board continue to serve as the basis for NOP policy.⁸⁰ Apart from providing guidance on the implementation of the NOP in general, the NOSB also has special responsibilities for developing the National List of substances approved and prohibited in organic agriculture.⁸¹ By statute, the makeup of the NOSB includes organic farm owners and operators (4), handlers (2), retailers (1),

⁷⁴ 7 U.S.C § 343(d) (2014).

⁷⁵ 7 U.S.C § 343(d) (2014).

⁷⁶ NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP'T AGRIC., <https://nareeeab.ree.usda.gov>.

⁷⁷ Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 7102, 122 Stat. 1651, 1975 (2008); *Nominations*, NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP'T AGRIC., <https://nareeeab.ree.usda.gov/about-nareeeab/nominations>.

⁷⁸ 7 U.S.C. § 3123a(c) (2014).

⁷⁹ *Specialty Crop Committee Members*, NAT'L AGRIC. RESEARCH, EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP'T AGRIC., <https://nareeeab.ree.usda.gov/membership/specialty-crop-committee-members>.

⁸⁰ See Jessica Ellsworth, *The History of Organic Food Regulation* (2001) (unpublished third year paper),

<http://nrs.harvard.edu/urn-3:HUL.InstRepos:8889458>; Barry Flamm, *Demise of the National Organic Standards Board?*, MONTANA ORGANIC ASS'N (Aug. 1, 2014),

<http://www.montanaorganiccassociation.org/nosb.htm#DemiseNOSB>; *Standards: The Groundwork Protecting Organic Integrity*, ORGANIC INTEGRITY Q. (U.S. Dep't Agric./Agric. Marketing Serv./Nat'l Organic Project, Washington, D.C.), May 2016, at 2, <https://www.ams.usda.gov/sites/default/files/media/2016%20Organic%20May%20Newsletter.pdf>.

⁸¹ 7 U.S.C. § 6517(d) (2014); *National Organic Standards Board (NOSB)*, AGRIC. MARKETING SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/rules-regulations/organic/nosb>.



environmental experts (3), public interest and consumer representatives (3), experts in toxicology, ecology, or biochemistry (1), and organic certifying agents (1)⁸²; however, although fair labor practices and worker safety standards are important issues in organic agriculture, there is no representative of organic farm laborers on the NOSB.

C. Is the National Organics Program achieving its goals?

Although organic agriculture received a significant funding increase in the 2014 Farm Bill, there is criticism that the NOP standards are not in line with the goals and values of organic farmers, and there is concern about the lack of enforcement of the program standards.

For example, the NOP standards require that producers “must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion.”⁸³ Producers must also “manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials”⁸⁴; however, the NOP standards do not impose any specific methods on farmers. Instead, farmers work with certifiers and draw on USDA guidance to create a soil health plan.⁸⁵ This provides flexibility, but also allows organic farmers to fall short of best practices in soil health and carbon sequestration.⁸⁶ In particular, organic farmers often do not practice conservation tillage.⁸⁷ Because organic farmers rely on tillage rather than herbicides for weed control,⁸⁸ organic farmers often do not adopt the no-till or minimum-till systems that minimize soil disturbances and help sequester carbon. The 2014 Organic Survey found that fewer than 5,000 out of 12,500 certified organic farmers in the U.S. used no-till or minimum-till systems.⁸⁹ Some of the most degraded soils can be found on organic farms, according to Ray Archuleta, a soil expert at the Natural Resources Conservation Service, who has worked with thousands of farmers over three decades in the field.⁹⁰

The issues of tillage, carbon sequestration, and soil health fit into a larger debate about agroecology and USDA Organic. The science of agroecology is defined as “the application of ecological concepts and

⁸² 7 USC §6518 (b) (2014) (organic certification).

⁸³ Soil fertility and crop nutrient management practice standard, 7 C.F.R. § 205.203 (2016).

⁸⁴ *Id.*

⁸⁵ BARBARA BELLOWS, NAT’L CTR. APPROPRIATE TECH., SOIL MANAGEMENT: NATIONAL ORGANIC PROGRAM REGULATIONS (2005), <https://attra.ncat.org/attra-pub/summaries/summary.php?pub=180>.

⁸⁶ Carbon sequestration in farm soil organic matter could be an essential tool for combating climate change. RODALE INST., REGENERATIVE ORGANIC AGRICULTURE AND CLIMATE CHANGE: A DOWN-TO-EARTH SOLUTION TO GLOBAL WARMING (2014), http://rodaleinstitute.org/assets/RegenOrgAgricultureAndClimateChange_20140418.pdf. Estimates suggest that agricultural soils could sequester 10 percent of current global greenhouse gas emissions, and some more optimistic studies report that “soil carbon storage could match anthropogenic emissions for the next 40 years.” DANIEL KANE, NAT’L SUSTAINABLE AGRIC. COALITION, CARBON SEQUESTRATION POTENTIAL ON AGRICULTURAL LANDS: A REVIEW OF CURRENT SCIENCE AND AVAILABLE PRACTICES 22 (2015), http://sustainableagriculture.net/wp-content/uploads/2015/12/Soil_C_review_Kane_Dec_4-final-v4.pdf.

⁸⁷ Several sources confirmed that conservation tillage is the most important soil health practice ignored by organic farmers. RODALE INST., REGENERATIVE ORGANIC AGRICULTURE AND CLIMATE CHANGE: A DOWN-TO-EARTH SOLUTION TO GLOBAL WARMING (2014), http://rodaleinstitute.org/assets/RegenOrgAgricultureAndClimateChange_20140418.pdf; Telephone Interview with Ray Archuleta, Natural Resources Conservation Serv. (Nov. 11, 2016).

⁸⁸ KEITH R. BALDWIN, CTR. FOR ENVTL. FARMING SYS., CONSERVATION TILLAGE ON ORGANIC FARMS, <https://content.ces.ncsu.edu/conservation-tillage-on-organic-farms>.

⁸⁹ U.S. DEP’T AGRIC., 2012 CENSUS OF AGRICULTURE: ORGANIC SURVEY 408 (2014).

⁹⁰ Telephone Interview with Ray Archuleta, Natural Resources Conservation Serv. (Nov. 11, 2016).



principles to the design and management of sustainable agroecosystems.”⁹¹ As a holistic approach to agriculture, agroecology embraces complexity and encourages high species diversity and biologically active soils in integrated systems designed to mimic nature.⁹²

Some members of the organic community worry that the NOP does not achieve the agroecological ideal of sustainability. Instead of changing whole farm systems to optimize sustainability, organic farmers may adopt an “input substitution” approach, meeting only the minimum requirements of USDA certification by simply replacing prohibited substances with allowed substances.⁹³ This belief leads some advocates to reason that if organic represents the model of sustainable agriculture for the U.S, then it should live up to that role.

In addition, if farmers are violating the standards of the NOP, there are limited options for enforcement. The Organic Foods Production Act of 1990 (OFPA)⁹⁴ authorizes USDA to establish and enforce minimum national standards for organic production through NOP. However, unlike other environmental statutes, like the Clean Water Act, the OFPA does not have a provision allowing for citizen suits. This means that interest groups and citizens are unable to use the federal courts to enforce NOP statutory provisions. Critics argue that no matter how strong the standards of the NOP are, without enforcement, they will do nothing to achieve the goals of the program.

Conclusion

Though the Horticulture Title is a somewhat recent addition to the farm bill, it is likely to continue to be an important part of future farm bills given the growing demand for specialty crops and organics. While specialty crops account for one quarter of the total value of U.S. crop production, Horticulture Title programs for specialty crops receive far less than a quarter of the funding and attention than commodity programs receive through the farm bill. Proponents of specialty crop and organic agriculture argue that the next farm bill should continue to fund programs that support specialty crop and organic producers, should ensure stakeholder interests are represented within the governance structure of the USDA, and should adjust NOP standards to align with the goals of organic agriculture.

⁹¹ Miguel Altieri, *Agroecology: Principles and Strategies for Designing Sustainable Farming Systems*, NEWSL. OF CCOF (Calif. Certified Organic Farmers, Santa Cruz, CA), Fall 2002, 2, https://www.ccof.org/sites/default/files/media_files/documents/ccof_mag_fall_2002.pdf.

⁹² *Id.*; see also IPES FOOD, FROM UNIFORMITY TO DIVERSITY (2016), http://www.ipes-food.org/images/Reports/UniformityToDiversity_FullReport.pdf.

⁹³ Peter M. Rosset & Miguel A. Altieri, *Agroecology Versus Input Substitution: A Fundamental Contradiction of Sustainable Agriculture*, 10 SOC’Y & NAT. RESOURCES 283 (1997); Stephen R. Gliessman, *Making the Conversion to Sustainable Agroecosystems: Getting from Here to There with Agroecology*, NEWSL. OF CCOF (Calif. Certified Organic Farmers, Santa Cruz, CA), Fall 2002, 7.

⁹⁴ 7 U.S.C. §§ 6501 *et seq.* (2014).