



Horticulture¹

INTRODUCTION

The purpose of this backgrounder is to educate readers about the history, context, and content of the farm bill's Horticulture Title (also known as Title X). The first section briefly introduces the establishment and evolution of federal horticulture programs. The second section summarizes the programs included in the Horticulture Title of the Agriculture Improvement Act of 2018 (P.L. 115-334; hereinafter referred to as 2018 Farm Bill). The final section summarizes current issues and critiques within the Horticulture Title as it pertains to the future of farming and public health.

Title X covers federal programs to support specialty crops (fruits, vegetables, tree nuts, and horticulture and nursery crops, including floriculture), promote local and regional foods, and govern certified organic agricultural production. There are around 240,000 farms growing over 350 types horticultural products and concentrated in California, Florida, Washington, Oregon, North Dakota, and Michigan.² As of 2017, U.S. specialty crop production generated nearly \$64.7 billion in sales—nearly one-third of the total value of U.S. crop production (farm level).³ With respect to organic foods, farm sales of specialty crops (including maple syrup) totaled almost \$4.2 billion in 2016.⁴ In total, retailers sell nearly \$100 billion of fruits and vegetables for at-home consumption annually.⁵ Yet, only 3–4% of harvested cropland (~11 million harvested acres) contains specialty crops.⁶ This percentage has remained relatively constant over the past five years. 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.⁷

I. 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 2004.⁸ Most of these programs were then reauthorized and expanded with the creation of the Horticulture Title in the 2008 Farm

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² CONG. RSCH. SERV., 2018 FARM BILL PRIMER: SPECIALTY CROPS AND ORGANIC AGRICULTURE (2019), <https://crsreports.congress.gov/product/pdf/IF/IF11317> [hereinafter 2018 FARM BILL PRIMER].

³ *Id.*

⁴ *Id.*

⁵ 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> [hereinafter JOHNSON, FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS].

⁶ *Id.*

⁷ *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).

⁸ RENÉE JOHNSON, CONG. RSCH. SERV., SPECIALTY CROP PROVISIONS IN THE 2014 FARM BILL 4 (2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43632.pdf>.



Bill.⁹ However, specialty crops have been addressed in a peripheral way in farm bills since the 1930s. The following sections give a brief history of its evolution.

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.¹⁰ 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 using supply management policies to reduce surpluses in commodity crops.¹¹ Food policy of the 1960s shifted to include concerns about U.S. conservation and nutrition, including the 1964 Food Stamp Act (P.L. 88-525) which provided permanent legislative authority to the Food Stamp Program.¹²

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 (i.e., those in the Special Supplemental Nutrition Program for Women, Infants, and Children) obtain fresh fruit and vegetables from farmers' markets.¹³ Four years later, the 1996 Farm Bill established grants to develop Community Food Projects.¹⁴ 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.¹⁵

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.¹⁶ The 2002 Farm Bill reauthorized the Community Food Projects Competitive Grant Program and doubled its annual funding from \$2.5 million to \$5 million.¹⁷ In addition, this 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.¹⁸ 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

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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).

¹² NOVAK ET AL., *supra* note 11, at 98.

¹³ ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., THE 2002 FARM BILL: PROVISIONS AND ECONOMIC IMPLICATIONS 36 (2002), https://www.ers.usda.gov/webdocs/publications/42660/13780_ap022_4_.pdf?v=41879 [hereinafter *2002 Farm Bill*].

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 37.



promote healthy eating.¹⁹ 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.²⁰

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 nutrition programs in schools and other institutions.²¹ The 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.²²

Importantly, the 2002 Farm Bill was the first farm bill to include provisions concerning organic produce. It funded research on organic production 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.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

In 2008, Congress added the Horticulture Title to the farm bill 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 Bill also increased funding for the cost-

¹⁹ ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., THE 2002 FARM BILL: PROVISIONS AND ECONOMIC IMPLICATIONS 62 (2002), https://www.ers.usda.gov/webdocs/publications/42660/13780_ap022_4_.pdf?v=41879.

²⁰ 2002 Farm Bill, *supra* note 13, at 37.

²¹ *Id.*

²² *Id.* at 62–63.

²³ NOVAK ET AL., *supra* note 11, at 36.

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, P.L. 109-97 § 773, 119 Stat. 2160 (2005) (codified at 7 U.S.C. § 1621 note).

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

²⁸ JOHNSON, FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS, *supra* note 5, at 41.

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

³⁰ ECON. RSCH. SERV., U.S. DEP'T OF AGRIC., 2008 FARM BILL SIDE-BY-SIDE 3 (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.



share program and the USDA's National Organic Program (NOP) (regulating organic standards and certification), and provided first-time funding for organic data collection.³³ It established programs to assist producers in transition to organic agriculture and funded additional research on organic practices.³⁴

II. The 2018 & 2014 Farm Bills

The 2014 and 2018 Farm Bills reauthorized many of the provisions from the 2008 law and expanded funding and support in certain key areas.³⁵ The Horticulture Title's three main program areas: specialty crops, farmers' markets and local food promotion, and organics, discussed further below. Additionally, the Horticulture Title is one of several Titles in the 2018 Bill containing new provisions related to hemp production. Under the USDA's agricultural marketing authority, Title X establishes a framework for regulatory oversight and licensing by USDA under its agricultural marketing authority, and a process for state departments of agriculture and Tribal Governments to assume such authority by developing their own plans for approval.³⁶

A. Specialty Crops Programs

The most significant specialty crop support mechanism in Title X is the Specialty Crop Block Grant Program (SCBGP). Initially authorized in the Specialty Crops Competitiveness Act of 2004, the program has been amended and reauthorized in each subsequent farm bill.³⁷ The SCBGP provides funds to states and U.S. territories for projects that enhance the competitiveness of specialty crops. 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.³⁸ Consequently, California, Florida, and Washington receive over half of total grants.³⁹ 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.⁴⁰ A single large grant for \$1.5 million paid for advertisements to promote California-grown specialty crops.⁴¹ The 2018 Farm Bill continues SCBGP with \$85 million in annual mandatory funding.⁴²

In addition to the SCBGP, the 2018 Farm Bill reauthorized an annual \$9 million appropriation to the Market News Service.⁴³ The specialty crops market news allocation provision directs USDA to provide timely price and shipment information of specialty crops in the United States.⁴⁴ The Bill also funded important research and development activities related to specialty crops in other titles, such as the Specialty Crop Research

³³ MARY JANE ANGELO ET AL., *supra* note 29, at 110–111.

³⁴ *Id.* at 3.

³⁵ RALPH M. CHITE, CONG. RSCH. 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>; CONG. RSCH. SERV., THE 2018 FARM BILL (P.L. 115-334): SUMMARY & SIDE-BY-SIDE COMPARISON (2019), <https://fas.org/sgp/crs/misc/R45525.pdf>.

³⁶ Agriculture Improvement Act of 2018, P.L. 115-334, § 10113, 132 Stat. 4908.

³⁷ JOHNSON, SPECIALTY CROP PROVISIONS IN THE 2014 FARM BILL, *supra* note 8, at 4.

³⁸ JOHNSON, FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS, *supra* note 5, at 15.

³⁹ See AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., FISCAL YEAR 2016 DESCRIPTION OF FUNDED PROJECTS (2016), <https://www.ams.usda.gov/sites/default/files/media/SCBGP2016DescriptionofFundedProjects.pdf>.

⁴⁰ *Id.* at 10.

⁴¹ 2016 Specialty Crop Block Grant Program Abstracts, CAL. DEP'T FOOD & AGRIC.,

https://www.cdff.ca.gov/Specialty_Crop_Competitiveness_Grants/pdfs/2016SCBGP_ProjectAbstracts.pdf.

⁴² Agriculture Improvement Act of 2018, P.L. 115-334, § 10107, 132 Stat. 4905; 2018 FARM BILL PRIMER, *supra* note 2. <https://crsreports.congress.gov/product/pdf/IF/IF11317>.

⁴³ Agriculture Improvement Act of 2018, P.L. 115-334, § 10101, 132 Stat. 4888.

⁴⁴ JOHNSON, FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS, *supra* note 5, at 20.



Initiative under Title VII (Research & Extension) and the Emergency Citrus Disease Research and Development Trust Fund in Title XII (Miscellaneous).⁴⁵

B. Farmers Markets and Local Foods Programs

Another key aspect of Title X is support for farmers' markets and local food promotion. The 2014 Farm Bill expanded the Farmers Market Promotion Program, which promotes direct-to-consumer marketing efforts, 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."⁴⁶ The combined program was renamed the Farmers' Market and Local Food Promotion Program (FMLFPP). The FMLFPP, administered by USDA's Agricultural Marketing Service (AMS), is a competitive grant program that funds direct-to-consumer marketing grants and intermediate marketing grants, with a 25% match requirement.⁴⁷

The 2018 Farm Bill further consolidated and strengthened these programs by establishing the Local Agriculture Market Program (LAMP), which houses FMLFPP and the Value-Added Agricultural Product Market Development Grants.⁴⁸ The combined programs now receive \$50 million in annual mandatory funding, with an additional \$20 million in authorized appropriations, making LAMP a part of the farm bill's permanent baseline funding.⁴⁹

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.⁵⁰ 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 that has been made in implementing local food programs and identifying any additional needs and barriers related to developing local and regional food systems.⁵¹

⁴⁵ 2018 FARM BILL PRIMER, *supra* note 2.

⁴⁶ Agricultural Act of 2014, § 10003, 128 Stat. 940 (codified at 7 U.S.C. § 3005(b)(2)) (amending Section 6 of the Farmer-to-Consumer Direct Marketing Act of 1976).

⁴⁷ 7 U.S.C. § 1627c; For more information on how AMS administers the FMLFPP, see *Farmers Market Promotion Program*, AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/services/grants/fmpp>, and *Local Food Promotion Program*, AGRIC. MKTG. SERV., U.S. DEP'T OF AGRIC., <https://www.ams.usda.gov/services/grants/lfpp>.

⁴⁸ Agriculture Improvement Act of 2018, P.L. 115-334, § 10101, 132 Stat. 4888.

⁴⁹ 7 U.S.C. § 1627c.

⁵⁰ 7 U.S.C. § 2204h.

⁵¹ 7 U.S.C. § 2204h; *see* ECON. RSCH. 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>.



C. Organics

Title X governs many aspects of USDA’s organics programs, including the National Organic Program (NOP) and the National Organic Certification Cost Share Program (NOCCSP). Over the 2014 and 2018 farm bills the Title addressed, and provided funding for, data collection and reporting on organic production and markets,⁵² and strengthened USDA’s NOP enforcement and investigation authority, producer recordkeeping requirements, and the organic certification provisions for imported products.⁵³ The 2018 Farm Bill also reauthorizes the Organic Agriculture Research and Extension Initiative with increasing mandatory funding over the next 5 years—hitting \$50 million per year in FY2023—but this provision is found in Title VII (Research & Extension) rather than Title X.⁵⁴

NOCCSP assists organic producers and handlers with the cost of organic certification.⁵⁵ The 2014 Farm Bill more than doubled mandatory funding for the NOCCSP to \$57.5 million—or \$11.5 million annually (up from just over \$5 million annually). While the 2018 law decreased mandatory funding to \$2 million for 2019 and 2020, \$4 million in 2021, and \$8 million in 2022 and 2023, \$16.5 million in carryover funds remained available to support producers through NOCCSP as well.⁵⁶

The 2014 Horticulture Title also amended 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.⁵⁷ The Bill authorized 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.⁵⁸ After initially proposing a rule to create the program, USDA abandoned these efforts due to, it stated, “lack of consensus within the industry[.]”⁵⁹

III. 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 Organic Program (NOP).

A. Are horticulture program funding levels sufficient?

⁵² 7 U.S.C. § 5925c; JOHNSON, FRUITS, VEGETABLES, AND OTHER SPECIALTY CROPS, *supra* note 5, at 19–20, 46.

⁵³ Agricultural Act of 2014, § 10003, 128 Stat. 944; Agriculture Improvement Act of 2018, P.L. 115-334, § 10104, 132 Stat. 4899. For more information on USDA’s organic enforcement, see *Organic Enforcement*, AGRIC. MKTG. SERV., U.S. DEP’T OF AGRIC., <https://www.ams.usda.gov/services/enforcement/organic>.

⁵⁴ Agriculture Improvement Act of 2018, § 7210, 132 Stat. 4811.

⁵⁵ 7 U.S.C. § 6523 (2014).

⁵⁶ Agriculture Improvement Act of 2018, § 10105, 132 Stat. 4905; Peter Nell, *2018 Farm Bill Becomes Law with Wins for Organic*, COOF (Jan. 7, 2019), <https://www.ccof.org/blog/2018-farm-bill-becomes-law-wins-organic>.

⁵⁷ 7 U.S.C. § 7401.

⁵⁸ *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/>.

⁵⁹ *USDA Finds Lack of Consensus Among Farmers for a New Organic Marketing Board*, U.S. DEP’T OF AGRIC. (May 11, 2018), <https://www.ams.usda.gov/content/usda-finds-lack-consensus-among-farmers-new-organic-marketing-board>.



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.⁶⁰ Insufficient funding is one of the most often cited criticisms of the Horticulture Title. For example, small-scale local and regional good business enterprises 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.⁶¹ Aggregation points, often in the form of “food hubs,” are important actors in the supply chain for specialty crops.⁶² While the LFPP, now part of LAMP, provides important support, food hubs face other challenges that are not met by the current grant system.⁶³ 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. Others argue that the farm bill could better leverage land grant universities to support small, local, and sustainable specialty crop producers through the Cooperative Extension System.

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.⁶⁴ NAREEEAB has 25 members, each representing a specific category of stakeholders as mandated by the 2008 Farm Bill.⁶⁵ 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.”⁶⁶ Current membership includes a representative from the J.M. Smucker Company.⁶⁷ 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 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

⁶⁰ JOHNSON, SPECIALTY CROP PROVISIONS IN THE 2014 FARM BILL, *supra* note 8, at 5.

⁶¹ Interview with John Boyd, Nat’l Black Farmers Assoc., and Kara Boyd, Assoc. Am. Indian Farmers, in New Haven, Conn. (Nov. 15, 2016).

⁶² See Jill K. Clark & Shoshanah M. Inwood, *Scaling-up Regional Fruit and Vegetable Distribution: Potential for Adaptive Change in the Food System*, 33 AGRIC. & HUMAN VALUES 503, 506 (2016).

⁶³ See *id.*

⁶⁴ NAT’L AGRIC. RSCH., EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP’T OF AGRIC., <https://nareeeab.ree.usda.gov>.

⁶⁵ Food, Conservation, and Energy Act of 2008, § 7102, 122 Stat. 1651, 1975; *Nominations*, NAT’L AGRIC. RSCH., EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP’T OF AGRIC., <https://nareeeab.ree.usda.gov/about-nareeeab/nominations>.

⁶⁶ 7 U.S.C. § 3123a(c) (2014).

⁶⁷ *Specialty Crop Committee Members*, NAT’L AGRIC. RSCH., EXTENSION, EDUC. & ECON. ADVISORY BD., U.S. DEP’T OF AGRIC., <https://nareeeab.ree.usda.gov/membership/specialty-crop-committee-members>.



to serve as the basis for NOP policy.⁶⁸ 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.⁶⁹ By statute, the makeup of the NOSB includes organic farm owners and operators (4), handlers (2), retailers (1), environmental experts (3), public interest and consumer representatives (3), experts in toxicology, ecology, or biochemistry (1), and organic certifying agents (1).⁷⁰ The 2018 Farm Bill added that owner operators, handlers, and retailers could be represented by an employee of such individuals.⁷¹ However, this addition does not guarantee that fair labor practices and worker safety standards will be addressed by NOSB despite the importance of these issues in organic agriculture.

C. *Is the National Organics Program achieving its goals?*

Although organic agriculture has enjoyed increased support over the last few farm bills, 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.”⁷² Producers must also “manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials”⁷³; 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.⁷⁴ This provides flexibility, but also allows organic farmers to fall short of best practices in soil health and carbon sequestration.⁷⁵ In particular, organic farmers often do not practice conservation tillage.⁷⁶ Because organic farmers rely on tillage rather than herbicides for weed control,⁷⁷ organic farmers often do not adopt the no-till or minimum-till systems that minimize soil disturbances and help sequester

⁶⁸ 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.montanaorganicassociation.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>.

⁶⁹ 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>.

⁷⁰ 7 USC §6518 (b).

⁷¹ *Id.*

⁷² Soil fertility and crop nutrient management practice standard, 7 C.F.R. § 205.203 (2016).

⁷³ *Id.*

⁷⁴ 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>.

⁷⁵ 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.

⁷⁶ Several sources confirmed that conservation tillage is the most important soil health practice ignored by organic farmers. RODALE INST., *supra* note 65; Telephone Interview with Ray Archuleta, Natural Resources Conservation Serv. (Nov. 11, 2016).

⁷⁷ KEITH R. BALDWIN, CTR. FOR ENVTL. FARMING SYS., CONSERVATION TILLAGE ON ORGANIC FARMS, <https://content.ces.ncsu.edu/conservation-tillage-on-organic-farms>.



carbon. The 2019 Organic Survey found that fewer than 6,000 out of approximately 16,600 certified organic farmers in the U.S. used no-till or minimum-till systems.⁷⁸ 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.⁷⁹

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 principles to the design and management of sustainable agroecosystems.”⁸⁰ 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.⁸¹

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.⁸² 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)⁸³ 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.

⁷⁸ U.S. DEP'T OF AGRIC., 2017 CENSUS OF AGRICULTURE: 2019 ORGANIC SURVEY (2020), https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/Organics/ORGANICS.pdf.

⁷⁹ Telephone Interview with Ray Archuleta, Natural Resources Conservation Serv. (Nov. 11, 2016).

⁸⁰ Miguel Altieri, *Agroecology: Principles and Strategies for Designing Sustainable Farming Systems*, NEWSL. OF CCOF (Fall 2002), https://www.ccof.org/sites/default/files/media_files/documents/ccof_mag_fall_2002.pdf.

⁸¹ *Id.*; see also IPES FOOD, FROM UNIFORMITY TO DIVERSITY (2016), http://www.ipes-food.org/images/Reports/UniformityToDiversity_FullReport.pdf.

⁸² 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 (Fall 2002), 7.

⁸³ 7 U.S.C. §§ 6501 *et seq.*