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**25. ORGANIC FOODS PRODUCTION ACT OF 1990**  
[As Amended Through Public Law 109-97, Nov. 10, 2005]

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November 16, 2005

## **25. ORGANIC FOODS PRODUCTION ACT OF 1990**

Title XXI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Public Law 101-624)

### **TITLE XXI—ORGANIC CERTIFICATION**

#### **SEC. 2101. [7 U.S.C. 6501 note] SHORT TITLE.**

This title may be cited as the “Organic Foods Production Act of 1990”.

#### **SEC. 2102. [7 U.S.C. 6501] PURPOSES.**

It is the purpose of this title—

- (1) to establish national standards governing the marketing of certain agricultural products as organically produced products;
- (2) to assure consumers that organically produced products meet a consistent standard; and
- (3) to facilitate interstate commerce in fresh and processed food that is organically produced.

#### **SEC. 2103. [7 U.S.C. 6502] DEFINITIONS.**

As used in this title:

(1) **AGRICULTURAL PRODUCT.**—The term “agricultural product” means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed in the United States for human or livestock consumption.

(2) **BOTANICAL PESTICIDES.**—The term “botanical pesticides” means natural pesticides derived from plants.

(3) **CERTIFYING AGENT.**—The term “certifying agent” means the chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, and any person (including private entities) who is accredited by the Secretary as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation in accordance with this title.

(4) **CERTIFIED ORGANIC FARM.**—The term “certified organic farm” means a farm, or portion of a farm, or site where agricultural products or livestock are produced, that is certified by the certifying agent under this title as utilizing a system of organic farming as described by this title.

(5) **CERTIFIED ORGANIC HANDLING OPERATION.**—The term “certified organic handling operation” means any operation, or portion of any handling operation, that is certified by the certi-

fyng agent under this title as utilizing a system of organic handling as described under this title.

(6) CROP YEAR.—The term “crop year” means the normal growing season for a crop as determined by the Secretary.

(7) GOVERNING STATE OFFICIAL.—The term “governing State official” means the chief executive official of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, who administers an organic certification program under this title.

(8) HANDLE.—The term “handle” means to sell, process or package agricultural products.

(9) HANDLER.—The term “handler” means any person engaged in the business of handling agricultural products, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(10) HANDLING OPERATION.—The term “handling operation” means any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that—

(A) receives or otherwise acquires agricultural products; and

(B) processes, packages, or stores such products.

(11) LIVESTOCK.—The term “livestock” means any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life.

(12) NATIONAL LIST.—The term “national list” means a list of approved and prohibited substances as provided for in section 2118.

(13) ORGANIC PLAN.—The term “organic plan” means a plan of management of an organic farming or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in this title including crop rotation and other practices as required under this title.

(14) ORGANICALLY PRODUCED.—The term “organically produced” means an agricultural product that is produced and handled in accordance with this title.

(15) PERSON.—The term “person” means an individual, group of individuals, corporation, association, organization, cooperative, or other entity.

(16) PESTICIDE.—The term “pesticide” means any substance which alone, in chemical combination, or in any formulation with one or more substances, is defined as a pesticide in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(17) PROCESSING.—The term “processing” means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

(18) PRODUCER.—The term “producer” means a person who engages in the business of growing or producing food or feed.

(19) SECRETARY.—The term “Secretary” means the Secretary of Agriculture.

(20) STATE ORGANIC CERTIFICATION PROGRAM.—The term “State organic certification program” means a program that meets the requirements of section 2107, is approved by the Secretary, and that is designed to ensure that a product that is sold or labeled as “organically produced” under this title is produced and handled using organic methods.

(21) SYNTHETIC.—The term “synthetic” means a substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

**SEC. 2104. [7 U.S.C. 6503] NATIONAL ORGANIC PRODUCTION PROGRAM.**

(a) IN GENERAL.—The Secretary shall establish an organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this title.

(b) STATE PROGRAM.—In establishing the program under subsection (a), the Secretary shall permit each State to implement a State organic certification program for producers and handlers of agricultural products that have been produced using organic methods as provided for in this title.

(c) CONSULTATION.—In developing the program under subsection (a), and the National List under section 2118, the Secretary shall consult with the National Organic Standards Board established under section 2119.

(d) CERTIFICATION.—The Secretary shall implement the program established under subsection (a) through certifying agents. Such certifying agents may certify a farm or handling operation that meets the requirements of this title and the requirements of the organic certification program of the State (if applicable) as an organically certified farm or handling operation.

**SEC. 2105. [7 U.S.C. 6504] NATIONAL STANDARDS FOR ORGANIC PRODUCTION.**

To be sold or labeled as an organically produced agricultural product under this title, an agricultural product shall—

(1) have been produced and handled without the use of synthetic chemicals, except as otherwise provided in this title;

(2) except as otherwise provided in this title and excluding livestock, not be produced on land to which any prohibited substances, including synthetic chemicals, have been applied during the 3 years immediately preceding the harvest of the agricultural products; and

(3) be produced and handled in compliance with an organic plan agreed to by the producer and handler of such product and the certifying agent.

**SEC. 2106. [7 U.S.C. 6505] COMPLIANCE REQUIREMENTS.**

(a) DOMESTIC PRODUCTS.—

(1) IN GENERAL.—On or after October 1, 1993—

- (A) a person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this title; and
- (B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this title.
- (2) **USDA STANDARDS AND SEAL.**—A label affixed, or other market information provided, in accordance with paragraph (1) may indicate that the agricultural product meets Department of Agriculture standards for organic production and may incorporate the Department of Agriculture seal.
- (b) **IMPORTED PRODUCTS.**—Imported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of this title.
- (c) **EXEMPTIONS FOR PROCESSED FOOD.**—Subsection (a) shall not apply to agricultural products that—
- (1) contain at least 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the Secretary of Health and Human Services, has determined to permit the word “organic” to be used on the principal display panel of such products only for the purpose of describing the organically produced ingredients; or
- (2) contain less than 50 percent organically produced ingredients by weight, excluding water and salt, to the extent that the Secretary, in consultation with the National Organic Standards Board and the Secretary of Health and Human Services, has determined to permit the word “organic” to appear on the ingredient listing panel to describe those ingredients that are organically produced in accordance with this title.
- (d) **SMALL FARMER EXEMPTION.**—Subsection (a)(1) shall not apply to persons who sell no more than \$5,000 annually in value of agricultural products.

**SEC. 2107. [7 U.S.C. 6506] GENERAL REQUIREMENTS.**

- (a) **IN GENERAL.**—A program established under this title shall—
- (1) provide that an agricultural product to be sold or labeled as organically produced must—
- (A) be produced only on certified organic farms and handled only through certified organic handling operations in accordance with this title; and
- (B) be produced and handled in accordance with such program;
- (2) require that producers and handlers desiring to participate under such program establish an organic plan under section 2114;
- (3) provide for procedures that allow producers and handlers to appeal an adverse administrative determination under this title;

(4) require each certified organic farm or each certified organic handling operation to certify to the Secretary, the governing State official (if applicable), and the certifying agent on an annual basis, that such farm or handler has not produced or handled any agricultural product sold or labeled as organically produced except in accordance with this title;

(5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this title;

(6) require periodic residue testing by certifying agents of agricultural products that have been produced on certified organic farms and handled through certified organic handling operations to determine whether such products contain any pesticide or other nonorganic residue or natural toxicants and to require certifying agents, to the extent that such agents are aware of a violation of applicable laws relating to food safety, to report such violation to the appropriate health agencies;

(7) provide for appropriate and adequate enforcement procedures, as determined by the Secretary to be necessary and consistent with this title;

(8) protect against conflict-of-interest as specified under section 2116(h);

(9) provide for public access to certification documents and laboratory analyses that pertain to certification;

(10) provide for the collection of reasonable fees from producers, certifying agents and handlers who participate in such program; and

(11) require such other terms and conditions as may be determined by the Secretary to be necessary.

(b) DISCRETIONARY REQUIREMENTS.—An organic certification program established under this title may—

(1) provide for the certification of an entire farm or handling operation or specific fields of a farm or parts of a handling operation if—

(A) in the case of a farm or field, the area to be certified has distinct, defined boundaries and buffer zones separating the land being operated through the use of organic methods from land that is not being operated through the use of such methods;

(B) the operators of such farm or handling operation maintain records of all organic operations separate from records relating to other operations and make such records available at all times for inspection by the Secretary, the certifying agent, and the governing State official; and

(C) appropriate physical facilities, machinery, and management practices are established to prevent the possibility of a mixing of organic and nonorganic products or a penetration of prohibited chemicals or other substances on the certified area; and

(2) provide for reasonable exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

## (c) WILD SEAFOOD.—

(1) IN GENERAL.—Notwithstanding the requirement of section 2107(a)(1)(A) requiring products be produced only on certified organic farms, the Secretary shall allow, through regulations promulgated after public notice and opportunity for comment, wild seafood to be certified or labeled as organic.

(2) CONSULTATION AND ACCOMMODATION.—In carrying out paragraph (1), the Secretary shall—

## (A) consult with—

(i) the Secretary of Commerce;

(ii) the National Organic Standards Board established under section 2119;

(iii) producers, processors, and sellers; and

(iv) other interested members of the public; and

(B) to the maximum extent practicable, accommodate the unique characteristics of the industries in the United States that harvest and process wild seafood.

(d) STATE PROGRAM.—A State organic certification program approved under this title may contain additional guidelines governing the production or handling of products sold or labeled as organically produced in such State as required in section 2108.

## (e) AVAILABILITY OF FEES.—

(1) ACCOUNT.—Fees collected under subsection (a)(10) (including late payment penalties and interest earned from investment of the fees) shall be credited to the account that incurs the cost of the services provided under this title.

(2) USE.—The collected fees shall be available to the Secretary, without further appropriation or fiscal-year limitation, to pay the expenses of the Secretary incurred in providing accreditation services under this title.

**SEC. 2108. [7 U.S.C. 6507] STATE ORGANIC CERTIFICATION PROGRAM.**

(a) IN GENERAL.—The governing State official may prepare and submit a plan for the establishment of a State organic certification program to the Secretary for approval. A State organic certification program must meet the requirements of this title to be approved by the Secretary.

## (b) ADDITIONAL REQUIREMENTS.—

(1) AUTHORITY.—A State organic certification program established under subsection (a) may contain more restrictive requirements governing the organic certification of farms and handling operations and the production and handling of agricultural products that are to be sold or labeled as organically produced under this title than are contained in the program established by the Secretary.

(2) CONTENT.—Any additional requirements established under paragraph (1) shall—

(A) further the purposes of this title;

(B) not be inconsistent with this title;

(C) not be discriminatory towards agricultural commodities organically produced in other States in accordance with this title; and

(D) not become effective until approved by the Secretary.

## (c) REVIEW AND OTHER DETERMINATIONS.—

(1) **SUBSEQUENT REVIEW.**—The Secretary shall review State organic certification programs not less than once during each 5-year period following the date of the approval of such programs.

(2) **CHANGES IN PROGRAM.**—The governing State official, prior to implementing any substantive change to programs approved under this subsection, shall submit such change to the Secretary for approval.

(3) **TIME FOR DETERMINATION.**—The Secretary shall make a determination concerning any plan, proposed change to a program, or a review of a program not later than 6 months after receipt of such plan, such proposed change, or the initiation of such review.

**SEC. 2109. [7 U.S.C. 6508] PROHIBITED CROP PRODUCTION PRACTICES AND MATERIALS.**

(a) **SEED, SEEDLINGS AND PLANTING PRACTICES.**—For a farm to be certified under this title, producers on such farm shall not apply materials to, or engage in practices on, seeds or seedlings that are contrary to, or inconsistent with, the applicable organic certification program.

(b) **SOIL AMENDMENTS.**—For a farm to be certified under this title, producers on such farm shall not—

(1) use any fertilizers containing synthetic ingredients or any commercially blended fertilizers containing materials prohibited under this title or under the applicable State organic certification program; or

(2) use as a source of nitrogen: phosphorous, lime, potash, or any materials that are inconsistent with the applicable organic certification program.

(c) **CROP MANAGEMENT.**—For a farm to be certified under this title, producers on such farm shall not—

(1) use natural poisons such as arsenic or lead salts that have long-term effects and persist in the environment, as determined by the applicable governing State official or the Secretary;

(2) use plastic mulches, unless such mulches are removed at the end of each growing or harvest season; or

(3) use transplants that are treated with any synthetic or prohibited material.

**SEC. 2110. [7 U.S.C. 6509] ANIMAL PRODUCTION PRACTICES AND MATERIALS.**

(a) **IN GENERAL.**—Any livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with this title.

(b) **BREEDER STOCK.**—Breeder stock may be purchased from any source if such stock is not in the last third of gestation.

(c) **PRACTICES.**—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm—

(1) shall feed such livestock organically produced feed that meets the requirements of this title;

(2) shall not use the following feed—

(A) plastic pellets for roughage;

- (B) manure refeeding; or
  - (C) feed formulas containing urea; and
  - (3) shall not use growth promoters and hormones on such livestock, whether implanted, ingested, or injected, including antibiotics and synthetic trace elements used to stimulate growth or production of such livestock.
- (d) HEALTH CARE.—
- (1) PROHIBITED PRACTICES.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall not—
    - (A) use subtherapeutic doses of antibiotics;
    - (B) use synthetic internal parasiticides on a routine basis; or
    - (C) administer medication, other than vaccinations, in the absence of illness.
  - (2) STANDARDS.—The National Organic Standards Board shall recommend to the Secretary standards in addition to those in paragraph (1) for the care of livestock to ensure that such livestock is organically produced.
- (e) ADDITIONAL GUIDELINES.—
- (1) POULTRY.—With the exception of day old poultry, all poultry from which meat or eggs will be sold or labeled as organically produced shall be raised and handled in accordance with this title prior to and during the period in which such meat or eggs are sold.
  - (2) DAIRY LIVESTOCK.—
    - (A) IN GENERAL.—Except as provided in subparagraph (B), a dairy animal from which milk or milk products will be sold or labeled as organically produced shall be raised and handled in accordance with this title for not less than the 12-month period immediately prior to the sale of such milk and milk products.
    - (B) TRANSITION GUIDELINE.—Crops and forage from land included in the organic system plan of a dairy farm that is in the third year of organic management may be consumed by the dairy animals of the farm during the 12-month period immediately prior to the sale of organic milk and milk products.
- (f) LIVESTOCK IDENTIFICATION.—
- (1) IN GENERAL.—For a farm to be certified under this title as an organic farm with respect to the livestock produced by such farm, producers on such farm shall keep adequate records and maintain a detailed, verifiable audit trail so that each animal (or in the case of poultry, each flock) can be traced back to such farm.
  - (2) RECORDS.—In order to carry out paragraph (1), each producer shall keep accurate records on each animal (or in the case of poultry, each flock) including—
    - (A) amounts and sources of all medications administered; and
    - (B) all feeds and feed supplements bought and fed.
- (g) NOTICE AND PUBLIC COMMENT.—The Secretary shall hold public hearings and shall develop detailed regulations, with notice

and public comment, to guide the implementation of the standards for livestock products provided under this section.

**SEC. 2111. [7 U.S.C. 6510] HANDLING.**

(a) **IN GENERAL.**—For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title—

(1) add any synthetic ingredient not appearing on the National List during the processing or any postharvest handling of the product;

(2) add any ingredient known to contain levels of nitrates, heavy metals, or toxic residues in excess of those permitted by the applicable organic certification program;

(3) add any sulfites, except in the production of wine, nitrates, or nitrites;

(4) add any ingredients that are not organically produced in accordance with this title and the applicable organic certification program, unless such ingredients are included on the National List and represent not more than 5 percent of the weight of the total finished product (excluding salt and water);

(5) use any packaging materials, storage containers or bins that contain synthetic fungicides, preservatives, or fumigants;

(6) use any bag or container that had previously been in contact with any substance in such a manner as to compromise the organic quality of such product; or

(7) use, in such product water that does not meet all Safe Drinking Water Act requirements.

(b) **MEAT.**—For a farm or handling operation to be organically certified under this title, producers on such farm or persons on such handling operation shall ensure that organically produced meat does not come in contact with nonorganically produced meat.

**SEC. 2112. [7 U.S.C. 6511] ADDITIONAL GUIDELINES.**

(a) **IN GENERAL.**—The Secretary, the applicable governing State official, and the certifying agent shall utilize a system of residue testing to test products sold or labeled as organically produced under this title to assist in the enforcement of this title.

(b) **PREHARVEST TESTING.**—The Secretary, the applicable governing State official, or the certifying agent may require preharvest tissue testing of any crop grown on soil suspected of harboring contaminants.

(c) **COMPLIANCE REVIEW.**—

(1) **INSPECTION.**—If the Secretary, the applicable governing State official, or the certifying agent determines that an agricultural product sold or labeled as organically produced under this title contains any detectable pesticide or other non-organic residue or prohibited natural substance the Secretary, the applicable governing State official, or the certifying agent shall conduct an investigation to determine if the organic certification program has been violated, and may require the producer or handler of such product to prove that any prohibited substance was not applied to such product.

(2) **REMOVAL OF ORGANIC LABEL.**—If, as determined by the Secretary, the applicable governing State official, or the certi-

fyng agent, the investigation conducted under paragraph (1) indicates that the residue is—

- (A) the result of intentional application of a prohibited substance; or
- (B) present at levels that are greater than unavoidable residual environmental contamination as prescribed by the Secretary or the applicable governing State official in consultation with the appropriate environmental regulatory agencies;

such agricultural product shall not be sold or labeled as organically produced under this title.

(d) **RECORDKEEPING REQUIREMENTS.**—Producers who operate a certified organic farm or handling operation under this title shall maintain records for 5 years concerning the production or handling of agricultural products sold or labeled as organically produced under this title, including—

- (1) a detailed history of substances applied to fields or agricultural products; and
- (2) the names and addresses of persons who applied such substances, the dates, the rate, and method of application of such substances.

**SEC. 2113. [7 U.S.C. 6512] OTHER PRODUCTION AND HANDLING PRACTICES.**

If a production or handling practice is not prohibited or otherwise restricted under this title, such practice shall be permitted unless it is determined that such practice would be inconsistent with the applicable organic certification program.

**SEC. 2114. [7 U.S.C. 6513] ORGANIC PLAN.**

(a) **IN GENERAL.**—A producer or handler seeking certification under this title shall submit an organic plan to the certifying agent and the State organic certification program (if applicable), and such plan shall be reviewed by the certifying agent who shall determine if such plan meets the requirements of the programs.

(b) **CROP PRODUCTION FARM PLAN.**—

(1) **SOIL FERTILITY.**—An organic plan shall contain provisions designed to foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring.

(2) **MANURING.**—

(A) **INCLUSION IN ORGANIC PLAN.**—An organic plan shall contain terms and conditions that regulate the application of manure to crops.

(B) **APPLICATION OF MANURE.**—Such organic plan may provide for the application of raw manure only to—

- (i) any green manure crop;
- (ii) any perennial crop;
- (iii) any crop not for human consumption; and
- (iv) any crop for human consumption, if such crop is harvested after a reasonable period of time determined by the certifying agent to ensure the safety of such crop, after the most recent application of raw manure, but in no event shall such period be less than 60 days after such application.

(C) CONTAMINATION BY MANURE.—Such organic plan shall prohibit raw manure from being applied to any crop in a way that significantly contributes to water contamination by nitrates or bacteria.

(c) LIVESTOCK PLAN.—An organic livestock plan shall contain provisions designed to foster the organic production of livestock consistent with the purposes of this title.

(d) MIXED CROP LIVESTOCK PRODUCTION.—An organic plan may encompass both the crop production and livestock production requirements in subsections (b) and (c) if both activities are conducted by the same producer.

(e) HANDLING PLAN.—An organic handling plan shall contain provisions designed to ensure that agricultural products that are sold or labeled as organically produced are produced and handled in a manner that is consistent with the purposes of this title.

(f) MANAGEMENT OF WILD CROPS.—An organic plan for the harvesting of wild crops shall—

(1) designate the area from which the wild crop will be gathered or harvested;

(2) include a 3 year history of the management of the area showing that no prohibited substances have been applied;

(3) include a plan for the harvesting or gathering of the wild crops assuring that such harvesting or gathering will not be destructive to the environment and will sustain the growth and production of the wild crop; and

(4) include provisions that no prohibited substances will be applied by the producer.

(g) LIMITATION ON CONTENT OF PLAN.—An organic plan shall not include any production or handling practices that are inconsistent with this title.

**SEC. 2115. [7 U.S.C. 6514] ACCREDITATION PROGRAM.**

(a) IN GENERAL.—The Secretary shall establish and implement a program to accredit a governing State official, and any private person, that meets the requirements of this section as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation.

(b) REQUIREMENTS.—To be accredited as a certifying agent under this section, a governing State official or private person shall—

(1) prepare and submit, to the Secretary, an application for such accreditation;

(2) have sufficient expertise in organic farming and handling techniques as determined by the Secretary; and

(3) comply with the requirements of this section and section 2116.

(c) DURATION OF DESIGNATION.—An accreditation made under this section shall be for a period of not to exceed 5 years, as determined appropriate by the Secretary, and may be renewed.

**SEC. 2116. [7 U.S.C. 6515] REQUIREMENTS OF CERTIFYING AGENTS.**

(a) ABILITY TO IMPLEMENT REQUIREMENTS.—To be accredited as a certifying agent under section 2115, a governing State official or a person shall be able to fully implement the applicable organic certification program established under this title.

(b) INSPECTORS.—Any certifying agent shall employ a sufficient number of inspectors to implement the applicable organic certification program established under this title, as determined by the Secretary.

(c) RECORDKEEPING.—

(1) MAINTENANCE OF RECORDS.—Any certifying agent shall maintain all records concerning its activities under this title for a period of not less than 10 years.

(2) ACCESS FOR SECRETARY.—Any certifying agent shall allow representatives of the Secretary and the governing State official access to any and all records concerning the certifying agent's activities under this title.

(3) TRANSFERENCE OF RECORDS.—If any private person that was certified under this title is dissolved or loses its accreditation, all records or copies of records concerning such person's activities under this title shall be transferred to the Secretary and made available to the applicable governing State official.

(d) AGREEMENT.—Any certifying agent shall enter into an agreement with the Secretary under which such agent shall—

(1) agree to carry out the provisions of this title; and

(2) agree to such other terms and conditions as the Secretary determines appropriate.

(e) PRIVATE CERTIFYING AGENT AGREEMENT.—Any certifying agent that is a private person shall, in addition to the agreement required in subsection (d)—

(1) agree to hold the Secretary harmless for any failure on the part of the certifying agent to carry out the provisions of this title; and

(2) furnish reasonable security, in an amount determined by the Secretary, for the purpose of protecting the rights of participants in the applicable organic certification program established under this title.

(f) COMPLIANCE WITH PROGRAM.—Any certifying agent shall fully comply with the terms and conditions of the applicable organic certification program implemented under this title.

(g) CONFIDENTIALITY.—Except as provided in section 2107(a)(9), any certifying agent shall maintain strict confidentiality with respect to its clients under the applicable organic certification program and may not disclose to third parties (with the exception of the Secretary or the applicable governing State official) any business related information concerning such client obtained while implementing this title.

(h) CONFLICT OF INTEREST.—Any certifying agent shall not—

(1) carry out any inspections of any operation in which such certifying agent, or employee of such certifying agent has, or has had, a commercial interest, including the provision of consultancy services;

(2) accept payment, gifts, or favors of any kind from the business inspected other than prescribed fees; or

(3) provide advice concerning organic practices or techniques for a fee, other than fees established under such program.

(i) ADMINISTRATOR.—A certifying agent that is a private person shall nominate the individual who controls the day-to-day operation of the agent.

(j) LOSS OF ACCREDITATION.—

(1) NONCOMPLIANCE.—If the Secretary or the governing State official (if applicable) determines that a certifying agent is not properly adhering to the provisions of this title, the Secretary or such governing State official may suspend such certifying agent's accreditation.

(2) EFFECT ON CERTIFIED OPERATIONS.—If the accreditation of a certifying agent is suspended under paragraph (1), the Secretary or the governing State official (if applicable) shall promptly determine whether farming or handling operations certified by such certifying agent may retain their organic certification.

**SEC. 2117. [7 U.S.C. 6516] PEER REVIEW OF CERTIFYING AGENTS.**

(a) PEER REVIEW.—In determining whether to approve an application for accreditation submitted under section 2115, the Secretary shall consider a report concerning such applicant that shall be prepared by a peer review panel established under subsection (b).

(b) PEER REVIEW PANEL.—To assist the Secretary in evaluating applications under section 2115, the Secretary may establish a panel of not less than three persons who have expertise in organic farming and handling methods, to evaluate the State governing official or private person that is seeking accreditation as a certifying agent under such section. Not less than two members of such panel shall be persons who are not employees of the Department of Agriculture or of the applicable State government.

**SEC. 2118. [7 U.S.C. 6517] NATIONAL LIST.**

(a) IN GENERAL.—The Secretary shall establish a National List of approved and prohibited substances that shall be included in the standards for organic production and handling established under this title in order for such products to be sold or labeled as organically produced under this title.

(b) CONTENT OF LIST.—The list established under subsection (a) shall contain an itemization, by specific use or application, of each synthetic substance permitted under subsection (c)(1) or each natural substance prohibited under subsection (c)(2).

(c) GUIDELINES FOR PROHIBITIONS OR EXEMPTIONS.—

(1) EXEMPTION FOR PROHIBITED SUBSTANCES IN ORGANIC PRODUCTION AND HANDLING OPERATIONS.—The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if—

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

(i) would not be harmful to human health or the environment;

(ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products; and

(iii) is consistent with organic farming and handling;

(B) the substance—

(i) is used in production and contains an active synthetic ingredient in the following categories: copper and sulfur compounds; toxins derived from bacteria; pheromones, soaps, horticultural oils, fish emulsions, treated seed, vitamins and minerals; livestock parasiticides and medicines and production aids including netting, tree wraps and seals, insect traps, sticky barriers, row covers, and equipment cleansers; or

(ii) is used in production and contains synthetic inert ingredients that are not classified by the Administrator of the Environmental Protection Agency as inerts of toxicological concern; and

(C) the specific exemption is developed using the procedures described in subsection (d).

(2) PROHIBITION ON THE USE OF SPECIFIC NATURAL SUBSTANCES.—The National List may prohibit the use of specific natural substances in an organic farming or handling operation that are otherwise allowed under this title only if—

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

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

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

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

(d) PROCEDURE FOR ESTABLISHING NATIONAL LIST.—

(1) IN GENERAL.—The National List established by the Secretary shall be based upon a proposed national list or proposed amendments to the National List developed by the National Organic Standards Board.

(2) NO ADDITIONS.—The Secretary may not include exemptions for the use of specific synthetic substances in the National List other than those exemptions contained in the Proposed National List or Proposed Amendments to the National List.

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

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

(5) PUBLICATION OF NATIONAL LIST.—After evaluating all comments received concerning the Proposed National List or Proposed Amendments to the National List, the Secretary shall publish the final National List in the Federal Register, along with a discussion of comments received.

(6) EXPEDITED PETITIONS FOR COMMERCIALY UNAVAILABLE ORGANIC AGRICULTURAL PRODUCTS CONSTITUTING LESS THAN 5 PERCENT OF AN ORGANIC PROCESSED PRODUCT.—The Secretary may develop emergency procedures for designating agricultural products that are commercially unavailable in organic form for placement on the National List for a period of time not to exceed 12 months.

(e) SUNSET PROVISION.—No exemption or prohibition contained in the National List shall be valid unless the National Organic Standards Board has reviewed such exemption or prohibition as provided in this section within 5 years of such exemption or prohibition being adopted or reviewed and the Secretary has renewed such exemption or prohibition.

**SEC. 2119. [7 U.S.C. 6518] NATIONAL ORGANIC STANDARDS BOARD.**

(a) IN GENERAL.—The Secretary shall establish a National Organic Standards Board (in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2 et seq.)) (hereafter referred to in this section as the “Board”) to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of this title.

(b) COMPOSITION OF BOARD.—The Board shall be composed of 15 members, of which—

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

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

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

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

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

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

(7) one shall be an individual who is a certifying agent as identified under section 2116.

(c) APPOINTMENT.—Not later than 180 days after the date of enactment of this title, the Secretary shall appoint the members of the Board under paragraph (1) through (6) of subsection (b) (and under subsection (b)(7) at an appropriate date after the certification of individuals as certifying agents under section 2116) from nominations received from organic certifying organizations, States, and other interested persons and organizations.

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

(e) MEETINGS.—The Secretary shall convene a meeting of the Board not later than 60 days after the appointment of its members and shall convene subsequent meetings on a periodic basis.

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

(g) **CHAIRPERSON.**—The Board shall select a Chairperson for the Board.

(h) **QUORUM.**—A majority of the members of the Board shall constitute a quorum for the purpose of conducting business.

(i) **DECISIVE VOTES.**—Two-thirds of the votes cast at a meeting of the Board at which a quorum is present shall be decisive of any motion.

(j) **OTHER TERMS AND CONDITIONS.**—The Secretary shall authorize the Board to hire a staff director and shall detail staff of the Department of Agriculture or allow for the hiring of staff and may, subject to necessary appropriations, pay necessary expenses incurred by such Board in carrying out the provisions of this title, as determined appropriate by the Secretary.

(k) **RESPONSIBILITIES OF THE BOARD.**—

(1) **IN GENERAL.**—The Board shall provide recommendations to the Secretary regarding the implementation of this title.

(2) **NATIONAL LIST.**—The Board shall develop the proposed National List or proposed amendments to the National List for submission to the Secretary in accordance with section 2118.

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

(4) **SPECIAL REVIEW OF BOTANICAL PESTICIDES.**—The Board shall, prior to the establishment of the National List, review all botanical pesticides used in agricultural production and consider whether any such botanical pesticide should be included in the list of prohibited natural substances.

(5) **PRODUCT RESIDUE TESTING.**—The Board shall advise the Secretary concerning the testing of organically produced agricultural products for residues caused by unavoidable residual environmental contamination.

(6) **EMERGENCY SPRAY PROGRAMS.**—The Board shall advise the Secretary concerning rules for exemptions from specific requirements of this title (except the provisions of section 2112) with respect to agricultural products produced on certified organic farms if such farms are subject to a Federal or State emergency pest or disease treatment program.

(l) **REQUIREMENTS.**—In establishing the proposed National List or proposed amendments to the National List, the Board shall—

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

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

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

(m) **EVALUATION.**—In evaluating substances considered for inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider—

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

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

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

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

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

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

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

(n) **PETITIONS.**—The Board shall establish procedures under which persons may petition the Board for the purpose of evaluating substances for inclusion on the National List.

(o) **CONFIDENTIALITY.**—Any confidential business information obtained by the Board in carrying out this section shall not be released to the public.

**SEC. 2120. [7 U.S.C. 6519] VIOLATIONS OF TITLE.**

(a) **MISUSE OF LABEL.**—Any person who knowingly sells or labels a product as organic, except in accordance with this title, shall be subject to a civil penalty of not more than \$10,000.

(b) **FALSE STATEMENT.**—Any person who makes a false statement under this title to the Secretary, a governing State official, or a certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code.

(c) **INELIGIBILITY.**—

(1) **IN GENERAL.**—Except as provided in paragraph (2), any person who—

(A) makes a false statement;

(B) attempts to have a label indicating that an agricultural product is organically produced affixed to such product that such person knows, or should have reason to know, to have been produced or handled in a manner that is not in accordance with this title; or

- (C) otherwise violates the purposes of the applicable organic certification program as determined by the Secretary;
- after notice and an opportunity to be heard, shall not be eligible, for a period of 5 years from the date of such occurrence, to receive certification under this title with respect to any farm or handling operation in which such person has an interest.
- (2) WAIVER.—Notwithstanding paragraph (1), the Secretary may reduce or eliminate the period of ineligibility referred to in such paragraph if the Secretary determines that such modification or waiver is in the best interests of the applicable organic certification program established under this title.
- (d) REPORTING OF VIOLATIONS.—A certifying agent shall immediately report any violations of this title to the Secretary or the governing State official (if applicable).
- (e) VIOLATIONS BY CERTIFYING AGENT.—A certifying agent that is a private person that violates the provisions of this title or that falsely or negligently certifies any farming or handling operation that does not meet the terms and conditions of the applicable organic certification program as an organic operation, as determined by the Secretary or the governing State official (if applicable) shall, after notice and an opportunity to be heard—
- (1) lose its accreditation as a certifying agent under this title; and
  - (2) be ineligible to be accredited as a certifying agent under this title for a period of not less than 3 years subsequent to the date of such determination.
- (f) EFFECT OF OTHER LAWS.—Nothing in this title shall alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.) concerning meat, poultry and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.), nor the authority of the Administrator of the Environmental Protection Agency under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 et seq.).
- SEC. 2121. [7 U.S.C. 6520] ADMINISTRATIVE APPEAL.**
- (a) EXPEDITED APPEALS PROCEDURE.—The Secretary shall establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that—
- (1) adversely affects such person; or
  - (2) is inconsistent with the organic certification program established under this title.
- (b) APPEAL OF FINAL DECISION.—A final decision of the Secretary under subsection (a) may be appealed to the United States district court for the district in which such person is located.
- SEC. 2122. [7 U.S.C. 6521] ADMINISTRATION.**
- (a) REGULATIONS.—Not later than 540 days after the date of enactment of this title, the Secretary shall issue proposed regulations to carry out this title.
- (b) ASSISTANCE TO STATE.—

(1) TECHNICAL AND OTHER ASSISTANCE.—The Secretary shall provide technical, administrative, and Extension Service assistance to assist States in the implementation of an organic certification program under this title.

(2) FINANCIAL ASSISTANCE.—The Secretary may provide financial assistance to any State that implements an organic certification program under this title.

**SEC. 2123. [7 U.S.C. 6522] AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this title.