

Appendix A

Disaster Readiness and Recovery: Legal Considerations for Organic Farmers

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Appendix A

Disaster Readiness and Recovery: Considerations for Organic Farmers

As they do for all farmers, natural disasters pose a significant threat to organic farmers. For over 15 years, FLAG has regularly published and updated this *Farmers' Guide to Disaster Assistance* to help farmers understand the federal assistance programs that may help them recover from disaster losses. In the fall of 2007, FLAG published a separate article addressing aspects of federal disaster assistance that are of particular relevance for organic farmers. This appendix is an updated and shortened version of that article.

The most significant changes to the original article found in this appendix arise from the passage of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill).¹ Among the most important provisions in the 2008 Farm Bill for organic farmers are: (1) authority and funding to collect comprehensive data about organic production and marketing, which is intended to lead to farmers having the option to use organic prices when determining crop insurance coverage levels; (2) authority to conduct a comprehensive review comparing the relative performance of organic and conventional agriculture from a risk management perspective, which may lead to reduction or elimination of crop insurance premium surcharges; (3) increased funding for research and education related to organic farming methods; and (4) significant steps to integrate organic farming practices into federal conservation programs. These and other 2008 Farm Bill provisions are discussed in the relevant sections below.

The first part of this appendix discusses unique issues that organic farmers may face when attempting to participate in the federal disaster assistance programs discussed in this book. The primary goal is to help organic farmers understand and participate in the programs as they exist

now. FLAG recognizes that, while gaining access to existing programs is important for individual organic farmers, in many cases it may be that the programs themselves must be improved and modified in order to effectively be of assistance for organic farmers.²

The second part of this appendix addresses questions farmers may have about how natural disasters and disaster recovery may affect their organic certification status. Most organic farmers have invested a number of years in achieving their “certified organic” status, and a loss of that status could have financial consequences for the farmer well beyond the loss of a single year’s crop.

The third part of this appendix discusses steps that organic farmers may take to prepare for natural disasters. Advance planning may enable organic farmers to prevent or reduce the effects of a natural disaster on their farms, prepare for the agronomic and financial impacts of a natural disaster, and improve the resilience of their farms following a natural disaster.

I. Federal Disaster Assistance Programs for Farmers — Special Considerations for Organic Farmers

This section discusses the federal disaster assistance programs for farmers described in this book and highlights issues for each program that may be of particular concern to organic farmers. More detailed information about the programs mentioned here is set out in specific chapters of this book. Farmers in need of legal advice about their particular situation are encouraged to consult an attorney.

A. Emergency Conservation Program (ECP)

As discussed in Chapter 5 of this book, the Emergency Conservation Program (ECP) is a conservation program intended to help farmers restore and rehabilitate farmland and water resources damaged in natural disasters by reimbursing them for part of the costs of installing or adopting an approved conservation practice.

Because ECP is only available when specifically authorized in a given county for a given disaster, farmers in general are encouraged to report conservation needs created by a disaster to their local Farm Service Agency (FSA) office to ensure that the needs are recognized and counted. This is particularly true for organic farmers, because FSA may not be aware of these farmers' needs.

B. Crop Insurance

As discussed in Chapter 3 of this book, the federal crop insurance program offers a variety of insurance plans to compensate farmers for yield and revenue losses caused by drought, flood, or other natural disaster.

Federal crop insurance was not designed with organic farmers in mind. As the Federal Crop Insurance Corporation (FCIC) has gradually come to recognize organic production and attempt to integrate it into the existing crop insurance plans, a variety of difficulties have arisen.

1. Organic Crops in General

The 2008 Farm Bill added a definition of organic crop to the statute governing federal crop insurance programs.³ For purposes of crop insurance, an organic crop is an agricultural commodity that is organically produced and, in general, certified organic. Farmers will be required to provide proof of organic certification.

Even before this definition was adopted, organic farming practices were already addressed in a specific section of standard crop insurance policies.⁴

a. Insurance Not Automatically Available for Organic Crops

In general, coverage is not available for organic crops unless the information needed to determine a premium rate is specified in the actuarial table, or coverage is allowed under a written agreement.⁵ When coverage for organic crops is

available, certified organic acreage, transitional organic acreage, and buffer zone acreage are eligible.⁶

Organic farmers should consult a crop insurance provider to find out whether coverage is available in the county for a particular crop, and for an organic variety, specifically.⁷

If crop insurance is not available for a particular organic crop in a farmer's county, the farmer may still be able to obtain coverage under a written agreement.⁸ A written agreement can allow a farmer to insure uncommon crops and practices, but this typically comes at a significant cost increase over the standard coverage, and the Risk Management Agency (RMA) retains discretion to reject an application for a written agreement if it determines the risk of coverage is too high.⁹

b. No Coverage for Unintended Application or Drift of Prohibited Substances

Federal crop insurance does not provide coverage for contamination of an organic, transition, or buffer zone crop due to application or drift of prohibited substances onto the acreage.¹⁰

c. Split Operations

If a farmer has a split operation, growing both conventional and organic crops,¹¹ the organic crops can be insured if certain requirements are met. In this situation, all of the farmers' organic, transition, and buffer zone acreage for the specific crop must be combined into an "optional unit" for insurance coverage.¹² This farmer must purchase the "additional coverage" level of insurance, which costs more than the basic catastrophic level of coverage.¹³

Most requirements to establish an "optional unit" for crop insurance purposes already apply to organic farmers. For example, the farmer must plant the crop so that there is a clear

and discernible break in the planting pattern at the outside boundary of an optional unit.¹⁴

d. Organic Production as a “Good Farming Practice”

As discussed in Chapter 3 of this book, it is a general requirement of federal crop insurance coverage that the farmer must follow “good farming practices.”¹⁵ When this requirement was first introduced, there were some problems with organic and other sustainable practices not being considered “good farming practices.” This problem seems to have been resolved for now, at least in general terms.

An important aspect of the definition of “good farming practices” is that they are those practices that are generally recognized in the area. The term “generally recognized” is now defined as follows:

[w]hen agricultural experts or the organic agricultural industry, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance.¹⁶

2. Price Coverage Generally Limited to Wholesale Price for Conventionally Produced Crops

Many organic farmers receive a substantial price premium for their organic crops, and many sell to retail markets. However, standard crop insurance plans generally only provide coverage based on wholesale prices for the insured crop in conventional markets.¹⁷ As a result, organic farmers are not able to obtain crop insurance coverage for the full prices their organic crops receive. Federal crop insurance thus tends to cover less of the actual value of losses experienced by organic farmers than by conventional farmers.

The 2008 Farm Bill directs FCIC to collect and report comprehensive data on the production and marketing of organic agricultural products.¹⁸ Access to more data about prices will enable FCIC to develop crop insurance policies under which organic farmers can choose a level of coverage that reflects actual prices (including appropriate retail and wholesale prices) received by organic producers.¹⁹ This price election should be available for producers to choose for organic crops with sufficient data for the 2010 crop year. The 2008 Farm Bill establishes a goal of completing the data collection and price election process for all organic crops not later than the fifth full crop year after the 2008 Farm Bill was enacted on May 22, 2008.²⁰

3. Premium Surcharge to Obtain Higher Levels of Coverage for Organic Crops

Organic farmers are typically assessed a premium surcharge for crop insurance coverage above the most basic level. The standard federal crop insurance policy provisions do not specifically address premium amounts. In practice, however, organic farmers are assessed a five percent premium surcharge when they purchase yield-based additional coverage or crop revenue coverage.²¹ This surcharge purportedly reflects an adjustment for additional risk associated with covering organic farming practices.²²

The 2008 Farm Bill directs FCIC to review the underwriting, risk, and loss experience of organic crops, whether or not covered by crop insurance policies, and to determine whether there is a consistent, significant difference between the loss history for organic and nonorganic production.²³ FCIC is directed to eliminate or reduce the premium surcharge it charges for coverage of organic crops *unless* its review documents a significant, consistent, and systemic variation in loss history between organic and nonorganic crops, either as a whole or for an individual crop.²⁴

4. Whole Farm Coverage an Attractive Option for Diversified Producers

Federal crop insurance can be cumbersome for diversified organic producers, because standard yield-based and revenue-based crop insurance is generally sold on a per crop basis. Thus, an organic farmer growing seven kinds of vegetables would need seven insurance policies.

Two relatively new crop insurance plans that may be of particular interest to diversified organic farmers, particularly those who grow both crops and livestock, are Adjusted Gross Revenue (AGR) and Adjusted Gross Revenue-Lite (AGR-Lite). These revenue-based programs allow a farmer to insure several crops and even livestock under a single policy.

Neither AGR nor AGR-Lite distinguishes between organic and conventional crops. Because the premiums and guarantees are based upon the farmer's tax return, there is no five percent premium surcharge for organic farmers in either program.

C. Noninsured Crop Disaster Assistance Program (NAP)

As discussed in Chapter 4 of this book, the Noninsured Crop Disaster Assistance Program (NAP) provides crop loss coverage on crops that are not eligible for crop insurance in a particular county.²⁵ NAP coverage is not available at levels above 50 percent of the approved yield. Like crop insurance, NAP must be obtained before the farmer knows whether there will be a natural disaster in the coming crop year.

1. NAP Benefits Based on Conventional Wholesale Prices

As is true for federal crop insurance, NAP benefits are based on a conventional market price.²⁶ There is no provision to change the market that the price is based on or otherwise modify the NAP benefit to reflect an organic farmer's greater relative value in the same quantity of lost production.

The 2008 Farm Bill sets the stage for improvements in NAP coverage for organic farmers, but stops short of authorizing dramatic changes to NAP. It directs USDA to collect and report comprehensive data on the production and marketing of organic agricultural products.²⁷ But the 2008 Farm Bill does not create a mechanism for the NAP program to use the price data collected to offer coverage to organic farmers at organic retail or wholesale price levels.²⁸ Nor does the 2008 Farm Bill authorize an option for farmers to increase the level of NAP coverage, which is currently provided only for yield losses over 50 percent.

2. Organic Production as a “Good Farming Practice”

It is a general requirement for NAP coverage that the farmer must follow “good farming practices.”²⁹ When this requirement was first introduced, there were some problems with organic and other sustainable practices not being considered “good farming practices.” Although this problem has been addressed, if not completely resolved, for the federal crop insurance program, NAP regulations have not been amended to explicitly state that organic and other sustainable production practices can be considered “good farming practices.”

The NAP regulations simply define good farming practices as the cultural practices generally used for the crop to make normal progress toward maturity and produce at least the approved yield.³⁰ The regulations further provide that good farming practices are normally those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.³¹

D. Emergency Crop Disaster Assistance Programs

Over the past 10 years, Congress has repeatedly authorized ad hoc crop disaster programs to provide assistance to crop farmers for disaster-related losses, often years after those losses occurred. The 2008 Farm Bill established a crop disaster program that will be available on a standing basis for losses resulting from disasters that

occur before October 1, 2011.³² The Supplemental Revenue Assistance Payment Program (SURE) will provide cash payments to eligible producers who have incurred crop production losses or crop quality losses, or both.³³ As discussed in Chapters 3 and 4 of this book, producers must generally have had crop insurance or NAP coverage in order to participate in the SURE program.

The discussion below of recent crop loss programs indicates that organic farmers have had concerns about how the benefits to which they were entitled under crop loss programs were determined. The specific details of how the SURE program will be administered—and specifically how benefit levels will be calculated—will not be known until FSA publishes program regulations. For program specifics on the SURE program, farmers should contact their local FSA offices or check FLAG’s website at www.flaginc.org for updates.

As with other crop disaster assistance programs, the various versions of the ad hoc Crop Disaster Program (CDP) generally provided assistance to organic farmers based upon the conventional price for the crops grown. Organic farmers have challenged this approach.

In the mid-1990s, three organic farmers in Michigan sued USDA, arguing that they should have received disaster payments based on the “end use” of their black turtle beans, pinto beans, and adzuki beans in the certified organic market. The regulations for the 1990-1993 crop disaster payment program required different payment rates when agricultural products had different end uses and the different rates were supported by data.³⁴ A 1998 federal district court decision held that, under those regulations, the organic farmers were entitled to a separate payment rate for their organically grown crops.³⁵

FSA then issued regulations for a new ad hoc crop disaster payment program, which authorized FSA county committees to establish up to three separate payment rates for the same crop when there was supporting data that showed a significant difference in yield or value based upon a distinct and separate end use of the crop.³⁶ However, the regulations specifically prohibited FSA county committees from

establishing separate rates or yields for crops with different cultural practices, including organic practices.³⁷ Similar regulations prohibiting separate payment rates for organic practices were adopted for the crop disaster programs covering losses from 2000 to 2002.³⁸

Some organic farmers argued that their crops should receive 2001-2002 CDP benefits based on organic prices.³⁹ The farmers' administrative appeals were unsuccessful, and they filed suit in federal district court, arguing that the 2001-2002 CDP regulations which prevented them from receiving assistance at a higher rate for their losses of higher-value organic crops were arbitrary and capricious. In 2006, a federal district court judge upheld the regulation and ruled against the organic farmers.⁴⁰

The 2005-2007 CDP regulations stated that no separate rates or yields would be established for different cultural practices, including organic practices, despite potential differences in yield or values.⁴¹

E. Disaster Assistance for Livestock Producers

As discussed in Chapter 6, the 2008 Farm Bill established the Livestock Indemnity Program (mortality losses); the Livestock Forage Disaster Program (grazing losses); and the Emergency Assistance for Livestock, Honey Bees, and Farm-Raised Fish (other losses) to provide disaster assistance to livestock producers.⁴²

In general, disaster assistance programs for livestock producers have not tended to specifically address the particular issues of organic producers. As with most crop loss programs, the default rule has been to use average conventional livestock and feed prices as a basis for assistance.

Recently, however, an FSA policy notice related to the 2005-2007 Dairy Disaster Assistance Program (DDAP) directly addressed issues related to farmers transitioning to organic production.⁴³ DDAP provided cash payments for dairy producers for milk production losses in disaster counties in 2005 to 2007.⁴⁴

2005-2007 DDAP benefits were based upon eligible production losses equal to the difference between a dairy producer's base annual production and the producer's actual commercially marketed production during the disaster period.⁴⁵ The base annual production was the farm's established production history from a base period of 2003 and 2004, or, if actual production history was not available, a base production level estimated by FSA using information from three similar farms. The DDAP payment rate for eligible production losses was based upon the annual average Mailbox milk price for the federal milk marketing order where the farm was located.⁴⁶

The FSA policy notice asserts that several dairies converted to organic farming practices during the base period, and significantly reduced production for management-related reasons, rather than a disaster-related reason.⁴⁷ When reviewing applications submitted by dairies that converted from a conventional operation to an organic operation after the base period, FSA employees were directed to use *either* the base period information of three similar organic dairies to determine the average annual pounds produced per cow, *or* to reduce the farm's base period production as a conventional farm by 24 percent, when three similar organic dairies could not be located.⁴⁸

F. FSA Emergency Loans

As discussed in Chapter 7 of this book, FSA provides relief for farmers affected by disaster in the form of low interest loans, known as Emergency (EM) loans. EM loans are intended to enable farmers to return to their normal farming operations as soon as possible after a disaster. The interest rate on EM loans has been 3.75 percent for the past several years, though that rate is subject to change.

EM loans are intended for approved uses by farmers engaged in production agriculture. One noteworthy possible use for an EM loan for organic farmers is reorganizing the family farm to improve its profitability.⁴⁹ The agency handbook that FSA personnel refer to when administering the EM loan program states that reorganizing a farm means changing enterprises, production practices, marketing

methods, or other parts of the farm business to promote recovery from the disaster and reduce the potential impact of future disasters.⁵⁰

G. Other Considerations for Organic Farmers Seeking Disaster Assistance

A variety of insights that may prove helpful for organic farmers can be gleaned from appeals decisions related to a variety of disaster assistance programs. In addition, because federal disaster assistance programs address only a portion of the losses suffered by organic farmers, organic farmers and organic farming organizations have sometimes sought to mobilize a community response to support organic farmers. Some recent models may be found in the response to flooding in the upper Midwest in August 2007.

1. Report Losses to the Proper Authority

Most organic farmers are well aware of the need for good communication with their certifying agents. They should also realize the importance of good communication with their crop insurance provider or with FSA, if they participate in NAP. Thus, organic farmers should report disaster-related losses and concerns to their certifying agents, but they must also comply with all deadlines for reporting losses to their crop insurance provider or to FSA. It is not sufficient, for crop insurance and NAP purposes, for organic farmers to report crop losses only to their certifying agents.⁵¹

Organic livestock farmers should also report their livestock and feed losses, as well as their conservation needs, to FSA, and retain their records, so that evidence of their eligibility for assistance will be available if any additional programs are authorized later.

2. Consult Experts When Considering Experimental Crops

As noted above, farmers must use “good farming practices” in order to receive either crop insurance or NAP payments. For the NAP program, good farming practices are the cultural practices

generally recognized by the Extension Service.⁵² The NAP regulations do not specifically provide for the treatment of organic and sustainable farming practices as “good farming practices,” as the crop insurance regulations do.⁵³

In one appeal, an organic farmer began growing *Vinifera* wine grapes in the southeastern United States. He experienced crop failures for two years in a row, due to mildew and fungal diseases caused by excessive moisture and humidity.⁵⁴ The farmer was denied NAP benefits by FSA. The Director of USDA’s National Appeals Division ruled that the farmer’s choices to: (1) grow a grape variety known to be susceptible to fungal diseases and mildew, (2) in a part of the country that routinely experiences high humidity and moist summers, and (3) use organic farming practices constituted a failure to follow good farming practices.

One lesson from this appeal might be that farmers who plan to grow crops or varieties that are not commonly grown in their area may wish to consult with the Extension Service for an opinion about whether that crop or variety could be organically grown in the region in such a way as to make normal progress toward maturity and produce an approved yield.⁵⁵ If possible, it might be helpful to obtain a written opinion from the Extension Service before making a final decision to plant the crop or variety.

3. Equitable Relief May Be Available

Federal disaster assistance programs may be enacted in haste, without a full notice-and-comment rulemaking process. As a result, concerns of various stakeholders, including organic farmers, may be overlooked. Following a series of hurricanes that struck the state of Florida in 2004, USDA implemented the Florida Vegetable, Fruit and Tropical Fruit Disaster Program.⁵⁶ To receive assistance at the highest level under this program for plasticulture practices, farmers were required to have installed irrigation, covered the soil with plastic mulch, fumigated, fertilized the soil, and put in transplants prior to onset of the hurricane. The

program requirements did not address requirements for organic farmers barred from applying fumigation to their crops.

An organic farmer was denied benefits under the program due to the failure to fumigate. The farmer appealed and requested equitable relief.⁵⁷ When program participants seek equitable relief from USDA, they admit that they did not satisfy all of the program requirements, but argue that they are still entitled to benefits under the program. Equitable relief is generally available for disaster assistance programs, except for agricultural credit and crop insurance programs.⁵⁸ In general, there are two grounds for equitable relief: (1) good faith reliance upon misinformation from USDA, and (2) good faith effort to comply with program requirements.

Equitable relief may be granted by an agency official, such as the FSA State Director, or by the Director of the National Appeals Division (NAD).⁵⁹ Farmers should note that within NAD, only the NAD Director may grant equitable relief. Farmers must develop the evidence that would support a decision to grant equitable relief in the initial NAD hearing, even though NAD hearing officers may not grant equitable relief.⁶⁰

In the appeal under the Florida program, the organic farmer argued that she had made a good faith effort to comply with the plasticulture requirements. FSA agreed that she had used good organic farming practices. The NAD Director held that the farmer acted in good faith by applying proper organic farming practices, particularly in light of the fact that she could have been subject to loss of her organic certification and fines if she had fumigated her crops. The NAD Director granted equitable relief, with the consequence that the farmer was eligible for program benefits.

4. Models for Community Response

In August 2007, extensive flooding hit parts of Minnesota, Wisconsin, and Iowa. The areas affected included a heavy concentration of organic vegetable and dairy farms.⁶¹ Many

individuals were eager to support local organic farmers, and so organic organizations created means to provide support to address needs unmet by federal assistance. The Midwest Organic and Sustainable Education Service (MOSES) established a flood update on its website with information tailored to organic farmers.⁶² In addition, a coalition of nonprofit organizations and food co-ops joined to support a “Sow the Seeds” fund, administered by the Institute for Agriculture and Trade Policy, to make grants to assist organic and sustainable farmers in recovering from the flood.⁶³

II. Natural Disasters and Organic Certification

Under the National Organic Program (NOP), accredited certifying agents make the decisions to grant, deny, suspend or revoke organic certification. Certifying agents make certification decisions based upon the farmer’s organic system plan. Certifying agents look for evidence that farmers have developed and followed an organic plan that meets the requirements of the NOP regulations. Because certifying agents have such an important role in the NOP, it is crucial that organic farmers communicate with their certifiers in the event of a natural disaster.

The regulations governing organic certification are found in Part 205 of Title 7 of the Code of Federal Regulations, and the underlying statute is the Organic Foods Production Act (OFPA). When the final NOP rule was published in the Federal Register in December 2000, it included a lengthy preamble containing USDA’s remarks about the rulemaking process, including a discussion of public comments received and how the final rule differed from the proposed rule.⁶⁴ Unlike OFPA and the NOP regulations themselves, the preamble is not the law. However, the preamble can be a useful resource to help farmers and certifiers to understand and interpret the law, or at least to understand how USDA believes the law should be interpreted.

A. Organic System Plan Can Incorporate Disaster Readiness and Recovery

The organic system plan is the key document in organic certification. It is a plan of management for an organic farm that is agreed to by the farmer and the certifying agent.⁶⁵

It includes written plans concerning all aspects of agricultural production, including the following.⁶⁶

- (1) A description of practices and procedures to be performed and maintained, including how often they will be performed;
- (2) A list of each substance to be used as a production input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable;
- (3) A description of the monitoring practices and procedures to be performed and maintained, including how often they will be performed;
- (4) A description of the recordkeeping system implemented;
- (5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production operations and products with prohibited substances; and
- (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.

Farmers need not design their organic system plan entirely on their own. One valuable resource for organic farmers and farmers transitioning to organic production is ATTRA, the National Sustainable Agriculture Information Service, which has prepared numerous publications for organic farmers, including sample worksheets that organic farmers may incorporate into their organic

plans.⁶⁷ Many organic certifiers also provide sample forms for organic system plans. Farmers should be sure to address any unique or unusual aspects of their farming operation in their organic plan.

The elements of an organic plan can help organic farmers when natural disaster strikes.⁶⁸ For example, an organic farmer's monitoring practices may provide early notice of an impending drought, so that the farmer could seek out assistance to install drip irrigation. Or physical barriers intended to prevent unintended application of prohibited substances might divert runoff from heavy rains, preventing soil erosion.

A less obvious but still important advantage of the organic plan for organic farmers affected by natural disaster is the recordkeeping required. Successful participation in federal disaster assistance programs often requires detailed records of crop yields and prices, and of livestock killed or injured in the disaster, or livestock sold earlier than planned due to feed shortages. A farmer operating under an organic plan is likely to have all of the needed records to establish his or her losses. If a farmer's records are destroyed in the disaster, the certifying agent may have copies.

As suggested above, it is not uncommon for Congress to provide for disaster assistance some years after a disaster occurs. Well-maintained records can help farmers to document losses from previous years and establish eligibility for late-enacted programs.

B. Notify Certifier of Changes Due to Natural Disaster

In order to continue their organic certification, farmers must annually pay the certification fees and submit updated information to the certifying agent.⁶⁹ An organic farmer affected by natural disaster should immediately notify the certifying agent of any change in the farming operation that may affect the farmer's compliance with organic requirements.⁷⁰ Organic farmers should also notify their certifiers immediately if a natural disaster leads to application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation.⁷¹

Farmers may want to ask their certifiers for written agreement to any changes they propose.

The updated organic system plan submitted by the farmer each year must include:

- (1) A summary statement, supported by documentation, detailing any changes made to the organic system plan during the previous year;
- (2) Any additions or deletions to the organic system plan, intended to be undertaken in the coming year;
- (3) Updated contact information for the farm operator;
- (4) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and
- (5) Other information as deemed necessary by the certifying agent to determine compliance with organic requirements.

The changes which must be documented would include those instituted as a result of natural disaster, including those instituted under a temporary variance.

C. Temporary Variance from NOP Requirements May Be Possible

The Administrator of the Agricultural Marketing Service (AMS) is the official within USDA who oversees implementation of the NOP. The Administrator has the authority to grant temporary variances from NOP requirements for a variety of reasons, among them natural disasters declared by the Secretary of Agriculture and damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption.⁷² Unfortunately, the regulation defines neither “variance” nor “temporary variance.”

Temporary Variances from NOP Practice Standards

The AMS Administrator may grant a temporary variance from a variety of crop, livestock, and handling practice standards under the NOP, including:

- The soil fertility and crop nutrient management practice standard.
- The seed and planting stock practice standard.
- The crop rotation practice standard.
- The crop pest, weed, and disease management practice standard.
- The wild crop harvesting practice standard.
- The requirements related to origin of livestock.
- The requirements related to livestock feed.
- The livestock health care practice standard.
- The requirements related to livestock living conditions.
- The organic handling requirements.
- The facility pest management practice standard.
- The commingling and contact with prohibited substance prevention practice standard.

Certifiers do not have authority to grant a temporary variance, but may only provide a written recommendation that the Administrator grant one.⁷³ If the Administrator establishes a temporary variance, the Administrator must provide written notification to certifying agents and specify the period of time it shall remain in effect, subject to extension as the Administrator deems necessary. When a certifier is notified by the Administrator of the establishment of a temporary variance, the certifying agent must notify each production or handling operation it certifies to which the temporary variance applies. A temporary variance may not be granted to allow the use of prohibited substances. Other than requirements specifically granted a temporary

variance, all other organic certification requirements continue to apply.

D. Specific Changes Provided for in the NOP Regulations

Following a natural disaster, organic farmers may find themselves unable to follow some of the crop practices contained in their organic plans. The NOP regulations anticipate such difficulties and set out specific instances where strict adherence to an organic plan may be excused.

1. Changes to Crop Practices

The Administrator may establish a temporary variance for damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption to allow a farmer to use non-organically produced annual seedlings to produce an organic crop.⁷⁴

2. Temporary Confinement of Livestock

In general, an organic livestock producer must establish and maintain livestock living conditions which accommodate the health and natural behavior of animals, including freedom of movement, access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight, as well as access to pasture for ruminants.⁷⁵

While not, strictly speaking, a temporary variance, an organic livestock producer may temporarily confine an animal because of: inclement weather; conditions under which the health, safety, or well-being of the animal could be jeopardized; or risk to soil or water quality.⁷⁶ Producers who are considering or using temporary confinement should discuss it with their certifier, in order to reach agreement upon whether there is a need for temporary confinement, the conditions to be provided to the confined livestock, and the date or circumstances at which the temporary confinement will end.⁷⁷

E. Natural Disasters and Applications of Prohibited Substances

One concern that arises with natural disasters such as floods is contaminants that may be carried and deposited by the flood water. Organic farmers should be aware of both generally applicable food safety laws and specific NOP requirements. A comprehensive overview of food safety laws is beyond the scope of this appendix.

1. Food Safety Laws and Voluntary Programs Not Limited to Organic Farmers

Though not an issue unique to organic farming, it is worth noting that raw agricultural products that contain any added poisonous or deleterious substance as a result of natural disaster or that have been held under unsanitary conditions that may have rendered them injurious to health are considered by the Food and Drug Administration (FDA) to be adulterated and may not be sold for human consumption.⁷⁸ The FDA also regulates use of affected agricultural products for livestock feed.⁷⁹

The Agricultural Marketing Service within USDA administers a voluntary auditing program known as Good Agricultural Practices and Good Handling Practices (GAP & GHP).⁸⁰ Like organic certification, GAP and GHP provide third-party certification of farming and handling practices. Some buyers may ask for a USDA Good Agricultural Practices and/or Good Handling Practices audit as a general practice or following a natural disaster.⁸¹ If an audit is not required under an existing contract, farmers may want to negotiate for the buyer to pay for the costs of the audit.

2. NOP Requirements Related to Prohibited Substances

Most NOP requirements related to prohibited substances are well known to organic farmers and prospective organic farmers. Yet it is useful to review these basic requirements and consider how they might apply after a natural disaster.

a. Three-Year Transition Period for Land

Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must have had no prohibited substances applied to it for a period of three years immediately preceding harvest of the crop.⁸² The list of prohibited substances in § 205.105 includes synthetic substances that are not on the National List, natural substances that are on the National List, and sewage sludge.⁸³ Irradiation and genetic engineering are prohibited practices mentioned in §§ 205.105 and 205.301, so that genetically modified organisms are arguably prohibited substances as well.⁸⁴

Unfortunately, the NOP regulations do not define “apply” or “applied.” Thus, it is difficult to know for certain whether a prohibited substance that had been carried to an organic farm as a result of natural disaster would be considered to have been “applied” within the meaning of the NOP regulations. Arguably, the term “apply” bars only an intentional use of a prohibited substance during the transition period. In support of this argument, one could point to the subsection of the rules that immediately follows the ban on application of prohibited substances. That provision states that organic farmland also must have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the *unintended application* of a prohibited substance to the crop.⁸⁵ Use of the phrase “unintended application” suggests that “application” entails only intentional use. Arguably, then, because the farmer did not intend for the natural disaster to occur and for prohibited substances to come into contact with the land, those prohibited substances were not “applied.” Under this interpretation, if the farmer took steps to prevent unintended application of prohibited substances as part of the organic system plan, the farmer has met the requirements of the NOP, and the land may continue to be certified organic.⁸⁶

However, one could argue that both intentional and unintentional application of prohibited substances are forbidden. Arguably, “application” is more concerned with whether a substance was actually used on land than with the farmer’s intent. Under this interpretation, if flood waters deposited sediment containing prohibited substances on organic fields, those fields have had prohibited substances “applied” to them, and the three-year transition period must be repeated. Further support for this position may be found in the regulation which requires farmers to report “application, including drift” of prohibited substances to their certifiers.⁸⁷

The NOP regulations do not allow the Administrator to provide a temporary variance for the land requirements, including the three-year transition period and the duty to take steps to prevent unintended application.⁸⁸ This does not help with the interpretation of those requirements. It could mean either that no variance is needed because the provisions do not apply to unintentional application caused by natural disaster, or that USDA will require the three-year transition for all applications of prohibited substances, whether intentional or unintentional.

Until there is a clearer resolution of this question, farmers are advised to be in close communication with their certifying agents when a disaster has or may have deposited prohibited substances on their land.

b. Take Steps to Prevent Unintended Application

Organic land must have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.⁸⁹

c. Notify Certifier of Drift or Unintended Application

A person seeking to receive or maintain organic certification must immediately notify the certifier concerning any application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation.⁹⁰ Drift is defined as the physical movement of prohibited substances from the intended target site onto an organic farm or field.⁹¹ Thus, farmers must notify their certifier of any possible contamination which occurs as a result of natural disaster.

d. Certifiers and Others May Test

When there is reason to believe that an agricultural product to be sold as organic has come into contact with a prohibited substance, then the certifier, USDA, or state organic program (if applicable) may require testing of a sample of the agricultural product.⁹² A natural disaster may provide the basis for a belief that contamination has occurred.

Certifying agents must submit to USDA the procedures for sampling and residue testing that they will follow.⁹³ When testing, certifying agents must maintain sample integrity, and testing must be performed in an accredited laboratory.⁹⁴ Testing may be required before or after harvest. However, the farmer may not be required to pay for the testing.⁹⁵ The certifier must provide the farmer with a copy of the test results.⁹⁶

e. Exclusion from Sale as Organic

Following a natural disaster, organic farmers or certifying agents may confirm that prohibited substances are present in or on a crop in the field or in storage. As is discussed further below, when prohibited substances are present in an agricultural product at levels that exceed the NOP tolerance, the agricultural product must not be sold as organic.⁹⁷

Although the agricultural product may not be sold as organic, it may be sold in conventional markets if it does not violate any other generally applicable laws.

The exclusion from organic sale based upon contamination with prohibited substances is unique in the NOP regulatory scheme. The NOP is a “process-based” program.⁹⁸ In general, the NOP regulations set forth farming practices and methods that the farmer must follow, rather than outcomes that must be achieved. But this provision sets forth an absolute ceiling on the presence of certain prohibited substances which must not be exceeded if the product is to be considered organic. Thus, contamination caused by a natural disaster may cause a farmer to lose access to the organic market, despite the farmer’s best efforts to follow NOP requirements. There is no exception or temporary variance available for circumstances beyond the farmer’s control.

Agricultural products may be excluded from sale if they exceed NOP tolerances or if the organic farmer otherwise failed to comply with NOP requirements.

i. Tolerances Have Been Established for Some Prohibited Substances

A tolerance is defined under the NOP regulations as the maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food.⁹⁹ The Environmental Protection Agency (EPA) has authority to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).¹⁰⁰ In general, after a pesticide is registered with the EPA, either a tolerance or an exemption from the need for a tolerance will be established.¹⁰¹

For prohibited substances with an established EPA tolerance, the NOP tolerance is five percent of the EPA tolerance.¹⁰² Thus, if the EPA tolerance for a prohibited

substance were 100 parts per million, the NOP tolerance would be five parts per million.

ii. Unavoidable Residual Environmental Contamination and Prohibited Substances

The second half of the NOP tolerance standard is that prohibited substances must not be present in organic goods at levels greater than unavoidable residual environmental contamination. The NOP regulations define unavoidable residual environmental contamination as background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products.¹⁰³ The definition further notes that unavoidable residual environmental contamination is below established tolerances. If there is no established tolerance for a given substance, it would seem there could be no point at which a certifier or USDA could determine that unavoidable residual environmental contamination had been exceeded.

However, USDA asserted in the preamble to the final rule that it intended to establish levels of unavoidable residual environmental contamination for purposes of regulating the presence of prohibited substances under the NOP.¹⁰⁴ USDA went on to state that these levels would represent limits at which USDA could take compliance action to suspend the use of a contaminated area for organic agricultural production.¹⁰⁵ USDA further stated that, in the interim, unavoidable residual environmental contamination would be defined as the Food and Drug Administration's action levels for poisonous or deleterious substances in human or animal feed.¹⁰⁶ Research for this appendix did not discover any action taken by USDA since issuance of the final rule in 2000 to establish unavoidable residual environmental

contamination levels for any prohibited substances. It is unclear what effect incorporating action levels already enforced by the FDA into the NOP standards would have on organic farmers. Moreover, it is doubtful whether a standard referenced only in the preamble to the final rule and not in the regulation itself could be enforced against an organic farmer as a part of organic certification standards, since the preamble does not have the force and effect of law.

Therefore, until tolerance levels are established in the NOP regulations for unavoidable residual environmental contamination, it seems that an organic farmer could argue that exceeding background levels of unavoidable residual environmental contamination is not a lawful basis for excluding organic products from organic sale or suspending or revoking certification, because no background levels have been established through the rulemaking process.¹⁰⁷

iii. Presence of Prohibited Substances Acts as a Warning Signal

The preamble to the final rule states that the presence of prohibited substances acts as a “warning indicator” to the certifying agent.¹⁰⁸ Presence of prohibited substances at levels that exceed the NOP tolerance will result in the crop being excluded from sale as organic. Presence of prohibited substances at levels that do not exceed any established tolerances may result in a proposed suspension or revocation of organic certification, if investigation reveals that the farmer failed to comply with other NOP requirements, including by intentional use of a prohibited substance.¹⁰⁹

F. Process When Certifying Agents Find a Violation of Organic Requirements, Including As a Result of Natural Disaster

Certifying agents and USDA must follow certain procedures when they believe an applicant for certification or a certified farmer has violated organic requirements.¹¹⁰ In general, the certifier or USDA must first send a notice of noncompliance and provide an opportunity for the farmer to rebut or correct each noncompliance.¹¹¹ If the farmer does not succeed, the certifier or USDA must send a notice of proposed suspension or revocation organic of certification.¹¹² The notice must advise the farmer of the rights to request mediation and to file an appeal. Finally, if he or she does not prevail in appeals within USDA, the farmer may seek review in federal court.¹¹³

III. Farming to Create Your Own Disaster Prevention and Recovery Program

Many organic farmers use farming and financial practices that may lessen the risk of harm from natural disaster. Even though these efforts are commonly thought of as “self-help,” there may be assistance for organic farmers to adopt these practices. Assistance in the form of information and education is sometimes referred to as technical assistance. Financial assistance may include a cost-share, or even grants and direct payments.

The 2008 Farm Bill contains a number of provisions that should make it easier for organic farmers to gain access to conservation programs. It also approved a dramatic increase in funding for research related to organic agriculture.

A. Reducing Risk through Crop and Livestock Diversification

Diversification is a basic part of organic farming. Indeed, the NOP regulations define organic production as a production system managed “to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.”¹¹⁴

Diversification may mean growing both crops and livestock, or growing a variety of either crops or livestock. Or diversification may be expressed in seed or breed variety selection or planting times. Diversification may be expressed through on-farm processing for some or all products of the farm. Diversification may also be expressed in marketing through a variety of buyers, types of buyers, and marketing channels.

Diversification can reduce the impact of a natural disaster because it may mean that a farming operation is producing crops or livestock which respond differently from one another to the effects of a particular disaster. If one farm enterprise is affected by a natural disaster such as excess rain or late freeze, another may be unaffected, or even respond favorably, adding up to a successful overall bottom line for the year. For some organic farms, diversification is the primary management strategy related to natural disasters.¹¹⁵ However, diversification is not a comprehensive strategy to enable a farming operation to weather a severe natural disaster. Most organic farmers should give careful thought to obtaining some type of crop insurance or NAP coverage.

B. Conservation Practices to Increase Disaster Resistance and Speed Recovery

Conservation practices required in organic farming may help prevent, prepare for, and lessen the effects of natural disaster. For example, the NOP regulations impose a soil fertility and crop nutrient management practice standard.¹¹⁶ Under this practice standard, organic farmers must implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil, and minimize soil erosion. The NOP regulations also impose a crop rotation practice standard.¹¹⁷ Under this practice standard, farmers must implement a crop rotation that includes, among other things, sod, cover crops, green manure crops, and catch crops. As a result of these practices, some scientific research indicates that soil on organic farms is more drought resistant and drought tolerant.¹¹⁸

A variety of federal programs may assist organic farmers to implement conservation practices that will make their farms better able to withstand natural disaster. Some of these programs are discussed below, but there are many others, such as the Wildlife Habitat Incentive Program and the Conservation Reserve Enhancement Program.

1. Funding for Research to Test Conservation Farming Practices

Farmers interested in testing whether and how certain farming practices improve disaster resistance and recovery may be able to receive funding to support that research. Funding support is available from public sources, such as the Sustainable Agriculture Research and Education (SARE) program within USDA, and private sources, such as the Organic Farming Research Foundation (OFRF). SARE is divided into four regions of the country, each of which issues calls for proposals with specific deadlines.¹¹⁹

The 2008 Farm Bill provided a substantial increase in public funding for research related to organic agriculture.¹²⁰ Congress appropriated \$18 million for fiscal year 2009 and \$20 million for each of the fiscal years 2010 through 2012 to carry out the Organic Agriculture Research and Extension Initiative. The Farm Bill also authorized Congress to appropriate additional funds in fiscal years 2009 through 2012 if it chooses to do so.

2. Environmental Quality Incentives Program

The Environmental Quality Incentives Program (EQIP) is a conservation program for land that is in agricultural production.¹²¹ It is administered by the Natural Resources Conservation Service (NRCS), which is a part of USDA. Farmers who participate in EQIP may receive technical assistance, incentive payments, or cost-share assistance. While it is not designed as a disaster program, implementing EQIP conservation

practices may help to lessen the impact of a future natural disaster.

A farmer transitioning to organic production may adopt a variety of practices which may be eligible for EQIP assistance. Such practices include diverse extended crop rotations, use of cover crops, establishing buffer zones which may provide wildlife habitat and reduce wind erosion, reintroduction of beneficial insects, reducing tillage, year-round rotational or managed grazing systems, and nutrient management.¹²² Participation in EQIP requires a conservation plan to allow NRCS to review and approve the farmer's proposed conservation practices.¹²³ A farmer's conservation plan and organic system plan may refer to one another, or even be combined into one total plan for the farm.

Farmers making the transition to organic production practices may find the transition period to be a good time to consider and adopt practices that will help build their farm's ability to withstand natural disaster as well as provide conservation benefits and help achieve compliance with NOP requirements. Because the transition period can be a difficult time financially for farmers, EQIP assistance can play a crucial role in that process. Some state NRCS offices have adopted land management practice standards to target EQIP incentive payments to farmers who are in the process of transitioning to organic agriculture, such as organic dairy farming.¹²⁴ Farmers who are already certified organic may also be eligible to participate in EQIP, though assistance will generally not be approved for practices implemented before the farmer applied for EQIP.

The 2008 Farm Bill included several provisions which address participation in EQIP by organic farmers. The 2008 Farm Bill amended the existing statutory section setting forth the purposes of EQIP to state that those purposes include assisting producers to make beneficial, cost-effective changes to production systems including conservation practices related to organic production and grazing management.¹²⁵ It added definitions for "National

Organic Program” and “organic system plan” to the EQIP statutes.¹²⁶ The 2008 Farm Bill also directs USDA to ensure that, to the maximum extent practicable, organic production is fully incorporated in program standards, and to ensure that adequate technical assistance is available to enable organic and specialty crop producers to participate in EQIP.¹²⁷

Importantly, the 2008 Farm Bill authorizes EQIP payments for conservation practices related to organic production, including the transition to organic production.¹²⁸ The specific details of how EQIP will incorporate organic conservation practices will not be known until FSA publishes program regulations implementing the 2008 Farm Bill changes.

3. Conservation Stewardship Program

The Conservation Stewardship Program (CSP, formerly known as the Conservation Security Program) is a program administered by NRCS intended to encourage and support use of conservation practices on land in agricultural production.

The 2008 Farm Bill directs USDA to establish a transparent means by which farmers may initiate organic certification while participating in a CSP contract.¹²⁹ The 2008 Farm Bill also directs USDA to ensure that outreach and technical assistance are available, and program specifications are appropriate to enable organic and specialty crop producers to participate in CSP.¹³⁰ The 2008 Farm Bill also authorizes additional CSP payments to producers who agree to adopt a resource-conserving crop rotation.¹³¹ It seems likely that many organic farmers and farmers transitioning to organic practices would be able to take advantage of this provision. The specific requirements for organic farmers to participate in CSP will not be known until FSA publishes new program regulations implementing the 2008 Farm Bill changes.

4. Agricultural Management Assistance

Another program that may assist organic farmers in preparing for and reducing the risk of natural disaster is Agricultural Management Assistance. In recent years, Congress has directed NRCS to provide financial assistance for “agricultural management” to eligible farmers in 15 states with historically low rates of participation in the federal crop insurance programs. The Agricultural Management Assistance program is currently available in Connecticut, Delaware, Maryland, Massachusetts, Maine, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming to help farmers construct or improve water management structures or irrigation structures; plant trees to form windbreaks or to improve water quality; and mitigate risk through production diversification or resource conservation practices, including soil erosion control, integrated pest management, or transition to organic farming.¹³²

5. Conservation Reserve Program

Under the Conservation Reserve Program (CRP), USDA enters into long-term contracts with landowners, farm operators, and farm tenants to dedicate eligible land to a conserving use during the contract period in return for financial and technical assistance.¹³³ The land is commonly referred to as “set-aside” land, and is generally not available for agricultural use, including making commercial use of forage, such as by grazing livestock and mechanically harvesting hay.¹³⁴

The 2008 Farm Bill adopted a provision to require USDA to allow beginning farmers and ranchers and socially disadvantaged farmers and ranchers to begin the organic certification process when a CRP contract is modified in order to enable land to be transferred to them.¹³⁵

6. Conservation Loans for Transition to Organic Practices

The 2008 Farm Bill designated loans to farm owners and tenants for the purpose of converting to organic or sustainable agricultural production systems as a priority in FSA's conservation loan program.¹³⁶

C. Risk-Sharing through Community Supported Agriculture

In community supported agriculture (CSA), the farmer sells "shares" of the harvest before the season begins, and members receive their share of the harvest at regular intervals, most often weekly.¹³⁷

Operating as a CSA farm can help an organic farmer minimize the risks of natural disaster. Although operation as a CSA will not reduce the production losses a disaster may cause, it can significantly reduce the financial impact of those losses.

CSA farmers should make it clear to those who purchase a share of the harvest that the share owners assume the risk of a poor harvest, or no harvest at all. Many CSA farmers have found that consumers are willing to take that risk, in exchange for the chance to have a closer relationship to one particular farm in their community, and to eat local foods when they are in season. Of course, if there is a reduced harvest or no harvest at all, some members of the CSA may be less likely to return and take the same risk of loss in the next year. Other members may become strong supporters and advocates of "their farmer."¹³⁸

CSA farmers are advised to communicate clearly and in writing with potential members about both the risks and benefits of CSA membership, and to communicate with them throughout the season, particularly in the event of adverse weather conditions. Some CSA farms enter into a written contract with members. Although some farmers feel that written contracts could interfere with their efforts to build relationships with members, written documents usually help reduce the risk of misunderstandings.¹³⁹

D. Addressing Disaster Risks in Marketing and Sales Contracts

Many organic farmers market directly to the public or to institutions such as food cooperatives, grocery stores, restaurants, schools, prisons, or hospitals. These sales should involve written contracts to help reduce the risk of confusion and misunderstandings. Farmers may want to consider including a provision in the contract addressing the risk of natural disaster. For example, a farmer could negotiate for a provision in a sales contract excusing the farmer from delivering the agricultural products in the event of a natural disaster. Of course, the farmer and buyer are free to change any provision in the contract at any time, or add new provisions, if both agree to do so. But it can be difficult to come to an agreement once disaster has hit. In the absence of a provision excusing them from performance, farmers who lose a crop due to natural disaster could be forced to buy organic goods on the market in order to deliver them to the buyer as required under the contract.

Farmers may also enter into more detailed negotiations with their buyers. For example: Would the buyer accept less than the full quantity specified in the contract, if natural disaster prevented the farmer from performing in full and, if so, would the price remain the same? If the farmer were excused from delivering products for a certain period of time due to a disaster, would that terminate the contract, or would they resume their relationship as soon as the farmer was able to produce another crop? Would the buyer accept agricultural products that could not be certified organic as a result of the disaster, if they met all applicable food safety standards? Any agreements reached on these and related issues should be written into the contract.

Farmers may encounter a perception from buyers that because of the effects of a natural disaster, their crops are no longer truly organic. As long as the farmer has retained organic certification for the crops, and the contract requires only delivery of certified organic goods, a refusal by the buyer to accept the offered goods would arguably be a breach

of contract. This type of dispute can be difficult for organic farmers, who may rely on ongoing relationships with a relatively small number of buyers. Organic farmers finding themselves in this situation may wish to consult an attorney or a mediation program to see whether there is a solution that could resolve the issue to the satisfaction of both the farmer and the buyer.

Some food processors who enter into contracts with many different farmers charge a percentage or flat fee to create a group pool, or informal insurance network, in case of natural disaster or other crop failure. Farmers may want to ask questions before they enter into such contracts. Is contributing to the pool required or voluntary? If voluntary, does the amount charged seem reasonable in light of the risk protection that would be gained? How would benefits be determined? How do the costs and benefits of the pool compare to the costs and benefits of crop insurance and NAP?

IV. Conclusion

This appendix is intended to help organic farmers to understand and participate in disaster assistance, conservation, and organic certification programs as they exist now. But understanding disaster assistance programs, in particular, often reveals ways in which they fail to serve the disaster readiness and recovery needs of organic farmers. Participation in programs such as crop insurance and NAP is by no means enough for a comprehensive disaster readiness and recovery plan, but it may be an essential beginning in order to preserve eligibility for other disaster assistance programs. Improving the accessibility and effectiveness of federal disaster assistance for organic farmers is important to individual organic farmers, and may be crucial to restoring local and regional food systems when natural disaster strikes.¹⁴⁰

Appendix A Notes

- ¹ Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), Pub. L. No. 110-234, 122 Stat. 923 (May 22, 2008).
- ² For a case study analyzing the importance of updated disaster assistance policies to agriculture in North Carolina, see Scott Marlow, *Disaster Programs and the Changing Face of Agriculture in North Carolina*, (Rural Advancement Foundation International - USA, 2007), available at www.rafiusa.org.
- ³ 2008 Farm Bill § 12001 (to be codified at 7 U.S.C. § 1502(b)(7)).
- ⁴ 7 C.F.R. § 457.8, Common Crop Insurance Policy, “37. Organic Farming Practices” (2008); Crop Revenue Coverage (CRC) Insurance Policy, “37. Organic Farming Practices” (Policy No. 05-CRC-Basic).
- ⁵ 7 C.F.R. § 457.8, Common Crop Insurance Policy, “37. Organic Farming Practices (a)” (2008); Crop Revenue Coverage (CRC) Insurance Policy, “37. Organic Farming Practices (a)” (Policy No. 05-CRC-Basic).
- ⁶ 7 C.F.R. § 457.8, Common Crop Insurance Policy, “37. Organic Farming Practices (b), (c)” (2008); Crop Revenue Coverage (CRC) Insurance Policy, “37. Organic Farming Practices (b), (c)” (Policy No. 05-CRC-Basic).
- ⁷ Farmers may obtain a list of approved crop insurance providers from their local FSA office. A searchable list of approved crop insurance agents is also available at www.rma.usda.gov/tools/agent.html.
- ⁸ A written agreement is a crop insurance policy that has provisions that differ from the standard policy language approved by FCIC. 7 C.F.R. § 457.8, Common Crop Insurance Policy, “1. Definitions, “Written agreement” (2008).
- ⁹ NAD Director Review Determination 2004W000436 (Sept. 2, 2004). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- ¹⁰ 7 C.F.R. § 457.8, Common Crop Insurance Policy, “37. Organic Farming Practices (f)” (2008); Crop Revenue Coverage (CRC) Insurance Policy, “37. Organic Farming Practices (f)” (Policy No. 05-CRC-Basic). For analysis of issues related to genetic drift, see Jill Krueger, *If Your Farm is Organic, Must It Be GMO Free?: Organic Farmers, Genetically Modified Organisms, and the Law*, (Farmers’ Legal Action Group, 2007), available at www.flaginc.org/topics/pubs/arts/OrganicsAndGMOs2007.pdf; or contact

FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

- ¹¹ 7 C.F.R. § 205.2, "Split operation" (2008).
- ¹² 7 C.F.R. § 457.8, Common Crop Insurance Policy, "34. Unit Division (c)(3)" (2008).
- ¹³ 7 C.F.R. § 457.8, Common Crop Insurance Policy, "34. Unit Division (d)" (2008).
- ¹⁴ 7 C.F.R. § 457.8, Common Crop Insurance Policy, "34. Unit Division (b)(1)" (2008); Crop Revenue Coverage (CRC) Insurance Policy, "2. Unit Structure (b)(1)(ii)" (Policy No. 05-CRC-Basic). Compare 7 C.F.R. § 205.202(c) (2008).
- ¹⁵ 7 C.F.R. § 457.8, Common Crop Insurance Policy, "12. Causes of Loss (b)" (2008); Crop Revenue Coverage (CRC) Insurance Policy, "13. Causes of Loss (b)" (Policy No. 05-CRC-Basic) (replacing "production guarantee or amount of insurance" with "Final Guarantee").
- ¹⁶ 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Generally recognized'" (2008); Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Generally recognized'" (Policy No. 05-CRC-Basic) (replacing "production guarantee or amount of insurance" with "Final Guarantee"). "Organic agricultural industry" is defined as persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative State Research, Education and Extension Service, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought. 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Organic agricultural industry'" (2008); Crop Revenue Coverage (CRC) Insurance Policy, "1. Definitions, 'Organic agricultural industry'" (Policy No. 05-CRC-Basic). It is somewhat puzzling that accredited certifying agents are not included in this list of members of the organic agricultural industry.
- ¹⁷ The Risk Management Agency (RMA) has published a Fact Sheet on Organic Farming Practices which states that the price elections or insurance dollar amounts available on certified organic acreage, transitional acreage, and any buffer zones for a given crop year will be the price elections or insurance

- dollar amounts published by RMA for the crop grown using conventional means. Risk Management Agency Fact Sheet, "Organic Farming Practices: Insurance Fact Sheet," Program Aid Number 1912 (March 2008), available at www.rma.usda.gov/pubs/2006/organics.pdf.
- ¹⁸ 2008 Farm Bill § 10302 (to be codified at 7 U.S.C. § 5925c).
- ¹⁹ 2008 Farm Bill § 12023 (to be codified at 7 U.S.C. § 1522(10)(C)).
- ²⁰ 2008 Farm Bill § 12023 (to be codified at 7 U.S.C. § 1522(10)(D)).
- ²¹ Testimony of Mark Lipson, Review of Economic Impacts of Production, Processing, and Marketing of Organic Agricultural Products, U.S. House of Representatives Committee on Agriculture, Subcommittee on Horticulture and Organic Agriculture (Washington, DC, April 18, 2007), available at http://ofrf.org/policy/federal_legislation/federal_legislation.html. Lipson is the Public Policy Director of the Organic Farming Research Foundation, www.ofrf.org.
- ²² See Risk Management Agency Fact Sheet, "Organic Farming Practices: Insurance Fact Sheet," Program Aid Number 1912 (March 2008), at www.rma.usda.gov/pubs/2006/organics.pdf.
- ²³ 2008 Farm Bill § 12023 (to be codified at 7 U.S.C. § 1522(10)).
- ²⁴ 2008 Farm Bill § 12023 (to be codified at 7 U.S.C. § 1522(10)(B)(ii)).
- ²⁵ 7 U.S.C. § 7333.
- ²⁶ 7 U.S.C. § 7333(d)(2); 7 C.F.R. § 1437.11(a) (2008).
- ²⁷ 2008 Farm Bill § 10302 (to be codified at 7 U.S.C. § 5925c). Significantly, Congress appropriated \$5 million to carry out the organic production and market data initiative, and authorized further appropriations in the future.
- ²⁸ For a practical discussion of the shortcomings of NAP coverage experienced by one organic farmer who sells organic vegetables at retail, see <http://harmonyvalleyfarm.blogspot.com/2007/12/winter-is-herefsa-payments.html>.
- ²⁹ 7 C.F.R. § 1437.9(e)(3) (2008). The NAP statute prohibits coverage for this kind of loss. 7 U.S.C. § 7333(h)(3).
- ³⁰ 7 C.F.R. § 1437.3, "Good farming practices" (2008).
- ³¹ FSA comments accompanying a NAP rule issued in 2006 suggest that alternative farming practices and innovations that are supported by data

from the Cooperative State Research, Education, and Extension Service are included in the definition of good farming practices. 71 Fed. Reg. 13,737 (2006) (prefatory comments).

- 32 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(g)).
- 33 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531(b)(1)).
- 34 See 7 C.F.R. § 1477.6 (1995); 57 Fed. Reg. 10,963 (1992).
- 35 *Pringle v. United States*, 1998 U.S. Dist. LEXIS 19378 (E.D. Mich. 1998) (unpublished).
- 36 See 7 C.F.R. § 1477.202(d) (2000); 64 Fed. Reg. 18,554 (1999) (1998 Single Year and Multi-Year Crop Loss Disaster Assistance Program).
- 37 The regulations were adopted without notice and comment rulemaking, as directed by Congress, in order to allow USDA to implement the program more quickly. One benefit of standing programs such as those created in the 2008 Farm Bill is that of a full rulemaking process, in which interested parties may submit comments for consideration by USDA.
- 38 See 7 C.F.R. § 1480.12(d) (2002); 66 Fed. Reg. 15,979 (2001) (2000 Crop Disaster Program); and 7 C.F.R. § 1480.12(d) (2004); 68 Fed. Reg. 37,943 (2003) (2001-2002 Crop Disaster Program).
- 39 NAD Director Review Determinations 2004E000091 (June 29, 2004) and 2004E000539 (Aug. 16, 2004). Another organic farmer filed a similar unsuccessful appeal on the same issue related to the 2003-2004 CDP. NAD Hearing Officer Decision 2005E000971 (Oct. 12, 2005). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- 40 *Partlo v. Johanns*, 2006 U.S. Dist. LEXIS 43071 (D.D.C. 2006). The district court was affirmed by the court of appeals without a written opinion. *Partlo v. Johanns*, 2007 U.S. App. LEXIS 9963 (D.C. Cir. 2007).
- 41 7 C.F.R. § 760.811(c) (2008).
- 42 2008 Farm Bill § 12033(a) (to be codified at 7 U.S.C. § 1531).
- 43 FSA Notice LD-599, "Additional Dairy Disaster Assistance Program (DDAP-III) Program Clarifications and Questions and Answers (Q&A's)," para. 4.E, (April 11, 2008) (expires Jan. 1, 2009).
- 44 73 Fed. Reg. 11,519 (2008) (to be codified at 7 C.F.R. pt. 786).
- 45 73 Fed. Reg. 11,519, 11,524 (2008) (to be codified at 7 C.F.R. § 786.106).

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- ⁴⁶ 73 Fed. Reg. 11,519, 11,525 (2008) (to be codified at 7 C.F.R. § 786.107).
- ⁴⁷ FSA Notice LD-599, "Additional Dairy Disaster Assistance Program (DDAP-III) Program Clarifications and Questions and Answers (Q&A's)," para. 4.E, (April 11, 2008) (expires Jan. 1, 2009).
- ⁴⁸ FSA Notice LD-599, "Additional Dairy Disaster Assistance Program (DDAP-III) Program Clarifications and Questions and Answers (Q&A's)," para. 4.E, (April 11, 2008) (expires Jan. 1, 2009).
- ⁴⁹ 7 C.F.R. § 764.351(b)(1) (2008).
- ⁵⁰ EM Loan Handbook, page 9-5, para. 231.C (Dec. 31, 2007).
- ⁵¹ NAD Director Review Determination 2003W000083 (March 20, 2003). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- ⁵² 7 C.F.R. § 1437.3, "Good farming practices" (2008).
- ⁵³ Compare 7 C.F.R. § 1437.3, "Good farming practices" (2008) with 7 C.F.R. § 457.8, Common Crop Insurance Policy, "1. Definitions, 'Good farming practices'" (2008).
- ⁵⁴ NAD Director Review Determination 2005S000374 (July 7, 2005). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- ⁵⁵ See also NAD Hearing Officer Decision 2006E000770 (Sept. 29, 2006) (FSA consulted USDA Plant Hardiness Zone Map, an area orchard renovator, the Cherry Growers' website, and an FSA county committee member's knowledge in denying application for Tree Assistance Program benefits for losses to orchard for tart cherry production). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- ⁵⁶ 69 Fed. Reg. 63,134, 63,136 (2004) (notice of program implementation).
- ⁵⁷ NAD Director Review Determination 2006S000224 (June 1, 2006). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.
- ⁵⁸ 7 U.S.C. § 7996(a)(2); 7 C.F.R. pt. 718 (2008).
- ⁵⁹ 7 C.F.R. §§ 718.307, 11.9(e) (2008).
- ⁶⁰ Karen R. Krub, *USDA's National Appeals Division Procedure and Practice*, at 97 (Farmers' Legal Action Group, 2003), available at www.flaginc.org; or contact

FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

- ⁶¹ Janet Kubat Willette, "Organic Producers Suffer Severe Losses in Flooding," *Agri-News*, Aug. 28, 2007.
- ⁶² See www.mosesorganic.org/mosesgeneral/floodupdate.html. For example, the MOSES website included an article with practical advice on recovery from the flood, including model field flood records and field plans to assist organic farmers with monitoring fields affected by flood water, written by Jim Riddle, the Organic Outreach Coordinator for the University of Minnesota. Jim Riddle, "Impact of Flooding on Organic Food and Fields" (2007). Also posted on the MOSES website was an article on "Federal Disaster Assistance for Vegetable Growers Affected by Recent Floods and Droughts" written by Paul D. Mitchell of the University of Wisconsin Extension.
- ⁶³ See www.sowtheseeds.org for more information.
- ⁶⁴ 65 Fed. Reg. 80,548 (2000) (prefatory comments). Farmers should take note that changes have been made to the NOP regulations since the "final rule" was published, so the regulatory text set forth in the Federal Register must not be relied upon as an accurate statement of all of the current regulations. This appendix uses the term "final rule" to refer to the program as originally established in 2000 and uses the term "regulations" to refer to the regulations in effect in mid-2008.
- ⁶⁵ 7 C.F.R. § 205.2, "Organic system plan" (2008).
- ⁶⁶ 7 C.F.R. § 205.201(a) (2008).
- ⁶⁷ ATTRA publications about organic production may be found at <http://attra.ncat.org/organic.html>. See, for example, George Kuepper, Holly Born, and Lance Gegner, *Organic System Plan (OSP) Templates for Certifiers* (2007). Farmers may also call ATTRA with questions or to request publications by mail. ATTRA's telephone number is 800-346-9140; Spanish speakers may call 800-411-3222.
- ⁶⁸ An assertion that a farmer is following organic practices, but is not certified, may not be viewed sympathetically if a farmer seeks to overcome an FSA finding that the farmer failed to follow good farming practices. NAD Director Review Determination 2004E000263 (June 1, 2004). A searchable database of NAD decisions is available at www.nad.usda.gov/public_search.html.

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- ⁶⁹ 7 C.F.R. § 205.406 (2008).
- ⁷⁰ 7 C.F.R. § 205.400(f)(2) (2008).
- ⁷¹ 7 C.F.R. § 205.400(f)(1) (2008).
- ⁷² 7 C.F.R. § 205.290(a) (2008).
- ⁷³ 7 C.F.R. § 205.290(b) (2008).
- ⁷⁴ 7 C.F.R. § 205.204(a)(3) (2008). Note that lack of commercial availability alone would not be sufficient to justify use of nonorganically produced annual seedlings. 65 Fed. Reg. 80,548, 80,569 (2000) (prefatory comments).
- ⁷⁵ 7 C.F.R. § 205.239(a) (2008).
- ⁷⁶ 7 C.F.R. § 205.239(b) (2008).
- ⁷⁷ 65 Fed. Reg. 80,548, 80,573 (2000) (prefatory comments).
- ⁷⁸ 21 U.S.C. § 342(a). See generally 21 C.F.R. pt. 109 (2008). This is most commonly applied to fruits and vegetables in flooded fields, but it also applies to the affected products and ingredients in meat and poultry processing establishments. 9 C.F.R. §§ 318.14, 381.151 (2008).
- ⁷⁹ See Greg Roth, *Recommendations for Marketing Flood Damaged Grain Crops* (Penn State Corn and Soybean Management, 2004), available at http://cornandsoybeans.psu.edu/marketing_flood_damaged_crops.cfm.
- ⁸⁰ Information about the Good Agricultural Practices and Good Handling Practices program, including the Audit Verification Checklist used by USDA, is available at www.ams.usda.gov/fv/fpbgapghp.htm.
- ⁸¹ Samuel Fromartz, *Farmers, Flooding, and Whole Foods' Mea Culpa* (Sept. 12, 2007), available at www.chewswise.com/chews/2007/09/farmers-floodin.html.
- ⁸² 7 C.F.R. § 205.202(b) (2008). A similar restriction applies to the area from which an organic wild crop may be harvested. 7 C.F.R. § 205.207(a) (2008).
- ⁸³ 7 C.F.R. § 205.105 (2008).
- ⁸⁴ See Jill Krueger, *If Your Farm is Organic, Must It Be GMO Free?: Organic Farmers, Genetically Modified Organisms, and the Law*, (Farmers' Legal Action Group, 2007), available at www.flaginc.org; or contact FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.
- ⁸⁵ 7 C.F.R. § 205.202(c) (2008).

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- ⁸⁶ 65 Fed. Reg. 80,548, 80,633 (2000) (prefatory comments). In discussing emergency pest and disease treatment programs, USDA noted with apparent approval the previous certifier practice of treating such applications “as drift cases,” so that the specific crop was excluded from sale as organic, but the organic status of future crop years (i.e., the land) was not affected. USDA stated its intention to address such cases in a similar manner. USDA explicitly acknowledged the possible tension between consumer expectations and the welfare of organic farmers affected by unintended contact with prohibited substances.
- ⁸⁷ 7 C.F.R. § 205.400(f)(1) (2008).
- ⁸⁸ 7 C.F.R. §§ 205.290; 205.202 (2008).
- ⁸⁹ 7 C.F.R. § 205.202(c) (2008).
- ⁹⁰ 7 C.F.R. § 205.400(f)(1) (2008).
- ⁹¹ 7 C.F.R. § 205.2, “Drift” (2008).
- ⁹² 7 C.F.R. § 205.670(b) (2008). Compare 7 U.S.C. § 6506(a)(6), which states that a program established under OFPA must require periodic residue testing by certifying agents of agricultural products produced on organic farms to determine whether they contain any pesticide or other nonorganic residue.
- ⁹³ 7 C.F.R. § 205.504(b)(6) (2008).
- ⁹⁴ 7 C.F.R. § 205.670(b) (2008).
- ⁹⁵ 7 C.F.R. § 205.670(b) (2008). USDA has taken the position that residue testing expenses are a cost of doing business for the certifier. 65 Fed. Reg. 80,548, 80,628 (2000) (prefatory comments). The section does not address who must pay for testing if it is ordered by USDA.
- ⁹⁶ 7 C.F.R. § 205.402(b)(3) (2008).
- ⁹⁷ 7 C.F.R. § 205.671 (2008).
- ⁹⁸ 65 Fed. Reg. 80,548, 80,556, 80,631 (2000) (prefatory comments).
- ⁹⁹ 7 C.F.R. § 205.2, “Tolerance” (2008).
- ¹⁰⁰ 7 U.S.C. §§ 136 *et seq.*
- ¹⁰¹ 40 C.F.R. pt. 180 (2008).
- ¹⁰² 7 C.F.R. § 205.671 (2008).
- ¹⁰³ 7 C.F.R. § 205.2, “Unavoidable residual environmental contamination” (2008).

- ¹⁰⁴ 65 Fed. Reg. 80,548, 80,629 (2000) (prefatory comments).
- ¹⁰⁵ 65 Fed. Reg. 80,548, 80,629 (2000) (prefatory comments).
- ¹⁰⁶ 65 Fed. Reg. 80,548, 80,629 (2000) (prefatory comments). The FDA's action levels for poisonous or deleterious substances in human or animal feed are set forth at 21 C.F.R. pt. 109 (2008).
- ¹⁰⁷ However, the organic farmer might face enforcement action by the FDA.
- ¹⁰⁸ 65 Fed. Reg. 80,548, 80,628 (2000) (prefatory comments).
- ¹⁰⁹ 65 Fed. Reg. 80,548, 80,629-80,630 (2000) (prefatory comments).
- ¹¹⁰ For a detailed discussion of these procedures, see Jill Krueger, *Dispute Resolution Under the National Organic Program*, (Farmers' Legal Action Group, forthcoming in June 2008), available at www.flaginc.org.
- ¹¹¹ 7 C.F.R. §§ 205.406(c) and 205.662 (2008).
- ¹¹² 7 C.F.R. § 205.662(c) (2008).
- ¹¹³ 7 U.S.C. § 6520(b).
- ¹¹⁴ 7 C.F.R. § 205.2, "Organic production" (2008).
- ¹¹⁵ James C. Hanson, et al., *Risk and Risk Management in Organic Agriculture: View of Organic Farmers*, 19 *Renewable Agriculture and Food Systems* 218-227 (2007), available at www.arec.umd.edu/people/faculty/jhanson/jhanson.htm.
- ¹¹⁶ 7 C.F.R. § 205.203 (2008).
- ¹¹⁷ 7 C.F.R. § 205.205 (2008).
- ¹¹⁸ Don Lotter, et al., *The Performance of Organic and Conventional Cropping Systems in an Extreme Climate Year*, 18 *American Journal of Alternative Agriculture* at 146-154 (2003) (describing research conducted by the Rodale Institute), available at <http://donlotter.net/resume03.html>. See also Preston Sullivan, *Drought Resistant Soil* (2002), available at www.attra.ncat.org.
- ¹¹⁹ For more information about SARE financial assistance and current deadlines, visit the SARE website at www.sare.org.
- ¹²⁰ 2008 Farm Bill § 7206 (to be codified at 7 U.S.C. § 5925b).
- ¹²¹ For more information about EQIP, see the NRCS website at www.nrcs.usda.gov/programs/eqip/. Or see, Jill Krueger, *Is Your Farm "EQIP"ed for Conservation?: A Farmers' Guide to the Environmental Quality Incentives Program* (Farmers' Legal Action Group, 2007), available at

www.flaginc.org/topics/pubs/arts/FGtoEQIP.pdf; or contact FLAG by telephone at 651-223-5400; by fax at 651-223-5335; by mail at 360 North Robert Street, Suite 500, Saint Paul, MN 55101; or by electronic mail at lawyers@flaginc.org.

- ¹²² NRCS Fact Sheet, *Organic Agriculture and Resource Conservation: What Conservationists Need to Know about Organic Growers*, available at http://soils.usda.gov/sqi/management/org_farm_2.html. See also the companion fact sheet, *Organic Agriculture and Resource Conservation: What Organic Growers Need to Know about NRCS and Conservation Programs*, at http://soils.usda.gov/sqi/management/org_farm_1.html.
- ¹²³ Compare 7 C.F.R. pt. 205 (2008) with 7 C.F.R. pt. 1466 (2008).
- ¹²⁴ See 2007 Minnesota EQIP Conservation Practice Payment Docket, 440-V-CPM, Amend. MN-49, December 2006 (setting forth Practice 328b, Organic Conservation Crop Rotation and Practice 528, Organic Prescribed Grazing); “2007 Contracts with Organic Incentive Payments,” EQIP Docket pages MN515.P.162-49-50 (March 2004).
- ¹²⁵ 2008 Farm Bill § 2501 (to be codified at 16 U.S.C. § 3839aa(4)).
- ¹²⁶ 2008 Farm Bill § 2502 (to be codified at 16 U.S.C. § 3839aa-1(2), (3)).
- ¹²⁷ 2008 Farm Bill § 2706 (to be codified at 16 U.S.C. § 3842(i)). The 2008 Farm Bill also directs USDA to develop programs that meet specific needs of organic producers through cooperative agreements with other agencies and nongovernmental organizations.
- ¹²⁸ 2008 Farm Bill § 2503 (to be codified at 16 U.S.C. § 3839aa-2(i)).
- ¹²⁹ 2008 Farm Bill § 2301 (to be codified at 16 U.S.C. Ch. 58).
- ¹³⁰ 2008 Farm Bill § 2301 (to be codified at 16 U.S.C. Ch. 58).
- ¹³¹ 2008 Farm Bill § 2301 (to be codified at 16 U.S.C. Ch. 58).
- ¹³² 7 C.F.R. pt. 1465 (2008). The 2008 Farm Bill designates ten percent of AMA funds for organic certification cost-share assistance. 2008 Farm Bill § 2801 (to be codified at 7 U.S.C. § 1524(b)(4)(C)).
- ¹³³ 7 C.F.R. § 1410.3 (2008).
- ¹³⁴ 2008 Farm Bill § 2108(a) (to be codified at 16 U.S.C. § 3832(a)(8)(A)).
- ¹³⁵ 2008 Farm Bill § 2111 (to be codified at 16 U.S.C. § 3835(f)).
- ¹³⁶ 2008 Farm Bill § 5002 (to be codified at 16 U.S.C. § 1924(d)(2)).

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- ¹³⁷ Elizabeth Henderson and Robyn Van En, *SHARING THE HARVEST: A CITIZEN'S GUIDE TO COMMUNITY SUPPORTED AGRICULTURE* (2nd ed. 2007).
- ¹³⁸ Samuel Fromartz, *Farmers, Flooding, and Whole Foods' Mea Culpa* (Sept. 12, 2007), available at www.chewswise.com/chews/2007/09/farmers-floodin.html (discussing, among other things, fierce loyalty of CSA members after severe flooding, and noting that, "Through all of this, one thing is certain: good partners—and fanatical customers—are key.").
- ¹³⁹ For a discussion and sample of a basic CSA contract, see Neil D. Hamilton, *THE LEGAL GUIDE FOR DIRECT FARM MARKETING* at 58-61 (Drake University, 1999).
- ¹⁴⁰ For a case study analyzing the importance of updated disaster assistance policies to agriculture in North Carolina, see Scott Marlow, *Disaster Programs and the Changing Face of Agriculture in North Carolina*, (Rural Advancement Foundation International–USA, 2007), available at www.rafiusa.org.