



April 17, 2017

Promotion and Economics Division
Specialty Crops Program
AMS, USDA
1400 Independence Ave., NW
Room 1406-S, Stop 0244
Washington, DC 20250-0244

Re: Rule Proposing Organic Research, Promotion, and Information Order; 82 Fed.
Reg. 5746 (Jan. 18, 2017)
Submitted via www.regulations.gov (Docket No. AMS-SC-16-0112)

Dear Madam or Sir:

CropLife America (CLA) submits these comments in response to the proposed rule that would establish an industry-funded promotion, research, and information program for certified organic products (the Proposed Order). Established in 1933, CLA represents the developers, manufacturers, formulators and distributors of plant science solutions for agriculture and pest management in the United States. CLA's member companies produce, sell and distribute virtually all the vital and necessary crop protection and biotechnology products used by American farmers, ranchers and landowners, including the vast majority of pesticides approved for and used by growers of organic crops. CLA appreciates the opportunity to provide these comments.

ORGANIC FOOD PRODUCTION ACT ESTABLISHED A MARKETING STANDARD

Organic products are products produced according to the terms of a certification program operated under the authority of the Organic Foods Production Act of 1990 (OFPA). 7 U.S.C. 6501-6522. The OFPA was passed to establish national standards for the marketing of food identified as organic based on certain production practices. *Id.* at 6501. Generally speaking, the OFPA prohibits the use of most synthetic pesticides and fertilizers, and certain crop and livestock production practices, while allowing for certain exceptions. However, non-synthetic fertilizers and pesticides are regularly used in organic production, and designation as an organic product does not necessarily indicate any health, safety or environmental benefit from consumption of those products.

Representing the Crop Protection Industry

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Congress made clear when considering the bill that became the OFPA that organically produced food did not confer health, safety or nutritional benefits, nor should organic products be considered free of pesticide residue:

The Committee emphasizes that American-produced food, whether organically or conventionally grown, is the safest in the world. This legislation does not attempt to make scientific judgments about whether organically produced food is more healthful, nutritious, or flavorful than conventionally produced food. Nor is organically produced food necessarily residue-free. The Committee contends that organically produced food is food produced using certain defined materials and production methods.

S. Rep. 101-357, reprinted in 1990 U.S.C.C.A.N. 4656, 4947.

Similarly, no significant environmental benefit has been demonstrated to accrue from organic certification under the OFPA. The OFPA is administered by the Agricultural Marketing Service (AMS), the operations of which are categorically excluded from the requirements of the National Environmental Policy Act (NEPA) “unless the agency head determines that an action may have a significant environmental effect.” 7 CFR Sec. 1b.4. The Secretary of Agriculture has made no such determination and has undertaken no environmental impact analysis of any aspect of the certification program established under OFPA. In fact, the environmental impact of particular agricultural practices may vary based on multiple factors, and farmers may employ beneficial practices whether or not their operations are certified as organic.

ADVERTISING MUST BE TRUTHFUL, NON-MISLEADING AND NON-DISPARAGING

Like many other federal marketing orders, the Proposed Order would operate under the terms of the Commodity Promotion, Research, and Information Act of 1996 (the Act). 7 U.S.C. 7411-7425. The Act strictly prohibits any promotion, research or information activities that may be false or misleading or disparaging to another agricultural commodity.

(d) PROHIBITED ACTIVITIES.—A board [organized under the Act] may not engage in, and shall prohibit the employees and agents of the board from engaging in— (1) any action that would be a conflict of interest; (2) using funds collected by the board under the order, any action undertaken for the purpose of influencing any legislation or governmental action or policy other than recommending to the Secretary amendments to the order; and (3) any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or misleading or disparaging to another agricultural commodity.

Id. at 515(d).

The Proposed Order recognizes this prohibition, and includes similar language at proposed 7 C.F.R. Sec. 1255.47. 82 Fed. Reg. at 5784.

AN ORGANIC MARKETING ORDER MUST FOLLOW THE ACT'S PROHIBITIONS

In the Federal Register notice requesting comments on the Proposed Order, AMS summarizes three lines of reasoning provided as evidence of the need to establish a national organic research and promotion program – (1) domestic supply shortages of organic products, particularly feed and ingredients; (2) the need for viable pest management in organic production; and (3) market confusion. 82 Fed. Reg. at 5756. While CLA's member companies are continually researching new crop protection strategies and technologies, including technologies consistent with the OFPA, these comments will focus on market confusion.

CLA agrees that there is confusion in the consumer food marketplace today. Conflicting and confusing food claims face consumers with every purchase. Many of these terms, such as “clean”, have no agreed-upon definition, and are inherently disparaging of food that is not so labeled. Some food marketing touting the alleged benefits of certain “superfoods” or methods of production is based on poor quality studies, or no scientific support whatsoever. Many such claims ignore the stringent safety standards regulating all of the U.S. food supply. What Congress stated in 1990 remains true today: “American-produced food, whether organically or conventionally grown, is the safest in the world.”

Adding to this confusion, the standards of the OFPA and its certification program are not simple. Congress recognized this at the bill's passage:

Organic food is food produced using sustainable production methods that rely primarily on natural materials. The “organically produced” label authorized under this bill therefore pertains to the production methods used to produce the food rather than to the content of the food.

Organically produced food defies simple definition. The list of acceptable production materials is well understood and widely accepted—organic food is produced using no synthetic materials other than a small list of less than 10 exceptions described in the legislation. The land on which the product is raised must be farmed organically for a period of not less than three years. But defining organically grown food based on production materials and a three-year transition period alone is not sufficient. Organically

grown food is produced using farming and handling systems that include site-specific farm plans.

S. Rep. 101-357, reprinted in 1990 U.S.C.C.A.N. 4656, 4946.

Sadly, not only does this consumer confusion lead to frustrated shoppers and an unlevel playing field across food producers, recent research indicates that certain types of messaging around organic food choices have the potential to drive low-income shoppers away from healthy fruit and vegetables:

Current media trends promote organic food, particularly organically grown fresh FV [fruits and vegetables]. Communications are focused on superior health benefits of organically grown FV and excessive pesticide residues of conventionally grown produce. These promotional communications successfully convince consumers to purchase organic FV by way of influencing people's perceptions and beliefs about organic FV relative to conventionally or non-organically grown produce. People perceive organic FV as healthier and/or better for them compared with eating conventionally/nonorganically grown FV. Likewise, confusion and fear regarding conventionally grown FV associated with pesticides have also been reported.

“Low-Income Shoppers and Fruit and Vegetables: What Do They Think?”, Huang et al. *Food and Nutrition*. Vol. 51, No. 5, 242. Sept./Oct. 2016 (internal citations omitted).

This research highlights the importance of how messages regarding organic products are conveyed in order to both meet the Act's statutory standard of truthful, non-misleading and non-disparaging, messaging *and* to promote the consumption of healthy foods:

It is clear that low-income shoppers are hearing messages about pesticide residues and FV. It is also clear that the content and how the information is presented could negatively impact overall FV purchasing and intake in low-income populations... Acknowledging that media also play a significant role in communications suggests that continued professional interactions with media to educate and help them translate science about FV growing practices, real versus perceived safety issues, and benefits of FV will be of critical importance to ensure consumers are getting accurate and actionable information relevant at all income levels.

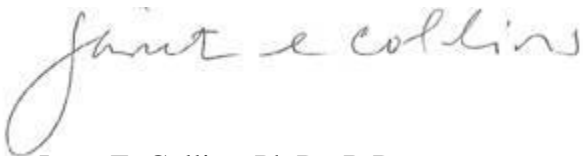
Id. at 249.

As set forth above, not only must promotion meet the Act's truthful, non-misleading and non-disparaging standard, research must do so, as well. All research supported under the Proposed Order, and the outcomes of that research, must be carefully constructed and communicated so that they do not create a means by which AMS-supported research would make misleading or disparaging comparisons between organically produced and conventionally produced agricultural products. Appropriate and scientifically balanced research studies must be well managed under the Proposed Order, as it is with other USDA Promotion, Research and Information Orders. The expectation of equivalence in food and feed safety, nutritional value and wholesomeness between organically produced and conventionally produced foods must be maintained by USDA oversight if this Proposed Order is to be of real value to US agriculture and to consumers. Growers and other merchants of certified organic products may choose to support the Proposed Order. If so, in implementing it, research and messaging undertaken in support of organic products must be carefully crafted and reviewed by regulators to ensure that all these activities meet the Act's statutory requirements. Ensuring that no advertising under the Proposed Order could be construed as false, misleading or otherwise disparaging to other agricultural products will not only comply with the requirements of the Act and the intent of the OFPA, it also will help ensure that all consumers are encouraged to consume safe, abundant, healthy food grown under the production method of their choice.

Should you have any questions or wish to discuss this matter, please contact me directly by email (jcollins@croplifeamerica.org) or telephone (+1-202-833-4474).

Thank you for your consideration of these comments.

Respectfully,

A handwritten signature in cursive script that reads "Janet E. Collins".

Janet E. Collins, Ph.D., R.D.

Executive Vice President, Science and Regulatory Affairs