MISSISSIPPI LEGISLATURE
REGULAR SESSION 2000
By: Stogner, Horhn
To: Agriculture

SENATE BILL NO. 2559
(As Sent to Governor)

AN ACT TO CREATE AN ORGANIC CERTIFICATION PROGRAM TO BE DEVELOPED AND IMPLEMENTED BY THE DEPARTMENT OF AGRICULTURE AND COMMERCE FOR THE PURPOSE OF DISTINGUISHING AND REGULATING THE SALE OF ORGANIC FOOD; TO PROVIDE DEFINITIONS; TO REQUIRE PERSONS TO BECOME CERTIFIED BY THE DEPARTMENT BEFORE SELLING ORGANIC FOOD; TO PROVIDE CERTIFICATION REQUIREMENTS; TO REQUIRE CERTAIN INSPECTION AND RENEWAL FEES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; TO PROVIDE HEARING PROCEDURES FOR PERSONS ACCUSED OF VIOLATING THIS ACT; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. For the purpose of this act, the following terms shall have the following meanings:

(a) "Agricultural product" means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock that is marketed for human or livestock consumption.

(b) "Certified organic farm" means a farm or portion of a farm or a site where agricultural products or livestock are produced, that is certified by the department as utilizing a system of organic farming.

(c) "Commissioner" means the Commissioner of the Mississippi Department of Agriculture and Commerce.

(d) "Department" means the Mississippi Department of Agriculture and Commerce.

(e) "EPA" means the United States Environmental Protection Agency.

(f) "Farm plan" means a plan of management of an organic farm that has been agreed to by the producer or handler and the department and that includes written plans concerning all
aspects of agricultural production or handling including all
practices required under this act.

(g) "FDA" means the United States Food and Drug
Administration.

(h) "Greenhouse unit" or "unit" means a structure
intended or used for the production of agricultural products.

(i) "Handler" means any person engaged in the business
of handling agricultural products, except such term shall not
include final retailers of agricultural products that do not
process agricultural products.

(j) "Livestock" means any cattle, sheep, goats, swine,
poultry, equine animals used for food or in the production of
food, fish or other seafood used for food, wild or domesticated
game, or other nonplant life.

(k) "Mississippi organic materials and practices
(MOMP)" means a list of approved and prohibited substances and
practices as adopted.

(l) "Organic farming" means a food production system
based on farm management methods or practices that rely on
building soil fertility by utilizing crop rotation, recycling of
organic wastes, application of unsynthesized minerals and, when
necessary, mechanical, botanical or biological pest control.

(m) "Organic food" means a food which is labeled as
organic or organically grown and which has been produced,
transported, distributed, processed and packaged without the use
of synthetic pesticides, synthetically compounded fertilizers,
synthetic growth hormones, genetically modified organisms or
artificial radiation and which has been verified by the department
as complying with all provisions of this act.

(n) "Organically managed or produced" means an
agricultural product that is produced and handled in accordance
with all the provisions of this act and any regulations adopted
thereunder.

(o) "Person" means an individual, group of individuals,
corporation, association, organization, cooperative or other
entity.

(p) "Pesticide" means any substance or mixture of
substances intended for preventing, destroying, repelling or
mitigating any pest and any substance or combination of substances
intended for use as a plant regulator, defoliant, desiccant or any
substance the commissioner determines to be a pesticide.

(q) "Processing" means cooking, baking, heating,
drying, mixing, grinding, churning, separating, extracting,
cutting, fermenting, eviscerating, preserving, dehydrating,
freezing or otherwise manufacturing and includes the packaging,
canning, jarring or otherwise enclosing food in a container.

(r) "Producer" means a person who engages in the
business of growing or producing food, feed, ornamental plants and
livestock.

(s) "Prohibited substances, fertilizers, materials,
pesticides" mean those substances, fertilizers, materials,
pesticides or practices prohibited by this act or regulations from
use in a certified organic farming operation.

(t) "Restricted" means substances and practices which
use is limited or qualified by the commissioner.

(u) "Tolerance" means the amount of a pesticide
permitted on raw or processed agricultural commodities.

SECTION 2. The department and three (3) advisory members
appointed by the Mississippi Organic Growers Association and one
(1) Mississippi State University extension service specialist and
one (1) Alcorn State University extension service specialist may
adopt any rules and regulations necessary for the enforcement and
administration of this act, including, but not limited to:

(a) Crop, livestock and dairy production standards;

(b) Manufacturing, processing, packaging and labeling
standards;

(c) A materials list of permitted and prohibited
substances;

(d) Procedures governing the certification process; and

(e) Standards and procedures for approving out-of-state
organic products and ingredients.

SECTION 3. (1) Any producer who sells or intends to sell organic food shall apply to the department for certification in accordance with this act.

(2) An applicant for certification must document that the land, individual field or greenhouse units to be certified shall be managed organically. Documentation for certification shall be in the form of a detailed, three-year farm plan for land, fields or units and in a format acceptable to the department. The application shall be reviewed by the organic certification program director.

(3) The farm plan shall include:

(a) Three-year rotation and nutrient-stabilization plans for each field or unit under organic management;

(b) One-year, agronomic field-by-field crop practice and spray plans for each field or unit of the farm which is organically managed;

(c) A map of the field to be organically managed which also indicates all buffer zones and their width, with at least a thirty-foot buffer zone separating land managed organically from other cultivated agricultural land and at least a fifteen-foot buffer zone separating greenhouse units managed organically from other units;

(d) A description of facility and methods that shall be used to keep organically-managed crops and livestock from post-harvest segregated from nonorganically-managed crops and livestock;

(e) A description of facilities and methods that will be used to keep farm equipment from contaminating organically-managed fields; and

(f) A description of facilities and methods that shall be used to store and handle prohibited materials separately from permitted materials.
(4) A crop grown in an organically-managed field, any part of which is located within thirty (30) feet of a field to which a prohibited pesticide has been applied, shall be tissue-tested for residues of that pesticide before the harvest of the organic crop.

(5) The department shall not certify a field as organically-managed that is part of a farm unless there exist distinct, defined boundaries between fields under organic management and other fields.

(6) The department shall not certify land that has no previous history as cultivated cropland, orchard or improved pasture, and that is being converted to organic for the sole purpose of replacing land abandoned because of chemical contamination or depleted fertility resulting from previous farm-management practices.

(7) In order to be certified, greenhouse units must be used solely for organically-produced agricultural products in compliance with this act and applicable regulations.

(8) An applicant for certification shall present soil fertility test results for each field or greenhouse unit to be certified initially and every third year thereafter.

(9) An applicant shall also present the results of water residue and plant-tissue tests as required by the department.

(10) The department shall reserve the right to use a certification rating system in evaluating the application.

SECTION 4. (1) Every precaution shall be taken to avoid pesticide or other contaminating residues on agricultural products sold or labeled as organic. In cases of unavoidable environmental contamination, residues shall not exceed the limits set by the department. For any substance not currently regulated by federal law, the department may set appropriate action levels.

(2) The department shall sample a percentage of organic raw agricultural commodities and organic processed food products as part of the state pesticide residue monitoring program. Results
obtained from organic produce and organically processed product samples shall be compiled in a separate annual report and submitted to the United States Department of Agriculture.

(3) If a pesticide residue or residue of another prohibited substance is found on an organic raw agricultural commodity or an organically processed product by a state pesticide residue monitoring program, the department may conduct an investigation of the appropriate handler, producer or processor.

(4) The department may conduct periodic residue testing of agricultural products sold as organic in the following situations:

(a) In cases of pesticide drift;

(b) When farm or handling facility inspection leads to suspicion of residue problems;

(c) Suspicion that the soil harbors contaminants;

(d) Suspicion that irrigation water or rainfall contains residues;

(e) During the thirty-six-month period immediately following treatment of a certified organic farm by a state or federal emergency spray program; or

(f) In response to complaints, or to follow up on positive residue testing results from federal, state, or local government testing.

SECTION 5. (1) The department may certify a crop as organic only if harvest occurs at least three (3) years after the most recent use of a prohibited pesticide and at least three (3) years after the most recent use of a prohibited fertilizer.

(2) Farmers, growers or producers may be certified as "transition to organic" within the three-year period required for being certified as organic pursuant to subsection (1) of the section. A "transition to organic" certification shall not exceed three (3) consecutive years for the same farm unit.
SECTION 6. If a certified farm, field or greenhouse unit is removed from organic management, it may be recertified after passage of three (3) years without the application of a prohibited pesticide and two (2) years without the application of a prohibited fertilizer or other prohibited material.

SECTION 7. (1) The following records shall be kept for each farm, field or other agricultural production unit for which application for certification is made:

(a) Copies of farm questionnaires devised by the department and completed by applicants for certification;

(b) Field-by-field or unit-by-unit fertilization, cropping and pest management histories;

(c) Records of all laboratory analyses performed for a farm, including soil tests, plant-tissue tests, forage tests, bacteria counts and residue tests for toxic contaminants in soil, water or crops for at least three (3) years and made available for review by the department;

(d) Records of all crops produced shall show by lot, bin or shipment numbers and dates which field a particular lot came from;

(e) A producer of both organic produce and nonorganic produce on the same farm shall keep separate records for each of these two (2) categories. The sales records shall include verification documents such as questionnaires, farm plans, affidavits, inspection reports, laboratory analyses and documents showing the path taken by an organic food product through post-harvest handling and distribution;

(f) Other documentation required to complete the application for certification or recertification as required under Section 3 of this act.

(2) The following records shall be kept for processors:

(a) The department-devised questionnaire covering all nonfarm aspects of food processing and manufacturing, if
applicable, to be prepared for each stage of the processing where
a food is substantially changed from its previous state and
covering every aspect of the product relevant to the department’s
certification standards; and

(b) Notarized affidavits and agreements declaring that
the information they provide is accurate.

(3) (a) The department shall conduct a minimum of one (1)
on-site inspection per year of every farm or processing facility
for which a questionnaire is required; and

(b) These inspections shall be reported on a form
signed by a department inspector that includes the following
information:

(i) Observations about the condition of the farm
or processing facility;

(ii) Comments about the use of restricted or
prohibited practices and materials; and

(iii) An optional certification rating of the
operation.

(4) The department may conduct unannounced inspections of
certified producers and certified processors.

SECTION 8. (1) The department may conduct or provide for
audits of all documents used to verify that certified products
meet organic standards.

(2) These audits shall include, where appropriate:

(a) An inventory audit, a listing of the formulations
of the product, percent accuracy in labeling, the amount bought
and sold per product and producer or destination and the number of
vendors and amount of product per vendor; or

(b) A farm audit, listing the amounts sold per product,
date and destination and the area and location planted of each
product with dates of harvest.

(3) Information contained in audit records that is exempt
under the Public Records Act of Mississippi shall remain
confidential. Such exempt confidential information shall include,

but not be limited to:

(a) Information that, if released, would give advantage
to competitors or bidders; and

(b) Trade secrets and commercial or financial
information obtained from a person and privileged or confidential
by statute or judicial decision.

SECTION 9. (1) Applications submitted under this act shall
be in writing on a form prescribed by the department.

(2) A separate application shall be submitted for each farm,
farm unit, processing plant, distribution facility or retail
operation.

(3) Applications and verification documents shall be
submitted to the Mississippi Department of Agriculture and
Commerce.

(4) The department shall authorize retailers and
distributors to use the Mississippi certified organic mark upon
satisfactory completion and approval of a department application
form.

(5) All applicants entitled to use the mark shall be subject
to inspection by the department.

SECTION 10. (1) The following conditions apply generally to
the retail sale of organic products:

(a) Any person selling organic products shall be
certified by the department, shall renew certification annually
and shall abide by the provisions of this act.

(b) A certified retailer may use the department
approved mark to identify only certified organic or transition to
organic food produced in Mississippi by a department certified
producer.

(c) Products bearing a Mississippi organic or
transitional organic mark shall be easily identifiable to
consumers and shall be clearly distinguishable from similar
products that are not Mississippi certified or transitional organic.

(d) A certified retailer may sell or hold out for sale as organic those agricultural products that have been certified as organically produced by the official certifying agent for the state of origin.

(2) A retailer or distributor shall have in place physical facilities and management procedures adequate to prevent commingling of organic food or organic products with other nonorganic or contaminated food or products during distribution or stocking.

SECTION 11. (1) The department shall not certify drugs or drug ingredients under this act.

(2) No person may use a Mississippi certified organic mark in connection with, nor represent as Mississippi certified organic, any product or any ingredient of a product that is regulated as a drug or that has been determined by a state or federal agency of competent jurisdiction to be subject to regulation as a drug.

(3) No person may use a Mississippi certified organic mark or represent any product or ingredient as Mississippi certified organic in an advertisement including, but not limited to, a printed or broadcast advertisement, “advertorial,” flier, point-of-purchase material, signage or other printed material, that makes medicinal claims.

SECTION 12. (1) The department shall perform inspections of certified producers, processors, retailers, distributors and applicants for certification at a time when normal production, post-harvest or sales activity can be observed.

(2) The department may issue a stop sale on products that falsely or erroneously claim to be organic. The stop sale may be lifted at such time as the seller can show:

(a) That the products were organically managed in
compliance with this act and regulations or that of the state of
origin; or
(b) That he agrees to drop any claim that the products
were organically produced.
(3) The department may conduct unannounced inspections in
cases of suspected violations of standards.
(4) Any person with cause to believe that any provision of
this act has been violated may file a written or oral complaint
with the department setting forth the facts of the alleged
violation.
(5) The department shall maintain for three (3) years
records of all complaints, investigations, and remedial actions.
These records shall become part of the reviewing record of any
proceeding involving a certified person or applicant for
certification.

SECTION 13. (1) Producers and processors participating in
the department’s organic certification program will be charged an
inspection fee and an annual renewal fee. Retailers and
distributors shall be charged an application fee for the initial
inspection conducted by the department in accordance with this act
and the regulations and an annual renewal fee.
(2) The inspection fee shall be paid by the new applicant
and those applicants renewing certification, and shall be paid in
accordance with the following schedule:

<table>
<thead>
<tr>
<th>Producer</th>
<th>Initial application</th>
<th>Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>less than 5 acres</td>
<td>$25.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>5 to 25 acres</td>
<td>$50.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>over 25 acres</td>
<td>$75.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Greenhouse Producer</td>
<td>Initial application</td>
<td>Renewal</td>
</tr>
<tr>
<td>less than 250 sq. ft.</td>
<td>$25.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>250 to 1,000 sq. ft.</td>
<td>$50.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>over 1,000 sq. ft.</td>
<td>$75.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>Distributor</td>
<td>Initial application</td>
<td>Renewal</td>
</tr>
<tr>
<td>250 to 999 sq. ft.</td>
<td>$25.00</td>
<td>$25.00</td>
</tr>
<tr>
<td>over 1,000 sq. ft.</td>
<td>$50.00</td>
<td>$25.00</td>
</tr>
</tbody>
</table>
SECTION 14.  (1) The labeling, advertising or otherwise representing of food to be organic by any producer, handler, distributor or retailer is prohibited, unless the food complies with this act and regulations.

(2) The selling or offering for sale of food as organic which does not comply with this act or regulations is prohibited.

(3) The buying, selling or offering for sale of any organic food by any handler, distributor or retailer in violation of this act or regulations is prohibited.

(4) The use, employment, adoption or utilization of the Mississippi certified organic mark in the selling, advertising, marketing, packaging or other commercial handling of food and fiber product without prior application to and approval by the department is prohibited.

SECTION 15. Any person who violates this act or any regulation is guilty of a misdemeanor, and shall be punished by the imposition of a fine not to exceed Five Hundred Dollars ($500.00) or by imprisonment in the county jail for a term not to exceed six (6) months, or both.

SECTION 16.  (1) If a person violates this act, or rules and regulations, administrative proceedings may be brought against the person by a written complaint filed with the department. The matter shall be heard by the organic certification program director or his designated representative in an informal meeting between the accused and the program director or his designee. If the program director or his designee finds that the accused did commit a violation, the program director may levy a civil penalty against the accused in an amount as authorized by the regulations.
of the department, revoke or suspend the registration, license or
certification of the accused and require the accused to remove the
mark from the goods or products that are in violation of this act
before sale. The program director or his designee shall render a
written opinion. If either party is aggrieved by the findings of
the program director or his designee, he may appeal to the
commissioner for a full evidentiary hearing. At the hearing
before the commissioner or his designated representative, the
matter shall be heard de novo, the commissioner shall have
subpoena power, the witnesses shall be placed under oath and the
testimony shall be recorded. The commissioner or his designee
shall render a written opinion. If either party is aggrieved by
the findings of the commissioner, he may appeal to the circuit
court of the county of residence of the accused, or, if the
accused is a nonresident of the State of Mississippi, to the
Circuit Court of the First Judicial District of Hinds County,
Mississippi. If either party is aggrieved by the findings of the
circuit court, he may appeal to the Mississippi Supreme Court.
All fees, costs and penalties collected from the accused may be
retained by the department for its operating expenses. The
commissioner may expand and amplify the procedures and other
matters mentioned in this section in such rules and regulations
that the commissioner deems necessary or desirable to carry out
this section.

(2) When any violation of this act or rules and regulations
occurs or is about to occur that presents a clear and present
danger to the public health, safety or welfare requiring immediate
action, the commissioner or any designated representative may
issue an order to be effective immediately, before notice and a
hearing that imposes upon the accused a stop sale order, requires
the relabeling of a product, requires the seizure and sale of a
product and such other measures as the commissioner deems
necessary under the circumstances. The emergency order shall
contain findings to this effect and the reasons for its entry. The order shall contain or be accompanied by a notice of opportunity for hearing which shall provide that a hearing shall be held if and only if the person subject to the order requests a hearing within ten (10) days of receipt of the order and notice. A copy of the order and notice shall be served upon the affected person by certified mail or by any of the methods set forth in Rule 4 of the Mississippi Rules of Civil Procedure. Upon a request for a hearing, a complaint setting forth the charges shall be served upon the accused, and the procedure outlined in subsection (1) of this section shall be followed. If it is determined by the reviewing officer or the commissioner, or his designee, that the emergency order was erroneously entered, a remedy shall be fashioned which will make the affected person whole.

SECTION 17. This act shall take effect and be in force from and after July 1, 2000.