

# Issue Brief for Congress

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## **Fruits and Vegetables: Issues for Congress**

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## Fruits and Vegetables: Issues for Congress

### SUMMARY

Although fruits and vegetables are not among crops normally receiving farm subsidies, there are a number of U.S. Department of Agriculture (USDA) activities and programs that provide support to fruit and vegetable growers. These include crop disaster assistance and, in recent years, market loss assistance payments. The government also supports these crops through federal marketing orders, the Market Access Program (MAP), food safety activities, research programs to improve crops and to help develop safe pesticides (e.g., alternatives to methyl bromide), and research and inspection activities to prevent foreign pests and disease from entering the country and to manage and eradicate them if they are introduced. The primary law that exclusively serves the produce industry is the Perishable Agricultural Commodities Act of 1930 (PACA).

Farm bills also contain provisions that affect this industry. The Farm Security and Rural Investment Act of 2002 (P.L. 107-171/H.R. 2646) was signed into law on May 13, 2002. The Act maintains: the restriction on planting of fruits and vegetables by commodity program growers; increases funding for the Market Access Program; provides technical assistance on barriers to specialty crop exports; provides funding for several nutrition programs that encourage the domestic consumption of produce; a new research program to improve harvesting productivity for fruits and vegetables; a program to authorize some uses of methyl bromide and search for alternatives; and requires a report on improvements to crop insurance for specialty crops. It also provides market loss assistance to apple growers and New York onion grow-

ers; provides disaster assistance to tree growers; authorizes a marketing order for caneberries; increases Section 32 funding including \$200 million annually to purchase fruits and vegetables; establishes programs to help organic producers; authorizes a Cranberry Acreage Reserve Program; and provides for temporary followed by mandatory country of origin labeling.

FY2002 agricultural appropriations legislation (P.L. 107-76/H.R. 2330) included \$75 million in market loss assistance for apple growers; \$344.7 million for FDA food safety activities and \$352 million for FDA inspections and import monitoring. It also increased funding for research on emerging diseases and pests of plants and invasive insect species that affect fruits and vegetables; and provided \$2,498,000 for the Methyl Bromide Transition Program. Funding for APHIS programs that benefit fruits and vegetables was increased by \$55.7 million. These spending levels remain in effect as long as the government is operating under continuing resolutions in FY2003.

Several bills that related to issues of foreign agricultural workers' immigrant status and wages were proposed but not passed in the first session of the 107<sup>th</sup> Congress.

The alleged dumping of foreign fruit and vegetable commodities into the U.S. market is an issue of concern to the produce industry, although no legislation was proposed in the 107<sup>th</sup> Congress to address the issue. However, some growers were successful in obtaining Department of Commerce and International Trade Commission acceptance of their anti-dumping petitions.

## **MOST RECENT DEVELOPMENTS**

The status of legislation making appropriations for USDA for FY2003, which would include provisions affecting the Department's several programs affecting the fruit and vegetable industry, cannot be reported definitively at this time. Floor debate has not yet taken place on the original House and Senate measures, which the respective Appropriations Committees reported out in July 2002. Currently, work is proceeding on an omnibus FY2003 appropriations measure that includes USDA funding as well as a \$3.1 billion agriculture disaster package that may affect some specialty crops. The President's FY2004 budget proposal will be released on February 3, 2003.

## **BACKGROUND AND ANALYSIS**

### **Introduction**

Fruits, vegetables, and tree nuts earned U.S. farmers \$28.5 billion in 2000, about 13% of all U.S. farm cash receipts. In 2000, per capita U.S. consumption of fruits and vegetables was 777 pounds, of which 307.1 pounds were fruits and tree nuts, and 469.9 pounds were vegetables and melons. Per capita consumption of fruits and vegetables grew by 12% between 1987 and 1997 for a variety of reasons: increased health concerns of Americans, improved quality, increased variety in supermarket produce departments (including packaged salads and fresh-cut vegetables and fruits), greater availability through world trade, and increased food service sales of fresh fruits and vegetables.

U.S. fruit, vegetable, and tree nut exports in 2000 totaled \$7.3 billion, or 14% of the total value of that year's agricultural exports (\$51.6 billion). Major produce exports were almonds, frozen potato fries, apples, grapes, and orange juice. In 2000 the top markets for these exports were Canada (\$2.3 billion), Japan (\$1.4 billion), the European Union (\$1.1 billion), and Mexico (\$639 million). In 2000 exports to Canada, Japan, and Mexico increased, and sales to the European Union, the third largest market, remained strong.

The value of produce imports (\$9.0 billion) exceeded produce exports by \$1.7 billion in 2000. Major U.S. produce imports were bananas and plantains, tomatoes, grapes, cashews, and peppers. The top suppliers of imported fruits and vegetables were Mexico (\$2.6 billion), South American countries (\$1.8 billion), Central American countries (\$1.1 billion), Canada (\$1.1 billion), and the European Union (\$803 million). Of the total fruits and vegetables (fresh and processed) consumed in 2000 in the United States, 17.4% were imported. About 38% of fresh fruits consumed and 11% of fresh vegetables consumed that year were imported products.

## Federal Activities and Programs

### Emergency Assistance

Congress has provided crop disaster assistance to growers of all crops, including fruits and vegetables and other horticultural crops, for many years, compensating them for damage from droughts, hurricanes and floods, insects, and plant diseases. In recent years, Congress also has provided market loss payments, a new type of emergency assistance to compensate producers for market losses caused by low commodity prices. Market loss assistance and disaster payments are funded through the borrowing authority of USDA's Commodity Credit Corporation (CCC) and administered by USDA's Farm Service Agency. Most disaster assistance and market loss payments have gone for grains, cotton, rice, oilseeds, and dairy, or so-called program crops. According to data from the Farm Service Agency for 1998 specialty crops got about 20% of a total of \$1.9 billion in disaster assistance paid to farmers for that year.

P.L. 107-25 (H.R. 2213) provided \$5.5 billion in emergency direct payments to farmers in FY2001, of which \$159.4 million went to specialty crops, including fruits and vegetables. Of the specialty crop total, \$26 million was distributed as "base state grants" with each state getting \$500,000 and Puerto Rico getting \$1 million; the remaining \$133.4 million was distributed in proportion to the value of specialty crops in each state (but not Puerto Rico), as specified in the new law. In addition to the \$159.4 million, the law provided \$10 million for processing, transportation and distribution of commodities to recipient agencies.<sup>1</sup>

The FY2002 agricultural appropriations (P.L. 107-76/H.R. 2330) provided \$75 million in market loss assistance for apple growers, which was less than the \$150 million approved by the House but more than the Senate bill (S. 1191) which contained no such funding.

The 2002 farm bill (P.L. 107-171/H.R. 2646) provides \$96 million for market losses in the 2000 crop year to apple producers and \$10 million for market losses in 1996 through 2000 crop years to onion producers in Orange County, New York. It also authorizes disaster assistance for commercial growers of trees, bushes and vines with a limit of \$75,000 in payments on no more than 500 acres per individual grower. For further information on agricultural emergency assistance, see CRS Report RL31095, *Emergency Spending for Agriculture: A Brief History of Congressional Action, FY1989-2001*.

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<sup>1</sup> The Senate version of this legislation (S. 1246) would have provided a total of \$7.5 billion (\$5.5 billion in FY2001 and \$2 billion in FY2002) in farm aid, with \$220 million for specialty crops experiencing low prices in 2000 and 2001 crop years. It also would have required that \$55 million of these funds be used to purchase agricultural commodities (including fruits and vegetables) for distribution in the School Lunch Program, and provided \$20 million to cover commodity transportation and distribution costs for these commodity purchases. The Senate bill also would have provided \$150 million to apple producers for market losses during the 2000 crop year. The Senate bill was defeated on the Senate floor and the House bill (H.R. 2213) was passed by the Senate in its stead on August 3, 2001.

## Marketing Services

The Agricultural Marketing Service (AMS) administers several services for the produce industry. These include Federal Marketing Orders, and programs and activities (including inspection services) authorized by the Perishable Agricultural Commodities Act of 1930 (PACA).

**Federal Marketing Orders.** Federal marketing orders give authority to committees of growers and handlers to make regulations for the marketing of specified fruits, vegetables, tree nuts, and specialty crops. In October 2002 there were 36 federal marketing orders in effect. Local administrative committees decide if a marketing order in a specific geographical area will have regulations requiring quality and quantity controls, standardized packages and containers, research and promotion, and marketing information. Any regulations that are adopted are binding and must be approved by two-thirds of the growers and handlers and the Secretary of Agriculture. AMS is responsible for formulating new marketing orders upon request of growers and handlers, and for monitoring marketing orders to assure they operate legally and in the public interest. These activities are financed by assessment fees collected from handlers; of the funds collected, Congress annually appropriates an amount to support AMS' personnel costs for operating the orders. In FY2002, the agency received \$14.6 million.

**Perishable Agricultural Commodities Act (PACA).** The Perishable Agricultural Commodities Act of 1930 promotes fair trading practices in the fruit and vegetables industry, ensures that sellers are paid even if the buyers become bankrupt, and provides procedures for resolving disputes outside the civil court system. Under this system a trust is established consisting of a buyer's produce-related assets. If a buyer becomes bankrupt, produce suppliers that have preserved their trust rights can recover money owed to them before trust assets are made available to general creditors. PACA activities in most years are funded by license and complaint filing fees (about \$7 million in FY2002), rather than by federal appropriations. One recent exception occurred in FY2000, when Congress appropriated a one-time amount of \$30.5 million under the Agricultural Risk Protection Act of 2000 (P.L. 106-224) to make an AMS proposal to increase the license fee unnecessary.

Under PACA, growers and shippers who were injured between 1996 and 1999 in a bribery scheme at the Hunts Point Wholesale Produce Market in Bronx, New York were permitted to file claims against the companies that were implicated. Damages to growers and shippers were estimated to be \$13.95 million to \$55.8 million. AMS inspectors were charged with accepting cash bribes in exchange for reducing the grade of the produce that they inspected, which then allowed the wholesale companies to pay amounts less than the invoice price to their suppliers. Of the 24 inspectors and wholesaler's employees who were arrested, 23 were convicted. Congress sought to improve the AMS inspection system so that such incidents would not occur in the future when it enacted the Agricultural Risk Protection Act of 2000 (P.L. 106-224) in June 2000. Under this law Congress provided \$11.55 million for AMS inspection service improvements. Many in the industry felt, however, that in addition to these provisions, Congress should provide restitution to the companies who were injured by the bribery scheme. No action was taken to do this in the 107<sup>th</sup> Congress.

## Market Access Program (MAP)

MAP, a program that helps develop foreign markets for U.S. exports, is especially important to the fruit and vegetable industry. Of the 66 U.S. trade organizations receiving MAP funds in FY2002, 31 (or 47% of the total) were fruit, vegetable, and wine trade groups. These groups received \$41.3 million, or 41% of the total \$100 million of MAP allocations for that fiscal year. Although funding for MAP is provided through the Commodity Credit Corporation (CCC) and not through annual appropriations, attempts are made almost every year in the agricultural appropriations legislation to put limitations or caps on MAP funding. An amendment proposed in the House floor debate on the FY2002 agricultural appropriations (H.R. 2330) would have prohibited any MAP funding in FY2002, but the amendment was defeated by a vote of 85-241. Many in the produce industry have asked for increased funding for MAP. The Farm Security and Rural Investment Act of 2002 (P.L. 107-171, the 2002 farm bill) gradually increases the authorized funding level from \$100 million in FY2002 to \$200 million in FY2006.

Supporters say that the program increases U.S. exports and consequently farm income and promotes thousands of non-farm jobs. They also contend that MAP funding is necessary to counter heavily subsidized foreign competition. Produce groups see MAP as one of the few programs that helps open foreign markets to U.S. produce and food exports and note that the government does not subsidize produce as it does other crops such as grains and cotton. Opponents of MAP argue that the program is “corporate welfare” because it subsidizes the advertising budgets of some of the largest and wealthiest exporters in the United States (Sunkist Growers, Blue Diamond Nuts, Welch’s Foods, Sunsweet, Ocean Spray, and others). Opponents also question the claim that MAP offsets foreign competitors’ export subsidies and that it increases farm income or American jobs. For further information see CRS Report RS20415, *Agricultural Export Programs: The Market Access Program and Foreign Market Development Cooperator Program*, and CRS Issue Brief IB98006, *Agricultural Export and Food Aid Programs*.

## Food Safety

During the 1990s, the produce industry and government food safety officials became concerned about foodborne illnesses linked to fruits and vegetables, particularly after unpasteurized fruit juices and fresh salad ingredients caused outbreaks of severe illness and death. According to data from the Centers for Disease Control and Prevention (CDC), between 1993 and 1997, out of a total of 3,021 *outbreaks* of foodborne illness from all foods, 80 (2.6%) were attributed to fruits and vegetables. Of 92,695 individual *cases* of food-borne illness from all foods during the same period, 13,442 (14%), were attributed to fruits and vegetables. (These statistics represent the number of outbreaks and cases that were reported to the CDC for which there is a known vehicle of transmission.) The CDC estimates that, each year, a total of 76 million foodborne illnesses (reported and not reported) occur in the United States, resulting in 325,000 hospitalizations and 5,000 deaths.

**Domestically Produced Food.** Certain steps to improve the safety of fruits and vegetables were undertaken in 1997 as part of the Clinton Administration’s *Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables*. The Food and Drug Administration (FDA), which is responsible for the safety of fruits and vegetables, worked with the produce industry to implement voluntary FDA guidelines to help growers minimize

microbial contamination of fresh fruits and vegetables. In addition, FDA promulgated a regulation that requires a warning label on fruit and vegetable juices that have not been pasteurized, and a regulation that requires all fruit and vegetable juice processors to implement Hazard Analysis and Critical Control Point (HACCP) standards. HACCP is a pre-emptive food safety method based on identifying where hazards can enter food during preparation and taking steps to prevent them.

The Bush Administration has continued certain activities begun under the Clinton Initiative. A survey of domestic fresh produce is ongoing. In an interim report on the survey in July 2001, it was reported that out of 767 samples of domestically produced fruits and vegetables, 12 samples or 1.6% were found to have the presence of either *Salmonella* or *Shigella*, but none of the samples had the presence of *E. coli* 0157:H7. Produce items that are being tested are cantaloupe, celery, cilantro, green onions, loose-leaf lettuce, parsley, strawberries, and tomatoes. These items are generally eaten raw and are representative of the types of products that present a greater risk of having pathogenic bacteria in them. In addition, AMS is continuing a pilot program called the Microbiological Data Program. Its goal is to collect information on the foodborne pathogens on domestic and imported fruits and vegetables. The Bush Administration intends for the program's information to be used to help federal and state public health agencies, such as the CDC, and the produce industry, in their food safety decisionmaking.

**Imported Food.** The Bush Administration also has continued to pursue the goal of preventing the importation of unsafe produce through increased international inspection and training of foreign governments on U.S. food safety laws. According to FDA officials, the agency has increased import inspections by 90% over earlier years, and both FDA and USDA have worked with the governments of foreign countries to update their inspection systems.

In January 2001, FDA released a Clinton-initiated survey of imported fresh produce. The report said that of 1,003 samples that were collected and analyzed, 44 samples (4%) were contaminated with either *Shigella* or *Salmonella*, while none of the produce items were contaminated with *E. coli* 0157:H7. Items that were tested were broccoli, cantaloupe, celery, cilantro, culantro (herb similar to cilantro), loose-leaf lettuce, parsley, scallions (green onions), strawberries, and tomatoes. Items with the greatest amount of contamination were cilantro, cantaloupe, and culantro. Food safety training was provided at firms that were the source of the contaminated produce, and harvest workers were taught the proper sanitary practices needed to harvest and maintain harvest equipment in a sanitary manner. Training sessions were held in 2001 in Central America, Brazil, and South Africa. In addition, the United States on September 4, 2001, signed an agreement with Mexico to share information for the purpose of reducing foodborne illnesses.

Finally, under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188), the practice of "port shopping" was made illegal. FDA is to promulgate through the Federal Register rulemaking process a regulation to require that food products refused entry into the United States for food safety reasons will be marked "UNITED STATES REFUSED ENTRY." The intent is to prevent unscrupulous importers from trying to enter a refused shipment through a second or third U.S. port.

**FY2002 and 2003 Appropriations.** The FY2002 agriculture appropriations law (P.L. 107-76) provided \$344.7 million for FDA food safety activities, an increase of \$9.4



million. It further provided \$352 million, an increase of \$10.3 million for FDA inspections and import monitoring.

For FY2003, the bill reported by the House Appropriations Committee (H.R. 5263) provides for total FDA funding of \$1.385 billion for FY2003, an increase of \$15.7 million above the FY2002 appropriation of \$1.218 billion and \$7.3 million above the FY2003 Administration request of \$1.377 billion. The Senate Appropriations Committee-reported bill (S. 2801) provides a total of \$1.404 billion, which is \$19 million above the House level, \$34.7 million above the FY2002 appropriation and \$26 million over the request.

H.R. 5263 does not include a specific level of funding for food safety, but the Senate committee, noting the expansion of FDA activities under the category of "Food Safety Initiative" recommends a total of \$504.8 million in S. 2801 for this purpose. House report language requests a summary of the case-controlled studies that link naturally-occurring bacterial pathogens to specific foods - i.e., *E. coli*, *Salmonella*, *Campylobacter*, and *Listeria* found on meat, poultry, eggs, seafood, fruits and vegetables. In addition, both bills would support further progress in the detection of the pathogens; the Senate would provide \$2 million for FDA to continue the evaluation of new testing methods for pathogens at New Mexico State University.

## Research

Two USDA agencies support extensive research on improving U.S. fruit and vegetable crops and protecting them from pests and diseases. USDA's in-house research agency, the Agricultural Research Service (ARS) spent \$144 million in FY2002 in fruit, vegetable, and tree nut research. Through USDA's Cooperative State Research, Education, and Extension Service (CSREES) \$45.5 million went to state agricultural research experiment stations for fruit and vegetable research in FY2001, and states appropriated an additional \$153.9 million for a total of \$199.4 million.

**Insect Pests and Diseases.** Fruit and vegetable crops are threatened by a variety of emerging pests and diseases, including citrus canker, fruit fly (Mediterranean, Mexican, and Oriental), plum pox virus, and Pierce's disease (which affects wine and table grapes), among others. Growers testified in recent hearings that they support increased funding for research on the prevention, detection, control and eradication of these pests. It was also suggested that research be done to find new pest and disease resistant varieties of fruit and vegetable crops.

Congress annually appropriates funds to address particular ongoing or emerging pest and disease problems. For FY2003 agricultural appropriations, the House bill (H.R. 5263) proposes \$202.4 million for the Emerging and Exotic Diseases and Pests of Plants program under ARS. The Senate bill (S. 2801) proposes \$207.2 million for this program that targets citrus canker, Plum Pox virus, Pierce's disease, and diseases of vegetables. Both the House bill and the Senate bill are higher than the ARS request of \$56.2 million. The ARS Invasive Species (Control of Weeds/Arthropods) program supports laboratories to find natural enemies of arthropods and weeds, and to develop methods and Integrated Pest Management (IPM) Pilot Tests to control these pests. Arthropods to be investigated include several kinds of fruit flies and the glassy-winged sharpshooter that spreads Pierce's disease, among other pests. For this program in FY2003, the House proposes \$105.8 million (an increase of \$9.9

million over the ARS request for \$95.9 million), and the Senate proposes \$110.4 million (an increase of \$14.5 million over the ARS request).

For the CSREES program, Critical Issues – Plant and Animal Diseases, both House and Senate bills propose \$500,000, an increase of \$300,000 over the FY2002 enacted amount (\$200,000). This program in FY2002 was known as the Emerging Pests/Critical Issues program under CSREES Research and Education Activities, and it covered plant pests only. Under the FY2003 budget and bill proposals, this program would include both plant and animal pests and is part of Integrated Activities.

**Alternatives to Methyl Bromide.** Methyl bromide is a pesticide that is widely used by the fruit and vegetable industry. About 87% of the total agricultural use is for soil fumigation to protect crops against weeds, insects, and plant diseases. Another 8% is used on crops after harvest to prevent the export of pests to foreign countries, many of which require the process before items can enter the country. About 5% is used for fumigation of warehouses, silos, food processing facilities, and transportation vehicles.

The use of methyl bromide has become an issue of concern because it contributes to the destruction of the ozone layer in the earth's upper atmosphere. In 1997, an amendment to an international agreement known as the "1987 Montreal Protocol on Substances which Deplete the Ozone Layer", to which the United States is a signatory, required that the use of methyl bromide be gradually reduced, and its production be completely eliminated by 2005 in industrialized countries. In the United States the deadline for the production of methyl bromide was moved up to 2001 under the 1990 Clean Air Act, but this phaseout date was later changed to conform with the Montreal Protocol's phaseout date of 2005. The change was made by the Omnibus Appropriations Act of FY1999 (P.L. 105-277), which like the Montreal Protocol also permits the use of methyl bromide for fumigation of exports of U.S. produce to foreign countries and of produce imported into the United States, since no alternative currently exists for this purpose. On July 24, 2001, the Environmental Protection Agency (EPA) published final rules for an interim process for exempting quarantine and pre-shipment applications of methyl bromide under the Clean Air Act. (See the U.S. EPA Methyl Bromide Phase Out Web Site at [<http://www.epa.gov/spdpublic/mbr/>].)

Those who are proponents of a global ban on the use of methyl bromide and ceasing its production by industrialized countries sooner than 2005 contend that there are some approved chemical and nonchemical alternatives to methyl bromide already in use, and many are in advanced stages of research. Another contention is that methyl bromide itself is hazardous to the health of farm workers who work in the fields where it is applied, as well as residents who live near those fields. According to the EPA, exposure could lead to respiratory, gastrointestinal, and neurological problems, including inflammation of nerves and organs, and degeneration of eyes as well as fetal defects in pregnant women. Because of the reported effects of exposure to methyl bromide, farm worker advocate groups and other groups want the pesticide banned as soon as possible. Supporters of methyl bromide use contend that there are no economically viable alternatives currently available, and note that some of the suggested alternatives are not acceptable to major export markets (i.e. irradiation) or adversely affect the quality or shelf life of the exported produce (i.e. heat treatment).

The proposed Senate bill (S. 2801) for the FY2003 agricultural appropriation would provide \$3 million for the Methyl Bromide Transition Program, an increase of \$502,000 over the FY2002 enacted amount of \$2,498,000. The proposed House bill (H.R. 5263) would provide \$3.5 million, an increase of about \$1 million over the FY2002 amount.

The 2002 farm bill (P.L. 107-171/H.R. 2646) requires the Secretary of Agriculture, in consultation with local authorities, to determine when methyl bromide may be used to control the spread of plant pests and diseases or noxious weeds. Alternatives must be considered prior to making a determination, and if no alternatives exist the Secretary is required to initiate research programs to develop them. The Secretary must keep a registry of authorized uses. For further information on methyl bromide, see CRS Report RS20863, *Stratospheric Ozone Depletion: Phase-Out of Methyl Bromide*.

## **Animal and Plant Health Inspection Service (APHIS)**

APHIS activities protect U.S. agriculture from harmful foreign pests, noxious weeds, and plant diseases. Because of increased produce imports, tourism, and smuggling in recent years, the produce industry has asked Congress to increase appropriations for APHIS. The industry contends that new pests and disease are costing over \$20 billion annually and that it is more cost-effective in the long-term to increase funding for pest exclusion and detection activities now rather than spend more in the future on eradication measures after pests have become widespread.

The goal of APHIS activities is first to prevent foreign pests and diseases from entering the country, but in case of introduction APHIS cooperates with states to manage and eradicate them. Under pest disease and exclusion activities APHIS has three programs that are valuable to the produce industry. The first of these programs is the Agricultural Quarantine Inspection (AQI) the purpose of which is to prevent foreign species from entering the United States. AQI activities include inspection of cargo and passengers and screening of baggage at U.S. ports of entry. (The AQI part of APHIS' pest and disease exclusion mission has been transferred to the new Department of Homeland Security under P.L. 107-296. For a discussion of issues pertaining to border inspection, agricultural protection, and homeland security, see CRS Report RL31466, *Homeland Security Department: U.S. Department of Agriculture Issues*.) The program also issues export certificates and phytosanitary certificates, conducts activities to prevent smuggling of plant and produce material into the United States, and informs truckers and distributors about shipping restrictions on regulated articles like Mexican avocados and Argentine citrus. The second program is Fruit Fly Exclusion and Detection, which is intended to prevent the establishment of the Mediterranean Fruit Fly (Medfly) and the Mexican Fruit Fly in the United States, among others. The third program is the Trade Issues Resolution and Management (TIRM) program which facilitates the export of U.S. agricultural products when U.S. access to foreign markets is threatened by sanitary and phytosanitary (SPS) barriers. SPS barriers are increasingly used by countries to protect their markets from imported agricultural products, including fruits and vegetables.

Under pest and disease management activities are two programs—Emerging Plant Pests and Golden Nematode. The Emerging Plant Pest program includes activities to eradicate citrus canker in Florida, plum pox virus in Pennsylvania, and the glassy-winged sharpshooter which cause Pierce's disease in wine and table grapes in California. The Golden Nematode

activities are intended to reduce Golden Nematode populations and protect a variety of crops in the state of New York. In addition to funding under these two programs, other funding may be provided for emergency eradication activities under the Contingency Fund and funds transferred from the Commodity Credit Corporation. In FY2001 emergency transfers of CCC funds amounted to \$24.5 million for fruit fly eradication and \$65.9 million for citrus canker eradication.

**Appropriations FY2003.** The following table shows the funding proposals for APHIS programs that benefit fruits and vegetables in the agriculture appropriations bills for FY2003 (H.R. 5263/S. 2801).

### Funding for APHIS, FY2002-FY2003

(\$ in millions)

APHIS Program	FY2002 Estimated	FY2003 Requested	House proposed	Senate proposed
Agricultural Quarantine Inspection	58.1	72.1	59.8	64.2
Trade Issues Resolution and Management	11.6	11.8	11.5	11.5
Emerging plant pests	46.6	131.0	105.8	69.5
Fruit fly	39.0	64.0	47.6	64.9
Golden Nematode	0.9	0.7	0.6	0.6
Plum pox	0.0	5.6	2.6	5.6
Contingency Fund	4.2	4.2	4.1	4.1
Produce subtotal	160.4	289.4	232.0	220.4
APHIS total	620.5	782.2	735.9	735.7

**Issues.** Some regulatory activities of APHIS related to foreign imports are controversial. Domestic industry concerns with the introduction of foreign pests often clash with the trade interests of the industry. Protection from foreign pests can be perceived by the exporting country as fear of competition and therefore any restrictions may be considered unfair phytosanitary barriers. Following are some examples of recent controversies. (For further information on phytosanitary barriers, see section on **Trade Issues: Phytosanitary Issues** in this issue brief.)

**Argentine Citrus.** A final rule was published by APHIS on June 15, 2000, that allowed the importation into the United States of Argentine citrus from areas of Argentina that are free of citrus canker, sweet orange scab, citrus black spot, and other plant pests. Prior to this rule citrus products from Argentina were not allowed to be imported into the United States. The following month, the U.S. Citrus Science Council (USCSC) filed a lawsuit against USDA contending that the rule violated the Plant Quarantine Act of 1912 which protects U.S. growers from foreign plant diseases and insects. USCSC also contended that the science used by USDA was flawed, and asked for an independent peer review body to examine the science on which the final rule is based. The citrus industry was supported in its

position by some in Congress, including Senator Barbara Boxer, who introduced an amendment to the FY2001 agriculture appropriations bill (H.R. 4461) that would have prohibited USDA from using any funds to implement the rule on Argentine citrus imports. The amendment, however, was defeated. Supporters of the import of Argentine citrus contend that excluding Argentine citrus from the United States is protectionist and would set a precedent that would cause other citrus-producing countries to exclude U.S. citrus from their markets. Some U.S. exporters of products other than produce fear that excluding Argentine citrus from the U.S. also might cause Argentina to refuse to import other U.S. agricultural products, a concern especially to the U.S. pork industry. A federal district court in October 2001 ruled in favor of USCSC and overturned the APHIS final rule, suspending import of Argentine citrus into the United States.

**Mexican Avocados.** Despite fears by U.S. avocado growers that the import of Mexican avocados into the United States would risk the introduction of harmful pests, APHIS first approved the import of Hass avocados from the Michoacan region of Mexico into the United States in 1997. On November 1, 2001, a new rule was published to expand the number of states in which fresh Mexican avocados could be distributed. The proposal added 12 Midwestern states to the current list of 19 Northeastern states, and it increased the length of the shipping season during which the Mexican avocados may be imported into the United States by two months. Although APHIS says that expanding the current Mexican avocado import program would pose a “negligible risk” of introducing plant pests into the United States, the California Avocado Commission disagrees. The Commission contends that under the proposal, the avocados could be imported into states with warmer climates where pests might be better able to multiply, and that the fruit could be shipped as late as April 30, which means the fruit could remain in the distribution system into the summer months, further increasing the risk of infestation. It believes that import of avocados from Mexico could lead to an infestation in the United States which could cost more than \$500 million to control and would lead to import restrictions against California produce, financial losses, and lost jobs. Both Mexican avocado growers and U.S. supporters of the proposed rule believe that U.S. growers are using the pest issue to protect the domestic avocado industry from foreign competition.

## Farm Bill Issues

The 107<sup>th</sup> Congress considered an omnibus farm bill to replace program authorizations generally due to expire in 2002 and to set the direction of federal farm policy for the next several years. During extensive hearings on the legislation, including field hearings, an array of issues emerged that are of interest to the fruit and vegetable industry. Two issues that have received widespread discussion are the existing fruit and vegetable restriction on planting by program crop producers and whether or not to introduce direct payments to fruit and vegetable crops in the same manner as payments are now made to program commodities such as wheat, corn, soybeans, sugar, peanuts, and dairy.

### Flexibility Restriction

Under the 1996 farm bill (Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act)) farmers receiving direct government payments are allowed to plant any crop

except fruits and vegetables, and there are penalties for violation of this provision. This restriction was not stated in the law until the 1996 FAIR Act because it was not until enactment of that law that program crop farmers were given the flexibility to raise other crops while still receiving direct government payments. In hearings held on the next farm bill, produce industry leaders said that the restriction on the planting of fruits and vegetables on contract acreage and effective penalties for violation of this provision should be continued. They contended that unsubsidized fruit and vegetable producers should not have to compete in the marketplace with producers who are subsidized by receiving direct government payments.

## **Industry Assistance**

The American Farm Bureau Federation (AFBF) proposed in February 2001 that government payments be made to produce growers when prices go below production costs, and that \$1.5 billion annually should be authorized for this purpose. AFBF contended that many fruit and vegetable growers are suffering low prices and are at risk of going out of business because of losses over a span of several years. AFBF proposed a counter-cyclical program in which government support payments rise when prices are low and decline when prices are higher. Later in 2001 AFBF stopped calling for direct payments to fruit and vegetable growers, reportedly because of concern that such a provision might mean an end to the restriction against planting fruits and vegetables on contract acreage.

Others in the industry contended that subsidizing production in the fruit and vegetable industry would be disastrous because it would lead to overproduction and an oversupply situation that would further depress low prices experienced in recent years by many fruit and vegetable growers. Furthermore, it was contended that many growers did not want to submit to increased regulations that would be part of accepting direct government payments. The produce industry has taken great pride in operating without government subsidies in the past, and would prefer to continue to do so in the future. Nevertheless, many in the industry contended that some government assistance was necessary because of falling commodity prices, increased imports, increased invasive pests, rising energy and water costs, among others. An alternative to direct payments has been suggested by the United Fresh Fruit and Vegetable Association and 24 other produce organizations. In testimony during a May 2, 2001 hearing before the House Committee on Agriculture, United's president delivered this alternative proposal with a suggested price tag of \$3.58 billion. Among the recommendations were an increase in funding for Section 32 government purchases of surplus produce commodities, the addition of fresh fruits and vegetables to the Food Stamp and Women, Infants and Children (WIC) programs, an increase in funding for the Market Access Program, technical assistance to help resolve problems associated with phytosanitary and technical trade barriers, and increased funding for eradication of and research on invasive pests and diseases, among other recommendations.

## **Farm Bill Provisions**

The President signed into law on May 13, 2002, the Farm Security and Rural Investment Act of 2002 (P.L. 107-171/H.R. 2646). Concerning fruits and vegetables, the new Act:

- Continues to prohibit the planting of fruits, vegetables, and wild rice on base acres by commodity program growers is continued and applied to peanut base acres.

- Gradually increases funding for the Market Access Program from \$100 million in FY2002 to \$200 million in FY2006.
- Provides \$2 million annually for an export assistance program to address the barriers to specialty crop exports.
- Provides \$6 million for a Fruit and Vegetable Pilot Program that will distribute fresh and dried fruits and fresh vegetables to elementary and secondary schoolchildren in four states and one Indian reservation.
- Increases funding for the Seniors Farmers' Market Nutrition Program from \$5 million in FY2002 to \$15 million annually for FY2003 through FY2007. The purpose of this program is to provide locally grown fruits, vegetable, and herbs to low-income seniors to increase domestic consumption of produce.
- Authorizes \$10 million annually for FY2002 through FY2007 for a Nutrition Information and Awareness Pilot Program for the purpose of increasing the domestic consumption of fresh fruits and vegetables.
- Adds a new research program to improve harvesting productivity for fruits and vegetables (including citrus).
- Requires the Secretary of Agriculture, in consultation with local authorities, to determine when methyl bromide may be used to control the spread of plant pests and diseases or noxious weeds. Alternatives must be considered prior to making a determination, and if no alternatives exist the Secretary is required to initiate research programs to develop them. The Secretary must keep a registry of authorized uses.
- Permanently includes sweet potatoes as a crop that would be eligible for crop insurance indemnity payments after harvest.
- Requires a report by the Federal Crop Insurance Corporation (FCIC) on the progress made in research and development of risk management products for specialty crops, including specific fruits and vegetables, Christmas trees, and agricultural nursery commodities. The FCIC must also report on the progress in increasing the use of risk management products by specialty crop producers, by small- and moderate-sized farms, and in areas that are under served.
- Provides \$94 million for market loss payments to apple producers for market losses during the 2000 crop year, and \$10 million for onion producers in Orange County, New York for market losses in 1996 through 2000 crop years.
- Authorizes a Tree Assistance Program with a limit of \$75,000 in disaster assistance payments on no more than 500 acres to individual commercial growers of trees, vines, and bushes.
- Authorizes a marketing order for caneberries (including raspberries, blackberries, and loganberries).
- Increases funding from \$300 million to \$500 million in Section 32 funds for the purchase of surplus crops. \$200 million must be used annually to purchase fruits, vegetables, and other specialty food crops and of that amount \$50 million is to be used to purchase fresh fruits and vegetables for schools and service institutions. Requires a report to Congress on the quantity and type of fruits, vegetables, and other specialty crops and other commodities purchased with Section 32 funds.
- Authorizes such sums as necessary to support the Farmers' Market Promotion Program to support farmers' markets, roadside stands, community supported agriculture programs and other direct producer-to-consumer market opportunities in order to increase domestic consumption of agricultural commodities.

- Provides \$5 million in FY2002 to establish a National Organic Certification Cost-share Program. Certified organic producers are exempt from paying assessments under commodity promotion laws.
- Authorizes \$10 million for a Cranberry Acreage Reserve Program.
- Beginning September 30, 2002, requires that guidelines be issued for voluntary country of origin labeling at the retail level for fresh fruits and vegetables among other commodities. Beginning on September 30, 2004, country of origin labeling becomes mandatory.

For additional information on the farm bill, see CRS Report RL31195, *The 2002 Farm Bill: Overview and Status*; and CRS Report RL30956, *What Is A Farm Bill?*.

## Trade Issues

### Phytosanitary Issues

Sanitary and phytosanitary (SPS) requirements and their potential to be trade barriers have become more prominent issues as tariffs have been reduced under recent multilateral agreements, such as the Uruguay Round Agreement on Agriculture and the North American Free Trade Agreement (NAFTA). Sanitary barriers relate to meat, poultry, and seafood while phytosanitary barriers relate to fruits and vegetables. Both the Uruguay Round (SPS Agreement) and NAFTA (Chapter 7), agreements were intended to control the use of SPS trade barriers. These agreements recognize that countries have a right to impose measures that protect the health and safety of their populations and agricultural sectors, but stipulate that such measures must be based on sound science and risk assessment. Often exporting/importing countries disagree on whether specific SPS requirements are scientifically based or are actually trade barriers.

The United States has made some progress removing other countries' SPS trade barriers in bilateral negotiations and in SPS agreements and the dispute settlement procedures of the World Trade Organization (WTO). Since the implementation of the SPS Agreement began in 1995, markets have opened in Chile for California lemons, table grapes, kiwis, oranges, and grapefruit; markets in Japan and Taiwan have opened for 25 varieties of U.S. tomatoes; markets in Mexico and China have opened for U.S. sweet cherries; and the market in China has opened for U.S. table grapes and citrus. Despite these successes, in 2001 some SPS trade barriers remain that prevent the export of U.S. fruits and vegetables in some countries. Examples of such SPS requirements that U.S. producers see as trade barriers include Australia's ban against the importation of California table grapes in February 2001; Chile's phytosanitary requirements against the entry of U.S. cherries and citrus; Argentina's ban on California fresh fruit; China's ban on U.S. fresh potatoes, avocados, peaches, and grapes; and Korea's ban on U.S. walnuts and apples, among others listed in the U.S. Trade Representative's 2001 National Trade Estimate Report on Foreign Trade Barriers.

Efforts made by some U.S. growers to prevent the import of specific fruits and vegetables from foreign countries on the grounds that their industry needs protection from foreign pests or diseases, have been viewed by some countries as a guise for protectionist measures. For example, charges of U.S. protectionism have been made because of U.S.



produce organizations' attempts to prohibit the import of Argentine citrus and Canadian Prince Edward Island potatoes. Most recently, when USDA proposed a rule to expand the number of states that could import Mexican avocados and to increase the length of the shipping season during which the Mexican avocados may be imported into the United States, both Mexico and U.S. supporters of the proposed rule consider opposition to the rule as protectionist. Before 1997 Mexican avocados were prohibited from being imported into the United States, but since then imports have been allowed in a limited number of states during specific winter months. (See **Mexican Avocados under Animal and Plant Inspection Service (APHIS)** in this issue brief.)

The new farm act provides \$2 million annually for an export assistance program to address the barriers, including phytosanitary barriers, to specialty crop exports. For further information on sanitary and phytosanitary measures see CRS Report 98-254, *Agricultural Negotiations in the World Trade Organization*.

## Dumping

Dumping results when an import is sold at "less than fair value" in the importing country. U.S. fruit and vegetable farmers have sought relief from allegedly dumped imports. Under current laws, a group of growers or a commodity organization may petition the Department of Commerce, asking it to investigate whether an imported commodity is being sold in the United States at dumped prices and whether those imports are injurious to domestic growers. If Commerce determines that an imported product is being sold at less than its fair value, and if the International Trade Commission (ITC) determines that a U.S. producer is being injured, the Commerce Department will impose antidumping duties on the imported goods. U.S. apple growers have successfully used antidumping laws to protect the domestic apple industry from the dumping of Chinese apple juice concentrate. On the other hand, California grape growers were recently unsuccessful in using this legal remedy to protect against alleged dumping of grapes from Mexico and Chile.

**Chinese Apple Juice Concentrate.** Because of increasing Chinese apple juice imports between 1995 and 1998 and declining prices that resulted from those imports, the U.S. apple industry filed an antidumping petition against China in June 1999. The U.S. Apple Association asked the U.S. Department of Commerce and the International Trade Commission to impose a duty on Chinese apple concentrate, arguing that it was sold at below the cost of production. On May 15, 2000, the ITC ruled that apple juice concentrate imports from China were being sold in the United States at less than fair value and were economically harming U.S. apple producers. On June 5, 2000, the Department of Commerce imposed antidumping duties of 51.74 % on most Chinese apple juice concentrate imports. News reports have indicated that prices for U.S. apples significantly increased once the duties on Chinese apple juice were in place. In July 2001 the U.S. apple industry petitioned the Department of Commerce contending that semi-frozen apple juice concentrate from China was within the scope of the antidumping duty. The apple industry charged that Chinese concentrate suppliers were evading the U.S. antidumping duties by chilling non-frozen concentrate to a semi-frozen state and declaring it "frozen concentrate." The Commerce Department found on October 1, 2001, that "semi-frozen" apple juice concentrate is classified as "frozen" and therefore does not fall within the scope of the antidumping order which applies only to non-frozen apple juice concentrate.

**Mexican and Chilean Table Grapes.** The Desert Grape Growers League of Coachella Valley, California on March 30, 2001 filed a petition with the U.S. Department of Commerce, asking for an investigation of the importation of Mexican and Chilean table grapes. The grape growers charged that Mexican and Chilean grapes were being sold in the U.S. market below the cost of production and were injuring the U.S. spring table grape industry. Supporters of Mexican and Chilean grape growers denied the dumping charges, contending that the influx of imported grapes into the United States was a one-time only occurrence in 2000 caused by a combination of early table grape harvests in Mexico and California, a late Chilean harvest, and a weak European market causing a surplus of Chilean grapes to be shipped to North American markets. They also contend that because the Coachella Valley growers produce only 10% of U.S. table grapes, this group was not large enough or representative enough of the U.S. grape industry to legally make dumping charges. On June 11, 2001 the ITC determined that Mexican and Chilean table grape imports did not cause damage to the U.S. table grape industry. Once the ITC has made a determination that imports are not causing material injury, a case is terminated.

## **Foreign Agricultural Workers (H-2A Program)**

Most fruits and vegetables are picked by hand, so that produce growers are dependent on hired and contract labor. When these growers cannot get sufficient domestic labor to harvest their crops, the H-2A program is an alternative source of farm workers. The program provides for the temporary admission of foreign agricultural workers into the United States, provided domestic workers are not available. The program is authorized by the Immigration and Nationality Act (Section 101(a)(15)(H)(ii)(a)). According to the U.S. Department of Labor, 41,827 farm workers were certified for the H-2A program in 1999.

Farmers who employ H-2A workers must follow procedures that involve the Department of Labor and the Immigration and Naturalization Service (INS). Farmers must apply for workers at least 45 days in advance of the time they are needed and must provide both domestic and foreign workers with free housing and workers' compensation.

In recent years farmers have argued that the H-2A program does not provide an adequate number of workers at the times needed, and on relatively short notice. They have recommended that the H-2A program be expanded to meet the labor needs of farmers and point out that a crackdown on illegal immigration is reducing the number of workers available ( in 1999 about 52% of U.S. farm workers were illegal). They would like to see the guest worker program simplified so that it is easier for farmers to use. On a broader scale, proponents note that an adequate number of farm workers is needed to keep the U.S. competitive in the global marketplace. Without an adequate number of farm workers, U.S. producers of labor-intensive commodities will abandon production and agricultural jobs will go to other countries, it is alleged.

Opponents of an expanded H-2A program and those generally opposed to any increases in immigration levels include U.S. farm workers, their labor representatives, and farm worker advocates. They argue that there is no current or future shortage of farm workers, and that increasing the size of the guest worker program would increase the number of illegal workers who compete with legal domestic workers. They further argue that if farmers want to attract

an adequate number of domestic agricultural workers, they should raise wages and improve working conditions.

In the 107<sup>th</sup> Congress several bills have been introduced to reform the H-2A program. The H-2A Reform and Agricultural Worker Adjustment Act of 2001 (H.R. 2736/S. 1313), among other provisions, would have allowed foreign agricultural workers to become legal temporary residents if they had worked in agriculture for at least 90 days in the 18-month period prior to July 2001 and were otherwise admissible as an immigrant. These bills would also have retained the current “adverse effect wage rate” requirement but would have mandated studies of it. The “adverse effect wage rate” is the minimum wage that must be paid to both foreign and domestic agricultural workers when the employer is using non-immigrant workers; it is calculated annually on a state-by-state basis by the USDA. The Agricultural Job Opportunity, Benefits, and Security (AgJOBS) Act of 2001 (S. 1161), among other provisions, would have allowed foreign agricultural workers to become legal temporary residents, but they would have been required to work 150 days in any consecutive 12-month period during the 18 months prior to July 4, 2001, and were otherwise admissible as immigrants. This bill would have replaced the “adverse effect wage rate” with the requirement that employers pay the minimum wage or the prevailing wage for agricultural workers in that area. The Wage Equity Act of 2001 (H.R. 2457/S. 1442) would also replace the “adverse effect wage rate” with a requirement that employers pay the minimum wage or the prevailing wage for agricultural workers.

For further information on foreign agricultural workers and the H-2A program, see CRS Issue Brief IB10103, *Immigration Legislation and Issues in the 107<sup>th</sup> Congress*, CRS Report RL30852, *Immigration of Agricultural Guest Workers: Policy, Trends, and Legislative Issues*, CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation*, CRS Report RL30395, *Farm Labor Shortages and Immigration Policy*, CRS Report 95-712, *Immigration: The Labor Market Effects of a Guest Worker Program for U.S. Farmers*, and CRS Report RS21015, *The Adverse Effect Wage Rate (AEWR)*.

## **FOR ADDITIONAL READING**

CRS Report RL31595. *Organic Foods and the USDA National Organic Program*, by Jean M. Rawson. October 3, 2002. 8 p.