



# BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003  
202-543-5450 phone ■ 202-543-4791 fax  
info@beyondpesticides.org ■ www.beyondpesticides.org

September 27, 2022

Ms. Michelle Arsenault  
National Organic Standards Board  
USDA-AMS-NOP  
1400 Independence Ave. SW.,  
Room 2648-S, Mail Stop 0268  
Washington, DC 20250-0268

**Docket ID # AMS-NOP-22-0042**

## **Re. CACS Risk Mitigation Table**

These comments to the National Organic Standards Board (NOSB) on its Fall 2022 agenda are submitted on behalf of Beyond Pesticides. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers, and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that eliminate a reliance on pesticides. Our membership and network span the 50 states and the world.

The certification system and oversight by inspectors are routinely cited as guaranteeing the integrity of organic food. However, some investigative reports, such as the widely-quoted November 15, 2021 *New Yorker* article titled—at best misleadingly, and certainly sensationally—“The Great Organic-Food Fraud,”<sup>1</sup> exploit occasional, but serious, failures of the system, thus highlighting the need for greater oversight and stronger enforcement to protect the value of the organic seal. The certification system provides consumers with assurance and farmers and processors with protection for the integrity of the organic brand. Certification establishes accountability to the rigorous and unique standards that set organic apart from chemical-intensive food production, with its hazardous practices and inputs. To the extent that the certification system suffers from credibility issues it undermines the standing of organic in the marketplace. Under the banner of “continuous improvement,” it is critical that the NOSB act to ensure that the certification system is the best it can be, so that the market continues to grow as a key element in mitigating the existential public health, biodiversity, and climate crises of our time.

---

<sup>1</sup> Ian Parker, 2021. The great organic food fraud. [https://www.newyorker.com/magazine/2021/11/15/the-great-organic-food-fraud?utm\\_source=nl&utm\\_brand=tny&utm\\_mailing=TNY\\_Daily\\_Variant\\_110821&utm\\_campaign=aud-dev&utm\\_medium=email&utm\\_term=tny\\_daily\\_digest&bxid=5be9d6613f92a40469e6784f&cndid=49798781&has=3c814dc0c12e40e21fed7d52667793ab&hashb=61dfc64efc5ca022d0d2144dc1d385fff085e84c&hashc=93a57b5c932bf4a4f9103137bb7e999d71b8bbde1c6a7f7acb2cff08819ab678&esrc=bounceX&mbid=CRMNYR012019](https://www.newyorker.com/magazine/2021/11/15/the-great-organic-food-fraud?utm_source=nl&utm_brand=tny&utm_mailing=TNY_Daily_Variant_110821&utm_campaign=aud-dev&utm_medium=email&utm_term=tny_daily_digest&bxid=5be9d6613f92a40469e6784f&cndid=49798781&has=3c814dc0c12e40e21fed7d52667793ab&hashb=61dfc64efc5ca022d0d2144dc1d385fff085e84c&hashc=93a57b5c932bf4a4f9103137bb7e999d71b8bbde1c6a7f7acb2cff08819ab678&esrc=bounceX&mbid=CRMNYR012019).

The organic certification system poses unique potential for conflicts of interest if not rigorously monitored. While organic's foundation was built on voluntary standards and a self-certification that established consumer trust and personal farmer-to-consumer relationships, as the market has grown exponentially so has the need for reassessing the strength of the system. Above all, there is the fact that organic operators choose their own certifiers and pay them for certification. For this system to maintain credibility in a growing market that must become mainstream, it is critical that we put in place adequate checks to ensure rigor, transparency, and checks on conflict of interest. The current system does, in worst case scenarios, allow operators to "shop" for certifiers that may be more in line with the operator's interpretation of organic regulations—or even, as in the case described by the *New Yorker*, unscrupulous or shoddy certifiers. While we understand that any system may have "bad apples" who seek to capitalize on potential weaknesses or act illegally, we believe that the debate on this topic is healthy and offers opportunities to strengthen a foundational principle of oversight in the organic system. For instance, standards could require a more randomized assignment of certifiers to operations seeking certification.

In addition, we need to ensure that certifiers are not seen as anything other than neutral parties enforcing standards that are set by the NOSB and National Organic Program (NOP) process. To that end, certifiers should serve as an important information source in policy deliberations, not as lobbyists advancing their own or their clients' financial self-interest. We must consider taking steps to ensure that certifiers are strengthened in their role as enforcers, not undermined by perceived and real conflicts of interest.

In the Spring, we stated,

In view of the dependence of organic consumers on the robustness of organic certification and inspection, this proposal requires serious consideration by the NOSB, not a rubber-stamping of NOP's table. The proposal advanced by the CACS and NOP does not address the systemic sources of conflicts of interest cited above and should not be approved without further deliberations and more rigorous review and research.

We support the further suggestions made by the CACS, in particular:

Revision of the table to include:

- Analysis of the risks to impartiality created by the organizational structure of the accreditation body within a larger governmental organization, as well as certifiers that operate within larger governmental organizations (e.g., state departments of agriculture and state organic programs).
- Analysis of risks created if top management reduced its commitment to quality (ex. Budget pressures, political pressures).

Clarification of the following areas:

- Based on this scale, action is not a mandatory requirement and therefore introduce

subjectivity. Further clarification is recommended on the criteria used to make this determination to better understand where various circumstances may fall on the scale.

- It is unclear who is making the initial determination regarding the risk and where it falls on the scale. NOP 1009 does state that if the “potential conflict is ‘possible’ or ‘likely’...NOP management reviews the specific circumstances...”. Further clarification is recommended on who is making the initial determination.
- Again, as stated previously, this scale appears only to be applied to “conflicts of interest” but not to other risks such as impartiality. Further clarification is recommended to broaden this scale to other types of risk.
- This potential conflict focuses on undue influence caused by “third parties.” However, undue influence may also be caused by accreditation program personnel. Further clarification and examples are recommended to be included that address undue influence imparted by auditors, reviewers, or other decision makers.
- Additionally, in the Control Measure column it is stated that the “NOP adheres to the USDA organic regulations in the decision-making process”, and the Monitoring Method column says to “compare the decision with previous decisions to confirm consistency with the requirements.” Achieving this goal becomes challenging when the USDA organic regulations lack clarity in some areas and are knowingly applied inconsistently by certifiers. Further clarification and examples are recommended for how the NOP will proceed in known areas of inconsistencies.

We also support the following statement:

The CACS’ discussion and some stakeholder comments included additional areas, that, as stated prior, are important but were not part of this review. The CACS would like to capture these areas for potential future work by the Board and/or NOP. These areas are:

- A tool for certifiers to compare accreditation findings.
- Systemic sources of conflicts-of-interest such as organic operators choosing their own certifiers and paying them for certification, discrepancies between certifiers in interpretation and implementation of the rule, and operators shopping for certifiers that may be more in line with the operator’s preferred interpretation of organic regulations.
- Clarification and revision to the standards on a routine basis to resolve known inconsistencies and divergent certification practices in order to fully ensure strong and consistent oversight of certifiers.

Thank you for your consideration of these comments.

Sincerely,



Terry Shistar, Ph.D.  
Board of Directors