



# BEYOND PESTICIDES

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

September 18, 2024

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-24-0023**

## **Re. CACS: Risk-based Certification DD**

These comments to the National Organic Standards Board (NOSB) on its Fall 2024 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 concept of risk-based oversight, while based in common sense, can become so enmeshed in detail that it loses effectiveness. Here we focus on some basic principles.

### **Fraud prevention and enforcement is essential to the integrity of the organic label.**

It is absolutely essential to any government or private standard setting process that enforcement and compliance are operating effectively and trusted by the public. Without an effective enforcement system, the value of the USDA organic label is undermined in the market. Whether related to imported or domestically grown food, enforcement against fraud and an assurance of compliance with organic standards is critical to the ongoing growth and stability of the organic market.

### **Organic fraud is potentially a problem for domestically and foreign grown and processed organic food.**

Fraud is potentially a problem for all food labeled organic, whether produced domestically or outside the U.S. It is a problem whenever someone or a company portrays as

organic a product that does not meet the standards for organic certification. Fraud hurts all sectors of the organic community –especially organic producers who follow the letter and spirit of the law and the consumers who depend on the market to provide organic food that meets organic standards. Fraud is a problem when, for example, crops are grown with prohibited inputs, when livestock do not get the required access to pasture, and when crops are produced in artificial media and, therefore, not in compliance with organic standards.

Consumer trust and organic farmer and handler investments are jeopardized by ineffective oversight and enforcement of organic standards by USDA. USDA and accredited organic certifying agents are generally meeting expectations, but the enforcement process has fallen short in several instances, and additional actions are needed to safeguard the integrity of the organic label. We appreciate that organic producers are subject to much more rigorous oversight than their counterparts in chemical-intensive or “conventional” production and processing. This is understandable given the high level of organic consumer expectation and the market premium. However, it is critical that we address any compliance limitations of the organic certification system when it occurs and ensure corrective action in a timely fashion with full transparency. Without this kind of response, public trust in the organic food label will suffer dramatically. Additionally, to the extent that the enforcement system is known to be highly rigorous, it will decrease the likelihood of aberrant behavior.

Reporting by the *Washington Post* in 2017 highlighted failures of USDA’s oversight of certified organic products. In particular, public attention has been drawn to imports of nonorganic grain entering the certified organic stream of commerce, organic factory eggs, and questionable organic milk. All these reports raise questions about the integrity of the organic label and whether consumers are getting the quality they expect. The investigations that uncovered this fraud were not undertaken by the National Organic Program (NOP), but by independent organizations like The Cornucopia Institute, Consumers Union, and Organic Farmers’ Agency for Relationship Marketing (OFARM).

### The fraud problem is complex.

There are many aspects to the problem. Just as the fraud problem is complex, so is a strategy to prevent it. Regulations must be clear, so that they can be enforced. NOP must have the will to enforce, whether the violator is large or small, foreign or domestic. Therefore, the NOSB and NOP must craft a multi-faceted strategy if it is to prevent organic fraud.

## Some Identified Problems

### Organic grain imports

Certified, imported, organic products are required to meet the same standards as certified, domestically produced, organic products. In recent years concerns have been raised about enforcement procedures governing organic grain imports, which have allowed a surge of soybean and corn imports labeled as organic. According to one recent analysis, “One of the underlying factors driving fraud is the greater demand for organic corn and soybeans than the U.S. supply of such grains, which are used in organic poultry production. As a result, the U.S.

relies heavily on imports of organic grains. About 26% of organic corn and 76% of organic soybeans used for poultry feed in the U.S. come from abroad, according to Mercaris, an organic market data firm.”<sup>1</sup> This indicates, as supported by the Organic Farmers Association, that the key to eliminating organic fraud is increasing domestic organic grain production—thus demonstrating that the complexity of the issue goes beyond enforcement.

### **Poultry animal welfare standards must be enforced.**

Unequal enforcement of federal organic standards has been an ongoing problem in the organic poultry and egg sector. To address this problem, USDA published a long overdue regulation to require ALL organic poultry and egg operations to provide meaningful outdoor access for chickens in compliance with the law. The Organic Livestock and Poultry Practices rule was promulgated, then withdrawn by NOP, and finally reinstated as the Organic Livestock and Poultry Standards. We have yet to realize the benefits of that rule.

### **Dairy pasture rule enforcement is required.**

In 2010, after an open and transparent public rulemaking process, USDA put in place a detailed set of rules to ensure that all certified organic dairy farmers were giving their animals meaningful access to pasture. Similar to the current poultry situation, most dairy farmers were already meeting that standard, but a few very large dairy operations were using a loophole in the regulations to skirt those requirements. However, in some cases, dairy enforcement is still falling short, and some large operations continue to deny their animals meaningful access to pasture.

### **Hydroponics violate organic standards.**

Contrary to a 2010 recommendation by the NOSB, NOP has been allowing hydroponics operations to be certified as organic. This reversal of an NOSB decision without any new scientific information undermines the NOSB process and will have a devastating long-term impact on the credibility of the organic label. In response, organic stakeholders, including growers, consumers, processors, and retailers, have come together around an add-on label that will inform consumers that their organic food has been grown in the soil and managed in accordance with the Organic Foods Production Act. This add-on label provides transparency so that consumers can be assured that farmers are engaged in the practices of soil-based agriculture, which are foundational to the principles and values integral to the law.

Those engaged in developing the add-on label are following the long history and legal standards of the organic law, building on its foundation and utilizing the marketplace to enable consumers to make decisions aligned with organic principles and values. To the extent that the NOSB advances an agenda that is divergent from the law with NOP oversight, the program will become increasingly irrelevant, as market forces respond to consumer expectations. And should USDA seek to change the law, it will inflict grave harm to the value of the USDA organic label.

---

<sup>1</sup> <https://www.bioecoactual.com/en/2023/11/24/fraud-is-unquestionably-the-biggest-threat-to-organic/>.

From its very beginnings, the organic sector has been driven by an alliance of farmers and consumers who defined the organic standards as a holistic approach to protecting health and the environment, with a deep conviction that food production could operate in sync with nature and be mindful of its interrelationship with the natural world—protecting and enhancing the quality of air, water, land, and food. These standards, integral to organic, certainly do not preclude the adoption of other methods that can identify themselves as offering other assets, but adherence to the principles of organic cannot be compromised if we are to sustain and grow the organic market in the future. So, from this perspective, we have a serious fraud and enforcement problem with the current allowance of certified organic hydroponic production.

### **Aquaculture violates organic standards.**

In spite of a lack of standards, NOP has allowed certified organic fish from aquaculture operations to be sold in this country. While the NOSB has never recommended the allowance of synthetic chemical-based aquaculture production practices as certifiable under organic standards, USDA has allowed the importation of fish produced with those very production processes. This allowance constitutes an enforcement and compliance violation.

### **Fraud crosses boundaries between production categories, as well as between countries.**

Fraud in one sector is often linked to fraud in another sector. Excessive imports of feed grains may reflect fraudulent production practices abroad, but they may also reflect livestock production facilities that are overly dependent on grains because they do not provide the required pasture for livestock.

### **NOP must investigate citizen complaints.**

NOP must take seriously complaints filed by citizens and NGOs. Fraudulent imports have been discovered by OFARM, and fraudulent livestock practices have been documented by The Cornucopia Institute. In both cases, there was systematic fraud, but NOP tried to ignore the complaints.

### **Technology should be employed to prevent fraud.**

There are companies providing tracking technology that can assist in preventing fraud. These technologies should not be viewed as a silver bullet but should be reviewed as a part of a comprehensive fraud prevention strategy. The needs that would be addressed and the capabilities of such programs should be thoroughly understood before embracing them.

## **Suggestions for NOSB Recommendations**

### **Imported Grain**

USDA should institute heightened procedures to ensure that all organic imports are meeting USDA organic standards. These procedures should include the following:

- A requirement that all imported organic products carry an electronic import certificate, to help prevent fraudulent labeling of conventional product as organic;

- Implementation of a policy that triggers an immediate USDA audit of any international organic certifier whose accreditation has been revoked by a nation with which the U.S. has an organic equivalency agreement;
- Implementation of a policy that triggers an automatic investigation when there is an extreme surge in imports of an individual organic product category, such as seen recently with organic corn and soybean imports;
- The Global Agricultural Trade System (GATS), operated by USDA's Foreign Agriculture Service, should be updated to track imports of all organic products. Currently, the U.S. government only tracks the value and quantity of a limited number of organic imports product categories.
- The U.S. Customs and Border Protection's automated import/export tracking system, the Automated Commercial Environment (ACE), should be updated to build organic-specific fields and questions into the system. This would provide USDA and the organic sector with more standardized and detailed information about organic imports.

### Dairy pasture rule

The NOSB should urge USDA to take immediate action to bring bad actors in the dairy sector and their organic certifying agents into compliance or exclude them from the program. The NOSB should carry out its statutory duty to provide advice and consultation to ensure that USDA takes the necessary actions to tighten enforcement.

### Hydroponics

The NOSB should insist that hydroponics operations be decertified unless regulations are adopted that provide standards for their management that are in compliance with OFPA. We do not view that as possible, given that OFPA is built on a systems approach in which nutrients are derived from the soil. This organic systems approach ensures that certified organic operates as it was and is intended—in sync with the natural environment, specifically soil biology and the food webs that are integral to sustaining life.

### Aquaculture

The NOSB should insist that products of aquaculture not be certified organic in the U.S. without standards proposed by the NOSB and adopted by NOP. Similar to hydroponics, these systems may be viewed by some as having value, but current and proposed operations do not conform to the standards in organic law.

### Conclusion

The problems of inadequate oversight and enforcement by NOP go beyond imports of organic grains and also include poultry animal welfare, access to pasture for dairy, hydroponics, and aquaculture. We suggest specific remedies to these problems and also suggest programmatic changes to prevent future problems:

**Imported Grain:** USDA should institute heightened procedures to ensure that all organic imports are meeting USDA organic standards.

**Poultry:** USDA should enforce the Organic Livestock and Poultry Practices.

**Dairy:** The NOSB should urge USDA to take immediate action to bring bad actors in the dairy sector and their organic certifying agents into compliance or exclude them from the program.

**Hydroponics:** The NOSB should insist that hydroponics operations be decertified until regulations are adopted that provide standards for their management.

**Aquaculture:** The NOSB should insist that products of aquaculture not be certified organic in the U.S. without standards proposed by the NOSB and adopted by NOP.

It is clear that the expression “one bad apple spoils the barrel” has direct application to the need for a strong, credible, and transparent enforcement system to ensure compliance with organic standards under OFPA. Without a strong and effective enforcement system, the certified organic label will become tainted over time. People do not expect that a standard setting governmental program will never encounter fraudulent practices. Their expectation, however, is that fraud will be swiftly and competently addressed, and create a disincentive for additional fraud.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry Shistar".

Terry Shistar, Ph.D.  
Board of Directors