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July 18, 2017

Mr. Tom Chapman, Chair  
National Organic Standards Board  
United States Department of Agriculture  
National Organic Program  
1400 Independence Ave., SW  
Room 2642-S, STOP 0268  
Washington, DC 20250-0268

Re: Petition for Rulemaking and NOSB Action

Dear Mr. Chapman,

Please find enclosed a Citizen Petition requesting that the NOSB act, on an expedited basis, to address the documented influx of fraudulent organic grain imports into the United States.

Thank you very much for your attention to this very important issue.

Sincerely,

Anne Ross  
Farm Policy Analyst  
The Cornucopia Institute

cc: Miles McEvoy, Deputy Administrator  
National Organic Program



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## CITIZEN PETITION

### I. Introduction

A deluge of fraudulent organic corn and soybeans have flooded the United States market. In a May 13, 2017 front page story, *The Washington Post* documented cases of fraudulent organic shipments and questionable organic certification practices originating overseas. The three massive fraudulent shipments uncovered by *The Washington Post*, alone, constitute an astonishing 7 percent of annual organic corn imports and 4 percent of organic soybean imports.

It is imperative that the USDA exercise its authority to enforce existing regulations and develop additional stringent regulatory oversight procedures to fulfill its obligations under the Organic Foods Production Act and safeguard the integrity of the USDA organic seal.

Specifically, the USDA must immediately (1) enforce the currently enacted regulations to ensure imports comply with the U.S. organic standards addressing prohibited inputs; (2) implement additional regulations, on an emergency basis, to deter and prevent the import of fraudulent organics into the United States; and (3) properly monitor and regulate third-party certifiers and equivalent agencies in other countries which administer USDA organic standards.

In this petition, the Cornucopia Institute requests that the NOSB recommend, on an expedited basis, the following remedial actions to address the infiltration of fraudulent organic imports into the United States market.

### II. Requested Action

Pursuant to 5 U.S.C. § 553(e) and 7 C.F.R. § 1.28, we request that the NOSB recommend that the USDA take the following actions.

- A. Amend NOP regulation § 205.100(a) to explicitly require NOP certification for any person or entity **that ships, transports, manages, directs the movement, or receives shipments of organic grain for import into the United States.**<sup>1</sup>

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<sup>1</sup> “Grain” refers to barley, canola, corn, flaxseed, mixed grain, oats, rye, sorghum, soybeans, sun flower seed, triticale, and wheat.

- B. Amend NOP regulation § 205.103 to require all persons or entities **that ship, transport, manage, direct the movement, or receive shipments of organic grain designated for import into the United States**, obtain full audit-trail documentation sufficient to determine the source, transfer of ownership, and transportation of the organic grain.
- C. Require the Deputy Administrator to exercise his authority pursuant to § 205.403(2)(iii), to mandate pesticide residue and GMO testing of all bulk shipments of “organic” grain presented for entry at ports, docks, or border crossings of the United States.

### III. Legal Basis

Under the Organic Foods Production Act of 1990 (OFPA), the USDA has authority to regulate organic food when it is both produced in the United States and when it is imported. In addition to establishing national standards governing the production of organic products, the purpose of OFPA is to “assure consumers that organically produced products meet a consistent standard.”<sup>2</sup>

The Secretary of Agriculture is charged with developing the organic certification program, which is designed to fulfill the stated purpose of OFPA and insure the integrity of the USDA organic label.<sup>3</sup> He or she is mandated to seek the advice of the National Organic Standards Board when doing so. For imported products to be legitimately labeled “organic,” the USDA must determine that the products “have been produced and handled under an organic certification program that provides adequate safeguards and guidelines.”<sup>4</sup>

The documented deluge of fraudulent organic grains entering the United States confirms that the enforcement mechanisms and efforts currently exercised by the USDA in regulating imports of organic grains are failing. Given the documented entry of these fraudulent shipments into the U.S., neither the American farmer, nor consumer can have confidence that imported products are being handled under a program that provides “adequate safeguards and guidelines,” which OFPA unequivocally mandates. To thwart the entry of fraudulent organic grains into the United States and to protect domestic markets and the American consumer, the USDA should immediately implement the following actions.

#### A. Importer Certification and Audit Trail Documentation

Section 205.100(a) requires handlers of organic products to be certified, unless specifically exempt or excluded as described in § 205.101(b). Section 205.101(b) excludes handlers of packaged organic products for the certification requirement if they receive in and ship out products in the same container without opening, relabeling or otherwise handling the products. The exclusion in section 205.101(b)(1) does not exempt handlers of unpackaged organic products such as bulk grain like soybeans, corn, and wheat.

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<sup>2</sup> 17 U.S.C. § 6501(2).

<sup>3</sup> 17 U.S.C. § 7 U.S.C. 6503(a).

<sup>4</sup> 7 U.S.C. § 6505(b).

Although importers of unpackaged, bulk grains fall within the ambit of Section 205.101(b) thereby requiring certification, the USDA should amend the regulation to explicitly broaden its scope. The regulations must unequivocally require that every entity in the international supply chain involved in the purchase, sale, and movement of the organic grain be certified under NOP regulations, regardless of whether the shipping container has been opened, altered, or if the product has been repackaged or reconstituted. If a person or entity is engaged in facilitating the import of shipments of “organic” grain into the United States, the USDA must require that entity be certified under NOP regulations.

The USDA should amend Section 205.100(a) as follows:

§ 205.100 What has to be certified.

- (a) Except for operations exempt or excluded in § 205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products, **or that ships, transports, manages, directs the movement, or receives shipments of grain at ports, docks, or border crossings for import into the United States**, that are intended to be sold, labeled, or represented as “100 percent organic” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.

The requirement that all entities selling, purchasing, transporting, directing the movement, and receiving shipments of organic grain be certified will trigger the penalty provisions and Section 205.103’s record keeping requirements. Although the USDA has formerly issued Draft Guidance discussing the requirement that handlers of unpackaged products be certified, the guidance is a weak articulation of critical requirements that should be outlined explicitly in the regulatory framework.<sup>5</sup>

The amended regulation, as proposed above, explicitly expands the scope of the certification requirement to include shippers, brokers, distributors, and transportation companies whether or not they open, reconstitute, repackage, or relabel the organic grain. Simply stated, all persons or entities that ship, receive, transport, manage, or direct the movement of organic grain that is presented for entry into the United States must be certified to protect the integrity of the USDA organic label.

Complicated international supply chains give bad actors ample opportunity to perpetrate fraud, particularly overseas where NOP oversight has been compromised. Requiring certification of every international entity involved in the import of shipments of organic grain gives increased assurances that the grain is, in fact, organic. As the last point of contact before

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<sup>5</sup> See Draft Guidance, Handling Bulk, Unpackaged Organic Products, NOP 5031, 7/20/2011.

the product is transported to the United States, the overseas entities are geographically and temporally situated to verify authenticity before the product arrives stateside.

Similarly, requiring certification of the entity that receives any shipment of grain, regardless of whether its packaging or handling has been reconstituted or is simply directing the movement of the grain, adds an additional layer of verification before the product enters the United States' market. Certification of these receivers, regardless of how the grain is maintained and directed throughout the transportation channel, will help identify instances in the supply chain where organic integrity has been compromised. Brokers, traders, transporters or distributors should not be exempt from certification under any circumstance if they engage in transactions involved in importing shipments of organic grain into the United States.

Because complex international supply chains increase opportunities for fraudulent conduct, the NOP must impose stringent audit trail requirements of every entity engaged in importing shipments of organic grain. A complete audit trail, which traces imports back to the point of origin overseas is necessary to combat fraudulent organic imports entering the United States.

The USDA should amend Section 205.103 to require to comply with the following record keeping requirements.

Specifically, Section 205.103 should be amended as shown in bold and underlined below:

§ 205.103 Recordkeeping by certified operations.

- (a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented at “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).”
- (b) Such records must:
  - (1) Be adapted to the particular business that the certified operation is conducting;
  - (2) Fully Disclose all activities and transaction of the certified operation in sufficient detail as to be readily understood and audited
    - (i) **For any handler that ships, transports, manages, directs the movement, or receives shipments of grain at ports, docks, or border crossings for import into the United States, sufficient detail for an audit includes documentation from which the following can be verified: (1) mass balance calculations for the shipment from point of origin through all intermediate handlers; and (2) complete supply chain traceability back to the grower shown through documents, such as, shipping manifests, certificates of origin, phytosanitary certificates, bills of**

**loading, invoices from vendors, and transaction  
certificates from intermediate handlers.**

- (3) Be maintained for not less than 5 years beyond their creation; and
- (4) Be sufficient to demonstrate compliance with the Act and the regulation part.

Section 205.201 requires certified operations to describe the recordkeeping system that will be implemented in accordance with Section 205.103 as part of the Organic System Plan (OSP). Requiring importers to keep documentation sufficient for a full trace-back and requiring these documents be described in the OSP enables the certifier to audit the activities associated with the shipment. A full trace-back prevents perpetrators from simply affixing an inauthentic organic certificate on the shipment as the sole means of verification.

B. Pesticide Residue Testing

OFPA unequivocally authorizes the USDA to “utilize a system of residue testing to test products sold or labeled as organically produced.”<sup>6</sup> The USDA should immediately implement the following course of action.

- (1) The USDA must immediately implement protocols and procedures to require testing of any bulk shipment of “organic” grain, that meets certain minimum volume or monetary value thresholds, and is presented for import at ports, docks, and border crossings of the United States. To accomplish this task, the USDA should coordinate with the FDA and U.S. Customs to insure an appropriate alert system for inbound shipments exists and that inspectors have access to the ports facilities. If a load tests positive for pesticide residue, synthetic fertilizer use (by nitrogen isotope testing), or GMO’s the load should be detained, an investigation conducted, and enforcement actions taken.
- (2) The USDA should require all NOP accredited certifiers which certify producers located in high risk countries to immediately deploy inspectors to conduct unannounced pesticide residue tests. Pursuant to Section 205.403(a)(2)(iii), inspectors are authorized to conduct unannounced inspections.
- (3) The USDA should begin an immediate audit of all pesticide residue testing results collected by certifiers on overseas producers. Certifiers are required to, on an annual basis, sample and conduct residue testing from a minimum of five percent of the operations that they certify. The NOP should identify, through a thorough audit of certifier records, all overseas operations which have failed pesticide residue testing and require certifiers to order their inspectors to conduct more frequent testing of operations which were noncompliant.
- (4) The USDA should use programs similar to the TRACES software recently adopted by the EU that specifically tracks organic imports through the supply chain.

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<sup>6</sup> 7 U.S.C. § 6511(a).

#### IV. Conclusion

The widespread fraud originating overseas is not new and has been publicly known for over two years. The alarming data alone gives cause for concern. Between 2015 and 2016, shipments of organic corn to the United States from Turkey have more than tripled. Imports of organic soybeans from Turkey to the United States similarly skyrocketed nearly 800 percent. Domestic organic farmers are suffering, and have seen dramatic decreases in prices for their own products coinciding with the dramatic increase of imports.

The influx of fraudulent organic grain into the United States threatens to undermine consumer confidence in the USDA organic label, which consumers have come to identify as an indicator of a more healthful choice, backed by government oversight. The USDA reports that organics is a 35 billion-dollar industry with over 19,000 certified operations in the United States. Domestic farmers, consumers, brokers, retailers, and others involved in the organic sector stand to lose if confidence in the USDA label continues to wane. There is no greater threat to organics or the USDA organic label than the revelation that it is not what it purports to be.

How many animals and livestock products are on the market today that are not really “organic” by virtue of being fed this phony grain? The USDA must act now and exercise its authority to implement the foregoing actions and eradicate the flow of fraudulent organic imports into the United States.