

Strengthening Organic Enforcement Rules

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United States Department of Agriculture
Agricultural Marketing Service
National Organic Program
Transition to Organic Partnership Program



Preventing Organic Fraud

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The word “organic” is protected by a United States law that clearly defines this label on agriculturally produced items. Those using the word in commerce have been inspected and certified to use that label, and most businesses use it to gain an enhanced price in the marketplace.

Organic is unique since it describes a system of production and does not rely on testing alone to obtain certification. Consumers

are attracted to purchasing organic products for many reasons, including for their health, environmental protection, animal welfare, and food production sustainability.

Unfortunately, as the organic market has grown, so has the prevalence of bad actors, both domestic and foreign, into the organic stream of commerce. In early 2024, the U.S. organic regulations were greatly improved to close loopholes through inspection and traceability require-

ments throughout the organic supply chain. There are now more oversight and enforcement tools to verify the truthfulness of the organic label, as well as to prevent fraudulent products from entering the organic marketplace.

MONITOR, VERIFY OR FILE A COMPLAINT

There are numerous ways farmers, businesses and certification entities can help prevent organic fraud.

Fraud:

Wrongful or criminal deception intended to result in financial or personal gain — the use of dishonest methods to cheat another person of something valuable.

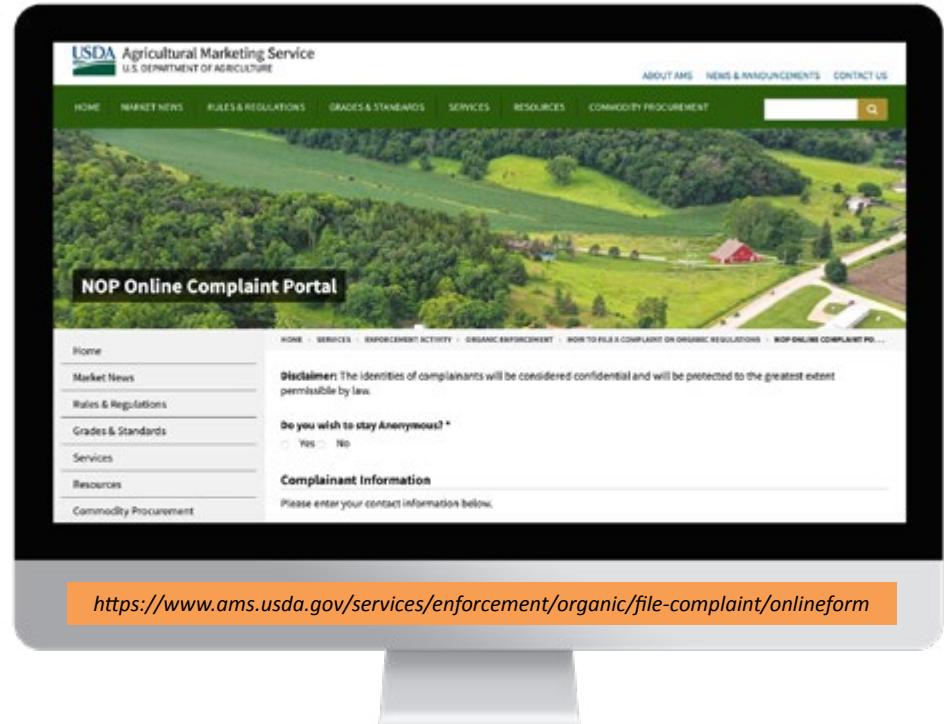
Each has their place in protecting integrity in the organic supply chain.

Understanding who needs to have an annual organic inspection, and verifying that their organic certification is in good standing at the time of an organic purchase, helps provide the necessary oversight. The NOP (National Organic Program) maintains an online current database, the Organic Integrity Database (<https://organic.ams.usda.gov/integrity>), where the public can verify current organic standing. While organic certificates are useful, and now have consistent information and terminology between certification agencies, a quick check of the database verifies the authenticity of the organic certificate.

If there is a suspicion of fraud or if there is a clear misuse of the organic label in the marketplace, there is an online portal to file a complaint with the National Organic Program. The public may also file a complaint with the organic certification agency associated with the entity being reviewed, and the certifier can do an investigation as well.

OVERSIGHT OF THE SUPPLY CHAIN AND FILING A COMPLAINT

The organic label can be compromised anywhere between the field to the retail store, which is referred



to as the “supply chain.” The National Organic Program has a robust and easy-to-use complaint portal on their website.

On a farm, if it is suspected that someone who is certified as organic has hired the local co-op to spray herbicide on their organic field, an anonymous complaint could be made to the NOP. Providing as much information, including photos of the co-op's sprayer, or signs of herbicide damage in the organic field, along with a location of the incident, name and address of the organic farmer, contact information for the cooper-

ative, and any other useful information, can be uploaded along with the complaint. There may be a reasonable explanation, such as that the field was no longer being certified as organic, or an approved foliar feed was being used (weeds would not have died if that was the case), or that farm may have been drifted on by a neighbor's application. The NOP will do their investigation and determine if there was something that warrants an enforcement action.

In one case of large-scale fraud, a business was buying thousands of bushels of non-organic corn and

soybeans and selling them as organic, netting millions of dollars. The Department of Justice got involved after a complaint was filed, tracking sales and clandestinely watching these activities to catch them in the act of their deception. The U.S. Justice Department built a strong case and won in court, with those committing the fraud sentenced to prison. Vigilance on the part of everyone in the supply chain, as well as the complaint process, is meant to deter those considering misuse of the organic label and prevent commerce of fraudulent organic products.

ORGANIC INTEGRITY DATABASE (OID)

The NOP maintains an online listing of every operation around the world that is certified to their USDA organic standards. This list is updated within 72 hours if an operation

has their certification suspended or revoked. This comprehensive listing includes the name of the operation, the people involved, the physical location, and all the products certified as organic by that operation.

When verifying if the seed or feed you are buying is organic, you can easily check the OID. If you are looking to buy organic dairy heifers, or organic apples or organic soybean meal in Iowa, you can narrow your search to find everyone in Iowa who grows organic apples, for instance. When buying organic products to either resell or use on your farm, like seed or feed, it is your responsibility (and this will be reviewed at your annual inspection) to verify at the time of purchase that there was current organic certification.

Inputs like soil amendments or pest management products are not

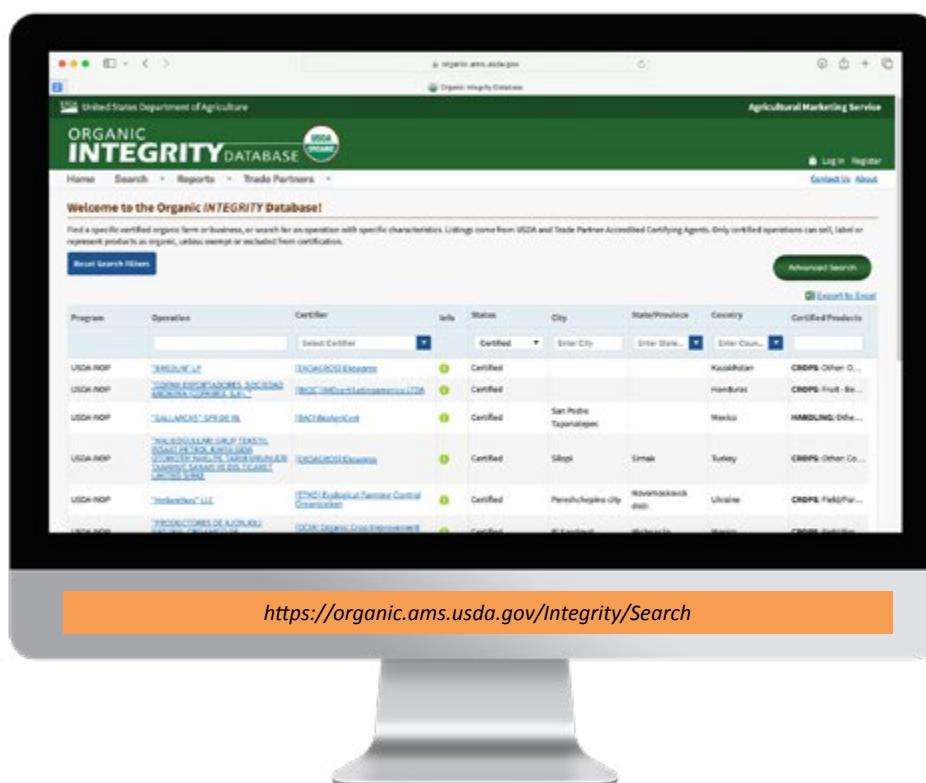
considered agricultural and are not "certified as organic." These production inputs are reviewed by the certifier to make sure they are "approved for organic production." These items are not listed in the OID. An organic certifier or the Organic Materials Review Institute (omri.org) has listings of approved for organic production farm inputs.

WATCH OUT FOR SCAMS!

As with other cases of fraud or scams, if it is too good to be true, then it probably is. Those involved in organic commerce should be vigilant when a product in short supply suddenly shows up in abundance, or at a reduced price.

Cases of domestic and foreign fraud have brought to the attention of the USDA by farmers and businesses. The origins of the "organic" products for sale, as well as the volumes being offered, were suspicious — for example, large volumes of organic corn and soybeans originating from countries with insufficient certified organic land to grow these crops. These fraudulent sales lowered the organic market prices, affecting authentic organic producers, as well as stealing their valuable organic markets. As these scams were discovered, it became clear that more oversight was needed to close the doors to this type of deceptive labeling. This stimulated the introduction in March 2024 of the Strengthening Organic Enforcement (SOE) rule.

Organic regulations clearly state that any label that does not fully comply with the organic law and reg-



<https://organic.ams.usda.gov/Integrity/Search>

ulations is considered deceptive and will be subject to civil penalties — up to \$11,000 per violation. This would include selling nonorganic products under the organic label or misusing the word “organic” in a description or business name when not certified as organic.

Protecting the integrity of the organic label is the responsibility of everyone involved, since it is unfair to those who are following the rules to compete with those that are not, and long-term consumer confidence in organic can be damaged if the truthfulness of the label is continually questioned.

ORGANIC CERTIFICATION COVERS MORE BUSINESSES

Numerous businesses are now newly subject to organic certification under the SOE rules. Handlers — those who process, package or sell products — must meet all organic regulations, including maintaining traceable documentation and having a yearly inspection to verify their compliance.

Brokers who do not take physical possession of organic products, but buy and sell them, now must have their books audited during their mandated organic inspection to verify that everything they sold as organic was purchased as a legitimate organic product. The documentation that goes with each organic sale must have the name of the last certified entity that handled the product, as well as a lot number or other identifier, that can specifically track that load back to its organic source. Crop, vegetable and livestock pro-

ducers selling to a buyer (not direct sales) must ensure they provide sufficient information to their buyers to aid in the tracking of their unique product back to their organic farms and fields.

Organic certification agencies will be reviewing specific supply chains and verifying there were sufficient acres and/or crop in storage to support organic sales. The information in an operation’s Organic System Plan and the records maintained at the farm or business are more important than ever. Every certified entity will have a “mass balance” audit to verify that there was enough organic feed produced or purchased to supply the needs of the organic livestock on the farm, for example.

If a farm or business is involved with both organic and nonorganic products, detailed documentation must verify that there was no commingling between the two products at any time, to ensure only the organic was sold under the organic label. Bills of lading, invoices, weight tickets and other documentation used between sellers and buyers must have the word “organic,” “org,” or another designation, along with the lot numbers and the names of those involved in the commerce. Helping the inspectors and certifiers track the authentic organic sales with detailed documentation, can also help them find the fraudulent ones.

CERTIFICATION AGENCIES MUST PERFORM MORE AUDITS

Organic certification agencies are now required to perform all organic inspections within the calendar year

of certification. This will prevent the timeframe between inspections from being overly long and will better identify potential fraud in a more timely manner.

All certifiers are required to perform traceback supply chain audits, usually based upon risk factors (very large operations with many locations could be considered “riskier”). When complaints are made detailing a variety of suspicions of fraud, those operations may be subject to an unannounced inspection and a very detailed audit of their documentation.

Complaints made to certification agencies and/or to the NOP will not fall on deaf ears, since there are mechanisms in place to delve into the circumstances behind the possible fraud and, if found, to stop it and punish those responsible. Certifiers are mandated to work together and share information, which builds more transparency into the system. Individuals and companies can tell certifiers of suspicious activities and should include details to help guide the certifier in their investigations

EXEMPT BUSINESSES

There are only a few entities exempt from the yearly organic inspection: retail stores and transportation companies. That said, these entities still must protect organic integrity when the organically labeled product is in their possession.

Trucks, railcars, totes, etc., must be documented clean and not treated with prohibited-in-organic materials (such as fumigants). Retail stores cannot have deceptive label-

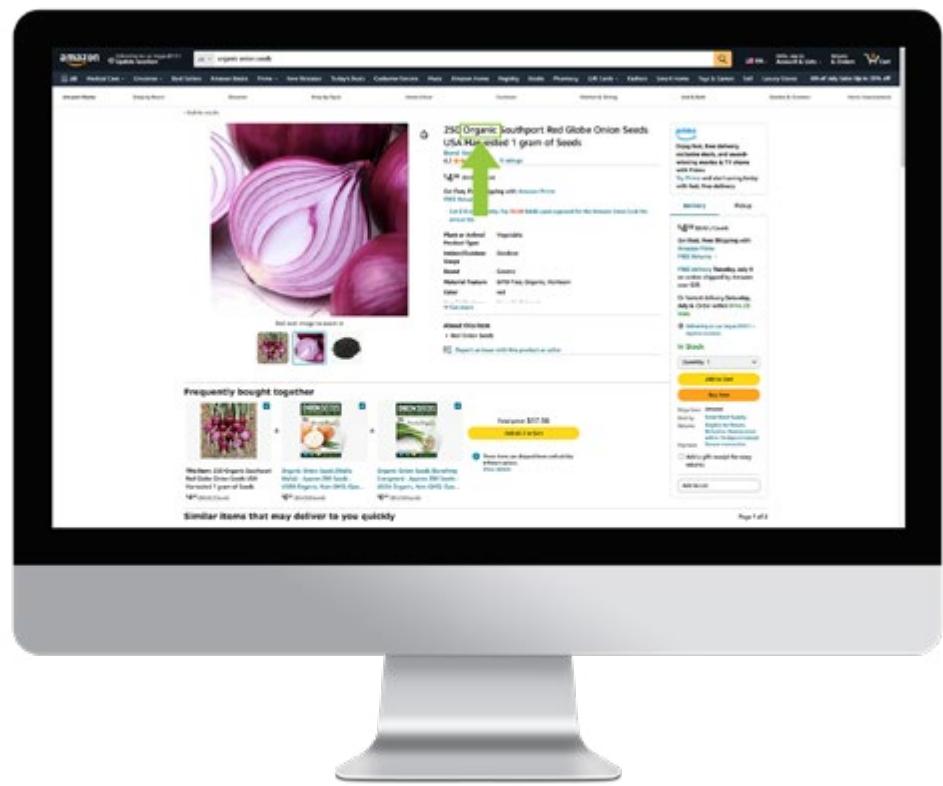
ing, such as a large organic sign over a display of nonorganic strawberries. If the organic handling and labeling rules are not followed, these are now considered cases of fraud, and punishment would be based on how widespread the issues are and how quickly they are fixed.

The USDA organic seal is trademarked and cannot be used by any business that is not certified organic. Farms with gross sales less than \$5,000 a year in organically labeled products do not need to be inspected and certified, but they must still follow all of the organic rules, including the maintenance of documentation that verifies their compliance. Statements like "beyond organic," "better than organic," and "organically grown," are misleading since they include a reference to organic; they can only be used by certified organic operations in their promotional literature. Everyone who has used the word organic, exempt or not, is subject to an investigation by the NOP or a certifier if a complaint is filed.

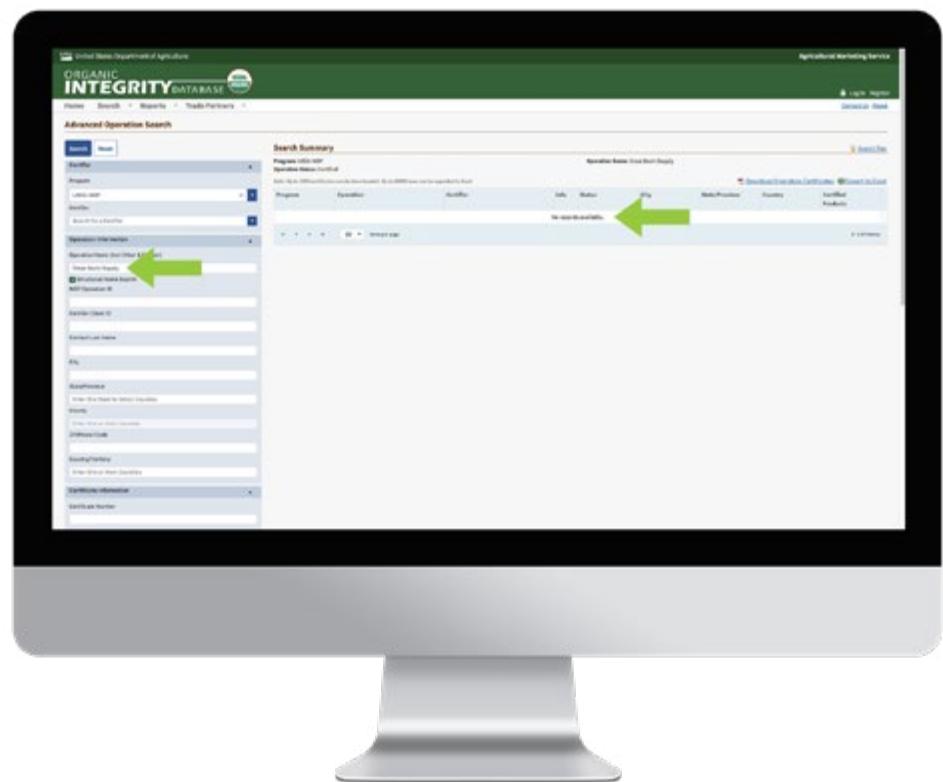
ONLINE SALES

Another large area of commerce covered under the NOP rules is internet sales. An entity that is not already exempt, such as a retail store, selling an organically labeled agricultural product must now be certified organic to do this type of marketing. Those businesses without a physical location and selling online are now mandated to be certified.

It will take some time to clean up the deceptively labeled organic products sold through the internet,



These "organic" seeds for sale recently on Amazon are not truly certified organic — the company cannot be found in USDA's Organic Integrity Database.



and the more help the NOP gets from the public identifying these non-compliant products, the quicker this can be solved. There are many legitimate organic companies selling online, and they should not have unfair competition with businesses that do not invest in the same documentation and traceability to protect organic integrity. There is usually a name of the company selling or distributing the organic product online. Try to find a website for that specific company if you can, and if they do not list a certification agency, they are probably not certified organic. You can also search for that business on the Organic Integrity Database.

WHAT IS REQUIRED OF FARMERS?

If you use an off-farm storage location, such as a cold-storage warehouse, grain elevator, or your neighbor's empty grain bin, or if have your soybeans roasted and then returned to you as organic feed, all of these off-farm handling entities must now have an annual organic certification inspection.

On the farm, organic and non-organic storage and transportation vehicles, such as wagons, should be clearly noted when they have organic product, with documentation they were cleaned before organic use. All employees should know organic protocols, including writing the word organic with a lot number on cases, totes, bills of lading and in-

voices, so that specific shipment can be tracked back through cleaning and to the field of origin.

If there is a supply-chain audit that your farm's products were part of, you might have an unannounced inspection to specifically track one shipment. Try to ensure your system is compliant at all times in order to meet these requirements at your annual inspection and at a possible unannounced inspection.

If you know that your buyer is processing or reselling your organic products, you could verify they are certified and are maintaining organic integrity as a way to prevent fraud, but this is not mandated. Organic certification makes the promise to consumers that products can be traced from farm to store, and farmers must maintain organic integrity in their link of the supply chain. This means any organically certified products used (like seed, feed and bedding) are certified and the next entity receiving your product who would then further sell it, like a distributor, processor or a broker, is also certified.

INTERNATIONAL TRADE

Organic certification agencies, brokers, Customs and Border Protection and the National Organic Program are working with new systems to verify the authenticity of organically labeled products being imported into the U.S.

A specific import certificate for

each shipment must be issued by a certification agency that is verifying the source of the products in that shipment. Brokers can no longer purchase or import organic products without this certificate. A USDA pilot program with the Federal Grain Inspection Service is doing spot residue testing on some incoming organic grain shipments. The same complaint system can be used for international trade transactions.

CONCLUSION: MAINTAINING TRUST IN THE ORGANIC LABEL

The many facets of organic oversight work together to build integrity in the organic supply chain. Farmers, processors, buyers, retailers and consumers all have a part to play in ensuring the organic label is only used on NOP-compliant products. Protecting against deception and fraud in the organic marketplace relies on the vigilance of consumers, farmers and businesses and the strong enforcement by organic certifiers and the NOP.

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