Bruce A. Kaser (WSBA No. 13532)
Vantage Law, PLLC
414 NE Ravenna Blvd.
Ste A-1243
Seattle, WA 98115
Tel: (206) 909-7928
Email: bruce@vantagelaw.net

Attorney for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

Royal Honey Farm LLC; Strehlow Bees, Inc; Adee Honey Farms, LLC; and Fischer Honey Farm, Inc. *Plaintiffs* vs. **UNITED STATES DEPARTMENT OF AGRICULTURE** *Defendant*	Case No. ______________________ **COMPLAINT FOR RELIEF UNDER THE LANHAM ACT (15 U.S.C. §§ 1116 and 1125) AND ADMINISTRATIVE PROCEDURE ACT (5 U.S.C. § 706)**

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Glossary of Acronyms

APA	Administrative Procedure Act
CCOF	California Certified Organic Farmers
CFIA	Canadian Food Inspection Agency
CGSB	Canadian General Standards Board
COR	Canadian Organic Regime
ERS	USDA Economic Research Service
FACA	Federal Advisory Committee Act
FAO	United Nations Food and Agriculture Organization
GATS	USDA Global Agricultural Trade System
IFOAM	International Federation of Organic Agriculture Movements
ITA	U.S. International Trade Administration
NASS	USDA National Agricultural Statistics Service
NHB	National Honey Board
NOP	USDA National Organic Program
NOSB	National Organic Standards Board
OFPA	Organic Foods Production Act
OFC	Organic Federation of Canada
OID	Organic Integrity Database
OIG	Office Inspector General
OTA	Organic Trade Association
SCC	Standards Council of Canada
SOE	Strengthening Organic Enforcement Rule
USCOEA	U.S.-Canada Organic Equivalency Arrangement
USDA	United States Department of Agriculture
USTR	U.S. Trade Representative

I. INTRODUCTION

1. When applied to a honey label, the USDA organic seal symbolizes the honey was made by bees feeding off plant nectar in an agrochemical-free environment. No consumer purchasing the honey would expect that it is the product of rules that enable beehives to be placed in or near conventional agricultural fields where bees can feed on plants that were sprayed with agrochemicals.

2. This case is about agency-created loopholes and challenges the Defendant United States Department of Agriculture's ("USDA") creation of pathways to organic certificates made available only to Brazilian and other foreign honey processors. The pathways violate the Organic Foods Production Act of 1990 (the "OFPA"), discriminate against United States ("U.S.") commercial beekeepers who are legally barred from obtaining organic certificates, and cause consumers to be misled.

3. No U.S. beekeeper can legally produce high volumes of "organic" honey because of OFPA prohibitions. However, the USDA allows foreign honey producers to bypass those prohibitions, entirely, by giving foreign producers access to different rules, like Canadian rules that provide a road to high volume production in conventional agricultural environments.

4. The Plaintiffs bring this action under the Lanham Act and the Administrative Procedure Act ("APA").

5. The USDA is subject to an express statutory waiver of sovereign immunity to Lanham Act claims, 15 U.S.C. § 1122(a), and a separate waiver under 5 U.S.C. § 702 that applies to APA claims.

6. Plaintiffs seek only prospective injunctive relief based on the USDA's ongoing OFPA violations. Unless and until the USDA discontinues these violations, Plaintiffs request an

order requiring the USDA to cease licensing the USDA organic seal for use on foreign honey labels, because it is false labeling.

II. JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over all claims pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

8. The Court has jurisdiction over Plaintiffs' Lanham Act claims under 28 U.S.C. § 1331 and 15 U.S.C. § 1121. Plaintiffs allege false advertising violations under 15 U.S.C. § 1125 and seek injunctive relief authorized by 15 U.S.C. § 1116. Congress broadly waived sovereign immunity for Lanham Act claims against the United States and its agencies. 15 U.S.C. § 1122(a).

9. The Court has jurisdiction over Plaintiffs' APA claims under 28 U.S.C. § 1331. Plaintiffs allege that the USDA, through interpretations and practices that contravene statutory requirements in the OFPA, 7 U.S.C. § 6501 et seq., has created and enforced a regulatory scheme that (1) violates numerous OFPA and regulatory statutes; and (2) discriminates against and harms U.S. commercial beekeepers in violation of the equal-protection component of the Fifth Amendment's Due Process Clause. These violations are reviewable under the APA, which waives sovereign immunity for suits that seek non-monetary relief against a federal agency, 5 U.S.C. § 702. The APA authorizes this Court to "hold unlawful and set aside" agency actions that are: "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" (5 U.S.C. § 706(2)(A)); "contrary to constitutional right, power, privilege, or immunity" (5 U.S.C. § 706(2)(B)); and "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right" (5 U.S.C. § 706(2)(C)).

10. Venue is proper in this District under 28 U.S.C. § 1391(e)(1)(B) and (C). A substantial part of the events or omissions giving rise to the claims occurred in this district in the form of retail sales of honey caused by the USDA to be unlawfully labeled as "organic." 28 U.S.C. § 1391(e)(1)(B). Plaintiff Royal Honey Farm LLC resides in this judicial district. 28 U.S.C. § 1391(e)(1)(C). Venue is proper as to other plaintiffs as joined parties, pursuant to 28 U.S.C. § 1391(e)(1)(C).

III. PARTIES

A. U.S. Commercial Beekeeper Plaintiffs:

11. Plaintiff Royal Honey Farm LLC ("Royal Honey") is a family-owned Washington Limited Liability Company having a business address at 101165 Division Rd. SW, Othello, WA 99344-9126. Royal Honey runs a central Washington apiary operation in Royal, Washington, consisting of over 7,000 beehives. Royal Honey keeps honey yards in the Royal Slope area and has continuously entered into regional pollination contracts since about 2012.

12. Plaintiff Strehlow Bees, Inc. ("Strehlow Bees") is a South Dakota corporation having a primary business address at 303 Missouri Ave., Geddes, SD 57342. Strehlow Bees runs an apiary operation based in Kadoka, South Dakota, consisting of over 50,000 hives. Strehlow Bees specializes in honey production and providing pollination services for large agricultural operations, particularly almond orchards in California's Central Valley. Strehlow Bees joins this action pursuant to Fed. R. Civ. P. 20(a)(1) ("Rule 20").

13. Plaintiff Adee Honey Farms, LLC ("Adee Honey") is a family-owned South Dakota limited liability company having a primary business address at 517 Jay Street, Bruce, SD 57220. Adee Honey is a multi-state independent honey producer that manages over 80,000 hives. Adee

Honey provides crop pollination across the nation, including past pollination contracts in central Washington. Adee Honey joins this action pursuant to Rule 20.

14. Fischer Honey Farm, Inc. ("Fischer Honey") is a family-owned Texas corporation having a primary business address at 323 Broadway, Winnie, TX 77665. Fischer Honey manages approximately 5,000 hives in a multi-state operation that includes Texas, North Dakota, and California. Fischer Honey joins this action pursuant to Rule 20.

B. The Defendant:

15. Defendant USDA is a federal agency headquartered in Washington, D.C., at 1400 Independence Avenue, S.W., Washington, D.C. 20250.

16. The USDA administers the National Organic Program ("NOP") under the umbrella of the USDA's Agricultural Marketing Service ("AMS"), pursuant to the Organic Foods Production Act ("OFPA"), 7 U.S.C. § 6501 et seq. The AMS administers programs intended to create domestic and international marketing opportunities for U.S. producers of food, fiber, and specialty crops.

17. As a federal regulatory program that operates under the purview of the AMS, the NOP creates national standards for organic agricultural products sold in the U.S. under authority of the OFPA. The NOP also accredits third party organic certifiers to act as NOP agents and makes policies for certifying organic farm and handler operations.

18. Last, the NOP operates in collaboration with the National Organic Standards Board ("NOSB"). The NOSB is a federal advisory board staffed by fifteen (15) public volunteers that was created by Congress to make nonbinding advisory recommendations to the NOP concerning any aspect of the OFPA. Congress authorized the USDA to establish the NOSB when it enacted

the OFPA, 7 U.S.C. § 6518. The NOSB is governed by the Federal Advisory Committee Act ("FACA"), 5 U.S.C. §§ 1001 et seq.

19. The Deputy Administrator of the NOP is the Federal officer in charge who is personally responsible for compliance with certain relief requested here, pursuant to 5 U.S.C. § 702. Currently, the Deputy Administrator of the NOP is Dr. Jennifer Tucker. The NOP Deputy Administrator is subordinate to the AMS Administrator.

IV. COMPLAINT SUMMARY

A. The volume of organic honey demanded by the U.S. supply chain is produced by large-scale, foreign commercial processor and beekeeping operations that are incapable of producing "organic"

20. Plaintiffs are U.S. commercial beekeepers, who are also known as honey farmers. Plaintiffs are part of a group or class of commercial beekeepers who are a primary source of domestic crop pollination services and honey production in the U.S.

1. Organic imports displace U.S. beekeepers from the market

21. The USDA reports that domestic beekeeper honey sales were close to 116 million pounds from 2.41 million beehives in 2025, down 14% from the year before (according to a USDA National Agricultural Statistics Service ("NASS") report). According to best estimates, as of May 2026, beekeeper warehouses held about 60 million pounds of unsold honey. Some beekeepers are now sitting on 3 years' worth of unsold honey. Among those who were able to sell honey in the spring of 2026, most were forced to sell at net losses.

22. The 14% downturn and warehouse carry-over is, in part, causally linked to cheap, low quality ("adulterated") foreign honey imports that are pushing U.S. beekeepers out of the market. U.S. honey buyers (typically honey packers or co-packers) are putting foreign import prices ahead of concerns over quality.

23. However, relevant to the allegations in this Complaint, the downturn is also causally linked to USDA violations of the OFPA, which have enabled a surge in foreign "organic" honey imports – now over *78 million* pounds in 2025. This is pushing U.S. beekeepers out of the market independently of the adulteration issue.

24. This second category is fueled by shifting consumer preference and demand for "organic" over "conventional" food sold by retailers. It has caused U.S. honey buyers, who bottle and sell honey in the retail supply chain, to shift their upstream supplier purchases away from U.S. beekeepers to foreign suppliers who can sell honey that is accompanied by the USDA organic seal.

2. Canadian rules unavailable to Plaintiffs are the likely source of most "organic" honey imports

25. Agrochemical use in agriculture coupled with OFPA statutes, regulations, and related USDA policies legally bar U.S. beekeepers like Plaintiffs from producing organic honey in the quantities that buyers now want.

26. Foreign honey producers operate in similar agrochemical-intensive environments, except the USDA allows foreign producers to obtain organic certificates – under a hidden set of Canadian and other procedures that are made unavailable to Plaintiffs.

a) The agricultural realities of honey production

27. Plaintiffs allege that commercial beekeepers routinely move massive numbers of beehives from place to place to provide crop-pollination services and produce honey. The best example is the annual migration of beekeepers from across the U.S. to California's Central Valley almond orchards. In the recent book *Bitter Honey*, it was reported that, in 2024, commercial beekeepers hauled well over 2 million bee colonies and placed them on over a

million acres of almond trees. Jennie Durant, *Bitter Honey: Big Ag's Threat to Bees and the Fight to Save Them* 6 (2026).

28. The honey produced by commercial beekeepers is "conventional" because, in the almond and other agricultural sectors, the bees feed off and make honey from crops where agrochemicals are used regularly. Bees also fly miles from their hives. Because they cannot be fenced, where and what bees forage on simply cannot be controlled. This makes both commercial and general backyard beekeeping incompatible with organic standards that require bees to feed only on plants that are agrochemical-free.

b) The USDA-created "organic" bee forage zone that organic certifiers are supposed to inspect and verify, annually

29. Bees are "animals" according to common scientific classification. USDA publications establish that the USDA treats managed organic honeybees the same way as other organic farm livestock (cows, etc.).

30. Organic livestock must forage exclusively on plant life kept free from prohibited agrochemicals for at least three (3) continuous years. If fed independently, because natural forage is depleted, then the feedstock must be "all organic" in the same way. These requirements are created by a collection of OFPA statutes and regulations, including 7 U.S.C. §§ 6504, 6508, 6509, and 7 C.F.R. § 205.240(a).

31. Honey produced by bees that feed off plants where prohibited agrochemicals are used is not organic by OFPA standards and cannot be labeled that way.

32. To create a regulatory separation between what is organic honey and what is not, the USDA created apiculture "expectations" for organic certification that follow the OFPA's statutory and regulatory guidelines.

33. These expectations – which were put into wide distribution among USDA-accredited organic certifiers – define how and where bees can feed and still be considered organic.

34. They direct USDA-accredited certifiers to inspect and verify that the site of every organic bee colony is surrounded by a buffer or forage zone of entirely "certified organic" farm or wildland (wildland must be organic, but need not be "certified" organic). The area of the zone is defined by a USDA-adopted radius of 1.8 miles from bee colony location (this is derived from a European 3-kilometer standard).

35. Assuming 1.8 miles is a honeybee's maximum range from its hive, which is far short of what it actually is, the USDA therefore constructively built a fenceless organic bee pasture area consisting of ten (10) square miles.

36. This forage zone area creates a place for bees to theoretically feed off entirely organic plants that are not grown with any synthetic fertilizers or sprayed with pesticide chemicals (collectively called "prohibited substances" in the OFPA). To the extent organic bees need to be fed independently, if natural food becomes scarce, the USDA requires the feed to be 100% organic – the same as other organic livestock. The honey produced is theoretically agrochemical-free.

37. It is common knowledge that a forage zone like this will automatically cap total honey production, making *large-scale* production of organic honey impossible, and relegating it to a few isolated places. This is because 10 square miles defines a limit on natural food availability in the zone which, as a consequence, limits the number of beehives that can be sited in the zone.

38. Roughly speaking, 10 square miles might support about 50 permanently-placed hives capable of naturally producing roughly 50 plus pounds of honey each (for sale) – numbers that will vary up and down from year-to-year based on weather and local plant quality. Therefore, to the extent these places exist in the U.S., their small number will produce *de minimis* amounts of honey compared to amounts like the 116 million pounds sold by U.S. beekeepers last year.

39. Commercial beekeepers are able to keep much larger numbers of hives in smaller areas ("apiaries" or "honey yards") because hives are constantly moved to new fields seeking new sources of plant nectar (i.e., new feeding grounds), which is usually linked to providing crop pollination for farmers. Bees are independently fed in the honey yard by the beekeeper when the hives are not moving for long periods of time and/or when insufficient natural food sources are available.

40. If large numbers of bees do not have sufficient feed, they may die in place or naturally leave the hives and move on to places where they are unlikely to survive in large numbers. Therefore, commercial beekeepers constantly manage hives through a combination of regular movement to new fields or areas where bees can find food, along with independent feeding in honey yards.

c) The supermarket anomaly

41. Because the availability of truly organic bee forage zones is limited, the above factors collectively mean the OFPA (7 U.S.C. § 6501 et seq.) has served to effectively prohibit U.S. commercial beekeepers from the organic honey market.

42. While limited quantities of organic honey might be available from a few small producers in Hawaii, as an example, an anomaly exists in that there is no U.S.-produced

"organic" honey on the shelves of any supermarket chain where high volumes of honey are sold – it is mostly labeled "Product of Brazil" or the product of a handful of other nations that collectively export much lower amounts compared to Brazil.

43. The USDA's Global Agricultural Trade System ("GATS") statistics show the amount of organically labeled honey imported into the U.S. has grown from nothing to significant numbers. As indicated above, last year (2025) organic honey imports exceeded 78 million pounds compared to the 116 million pounds of "conventional" sold by U.S. beekeepers.

44. In fact, USDA import records show roughly 90% of *all* honey imported from Brazil is now labeled "organic," leaving a small percentage of Brazilian imports that are *not* labeled organic. Yet, organizations like the Food and Agriculture Organization of the United Nations ("FAO") report that Brazil is one of the largest consumers of pesticides globally. Data on worldwide pesticide use consistently rank Brazil, the U.S., and China as the top three countries in pesticide consumption and application.

45. For a long time, this has raised questions about the presence of the USDA organic seal on Brazilian and other foreign honey labels. However, the USDA organic seal on the labels creates a front that appears to stand in answer to those questions. The seal is the federal government's backing ("certification") to consumers that the honey in the bottle is made by bees that did not feed where agrochemicals are used.

46. A prominent USDA-accredited certifier nevertheless once acknowledged to organic writer Max Goldberg that the supermarket anomaly "didn't make much sense."

d) Canadian rules made available for use by similarly situated foreign beekeepers bypass the USDA's "organic" forage zone

47. Because the USDA's 10-square-mile "organic" forage zone necessarily caps total honey production, Plaintiffs allege that it is impossible for foreign beekeepers to find the massive

numbers of organic forage zones that would be necessary to produce the volumes that are being imported, if those honey producers are adhering to the USDA's stated forage zone requirement.

48. Plaintiffs allege that the sheer size of foreign production numbers would likely require permanently siting beehives in an impossible, totally "organic" forage area that is roughly the consolidated size of Washington, Oregon, and Idaho.

49. Plaintiffs allege that most organically-labeled honey likely results from use of a different set of rules by honey producers in Brazil and other countries, like Canada's organic rules. Canadian rules recognize the difficulty of applying organic livestock principles to a bee forage zone construct when, in the case of Brazil, it likely involves thousands of beekeeping operations and, perhaps, over a million beehives. On an approximate basis, these are roughly the numbers that would be required to generate the volume of organic production currently coming out of Brazil alone.

(1) Canadian rules value bee health over bee forage

50. Canadian rules create substantial exceptions for beehives that are located in or near conventional agricultural areas.

51. Canada essentially recognizes the impossibility of keeping bees from feeding in areas with agrochemicals. Therefore, Canadian rules allow bees to feed in those areas, so long as beekeepers consider how bee health is impacted (i.e., what happens to the bees if they are placed in or near a farm field too soon after sprays are applied). This conceptually relates to "safe" field re-entry periods for agricultural workers following applications of agrochemicals, which are routinely listed on agrochemical labels. Except, rather than rely on the label's minimum timing requirement, the timing of bee entry is delegated to the Canadian organic beekeeper's judgment about agrochemical "avoidance" and bee harm.

52. These Canadian exceptions, and other exceptions, are the likely source of Plaintiffs' market-injury-in-fact. Plaintiffs are prohibited from using Canada's apiculture rules. The USDA allows Brazilian and other foreign honey producers to use them and, additionally, apply them by using other standards that guarantee practically no meaningful beekeeper oversight.

53. To put the USDA organic seal on the honey, the USDA created a Canadian-to-USDA organic certificate exchange mechanism. The mechanics of the certificate exchange, not actual organic management of bees according to USDA expectations, enables large foreign honey processors to be first-in-line with a USDA organic certificate in the supply chain.

54. Plaintiffs allege that the lion's share of imported "organic" honey production originates from similarly situated large-scale commercial beekeeping operations, in Brazil and other countries, who take advantage of Canadian and other exceptions created by the USDA. Canada calls the honey "organic," even if bee hives are in or near conventional agricultural fields. The USDA does not, except the USDA accepts Canada's judgment on the matter.

55. It places the USDA seal on honey labels in supermarket chains, with no indication that Canada is involved.

B. <u>Plaintiffs' legal claims</u>

56. The USDA organic seal is a "certification mark," based on a license-to-use right that comes from the creation of an underlying USDA organic certificate.

1. Plaintiffs' Lanham Act claims summarized

57. Under the Lanham Act's prohibition on trademark misuse and commercial false advertising, 15 U.S.C. § 1125(a)(1), Plaintiffs seek to enjoin the USDA from enabling misleading organic honey labeling in commerce, and distributing misleading in-store

promotional materials where honey is sold. The Lanham Act provides Plaintiffs with injunctive relief pursuant to 15 U.S.C. § 1116(a).

58. USDA-enabled misuse of the USDA organic seal misleads consumers into purchasing honey labeled as "organic" only because of the seal's existence on the label, when the honey is unlikely to have the true characteristics of "organic" in actual fact.

59. Consumers buy organically labeled food because they regard it to be higher quality relative to conventional food. For example, the California Certified Organic Farmers ("CCOF") Foundation reports:

> Consumers cite numerous reasons for choosing organic over conventional foods including avoiding toxins from pesticides, hormones, and antibiotics; the perception that organic food is higher quality; alignment with consumers' values; and to avoid highly processed foods and artificial ingredients. Consumers in the United States also choose to eat organic food out of a desire to know where food comes from and for transparency in the supply chain, which is provided by the rigor of the USDA organic certification process.

CCOF Foundation, *Benefits Report, Roadmap to an Organic California* 16 (2019).

60. Because of USDA-enabled trademark misuse and false advertising involving the USDA organic seal, consumers who purchase foreign organic honey are being misled by the seal into believing they are purchasing agrochemical-free honey that is better than what Plaintiffs can provide – because of known agrochemical use in the U.S. However, Brazilian beekeepers also operate in a country that – like the U.S. – is known to be a leading agrochemical user. Plaintiffs have a commercial interest in consumers not being misled by unknown Brazilian use of rules like what Canada provides, which cause the USDA seal to be placed on honey labels, because such use displaces Plaintiffs from the market.

61. Foreign use of Canadian apiculture rules is only one problem. The USDA is also misleading consumers into believing imported Brazilian organic honey, as well as the imports

from other countries, are certified by *USDA-accredited* certifiers following annual on-site inspection and verification of each beekeeper's 10-square mile organic bee forage zone. In Brazilian honey, the USDA organic certificate likely begins with certifiers who are actually *Canadian-accredited* certifiers.

62. The seal on the honey label, and related promotions generated by the USDA, omit the existence and scope of use of inspection standards that are much lower than the inspection standards required by U.S. law. For example, Canadian and other certifiers use little-known "group certification" practices that involve little and possibly no on-site certifier visits of any local beekeeper apiary locations, despite USDA messaging that claims otherwise.

63. Canadian apiculture rules and group certification create the USDA-enabled trademark misuse and false advertising problems alleged here. Injunctive relief is authorized under 15 U.S.C. § 1116(a).

2. Plaintiffs' APA claims summarized

64. Plaintiffs allege a significant number of agency actions that violate OFPA statutes. These actions must be set aside following judicial review under the APA.

65. The OFPA is supposed to apply equally to all honey producers, domestic and foreign, whose product is sold to U.S. consumers.

66. Plaintiffs allege that USDA discriminatory and inconsistent implementation of the OFPA created two classes of honey producers: domestic producers who are correctly banned from using the USDA organic seal by the OFPA; and similarly or even identically situated foreign producers who should be banned but are not.

67. Plaintiffs allege the differential and inconsistent treatment – e.g., a USDA-created "Canadian" loophole made available only to foreign honey producers – is the direct result of the

USDA either ignoring or misinterpreting the requirements of an OFPA certificate-exchange statute involving imports, 7 U.S.C. § 6505(b).

68. Misapplying the statute, the USDA created a worldwide hidden chain of organic certificates that begins with Canada, resulting in a system that creates USDA organic certificates for foreign organic honey imports. The agency actions that created this pathway should be set aside under various judicial review provisions created by the APA.

69. Related to the above, Plaintiffs challenge (1) the U.S.–Canada Organic Equivalency Arrangement ("USCOEA"), and the New Zealand "recognition" agreement, which create loopholes leading to organic honey imports; and (2) certain provisions of the USDA's recent Strengthening Organic Enforcement ("SOE") rule amendment, specifically 7 C.F.R. §§ 205.201(c); 205.400(g); and 205.403(a)(2). The rule amendment codifies illegal "group certification" practices that lead to organic honey imports.

70. Plaintiffs allege these agency actions, which are final, should be declared unlawful and set aside under the statutory authority of 5 U.S.C. § 706.

V. FACTS

A. Background

71. When it comes to certified organic food, consumers mostly do not receive what the USDA tells them they receive. When Congress passed the Organic Foods Production Act (OFPA) in 1990, it was based on a traditional picture of U.S. agriculture: one farm, an annual on-site inspection of the farm by an independent organic certifier, and one organic certificate for the food produced by the farm. It is a system based on creation of a "certificate" following oversight by an independent third-party (i.e., a government-accredited certifier). The certifier has no ties to or financial interest in the farm or what it produces.

72. In addition to annual certifier inspection of the farm, the farm's products are to be periodically tested for agrochemicals ("residue testing") to ensure farm compliance with the OFPA's prohibition on agrochemical use. The farmer is even required to provide an averment of compliance that makes the farmer subject to monetary penalties, and even prison, if violations are found.

73. In return for meeting the above conditions, the farmer receives a USDA organic certificate. The certificate makes up the backbone of organic trade because it is a USDA-created license to apply the USDA organic seal to the food produced by the farmer as it passes into the supply chain, representing the food to be agrochemical-free, among other things.

74. The details of this model are presented in publications like the USDA's general "Guide to Organic Certification" made available to the public along with many other similar publications and website resources. The USDA's messaging about how it administers this system puts on a public face that closely follows the OFPA's core statutes.

1. The NOP – a domestic program that drifted from statutory requirements

75. Breaking away from the above model likely began as soon as the USDA's National Organic Program (NOP) was created in the mid-to-late 1990's. The birth of the NOP was followed by the first USDA-issued organic certificates in or about 2002, and then reached a seminal moment in 2006.

76. At that time, senior agency officials within the USDA's Agricultural Marketing Service (AMS) issued a binding administrative decision that informed the NOP it had been wrongly allowing USDA-accredited certifiers, operating overseas, to use "group" certification practices that violated the OFPA.

a) Group certification

77. Outside general public knowledge, the NOP was allowing foreign-based certifiers to routinely use "grower group" (aka. "producer group") certification practices to manufacture organic certificates directly for the benefit of foreign ingredients suppliers, typically first-level food processors who aggregate crops from large numbers of supplier farmers and sell the crops in bulk. Group certification places the processor's name, not farmers' names, on the first organic certificate introduced into the supply chain.

78. The practice originated from out-of-country tropical crop imports, before the OFPA existed, when governments were not involved in organic regulation. Organic "certifiers" were unaccredited private parties at the time, self-appointed as experts in organic farming practices. And initially, many were experts.

79. Congress did not include group certification in the OFPA when it decided to regulate organic food production in 1990, probably because it was a largely unknown foreign practice. Therefore, during the subsequent ten to twelve years it took to develop a USDA administrative system that implemented the OFPA, NOP officials, private certifiers who existed before the OFPA, and industry insiders who knew about and benefited from the practice collaborated to quietly grandfather it in, with no statutory basis.

80. The "group" is usually organized by an agribusiness/food processing entity who wants the organic certificate. The food processor aggregates crops from large numbers of supplier farms in a convergent crop-supply network that usually includes layers of middlemen between the farmers and the processor.

81. Single-farm certification is a foundational requirement of the OFPA. Single-farm certification involves the farmer receiving the first organic certificate in the supply chain

following annual on-site inspection and verification of farm practices by an independent, third-party certifier who visits the farm.

82. Group certification is a significant departure from single-farm certification. Under the group procedure, the agribusiness receives the first organic certificate in the supply chain. Inspection of the agribusiness's supplier farms is shifted from a government certifier to "internal" inspection – a form of self-inspection that is nonuniform in implementation. It may involve agribusiness field inspectors who work as direct employees of the agribusiness. It is not uncommon to use local farmers who inspect others in the group, akin to "peer-to-peer" review.

83. All of the group's farmers are required to enter into a contract that exclusively binds them to the agribusiness. As a largely foreign practice, what little information there is about farmer payments indicates some farmers may receive a small premium or, in some cases, they may not know their crops are sold as "USDA organic."

84. Group self-inspection is euphemistically described as the group's "internal control system," with that term disguising actual internal inspection methods and details. Any farm inspections actually done by an outside, third-party certifier is relegated to the certifier's subjective "risk assessment" of the actual need to visit a sampling of the group's farms.

85. Instead of actual farm inspection, the certifier's focus is shifted to review of the agribusiness's plan for administrating the internal control system. Based on that review, the certifier gives the first organic certificate to the agribusiness.

86. Group certification is intended to minimize or eliminate significant time and travel costs attributable to on-site certifier inspections of large numbers of hard-to-locate supplier farms.

87. One obvious byproduct is the lowering of inspection standards because of the elimination or near-elimination of independent, on-farm scrutiny by a third-party certifier's inspector. In addition to keeping independent certifiers off farms, this system also reduces certifier office time – from reviewing hundreds or thousands of individual organic farm plans (another OFPA requirement, 7 U.S.C. § 6506(a)(2)) to reviewing the agribusiness's single plan, which includes the plan for the "internal control system."

88. In stated theory, group certification was originally intended to be used as a low-cost system designed to help small communities or villages that could be visited by a third-party certifier where all farm plots are closely located and farmed the same, like a single farm. However, in practice, it quickly went unchecked and became a low-cost system for large agribusinesses. These agribusinesses were already using it by the time the NOP began to accredit foreign certifiers and issue organic certificates in or about 2002.

89. An industry lobbyist, the Organic Trade Association ("OTA"), recently summarized a third-party report for the NOP – confirming the largest trader group to be certified this way had *80,000* members. The same report indicates there are unconfirmed group numbers that are even higher in certain African countries.

90. Whereas group size was intended to be kept small and confined to geographic boundaries appropriate to a village situation, the world's largest USDA-accredited organic certifier, Ecocert SAS ("Ecocert"), indicated to the NOP that geographic boundaries are limited only by a country's borders.

(1) The AMS finds group certification is illegal

91. The public records that remain suggest that in 2006 senior AMS officials may have discovered, but certainly reviewed for the first time, the NOP's allowance of group certification

practices. It happened during the course of an administrative appeal to the AMS that involved a rejected application for organic certification made by a Mexican group operation. At that time, the AMS stepped in and declared the practice illegal.

92. Lacking any reasonable justification in the face of clear OFPA statutes, NOP officials subordinate to the AMS decided to not follow the AMS's administrative decision. They were aided by "recommendations" of the National Organic Standards Board (NOSB) that the NOP used as ultra vires adoptions. The NOSB was largely populated by industry insiders who wanted the out-of-statute practice to continue, thereby giving them a cheap path to the USDA organic seal.

93. The USDA organic certificate had, by that time, become a financial instrument that was generating an organic premium, in a supply chain that was responding to increasing consumer demand for organics. Additionally, a class of foreign, for-profit certifier organizations had emerged who wanted the practice to continue because it was a primary source of their revenue stream.

94. This was significant because the NOP's action marked clear agency departure from the OFPA's core farm inspection and labeling statutes toward a pattern of intentionally ignoring U.S. statutes in favor of foreign imports.

95. In honey, it eventually led to imports of foreign "organic" honey produced by large honey processors holding "group" certificates who also took advantage of other rules.

b) The New Zealand recognition agreement

96. The above is only part of the NOP's history of drifting from statutory and regulatory requirements.

97. Congress tasked the NOP with establishing a program to accredit certifiers who would issue USDA organic certificates. For any party who wanted to become accredited, the program requires the party to submit an application for accreditation directly to the USDA/NOP. The USDA/NOP then determines whether the applicant has sufficient expertise in organic farming and handling techniques to qualify as a certifier who would receive authority to issue USDA organic certificates. 7 U.S.C. § 6514(b). A foreign exception is implied in § 6505(b), which allows imported products to be labeled as USDA organic if the USDA determines the imports came from a country determined by the USDA to have its own "equivalent" certification program. This means the equivalent program would accredit its own certifiers.

98. Immediately ignoring § 6514, in 2002 the USDA/NOP entered into an agreement recognizing the New Zealand government could accredit certifiers for the purpose of placing the USDA organic seal on imports from New Zealand. The problem was the USDA did not review New Zealand's organic program for equivalency beforehand, because New Zealand did not have an organic program.

c) Residue testing

99. Periodic residue testing is required by OFPA statute, 7 U.S.C. § 6506(a)(6). In 2010, the USDA's Office Inspector General ("OIG") reported that the NOP was issuing organic certificates without requiring *any* pesticide residue testing (applied to agrochemicals, "pesticides" include both herbicides and insecticides).

100. The purpose of periodic testing is to deter fraudulent use of synthetic agrochemicals at both the farm-level and downstream in the supply chain, but mostly the farm. The OIG report indicated that the NOP ignored the statute entirely, under NOP reasoning that testing involves too much extra expense for certifiers and increases the complexity of certification procedures.

101. In response to OIG oversight, NOP officials instructed its accredited organic certifiers to periodically test organic food samples, but then enabled them to use a minimalist test method (called the QuEChERS test) – a cosmetic response that mostly neutralizes the residue-testing statute as a guardrail.

102. Now, and applicable to organic honey sales to U.S. consumers, the NOP routinely makes a public claim that it has a "Residue testing program to verify that prohibited pesticides aren't being applied to organic crops." The problem is the QuEChERS test is incapable of detecting glyphosate (marketed under the trademark Roundup® and other marks) and most other chemicals that are prevalent in agrochemical-intensive agriculture today, including fumigants that are used in the import supply chain.

103. With or without QuEChERS, in "organic" honey, there is no available evidence of periodic residue testing.

d) The USCOEA – creation of the Canadian certification pathway

104. Creation of what is referred to here as the "Canadian loophole" is an even more significant breakdown in NOP statutory compliance. As it relates to Plaintiffs, the loophole is singularly responsible for using different, Canadian standards to put the USDA organic seal on massive quantities of foreign-produced honey.

(1) NOP officials call the Canadian system "equivalent" without comparing the OFPA's statutes to the Canadian system

105. Canada's organic system was not created until 2009. Unlike the OFPA, which made no allowance for group certification, Canada created a dual-standard system that adopted single-farm certification on the one hand, similar to the OFPA, but also wrote its own version of group certification directly into Canadian laws – allowing it to be used as an alternative certification pathway.

106. As indicated above, Congress enacted 7 U.S.C. § 6505(b) for the purpose of facilitating organic labeling on direct imports from another country deemed to have an organic certification system "equivalent" to OFPA statutes. If equivalency is determined to exist by the USDA, then the other country's organic certification seal can be exchanged and replaced by the USDA seal on a food label.

107. The same year the Canadian system was created, NOP and Canadian officials, pushed by the Organic Trade Association (OTA), exchanged letters that simultaneously called their respective certification systems "equivalent."

108. Under § 6505(b), this enabled Canadian certifiers to use Canada's organic standards to place the USDA seal on organic food shipped from Canada to the U.S., and vice versa, under Canada's counterpart authorization.

109. This gave rise to what is now officially designated as the U.S.–Canada Organic Equivalency Arrangement (USCOEA). It was deliberately called "arrangement" over "agreement" in order to avoid legislative ratification by Congress, and other scrutiny, like the public notice and comment requirements of the APA.

110. On information and belief, there is no evidence that NOP officials conducted a *statutory-level* comparison between U.S. and Canadian organic laws before the letter exchange occurred – in direct contravention of § 6505(b). Instead, concerning group certification, in particular, public records suggest NOP officials merely compared its unwritten outlier version of group certification – which the NOP was illegally allowing its accredited certifiers to use on a more or less ad hoc basis – to the one described to them in meetings with Canadian officials.

111. In honey, no one noted then, or since then, that Canada has significantly softer rules concerning where beehives can be located relative to conventional agricultural crop fields.

112. When the USDA's OIG later evaluated the USCOEA in a 2017 trade report, the OIG was clearly unable to determine how the NOP closed the gap between identified differences in the U.S. versus the Canadian organic system. The NOP agreed that it had not been transparent, but made no changes.

(2) The Canadian certification pathway was not limited to direct imports from Canada to the U.S.

113. The above events were seminal in creating a hidden certification pathway that did not involve direct trade between Canada and the U.S..

114. The USDA/NOP and the OTA have mostly explained the USCOEA in half-truth form that follows the language of § 6505(b) – a deal that expedites *direct* organic trade between Canada and the U.S., or vice versa. The following OTA explanation is illustrative:

> The U.S. Department of Agriculture (USDA) and the Canadian Food Inspection Agency (CFIA) signed the historic Equivalence Agreement on June 17, 2009 during OTA's All Things Organic™ Conference & Trade Show in Chicago. As of June 30, 2009, the agreement allows for the smooth flow of organic products between the two countries, without requiring farmers or manufacturers to certify twice to mutually exclusive and redundant standards.

115. Missing from the above narrative is the other half of the truth: unrelated to direct trade between the two countries, and without making any public disclosure about it, the NOP allowed the USCOEA to be used as a mechanism for applying the USDA seal to *any* foreign import into the U.S. from *any* country, not just Canada.

116. So long as the import is certified by a Canadian-accredited certifier using Canadian standards, then the Canadian organic seal can be exchanged for the USDA seal anywhere, and enter the U.S. only with the USDA seal. In honey, this meant a Canadian certifier can create a USDA organic certificate for a Brazilian honey processor who ships honey directly to the U.S., using Canadian rules and procedures.

117. In public, the NOP framed the USCOEA as something designed to facilitate *export* marketing opportunities for U.S. organic farmers. However, in honey, the above loophole likely caused about 60 million pounds of "USDA-certified" organic honey to be shipped directly from Brazil into the U.S. in 2025. Roughly speaking, that amount fills about 95,000 55-gallon drums.

e) The Canadian pathway is revealed

118. In general, because of NOP and industry secretiveness, group certification is a hard to pin-down system, including the extent of its use. It is never referenced in routine public messaging about the NOP's organic certification practices.

119. For example, it cannot be found on any page or paragraph of the USDA's website where "Becoming a Certified Operation" is explained, https://www.ams.usda.gov/services/organic-certification/becoming-certified). NOP publications that are distributed to the public like "Guide to Organic Certification," "Guide for Organic Crop Producers," or "Guide for Organic Processors," all fail to mention it. It is mostly referenced on the websites of foreign certifiers.

120. When group certification is mentioned at all, by either the NOP or other industry insiders, the fact that it involves certifiers *not* doing annual on-site farm inspections and *not* certifying individual farms is never clearly explained and always masked, usually by the "internal control system" euphemism. This is often coupled to general statements taken from OFPA statutes, such as "all farms are inspected annually," but without explaining by whom (i.e., the farmers themselves).

121. The problem has always been that Congress did not include this system in the OFPA; it was not written into the original set of USDA regulations; and no one in the general public has known about it, because of USDA messaging practices. It has long been an unseen

foreign practice closely held by the agribusinesses who use it, the consultants who set up agribusinesses with the foreign certifiers who create the certificates, and the NOP officials who have secretively allowed it.

122. The extent group certification is outsourced to the Canadian government on a worldwide basis has been even more deeply hidden.

(1) USDA changes to the "Organic Integrity Database"

123. After over 20 years of largely undisclosed use, group certification was codified, for the first time, in the SOE amendment to existing U.S. regulations (March 2023 effective date). During the pre-SOE period, because of USDA public messaging, no member of the general public could have reasonably ascertained how widespread foreign group certification had become as applied to organically labeled food – or how it even worked. Even when it recently appeared in regulations as part of the SOE amendment, in public notice and comment it was dealt with as a peripheral issue, keeping the extent of the practice's use and specific operational details buried.

124. Moreover, apart from industry insiders, no one in the public could have reasonably understood or discovered how the Canadian loophole factored into the system.

125. On information and belief, the USDA's first public acknowledgement of the Canadian loophole was made by a single oblique reference that appeared, for the first time, in a February 2026 website update, shown below:

> **Scope.** This equivalence covers trade of USDA-certified and COR certified products between the United States and Canada, ***as well as third countries***. Products produced outside of the United States or Canada must be certified through the entire supply chain to either the USDA or Canadian organic standards. (bold face and italics added)

126. As part of SOE implementation, the NOP required certifiers to begin adding new information in data fields that appeared in the public side of its web-based "Organic Integrity Database" ("OID"). This new information revealed that, in honey production and many other commodities, the USCOEA is mostly used, not for direct trade between the U.S. and Canada, but as a loophole for worldwide imports of food bearing the USDA organic seal from non-Canadian countries. The loophole is now likely used to place the USDA seal on virtually every kind of imported agricultural commodity entering the U.S. from over 70 countries.

127. On information and belief, this happened because of a mixture of complex factors which, at the most basic level, involve U.S. retailers wanting a supply chain for selling products to consumers at an organic price premium.

128. In certain agricultural sectors, the increasing demand for organic suppliers (driven by consumer demand) outpaced speed of expansion by U.S. producers. The void was filled by foreign agribusiness suppliers who found advantageous "certificate trading" pathways, like the one provided by the USCOEA, to create the USDA organic seal on labels while avoiding both the statutory framework of the OFPA and USDA/NOP oversight.

129. In honey, the USCOEA is likely used extensively to put the USDA seal on labels.

B. <u>How the Canadian loophole works</u>

130. Understanding how group certification and the USCOEA are used together explains why statistics show many foreign countries are net *importers* of significant amounts of *conventional* agricultural products, but have now uniquely become *organic exporters* to the U.S.

131. The following is a real-world example of how the USCOEA works in soy imports from Nigeria:

1. The Nigerian case study

132. An agribusiness farm-group called Gbokun Egan Farmers Cooperative Society ("Gbokun") is located in *north-central* Nigeria (according to USDA records, an agribusiness group aggregator of crops from over 12,000 combined acres of soybean farms). On information and belief, the image below (showing a mound of grain outside of a building) corresponds to Gbokun's address shown on its USDA organic certificate:

Likely site of Gbokun Egan Farmers Cooperative Society – KM 5, Bida Mokwa Road, Bida Local Government, Niger State, Nigeria (image courtesy of Google EarthPro)

a) The Canadian group certificate

133. On information and belief, Gbokun requests a Canadian organic certificate *by email* from Aditi Organic Certifications Pvt. Ltd. ("Aditi"), a "gateway" certifier having a single office 4,350 miles away in southern India. Aditi is accredited as an organic certifier by the Canadian government and has a specialty practice that involves issuing Canadian certificates to various

operations in approximately twenty-one (21) different countries, including Nigeria. It is not accredited as an organic certifier by the USDA. It is the only organization accredited by Canada to issue Canadian certificates to Nigerian operations.

134. Because it is accredited by the Canadian government, an India-based certifier like Aditi is allowed to issue an initial Canadian organic certificate to an agribusiness group far away in Nigeria.

135. The reason is Canada's organic system provides its accredited certifiers with a discretionary "risk assessment" option to issue an initial group certificate to an agribusiness operation without actually visiting any of the operation's facilities or supplier farms beforehand, so long as the "internal control system" plan is reviewed. Alternatively, the certifier may or may not exercise its discretion to hire a local Nigerian surrogate (e.g., The Association of Organic Agriculture Practitioners of Nigeria aka. "NOAN") who visits the above facility before the certificate is issued. Or the surrogate may visit later, to assess whether the internal control system is working.

136. Consequently, Aditi's decision to certify rests on something that is the key to group certification: the *agribusiness-applicant's* contractual promise to the certifier, as part of the Canadian certificate request, that all local Nigerian farmers in the group have not been using prohibited agrochemicals and will be "internally" inspected for future prohibited use – the essence of the agribusiness's "internal control system."

137. One local Nigerian practice is for Farmer "A" to inspect Farmer "B" who inspects Farmer "C" and so on, all allowable under the group certification concept:

0 AM NOAN PGS Certification Procedures – NOAN

3. Groups cross examine themselves using the check list provided and verify one another
a. Note: Farmer A checks farm B, Farmer B cannot Check Farmer A but can check another farmer C

Source: group certification procedures according to the Association of Organic Agriculture Practitioners of Nigeria (formerly known as "NOAN")

b) The Canadian-USDA certificate exchange

138. On information and belief, Aditi's Canadian certificate (or confirmation of Canadian certification) is emailed to OneCert International Private Limited ("OneCert"), another certifier located in *northwestern* India. Unlike Aditi, OneCert *is* accredited as a USDA organic certifier by the NOP, only, but not the Canadian government. USDA records show that OneCert has created a specialty in exchanging Canadian for USDA certificates for far-away operations by using the Canadian loophole.

139. According to the way the NOP has allowed the USCOEA to be optionally used, OneCert can convert Aditi's Canadian certificate into a USDA organic certificate without inspecting any farms – it only requires the Canadian certificate paperwork from Aditi for the conversion.

140. From India, OneCert enters the Nigerian operation into the certifier side of the USDA's Organic Integrity Database (OID), designating the operation as USDA-certified because the USCOEA was applied (*See, e.g.,* Gbokun NOP ID 4920007499 in the OID).

141. This generates the actual USDA organic certificate directly from the database, and any required import documents, which are emailed back to Nigeria. In such case, the underlying "Canadian" certifier is never identified, and the USCOEA designation is removed from the USDA certificate itself.

142. The following reference "Certified in accordance with the terms of the US-Canada Equivalency Arrangement" appears in the OID apart from the certificate:

Program:	USDA-NOP (U.S.A.)
Operation Name:	Gbokun Egan Farmers Cooperative Society
Operation Status:	Certified
Status Effective Date:	11/29/2025
Certifier:	[OCI] OneCert International Private Limited

Operation Details Product Details

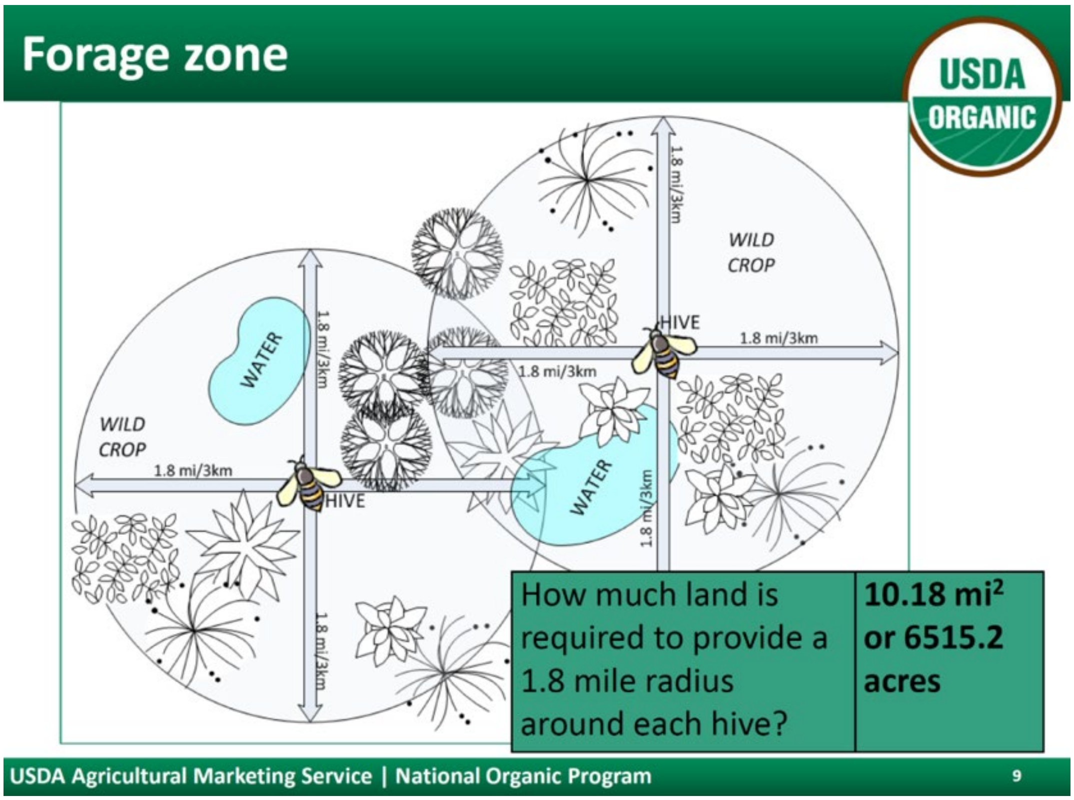
NOP ID:	492**0007499**
Certifier Client ID:	7499
Other/Former Names:	N/A
NOP Anniversary Date:	07/19/2026
Business Types/Services:	--
Total Certified Acres:	12340.17
Additional Info:	Certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement. All products listed are USCOEA verified.

143. On information and belief, the Canadian loophole created previously hidden networks of USDA-accredited certifiers who work with independent networks of Canadian-accredited certifiers in an outsourced system that has no real connection to Canada, and places the USDA organic seal on product labeling for numerous imported food products.

C. The key USDA apiary requirements and how Canadian regulatory exceptions can be used in Brazil to bypass them

144. USDA records currently show about four (4) certified organic beekeeping operations in the U.S. – all located in Hawaii. As previously described, these operations were required to show bee colony locations surrounded *only* by "certified organic" farm or wildland, within a radius of 1.8 miles.

145. This requirement was initially communicated to USDA-accredited certifiers in a February 10, 2015, USDA Organic Regulations Standards Update (the "2015 Standards Update"), presented by National Organic Program (NOP) officials to its certifiers during a meeting in Little Rock, Arkansas:



146. Using Brazil as the primary example, the above helps create a misconception that Brazil produces organic honey from an agrochemical-free environment in the Amazon basin. If that were true, the 60 million pounds of Brazilian "organic" honey imported in 2025 would need to be hauled out of a region that is largely roadless in its interior.

147. Plaintiffs allege this is unrealistic because the demands of a supply chain that generates volumes of that size requires enormous numbers of hives, beekeepers, and infrastructure – buildings, extraction equipment, trucks, and roads – leaving aside the requirement for massive numbers of qualifying, permanent bee forage zones.

1. International Trade Administration records show the Brazilian "organic" honey industry uses a convergent supplier/processor system

148. One USDA-certified organic Brazilian honey processor, Apis Nativa Agroindustrial Exportadora Ltda. ("Apis Nativa"), claims in advertising that its organic honey production comes from more than 870 beekeeper operations, managing more than *500 thousand* beehives, in 11 mostly coastal Brazilian states outside the Amazon. According to Apis Nativa, these beekeepers are able to produce over 16 million kilograms (35.2 million pounds) of "organic" honey every year, "certified by Apis Nativa's certifier."

149. Another Brazilian organic honey processor, Minamel Agroindustria Ltda ("Minamel") advertises that it produces over 120 tons of honey per day from over 360 thousand producing hives that are managed by over 1800 "specialized and certified" beekeepers.

150. The U.S. International Trade Administration ("ITA") recently conducted an antidumping investigation of raw honey from Brazil, and subsequent administrative reviews of a related antidumping order (ITA, A-351-857).

151. Those proceedings revealed the bulk of Brazilian organic honey imports likely come from a handful of Brazilian honey processors, all holding group certificates, who buy honey from networks of middlemen suppliers. All obtain USDA organic group certificates by likely taking advantage of the USCOEA, as reflected by the following extract from the USDA's Organic Integrity Database (OID):

Program	Certifier Name	Operation Name	Country	Additional Information
USDA-NOP	QIMA	Apidouro Comercial Exportadora E Importadora LTDA (Grupo Ceará)	Brazil	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement
USDA-NOP	QIMA	Apis Nativa Agroindustrial Exportadora Ltda (Grupo Produtores RS)	Brazil	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement.
USDA-NOP	QIMA	Breyer E Cia Ltda	Brazil	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement
USDA-NOP	QIMA	Melbras Importadora E Exportadora Agroindústria Ltda (Grupo Melbras)	Brazil	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement
USDA-NOP	QIMA	Minamel Agroindustria LTDA	Brazil	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement

152. One of the above processors, Melbras Importadora E Exportadora Agroindústria Ltda ("Melbras") received an ITA request for a list of its top five beekeeper suppliers (by volume), including contact information, and the quantity and value of honey obtained from the beekeepers from June 1, 2024 to May 31, 2025. Melbras, who is supposed to be overseeing "internal" organic inspections of its beekeepers, did not have their contact information:

> Melbras' supplier is able to identify the top five suppliers by quantity volume. **However, sourcing the contact information for each of these beekeepers is difficult**. Many of the [redacted]. Further, none of the suppliers listed below maintain email addresses. Melbras' Supplier provides the information that it has been able to obtain in the [redacted] table below. Note that "Povoado" means village and such small rural areas in Brazil do not have specific street names or identifying numbers in their addresses.

Melbras Admin. Review Filing 4924055-01 (ITA, A-351-857) (boldface added).

153. Concerning one beekeeper, Melbras stated:

> **This is a transient beekeeper** located in rural Brazil. He is a natural person (versus a legal) person for tax purposes and as such, is not required by the tax authority to keep any records. Furthermore, he has no accounting system which maintains sales. The beekeeper entered sales at the end of the season in his notebook based on invoices he had accumulated from Melbras.

Melbras Admin. Review Filing 4805119-01 (ITA, A-351-857) (boldface added).

154. The ITA also recently requested beekeeper information from Minamel, another one of the above processors. Minamel's partial response was:

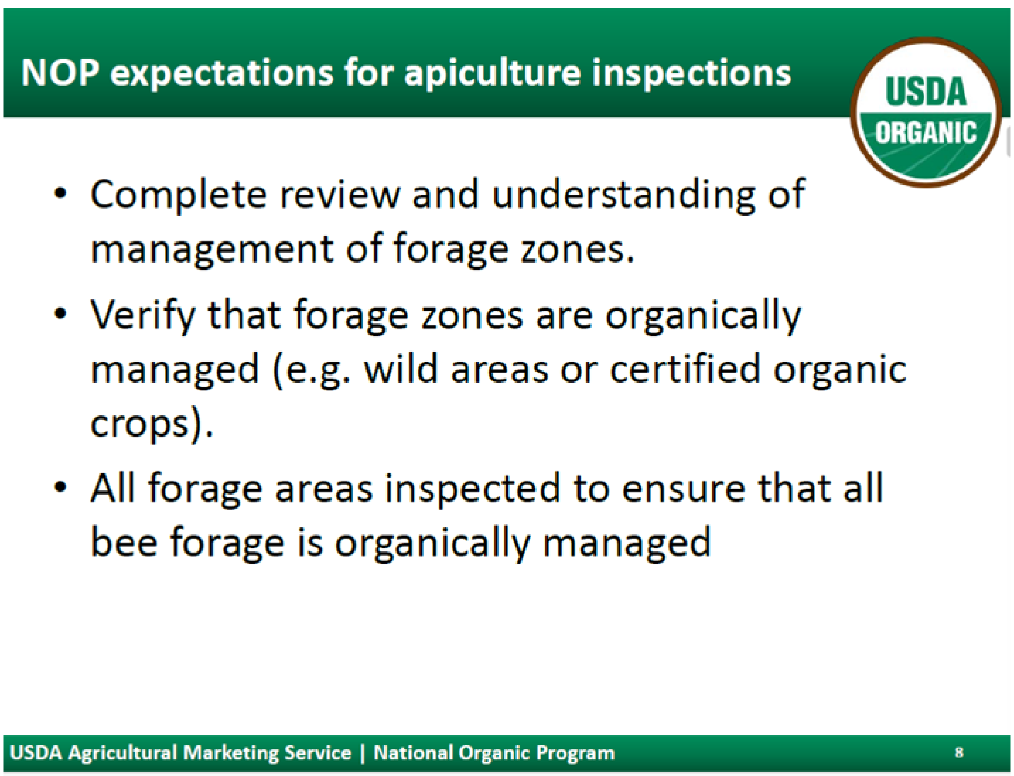
> [redacted]'s operation produces honey in multiple apiaries spread across the region. **Located on open farmland** or unincorporated free land in central Ceará state, these apiaries do not normally have formal street addresses. [redacted] uses a GPS coordinate system to locate his apiaries.

Minamel Admin. Review Filing 4930919-01 ((ITA, A-351-857)) (boldface added).

155. Plaintiffs allege that the above processor responses collectively show suppliers who are hard-to-identify beekeepers, who move (transient) hives, and site them in rural areas and on open farmland.

156. Current USDA records show Melbras holds six organic group certificates for honey. One certificate (NOP ID: 6400011655) claims to cover 2,624 apiaries having 110,481 hives that produce 5.5 million kilograms (12.1 million pounds) of honey. A second one (NOP ID: 6400011654) claims to cover 700 apiaries having 29,197 hives that produce 1.5 million kilograms (3.3 million pounds).

157. Given that Melbras's response to the ITA indicates difficulty in contacting beekeepers who are Melbras suppliers, more likely than not, no one is materially complying with the NOP's apiary inspection expectations for accredited certifiers, shown above and below:



2. Canadian rules allow beehives to be placed in areas that are not considered to be "organic" forage areas under U.S. standards

158. On information and belief, Apis Nativa and other Brazilian honey processors use the loophole created by the USCOE to acquire USDA group certificates the same way as the Aditi pathway described above, except other "Canadian" certifiers are involved.

Minamel Agroindustria Ltda's ("Minamel") honey processing facility (courtesy of Google EarthPro)

159. In general, Canada's organic laws and rules are softer and written more from the perspective of "avoidance" rather than "prohibition."

a) The Canadian system – one Canadian organization manages group certification; another manages beekeeping rules

160. The Canadian system is called the Canadian Organic Regime (or "COR") and is administered by the Canadian Food Inspection Agency ("CFIA"). The CFIA controls the "COR Operating Manual" which oversees procedures for accrediting Canadian organic certifiers and is also the sole-source for defining Canada's standards for group certification.

161. A separate body, called the Canadian General Standards Board ("CGSB"), independently develops and publishes organic standards apart from the CFIA. For honey, the CGSB published organic management standard CAN/CGSB-32.310, which contains certain rules specific to apiaries. Certain CGSB members are also tasked with providing rules interpretations for its published standards.

162. "Canadian" certifiers are charged with following both the COR Operating Manual and the approved apiculture standards created by the CGSB.

b) The Canadian rule that allows hives to be placed in open farmland where synthetic fertilizers are used

163. Concerning Canada's relative softness, in honey, Canada first has a general rule about bee forage that calls for organic plants to be the "primary" source of bee food while "avoiding" conventional agricultural fields. CAN/CBSB-32.310, Rule 7.1.5. This alone is a significant departure from OFPA requirements and NOP expectations stated in the 2015 Standards Update: "*All* forage areas inspected to ensure that *all* bee forage is organically managed" (italics added).

164. More significant, however, is a second Canadian rule specific to conventional agricultural fields that is triggered if hives are located where "zones of prohibited substances are present." CAN/CBSB-32.310, Rule 7.1.10.

165. In that situation, the second rule itself specifically permits hives to be located in or near agricultural fields where OFPA-prohibited synthetic fertilizers are used – anywhere within 1.9 miles of colony/hive location – which could be next to the hive or another location within 1.9 miles:

> **7.1.10 Location of hives**
>
> Where sources or zones of prohibited substances are present, that is, genetically engineered (GE) crops or environmental contamination, apiaries shall be protected with a buffer zone of 3 km (1.875 mi.). ***The following exceptions apply**:*
>
> a) ***Fertilizers*** (including those that are not listed in Table 4.2 Column 2 of CAN/CGSB-32.311) ***are permitted in the buffer zone***, with the exception of sewer sludge;
>
> * * *

CAN/CBSB-32.310, Rule 7.1.10(a) (boldface and italics added).

166. Since the NOP's 2015 Standards Update makes it clear bees are treated the same way as "livestock" that graze on pasture, the above Canadian allowance of fertilizer use is a no-exception, prohibited practice under the OFPA that causes loss of organic status. *See, e.g.,* 7 U.S.C. § 6504 (to be organic, no product shall be produced on land to which prohibited substances were applied for 3 years); 7 U.S.C. § 6508 (farm shall not use any fertilizers containing synthetic ingredients or commercially blended fertilizers containing prohibited materials); 7 U.S.C. § 6509 (organic feed, only, for organic livestock farm); and 7 C.F.R. § 205.240(a) (grazing pasture must be managed the same as an organic crop).

c) Canadian Rule 7.1.10 is interpreted such that it enables hives to be placed in open farmland where pesticides were recently sprayed

167. Other kinds of prohibited substances, like pesticide sprays, are dealt with by Canada in a different way.

168. As a member of the Canadian General Standards Board (CGSB), the Organic Federation of Canada ("OFC") is the leading Canadian organization that answers questions concerning the interpretation of Canadian Rule 7.1.10. Speaking on behalf of the CGSB following a recent (2025) review of Canadian apiculture rules, the OFC explains allowed use of pesticide sprays in the Canadian forage zone as follows:

> **Is a transition period required between the last use of a prohibited substance in the buffer zone and the time when the bees are feeding?**
>
> No. There is no set transition period required for the apiary buffer zone. No prohibited substances, other than fertilizers (see Clause 7.1.10), can be present when bees are foraging. As such, consideration must be given to chemically persistent materials previously applied (e.g., seed treatments) that could still present harm to the bees.

169. This is a second organic disqualifier under OFPA standards.

170. The OFPA requires a 3-year transition period following the last application of any prohibited substance which, of course, includes pesticide sprays. If there is no set transition period under Canadian rules, then the following becomes possible: crops can be sprayed in the forage zone beforehand with pesticides; and beehives can then be moved in temporarily for pollination and to make honey using plant nectar from temporary blooms. This is conditioned on the beekeeper's judgment about bee harm and/or bees picking up harmful pesticide residuals. After the blooms are exhausted, the beehives can be moved on to fields elsewhere, subject to beekeeper judgment.

171. Plaintiffs allege that, in real world terms, conventional crop fields and orchards are sprayed at different times with different chemicals for various crop-specific reasons, with large windows of no-spray activity. Canadian Rule 7.1.10(a), along with the above "no transition period" rule interpretation, allows temporary placement of beehives in this environment – an operating pattern that is the same for U.S. commercial beekeepers who are equally concerned about how pesticides harm bees. Durant, *Bitter Honey* at 83-100.

172. When used in combination with Canadian group certification, the two exceptions to fertilizer and spray use are a door-opener for foreign honey processors and make it easy for them to use local commercial beekeepers to produce massive amounts of honey that is labeled "organic" outside OFPA standards, while still applying the USDA seal under the certificate exchange mechanism provided by the USCOEA.

173. Additionally, and unlike the OFPA, there is no mandatory requirement by Canada for periodic agrochemical residue testing. Consequently, there is no evidence of USCOEA "Canadian" organic certifiers doing tests for agrochemicals in the honey they are certifying as "organic."

174. Various studies by others indicate it is common for tests of Brazilian honey to show the presence of prohibited agrochemicals, including prohibited synthetic chemicals that are used for varroa mite control.

D. <u>Honey labeling</u>

175. The following images show the front and back labels of bottled honey recently sold by Costco Wholesale Corporation ("Costco"):

176. As depicted, the bottle's front label includes the words " – ORGANIC – ," "PRODUCT OF BRAZIL," and the USDA organic seal. The back label states "INGREDIENTS: ORGANIC RAW HONEY" and "CERTIFIED ORGANIC BY QAI, INC."

177. Under the OFPA's labeling statute, 7 U.S.C. § 6506(a)(1)(A), it is impermissible to even use the word "organic" on a product label unless the product was "produced only on certified organic farms."

178. The unmistakable message of the label is that the certifier (QAI) verified that Costco is selling bottled organic honey that originated from Brazilian beehives, all of which complied with the above USDA organic standards. QAI did no such thing.

1. The certificate chain in retail honey

179. Costco buys "organic" honey from U.S. honey packers, who in turn purchase it from upstream Brazilian honey processors. Those processors aggregate honey from multiple supplier (beekeeper) sources in Brazil and load it into 55-gallon drums for export. At most, a QAI inspector may have seen those drums sitting in a U.S. packer's warehouse – depending entirely on what happened to be in inventory on the day of the visit.

Honey drums at Apis Nativa in Brazil made ready for sale or export

180. After the honey arrives from Brazil, the U.S. packer runs it through an automated bottling line, applying Costco's front and back labels to bottles filled from the imported drums. The packer then ships pallet loads of the finished product to Costco distribution centers to be sold under the "Kirkland Signature" private-label brand.

181. QAI was hired to look at upstream certificates – verifying that the drums imported from Brazil were accompanied by a valid USDA organic import certificate, backed by a valid general USDA organic certificate.

182. As previously described, "Canadian" organic certificates are routinely issued by certifiers with no presence in Canada, no role in certifying Canadian farms, and no requirement that they be identified when the USDA-accredited certifier exchanges the Canadian for the USDA certificate.

183. In the above Nigerian example, Aditi can be traced to Nigerian-sourced certificates because Canadian government records show it is the only Canadian certifier who operates there. If the USCOEA is used in connection with the Brazilian honey sold by Costco, this accreditation quirk narrows the "Canadian" certifier field to one of three foreign organizations, shown by Canadian government records to be authorized to issue Canadian certificates to Brazilian operations.

184. One or more of these three "Canadian" certifiers provide Canadian certificates to USDA-accredited certifiers like QIMA – a multinational, USDA-accredited certifier that appears to provide the same service in honey, as OneCert does for Nigerian soy in the example above.

185. USDA records show QIMA to be an organic honey certification specialist who issues USDA certificates, which claim to be issued under the USCOE, to nearly all large honey processors who operate out of Brazil, including Apis Nativa:

Program:	USDA-NOP (U.S.A.)
Operation Name:	Apis Nativa Agroindustrial Exportadora Ltda. (Grupo SC)
Operation Status:	Certified
Status Effective Date:	12/10/2021
Certifier:	[QIMA] QIMA (formerly IBD Certifications)

Operation Details Product Details

NOP ID:	223**0005126**
Certifier Client ID:	SC043/1
Other/Former Names:	N/A
NOP Anniversary Date:	03/17/2026
Business Types/Services:	Grower Group
Total Certified Acres:	--
Additional Info:	All products are certified in accordance with the terms of the US-Canada Organic Equivalency Arrangement

186. While Costco's label implies QAI inspectors visited beehive locations in Brazil, QAI's role is simply to confirm that the U.S. honey packer possesses the required upstream organic certification documents – documents issued by QIMA or another USDA-accredited certifier – who claims certification in accordance with the terms of the USCOEA.

187. From the consumer's perspective, the combined actions of all of these certifiers and certificates effectively launder out the fact that the honey is not necessarily labeled "organic" under OFPA standards according to the USDA's public narrative – but because of a Canadian certificate issued under different standards, with the Canadian element buried under multiple layers of certificates.

188. The above arrangement works seamlessly because USDA regulations *require* QAI to accept, without inquiry, any certificate issued by an upstream USDA-accredited certifier (e.g., QIMA). 7 C.F.R. § 205.501(a)(13). Therefore, the USDA certificate from a go-between certifier like QIMA, even though based on an upstream Canadian one, enables the U.S. packer to print the USDA seal on Costco's honey label, as "CERTIFIED ORGANIC BY QAI, INC."

E. The USDA organic "retail toolkit": in-store commercial advertising

189. Large corporate supermarket and membership-based warehouse chains have taken over the majority of food sales in the U.S., which includes organic. To help support the USDA's narrative about the seal, the USDA offers a "retail toolkit" for general distribution to these chains to help them do in-store commercial promotion of organics.

190. The USDA's toolkit provides retailers with signage, which is supposed to be placed in aisleways and other supermarket retail spaces, whose message is to remind consumers about what is behind the seal.

191. That message is summarized below in bullet points (taken from one of the toolkit's graphics):

Inspected yearly by experts.

- Organic farms and businesses are certified and inspected yearly by USDA-accredited certifiers.
- Specially trained organic inspectors visit each organic farm and business every year to confirm they still meet the organic standards. Every organic operation is also subject to additional surprise inspections and testing.
- USDA regularly audits certifiers to make sure they are correctly inspecting farms and upholding the integrity of the organic label.
- To become certified organic, operations go through a rigorous process to show that their practices follow the organic standards.

192. The USDA historically states that certifiers do high numbers of on-site inspections every year,

1. USDA advertising follows the core OFPA statutes, but omits non-statutory group certification and the USCOEA

193. Concerning annual certifier farm inspections, the representations made by the toolkit and other USDA publications are entirely consistent with the language of core statutes in the OFPA.

194. The USDA continuously messages the public that it follows the OFPA, including the OFPA's requirement for annual certifier farm inspections of every organic farm, with there being no public distinction between domestically produced food and foreign imports. Group certification and how the Canadian element may factor in is omitted from USDA public messaging, entirely.

195. The USDA's advertising trains the public to believe the above by using utopian imagery of traditional pastoral settings or cleanly-dressed young farmers carrying crates of appetizing, hand-picked produce portrayed as having come from organic, hand-hoed soil in local organic farm fields.

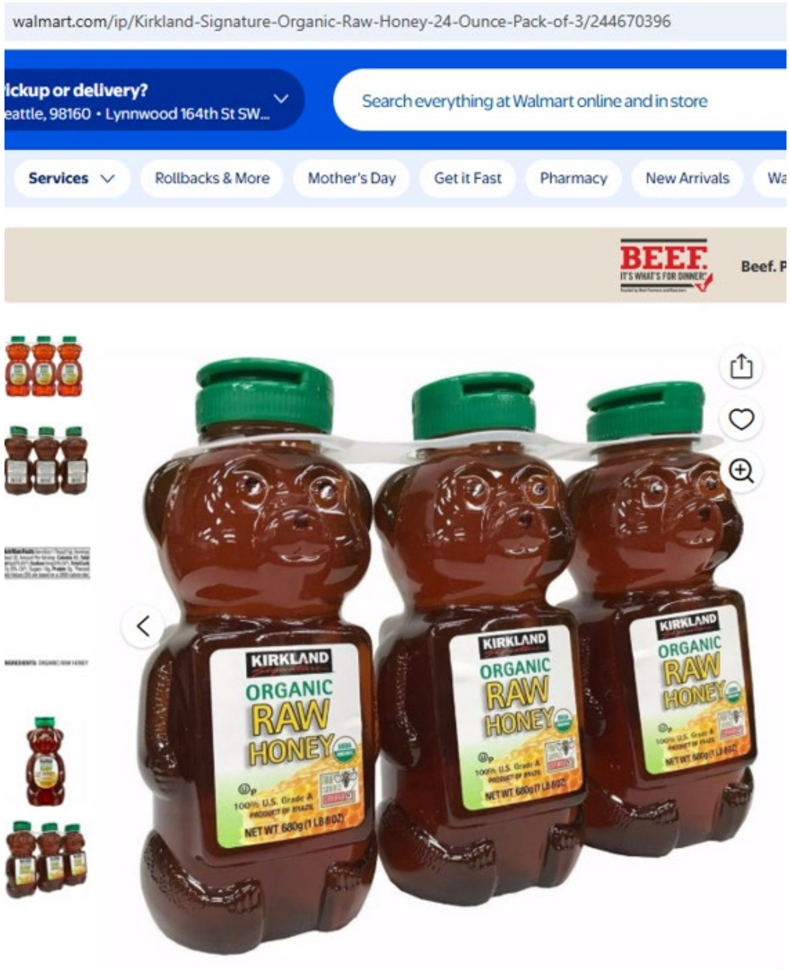
196. The toolkit's in-store displays include a QR code that consumers may use to redirect them to the USDA's website for information and messaging that is similar:

2. The USDA asks honey retailers to use the "retail toolkit" to promote retail sales

197. Seeking in-aisle visibility in stores for the purpose of building "consumer trust" in the USDA seal, the NOP reached out to Walmart and other large food retailers by email and telephone when it launched a campaign to promote the retail toolkit in spring 2024.

198. The NOP told the retailers the campaign's message was built on general talking points: "Products displaying the USDA organic label are protected by law; inspected by experts; traced from farm to store; and shaped by public input."

199. Walmart's online sales of Costco's private label "Kirkland Signature" organic honey is illustrative. While it seems like an odd relationship, Costco allows the honey packer who bottles honey for Costco to sell the same branded product to anyone else – which means it has found its way into the Walmart chain:



3. The "retail toolkit" is materially false relative to foreign imports

200. The NOP's actual administration of the organic system produces outcomes that look very different from the above toolkit bullet points.

201. While the USDA's narrative is mostly true-to-fact for traditional single-farm certification practices used by farms in the U.S., for foreign imports, and honey in particular, the truth is:

- Beehives and bee forage zones ***are not*** certified and inspected yearly by USDA-accredited certifiers.
- Beehives and bee forage zones ***are not*** visited every year by "specially trained organic inspectors" – if they can be found, at best they are visited by other beekeepers or a representative of the honey processor who buys the honey.

- Bee forage zones and produced honey ***are not*** subjected to additional surprise inspections or residue testing.
- The USDA ***does not*** audit Canadian certifiers operating in Brazil who may be the source of the USDA seal.
- Foreign honey processors and their beekeeper suppliers ***do not*** go through a rigorous process to show that their practices follow USDA organic standards. Instead, if they can be located, foreign beekeeping practices likely follow Canadian standards that enable beehives to be placed in or near conventional agricultural fields.

202. In honey, the USDA retail toolkit is materially false and misleading commercial advertising because the USDA is either using it, or attempting to use it in supermarket chains like Walmart's, who are benefitting from it when they sell organically labeled honey to their customers.

F. Other grower group and certificate problems in honey

203. On information and belief, USDA records indicate the USCOEA loophole is a preferred certificate pathway for "organic" honey imports. However, USDA records and related information show agribusinesses use other pathways that put the USDA seal on honey labels.

1. Group certification in Zambia

204. Since about 2005, at least one multi-national certifier, Ecocert, has been using the outlier group practice first allowed by NOP officials as a shadow system for thousands of beekeepers in different regions of Zambia. The shadow system was recently codified in the code of federal regulations by the SOE rules amendment.

2. The New Zealand "recognition agreement" – outsourcing organic certification to New Zealand's Ministry for Primary Industries

205. The USCOEA is a two-way arrangement between the U.S. and Canada. The USDA also created "one-way" arrangements that it calls "recognition agreements."

206. On information and belief, the recognition agreement confusingly allows non-USDA-accredited certifiers, operating in another country, to issue "NOP import certificates" for products entering the U.S. The NOP requires no backing of the import certificate by any underlying local government organic certificate or a USDA organic certificate. Supposedly, the local certifier has sufficient knowledge to determine the product is in "compliance" with the OFPA and issue an NOP import certificate on that basis.

207. This procedure makes the local certifier a constructive "USDA-accredited" certifier except it is not. The practical effect is to make the NOP import certificate into a stand-alone, constructive organic certificate in the supply chain that is used downstream to put the USDA seal on product labels.

208. In or about 2002 the USDA entered into this type of recognition agreement with the New Zealand Ministry of Primary Industries ("MPI"). The agreement authorized the New Zealand MPI to "accredit" local New Zealand organizations to apply U.S. organic standards to local products and create NOP import certificates for them. The authorization bypassed the need for the local organization to apply to the USDA for accreditation.

209. As indicated above, the problem was New Zealand had no governmental organic system or means for administering the authorization it received from the USDA under the recognition agreement. Therefore, on information and belief, the New Zealand MPI transferred the USDA authorization to another party outside the New Zealand government who performed the accreditation called for by the recognition agreement, thereby creating a New Zealand "NOP import certificate" loophole with little or no oversight by any government.

210. The USDA permitted this practice without making the necessary determination under 7 U.S.C. § 6505(b) that New Zealand's organic system is "equivalent" to the OFPA.

Making that determination was impossible at the time because New Zealand did not create its own governmental organic program or system until 2023. Moreover, no § 6505(b) determination has followed the creation of New Zealand's organic program.

211. On information and belief, import records indicate that, since 2015, Wedderspoon Organic USA, LLC ("Wedderspoon") has been using NOP import certificates created by the New Zealand loophole to import significant amounts of honey from New Zealand. Based on import certificates alone, a USDA-accredited certifier, Pennsylvania Certified Organic ("PCO"), has been and is issuing a standard USDA organic certificate to Wedderspoon as an organic "handler" of honey, enabling it to apply the USDA organic seal to New Zealand honey labels sold in the U.S.

212. USDA GATS records currently rank New Zealand in sixth place and Zambia in ninth among all countries who export organic honey to the U.S.

G. <u>U.S. Beekeepers lose market share</u>

1. Organically labeled honey is displacing Plaintiffs from the market

213. U.S. beekeepers have a reputation for producing premium-level honey.

214. Plaintiffs allege that they swim against a constant current of USDA and industry messaging about the meaning of the USDA organic seal.

215. The primary message is that the seal means food is free from synthetic pesticides and fertilizers. The public is expressly, impliedly, and continuously taught through various forms of media that these substances may have links to cancer and many other health problems.

216. The seal leverages consumer perception that other food products lacking the seal may contain higher levels of potentially unhealthy substances relative to products that carry it. This perception is reinforced by persistent media narratives about agrochemicals in the food

system and recurring controversies over the safety of government-determined "maximum residue levels" (or "MRLs") in conventional food. The following publication from California Certified Organic Farmers (CCOF) is illustrative:

48. Organic is free from synthetic pesticides and fertilizers.

Organic production does not allow harmful synthetic pesticides or herbicides. A synthetic pesticide or herbicide is a substance that is formulated or manufactured by a chemical process to destroy or repel pests or weeds. Chemical pesticides and herbicides have been linked to birth defects, obesity, diabetes, ADHD, and other health problems. Each time you choose organic, you are choosing to leave these chemicals off your plate.

217. Whether it is viewed as influencing or advertising, there is little question the above messaging shifts consumer purchasing patterns toward the seal. Because of this advertising dynamic, Plaintiffs allege they are being displaced from the market by the organic certification pathways created by the Canadian loophole and other exceptions to the single-farm certification requirements of the OFPA.

218. The USDA Global Agricultural Trade System's (GATS) statistics show there were no organic honey imports from any country before the USDA/NOP entered into the USCOEA in 2009. After 2009, total organic honey imports, mostly from Brazil, escalated to the levels described for 2025 (78 million pounds), now roughly equaling *two-thirds* of current U.S. beekeeper sales. During the same period, U.S. beekeeper sales declined from approximately 144

million pounds in 2009 to approximately 116 million last year (2025), in a market where overall honey consumption grew significantly during the same time period.

219. Plaintiffs allege the decline in sales is causally connected to competition from organically labeled honey in the premium honey market.

2. Secondary harm: the organic seal creates other government benefits for "organic" honey that are detrimental to Plaintiffs

a) The organic honey label exempts honey from NHB assessments

220. The USDA administers a federal honey marketing board, formally called the National Honey Board ("NHB"). The NHB was formed in the 1990's for the purpose of promoting honey marketing and enhancing demand for honey and honey products to benefit the U.S. honey industry.

221. The NHB's operations are funded by industry assessments, which are currently $.015 per pound. For all honey imports, conventional and organic, these assessments are automatically collected by U.S. Customs at the border. Consequently, 78 million pounds of organic imports equates to roughly $1.17 million in assessments to fund NHB operations that are intended to benefit everyone in the U.S. honey industry, including Plaintiffs.

222. However, federal honey regulations were structured to exempt organic honey from assessments and require the NHB to reimburse organic importers for Customs-collected assessments. This means large quantities of Brazilian organic honey imports, as an example, do not help pay for NHB marketing efforts, with the growing quantities of these imports causing administrative costs and interfering with the NHB's founding purpose. The negative consequences of the exemption have caused the NHB to recently propose an assessment increase:

> **The Board's budget also continues to be constrained by rising reimbursement requests on imported organic honey**. Pursuant to 7 CFR 1212.53(c), products that are 100 percent organic, as defined by the National Organic Program, may be exempt from assessments under the Order. Customs collects assessments on all imported honey and honey products, meaning importers must request a reimbursement from the NHB for any certified organic honey that was assessed. Aside from the costs incurred to process these reimbursement requests, the Board must set aside substantial funds for reimbursements requested throughout the fiscal year and 90 days into the next fiscal year as required by 7 CFR 1212.53(e)(1). **This causes the Board to be more conservative with promotion and research efforts to ensure funds are available to reimburse these assessments**. By increasing assessments, the Board will fund promotion and research efforts with less concern of having to move funds to cover reimbursement requests for certified organic honey.

U.S. Dep't of Agric., Agric. Mktg. Serv., Honey Packers and Importers; Increased Assessment Rate, Docket No. AMS-SC-25-0122-0001 (2026) (bold face added).

223. In essence, rather than seek an end to the exemption, the NHB is seeking an assessment increase that will apply to the conventional side of the industry. With or without the increase, Plaintiffs contend the exemption creates a financial benefit for those who use the organic seal on honey: free federal marketing of foreign mislabeled organic honey that takes significant market share away from the conventional component of the industry, all paid for by the conventional component.

b) The USDA organic seal on Brazilian honey creates tariff exemptions

224. In June 2026, the U.S. Trade Representative ("USTR") took action to impose "25 percent tariffs on all imports of Brazil, with certain exemptions."

225. On information and belief, in response to importer comments specifically claiming Brazil meets "U.S. organic requirements" because it has "large areas of naturally pesticide-free land," the USTR exempted Brazilian certified organic honey from these tariffs.

226. Plaintiffs allege that Brazilian honey meets "U.S. organic requirements" only because it obtains certificates using the USCOEA. Because nearly all Brazilian honey is labeled "organic," the resultant beneficial tariff treatment (25%) significantly reduces costs for nearly all imported Brazilian honey. Plaintiffs allege this is yet another factor facilitating displacement of the Plaintiffs from the honey market.

3. Brazilian "organic" honey production costs appear to be roughly equal to "conventional" on the supply side

227. Plaintiffs also allege that there should be a significant increase in local production costs, if "U.S. organic requirements" are applied to 78 million pounds of imported honey.

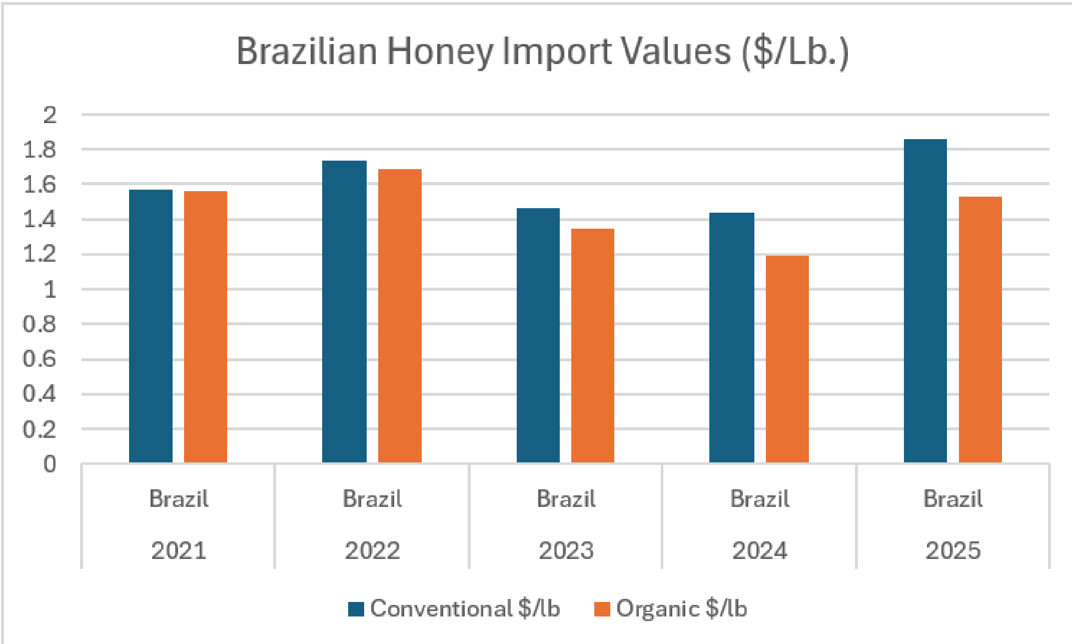
228. According to the USDA National Organic Program's (NOP) 2015 Standards Update, the NOP expects a 10-square mile organic forage zone to surround every bee colony/hive location, each one to be annually inspected and verified by a USDA-accredited certifier.

229. If those zones exist in numbers sufficient to produce 78 million pounds of honey, which they do not, Plaintiffs allege it would involve massive numbers of individual forage zones spread across a huge landscape that need to be inspected and verified, creating significant added production costs attributable to organic certification alone.

230. Plaintiffs also allege that the USDA bee forage zone requirement, if adhered to, would result in substantive increases in local beekeeper labor, travel time, and fuel costs, necessitating significantly higher prices paid by Brazilian processors to offset higher beekeeper costs.

231. For the above reasons, if organic certifiers followed the USDA/NOP's 2015 Standards Update, the increased certification and production costs attributable to the forage zone requirement would be reflected in consistently higher prices demanded by Brazilian processors

for organic compared to conventional honey. However, on information and belief, to the extent small amounts of Brazilian conventional honey are sold in the U.S., Brazilian honey processors are receiving close to the same price for organic compared to conventional. U.S. Census Bureau Trade Data is illustrative:



Source: U.S. Census Bureau data collected by USDA's Global Agricultural Trade System (GATS)

232. The above data reflects importer honey values declared to U.S. Customs and roughly show the comparative difference in prices paid by honey buyers to Brazilian honey processors. In recent years, importers have been declaring Brazilian "organic" honey is valued even lower than Brazilian "conventional" on an averaged basis.

233. Through exceptions like the USCOEA, the USDA has created a low cost supply chain of "certificates" for foreign imports that puts the USDA organic seal on honey labels, without regard to how misleading it is. Foreign suppliers, importers, honey packers and retailers

are all profiting from it because of the low standards, low certification and production costs, and government cost incentives. Meanwhile, U.S. beekeepers are being squeezed out of the market.

VI. CAUSES OF ACTION

234. Plaintiffs' first two causes of action arise from USDA conduct that violates the Lanham Act, 15 U.S.C. § 1051 et seq. The remaining causes arise from USDA conduct that invokes judicial review under the APA, 5 U.S.C. §§ 701 et seq.

A. First Cause Of Action – USDA violation of the trademark prong of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A)

235. Plaintiffs incorporate by reference the allegations of the preceding paragraphs, as though fully set forth herein.

236. This first cause of action is based on misrepresentations and omissions curated by the USDA in connection with use of the word "organic" and affixation of the USDA organic seal to honey labels on imported honey.

1. Product labels cannot bear the word "organic" unless the product is certified

237. Through a collection of OFPA statutes, Congress removed the word "organic" from general commercial speech by prohibiting anyone from using that term on a label, unless they comply with the OFPA. 7 U.S.C. §§ 6504, 6505(a), 6506(a)(1)(A).

238. In a string of statutes that ends with § 6506(a)(1), the OFPA forbids use of the word "organic," including use of the USDA organic seal, on any product label unless the product is formally "certified" by the USDA. This ties the word to the seal and makes the required organic certificate a financial instrument critical to organic trade. Congress created the USDA organic seal as a "certification" mark. 7 U.S.C. § 6505(a)(2) (organic label may incorporate USDA seal if labeled product meets OFPA standards).

2. The meaning of the USDA organic seal as a certification mark

239. The Lanham Act defines certification marks as a special type of trademark that includes any symbol "used by a person other than its owner." The owner never uses the mark but functions as a third-party standards-setting entity, and certifies quality or other characteristics of another person's goods or services. 15 U.S.C. § 1127. If those standards are met, the reviewed person receives an implied or express license right (e.g., the "certificate") to use the certification mark, which enables applying it to product labels. In the case of the USDA organic seal, the "owner's standards" are the standards defined by the OFPA's statutes and related regulations and policies.

240. Consistent with the traditional function of certification marks, the USDA has groomed the public to believe that the USDA seal symbolizes USDA supervision and verification of organic compliance.

3. Waiver of sovereign immunity to Lanham Act claims by the United States

241. As an agency of the U.S. government, the USDA is not immune from suit in federal court brought by any person for any violation of the Lanham Act. 15 U.S.C. § 1122(a).

242. Congress enacted no statute of limitations connected to the Lanham Act.

243. In honey labeling, because the OFPA structurally links use of the word "organic" to the organic certification symbolized by the USDA organic seal, placing both the word and seal on honey labels is a misuse that violates what courts often call the "trademark prong" of the Lanham Act.

4. 15 U.S.C. § 1125 (Lanham Act §43) – false designations of origin, false descriptions are forbidden

244. Subsection (a)(1) of 15 U.S.C. § 1125(a) states:

(a) Civil action

> (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
>
> > (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
> >
> > (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,
>
> shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 U.S.C. § 1125(a).

a) The USDA's actions fall within the lead paragraph in subsection (a)(1)

245. The USDA is a "person" within the meaning of the above statutory language, according to definitions in 15 U.S.C. § 1127.

246. The USDA is using the USDA organic seal in commerce by licensing it, via organic certificates, to be affixed to honey labels for Brazilian and other imported honey sold in retail trade, such as the Costco honey example above.

247. The USDA organic seal symbolizes that the USDA has certified that the labeled honey is "organic" according to the standards of the OFPA or, alternatively, that the USDA provided the service of supervising and verifying that the honey meets the organic standards of the OFPA. The word "organic" is on the label because of the seal and the USDA certification.

248. Both the word "organic" and the USDA organic seal are used in connection with goods (honey) or services (the USDA's organic certification services).

249. Therefore, the USDA is a "person who…in connection with any goods or services…uses in commerce any word…symbol…which—" all within the meaning of the lead paragraph in subsection (a)(1) of 15 U.S.C. § 1125(a).

b) The USDA is violating the trademark prong, subsection (1)(A) of § 1125(a)

250. Following the lead paragraph is a nested subsection, which is commonly known as the trademark prong of § 1125(a)(1):

> (A) **is likely to cause confusion, or to cause mistake, or to deceive** as to the affiliation, connection, or association of such person with another person, or **as to the** origin, sponsorship, or approval of his or her goods, services, or **commercial activities by another person**, or

15 U.S.C. § 1125(a)(1)(A) (boldface added).

251. Applied to honey labels, the USDA organic seal is a symbol that "is likely to cause confusion, or to cause mistake, or to deceive" as to the "commercial activities by another person" within the meaning of the above language. The word "organic" on the label is connected.

(1) The USDA's consumer survey – "What do you think the 'USDA Organic' seal means, as far as you know?"

252. In an October 2023 consumer survey conducted by the USDA, 55% of the respondents indicated that food labeled with the USDA organic seal means the food is produced without chemical fertilizers or pesticides:

253. The survey showed significant numbers of consumers believe the seal means that "farms are regularly inspected to ensure they are meeting organic standards." While not shown above, the survey also demonstrated that significant numbers of consumers believe the seal means the USDA, not another entity, "is responsible for making sure the food meets certain standards."

(2) The seal's misrepresentations and omissions on organic honey labels

254. Using the above Costco honey label as an example, and because no information is provided that indicates otherwise, reasonable consumers who see the USDA organic seal on Costco's honey label, along with the word "organic," and "CERTIFIED ORGANIC BY QAI, INC" (a USDA-accredited certifier) are unlikely to believe or expect that: (1) the USDA is allowing the organic certification procedure to be outsourced to Canadian government certifiers operating in Brazil; or (2) the USDA seal on the label was likely put there because of a Canadian system having apiculture rules that enable beehives to be placed in Brazilian crop fields where synthetic fertilizers and pesticide sprays are routinely used; or (3) the supervision and organic verification function involved a system that mostly shifted responsibility for supervision and verification of beekeepers, and the forage zones they use, to the honey processor who bought the beekeepers' honey.

(3) The "commercial activities by another person"

255. Referring again to the Costco label, because certification marks uniquely apply to situations where the mark's owner certifies someone else's activities ("another person"), the seal and related use of the word "organic" on honey labels used by Costco and other supermarket chain entities in retail trade squarely fall within the statutory language "commercial activities by another person."

256. Therefore, the USDA is violating all the necessary elements of the trademark prong, 15 U.S.C. § 1125(a)(1)(A).

c) The last paragraph of subsection (a)(1) defines standing under the Lanham Act

257. The USDA is liable to Plaintiffs within the meaning of the last paragraph of subsection (a)(1) because they believe they are being damaged, or likely to be damaged, by commercial market displacement caused by the USDA's wrongful licensing of the USDA organic seal for use on imported honey labels.

(1) Lanham Act standing

258. Concerning general standing to bring Lanham Act claims, courts have determined the Lanham Act is not a federal consumer protection law. A claim for a Lanham Act violation requires the plaintiff to show an injury to a *commercial* interest in sales or business reputation proximately caused by the defendant's misrepresentations. *Lexmark Int'l, Inc, v, Static Control Components, Inc.,* 134 S. Ct. 1377, 1395 (2014).

(a) U.S. beekeepers produce high quality honey

259. U.S. beekeepers have a general reputation for producing high quality, pure honey relative to conventional foreign imports. However, the USDA organic label on foreign imports alters that perception by creating the impression that the import is of superior quality – specifically, that it contains no pesticides – compared to what Plaintiffs can provide.

260. Plaintiffs have standing in this case because they have sustained a concrete injury to Plaintiff's' commercial interest in honey sales to U.S. honey packers – in the form of declining honey sales and material displacement from the U.S. honey market – caused by USDA-enabled misrepresentations on honey labels.

261. Plaintiffs' injury will be redressed if the Court grants the injunctive relief requested by Plaintiffs, because it will result in an equitable correction of labeling on honey imports that are taking market share from Plaintiffs relative to premium honey sales. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

5. Plaintiffs are entitled to injunctive relief pursuant to statute, 15 U.S.C. § 1116(a) and § 1125(b); § 1116(a) presumes irreparable harm

262. 15 U.S.C. § 1116(a) grants courts the power to issue injunctions to prevent a violation of § 1125(a), "according to the principles of equity and upon such terms as the court may deem reasonable." In the Trademark Modernization Act of 2020, Congress amended § 1116(a) to create a rebuttable *presumption* of irreparable harm for a plaintiff seeking an injunction when a violation of § 1125(a) is found.

263. Plaintiffs are entitled to injunctive relief under § 1116(a) because the USDA is directly violating § 1125(a).

264. 15 U.S.C. § 1125(b) is a different, stand-alone statute that independently bars imports of any goods labeled in contravention of § 1125(a). However, violations of this specific statute are excluded from the presumption of irreparable harm created by § 1116(a).

265. Because the USDA exercises direct control over organically labeled imports and is causing mislabeled honey to be imported into the United States, in contravention of § 1125(a), Plaintiffs are alternatively entitled to injunctive relief under § 1125(b) according to the usual standards for injunctive relief.

B. Second Cause Of Action – USDA violation of the false advertising prong of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B)

266. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

267. This second cause of action involves what is commonly known as the false advertising prong of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

1. The false advertising prong, subsection (1)(B) of § 1125(a)

268. The false advertising prong creates its own cause of action under the following statutory language:

> (B) **in commercial advertising or promotion, misrepresents the nature, characteristics, qualities,** or geographic origin **of his or her or another person's goods, services, or commercial activities**,

15 U.S.C. § 1125(a)(1)(B) (boldface added).

a) The USDA organic seal and word "organic" on foreign honey labels violates subsection (a)(1)(B)

269. The word "organic" and the USDA organic seal on honey labels is a form of USDA commercial advertising or promotion. This labeling misrepresents the "nature, characteristics, qualities" of both the certification services provided by the USDA and the honey in the bottle, within the meaning of subsection (a)(1)(B).

270. As to the USDA's certification services, the seal misrepresents the USDA's services by falsely conveying that the USDA was the agency who actually performed the certification, by following the OFPA's standards. Instead, in Brazilian honey, as one example, it is likely a Canadian certifier using Canadian group certification and Canadian apiculture standards made the certification. In that instance, creating USDA labeling via a Canada-to-U.S. certificate exchange mechanism was cosmetic rather than substantive.

271. Concerning organically labeled bottled honey, the USDA seal and the word "organic" on the label falsely certifies that the USDA itself verified that the goods (honey) or commercial activities (sales of honey) came from bees foraging in zones where no prohibited substances were used for at least 3 years running.

(1) For honey, USDA general promotion of "What's Behind the USDA ORGANIC SEAL?" is false

272. The USDA routinely and continuously promotes "the nature, characteristics, qualities" of its certification services as follows:

- "Organic farms and businesses are certified and inspected yearly by USDA-accredited certifiers"
- "Specially trained organic inspectors visit each organic farm and business every year to confirm they still meet the organic standards"
- "Every organic operation is also subject to additional surprise inspections and testing"
- "Synthetic fertilizers, sewage sludge, irradiation, and genetic engineering may not be used."
- "Residue testing program to verify that prohibited pesticides aren't being applied to organic crops"
- "USDA regularly audits certifiers to make sure they are correctly inspecting farms"
- The "separation between the farmer and the certifier maintains the 'independent third party' nature of the transaction"
- "Rigorous" certification of 'every farm' and business"
- "Traced from farm to store"

273. Plaintiffs allege that the above USDA representations are intentionally designed to promote USDA organic certification procedures as a government guarantee of compliance with a certain level of farm inspection, bans on fertilizer and pesticide use, and testing standards mandated by U.S. law. USDA use of the word "rigorous," which continuously appears in USDA promotions, signals certification and organic compliance at a high level.

274. Relative to organically labeled honey imports, the above promotions are materially misleading or false representations.

275. For example, because of the combined use of the USCOEA and group certification practices, Brazilian honey farmers are not "certified and inspected yearly by USDA-accredited certifiers." In that specific instance, they are actually certified by a Canada-to-U.S. certificate exchange connected to an inspection practice that involves a honey processor who controls the inspection.

276. Concerning USDA use of descriptive language like "Specially trained organic inspectors," in honey, that promotion is a material, misleading omission of information. At best, the inspectors are "field inspector" employees of the honey processor who received the organic certificate or some similar version of "internal" inspection by middlemen or even beekeepers themselves within a group of beekeepers. The key misleading point is: the organic certificate is awarded to a buyer following the buyer's organic inspection and verification of the buyer's suppliers, instead of inspection and verification by a third-party USDA-accredited certifier.

277. Concerning USDA promotional claims about "residue testing," the USDA implies testing is done for all types of agrochemicals. The USDA omits that it allows use of a test that cannot detect glyphosate, and many other chemicals commonly used in worldwide agricultural production, such as paraquat, glufosinate, dicamba, or 2,4-D. There is no evidence of organic certifier residue testing done in connection with the presence of these chemicals in organically labeled honey.

278. Concerning key USDA organic compliance requirements that involve prohibitions on synthetic fertilizers and pesticides, when the USCOEA is used to import organically labeled honey, USDA promotional claims hide the use of contradictory Canadian certification standards that enable hives to be placed in areas where these fertilizers and pesticides are routinely used.

279. Concerning USDA claims about tracing products from farm to store, Brazilian honey processor responses to ITA requests suggest otherwise.

2. The "retail toolkit" is false advertising

280. Independent of the above labeling problems, a second violation of the Lanham Act's false advertising prong involves the USDA's retail toolkit.

281. The toolkit is used to promote placement of in-store displays connected to the store's sale of products bearing the seal.

282. These in-store displays direct consumers in the store to information about the nature, characteristics, and qualities of the products sold in the store that carry the seal, directly benefitting retailers whose "certified" products are sold in the store.

283. For these reasons, the toolkit meets the above "use in commerce" and "commercial advertising or promotion" elements of § 1125(a)(1).

284. The toolkit states, "We [the USDA/NOP] developed this toolkit to raise consumers' awareness of, and trust in, the organic label." However, referring to the language of § 1125(a)(1)(B), the toolkit fulfills this intended purpose by misrepresenting the nature of the certification services provided by the USDA in that the toolkit omits any mention of the extent group certification, and practices involving the USCOEA or the New Zealand loopholes, are used to create honey labels that bear the USDA organic seal.

285. The toolkit is literally true some of the time, when it is viewed in the context of classic single-farm organic certification practices commonly used in the U.S., which is entirely consistent with the OFPA. However, for products like honey, it is always "false by message" because it fails to disclose different, and hidden, certification practices that are used much or most of the time for foreign imports.

286. The USDA has violated and is violating the false advertising prong of the Lanham Act, 15 U.S.C. § 1125(a)(1)(B).

287. Plaintiffs are entitled to reasonable injunctive relief under 15 U.S.C. § 1116(a) and/or § 1125(b) to remedy these false advertising violations.

C. Third Cause Of Action – USDA violated 7 U.S.C. § 6505(b) by ignoring key differences between OFPA and Canadian standards

288. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

289. This third cause of action, and the fourth and fifth causes that follow below, primarily relate to the USDA's violation of an OFPA import statute, 7 U.S.C. § 6505(b).

290. These causes arise from (1) the USDA's failure to follow the administrative-review procedures that § 6505(b) necessarily requires; (2) the USDA's apparent ad hoc determination that its ultra vires allowance of "group" certification is functionally equivalent to Canada's written standards; (3) the USDA's failure to recognize that its expectations communicated to USDA-accredited certifiers for inspection and verification of organic bee forage zones are materially different from Canadian standards; and (4) the USDA's misinterpretation of § 6505(b) to mean Canadian standards can be applied to any operation in the world to create the USDA organic certificate and seal.

291. The text of the statute is:

(b) Imported products

> Imported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are **at least equivalent to the requirements of this chapter**.

7 U.S.C. § 6505(b) (bold face added).

292. § 6505(b) was enacted to streamline organic labeling of *direct* U.S. imports from countries like Canada to the U.S., if the country's organic standards are not materially different. In such cases, rather than require farmers and handlers to undergo organic certification twice (first for products in their local country, and then a second time by the USDA if those products are also imported into the U.S.), the statute permits the USDA organic seal to be placed on the labels of the imports without further certification review by the USDA.

1. Group certification – the NOP's ultra vires lowering of foreign inspection standards before "equivalency arrangements"

293. On information and belief, an organization known as the International Federation of Organic Agriculture Movements ("IFOAM") influenced National Organic Program (NOP) practices following Congressional enactment of the OFPA in 1990.

294. As a nongovernmental entity that existed for years prior to the OFPA, IFOAM created its own organic standards based on IFOAM philosophies, which included pioneering the concept of IFOAM-accredited certifiers granting IFOAM "certification" to closely located farmers in groups. Many foreign certifying organizations had IFOAM connections or used IFOAM group certification practices before becoming USDA-accredited certifiers in or about 2002.

295. NOP officials allowed those certifiers to bring the IFOAM system with them and use IFOAM group standards to issue USDA organic certificates to foreign agribusinesses. The immediate effect was an ultra vires lowering of organic inspection and verification standards for foreign imports relative to OFPA requirements – primarily linked to the near-elimination of yearly *on-site inspections* of farms by independent third-party certifiers – which is foundational to the OFPA.

296. By the time the NOP later entered into the USCOEA in 2009, it had been allowing group certification as a shadow system for years.

2. Canada's group certification and apiary standards are not "at least equivalent to" the OFPA's standards

297. Before the USDA/NOP actually entered into the USCOEA, § 6505(b) required the USDA/NOP to conduct an administrative review of the Canadian organic system against the "requirements of this chapter." This meant a comparison of Canada's "safeguards and guidelines" to the requirements of OFPA *statutes*, including its regulations and policies promulgated under authority of those statutes.

298. On information and belief the USDA/NOP created no administrative record showing this review was done in a way that comported with the statute before declaring equivalency with Canada.

a) The single-farm certification standards of the OFPA are materially different from Canadian group certification

299. On information and belief, because the OFPA statutes and promulgated regulations lacked authorization for and failed to mention group certification, NOP officials avoided making the following comparative review:

Table I – Comparison: OFPA statutes vs. Canadian Standards (group certification)

U.S.	Canada
General hierarchy: OFPA is top-tier; Code of Federal Regulations ("CFRs") are second-tier; USDA/NOP policy memos and certifier instructions are third-tier.	General hierarchy: Canada's COR manual operates in parallel to independent standards published by the Canadian General Standards Board (CGSB) (e.g., CAN CGSB 32.310).
7 U.S.C. § 6501(2) – requires national standards to assure consumers that organic products meet a consistent standard.	Canada is dual-standard – both "single farm" certification (similar to the OFPA) and "group" certification. Single-farm certification is addressed in CAN CGSB

	32.310. Group certification is addressed in the COR manual.
7 U.S.C. § 6506(a)(5) ("the farm inspection statute") – requires "annual on-site inspection by the certifying agent of each farm and handling operation…."	Single-farm operations are inspected annually by a third-party certifier in a similar way as § 6506(a)(5) under CAN CGSB 32.310 procedures. In group certification, the COR manual takes over and allows the third-party certifier "to delegate the annual inspection of any group members to an identified body or unit [processor field inspectors, group farmers, middlemen, etc.] within the grower group."
7 U.S.C. § 6506(a)(6) ("residue testing") – requires periodic residue testing by certifiers to check for prohibited substances	No Canadian counterpart. Canada does not mandate periodic residue testing; certifiers may do it voluntarily.
7 U.S.C. § 6506(a)(4), 6519(c)(2) ("the farmer's oath") – require farmer personal certification of compliance with U.S. organic standards under penalty of 18 U.S.C. § 1001.	Canadian organic laws have no direct counterpart that create personal penalties, other than loss of certification.
7 U.S.C. § 6515(g) ("the conflict of interest statute") – requires independent third-party inspection (accredited certifiers) and prohibits inspections by parties having conflicts of interest.	Inherent conflicts of interest are allowed in group certification because farm inspections are controlled by the party who receives the organic certificate.

b) The NOP's stated expectations for certifier inspection and verification of organic bee forage zones are materially different from Canadian apiculture standards

300. Additionally, concerning organic management protocols relating to apiaries, NOP officials failed to make the following comparative review:

Table II – Comparison: OFPA honey standards vs. Canadian Standards

U.S.	Canada
The USDA/NOP treat honeybees as "livestock."	The Canadian General Standards Board (CGSB) publishes standards specific to apiculture that depart from Canada's livestock standards (e.g., CAN CGSB 32.310, Rule 7.1).
7 U.S.C. § 6509(c)(1) – requires livestock feed to be "organic."	CAN/CBSB-32.310, Rule 7.1.5 – generally calls for organic plants to be the "primary" source of bee food while avoiding conventional agricultural fields.

7 U.S.C. § 6508(a)(2) – requires that land used for organic crop production must have no prohibited substances applied for 3 years.	See below. Canadian rules interpretations created no transition waiting period for bee forage.
7 C.F.R. § 205.202 – requires land used for organic production must have no prohibited substances for 3 years; 7 C.F.R. § 205.207 – same 3-year requirement for wildlands. 7 C.F.R. § 205.240(a) ties livestock pasture requirements to the 3-year transition standard	When agricultural fields are present (within 1.9 miles from bee colony), CAN CGSB 32.310, Rule 7.1.10(a) specifically allows prohibited substances (fertilizers) near hives. The CGSB interprets this rule as requiring no transition period for agricultural fields near hives, which enables pesticide sprays to be used soon before hives are situated.
NOP Standards Update (Feb. 10, 2015) – requires USDA-accredited certifiers to (1) "Complete [certifier] review and understanding of management of forage zones"; (2) "Verify that forage zones are organically managed"; and (3) "All forage areas inspected to ensure that all bee forage is organically managed."	See above. Canada does not "organically manage" bee forage areas according to NOP expectations because it allows fertilizers and pesticide sprays in those areas. Canada's use of "group" certification ensures that "all" forage areas are not inspected by an accredited certifier.
NOP Standards Update states "expectations" of certifiers that create "additional requirements of the Secretary" under 7 U.S.C. § 6516(b), in the context of equivalency arrangements with other countries.	No evidence that Canadian certifiers have been instructed to follow the USDA Secretary's "additional requirements" in the form of apiculture inspection and verification expectations stated by the NOP in the NOP's 2015 Standards Update.
NOP Standards Update requires bee feed to be "all organic"; 7 C.F.R. § 205.202 – requires livestock feed to be 100% organic.	CAN CGSB 32.310, Rule 7.1.11.1(a) prefers organic feed for bees, but has specific allowances for the use of non-organic feed.

3. The USDA misapplies § 6505(b) to create a "Brazilian" organic honey industry

301. After not properly conducting the administrative review procedures required by § 6505(b), NOP officials then misapplied § 6505(b) to authorize a *worldwide* delegation of organic-certification authority to the Canadian government.

302. As a result, Canadian government records now show that "Canadian" certifiers with no connection to Canada – who exist for the purpose of creating the USDA organic seal on imports from other countries, outnumber in-country Canadian certifiers by a factor of two to one.

303. In honey, on information and belief, USDA misapplication of § 6505(b in connection with the USCOEA directly caused the USDA organic seal to be affixed to roughly 60 million pounds of "organic" honey imported from Brazil in 2025; 8 million from Uruguay; 6 million from India; 2 million from Mexico; and 1 million from Thailand.

4. USDA unequal treatment of U.S. beekeepers

304. The Due Process Clause of the Fifth Amendment contains an equal protection component that prohibits the federal government and its administrative agencies from treating similarly situated entities differently, without a rational basis for the discrimination.

305. Using Brazilian beekeepers as the primary example, Plaintiffs and Brazilian beekeepers are similarly situated in all material respects in that both groups operate in an agricultural environment where their bees are unlikely to forage on entirely agrochemical-free plant life.

306. Plaintiffs allege the USDA's failure to properly implement 7 U.S.C. § 6505(b), according to the express terms of the statute, created two classes of honey producers: (1) domestic producers, who are correctly barred from using the USDA organic seal by the OFPA's statutes; and (2) similarly situated foreign producers, who should be barred but are not. The USDA effectively exempted foreign honey producers from the OFPA.

5. APA standing

307. Plaintiffs have standing to pursue the above and all APA-related claims in this action because Plaintiffs are directly regulated by the OFPA in that OFPA standards prevent Plaintiffs from selling organically labeled honey. USDA actions that enable foreign producers to take market share from Plaintiffs by selling wrongly labeled "organic" honey, along with obtaining certain U.S. government incentives based solely on the label, have caused a concrete

injury to Plaintiffs. Plaintiffs' injury will be redressed if the Court grants the injunctive relief requested by Plaintiffs, because it will result in a correction to honey labeling. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

6. APA Statute of Limitations

308. On information and belief, because of USDA false messaging and labeling practices, neither Plaintiffs or anyone else in the public could have reasonably discovered how the USCOEA has been used in honey until after the USDA changed publicly available data in connection with implementation of the SOE amendment (effective date, March 20, 2023).

7. The USCOEA should be set aside

309. The USCOEA should be set aside under 5 U.S.C. § 706(2)(A) because the USDA's implementation of the USCOEA was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

310. The USCOEA should also be set aside under 5 U.S.C. § 706(2)(B) as "contrary to constitutional right, power, privilege, or immunity."

311. Finally, the USCOEA should be set aside under 5 U.S.C. § 706(2)(C) as "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

D. Fourth Cause Of Action – use of the USCOEA for worldwide creation of USDA organic certificates is an independent violation of § 6505(b)

312. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

1. Congress did not intend to delegate worldwide organic certification authority to Canada

313. Even if the USDA had properly determined "equivalency" after conducting an administrative review comparing OFPA to Canadian standards, the resultant arrangement should have been limited to direct trade between Canada and the U.S.

314. The OFPA's statutes collectively make it clear that Congress intended to allow only USDA-accredited certifiers – accredited to be a certifier after applying to the USDA under 7 U.S.C. § 6514(b) – to organically certify operations in foreign countries, and only so long as both the certifiers and foreign operations apply OFPA standards. 7 U.S.C. § 6515(b),(c).

315. § 6505(b) created an exception to the above, but only for direct imports, e.g., direct imports from Canada to the U.S.

316. Congress did not intend for § 6505(b) to be used as a general delegation of authority to the Canadian government, in essence making the Canadian government responsible for placing the USDA organic seal on worldwide imports of food products, including honey, as though the OFPA does not exist.

317. Dr. Barbara C. Robinson was the federal officer in charge of the USDA's National Organic Program (NOP) in 2009 when the USDA entered into the USCOEA. In a public letter exchange with Canadian officials she wrote:

> Following advance notice from USDA, the CFIA shall permit USDA to conduct on-site evaluations in Canada to verify that the CFIA's certifying agents are carrying out the requirements of Canada's organic certification program, including through visits to agent facilities and to production facilities and farms that agents have certified. The CFIA shall cooperate and assist USDA, to the extent permitted under domestic law, in carrying out such evaluations.

318. Ms. Robinson's use of the language "USDA to conduct on-site evaluations in Canada" demonstrates she was concerned only about farm and handler operations within Canada who would import to the U.S., consistent with § 6505(b). Moreover, in subsequent "equivalency

arrangements" with other countries following the Canada arrangement, the subsequent arrangements applied only to direct imports in the same way.

319. On information and belief, subsequent to Ms. Robinson's tenure, and outside public knowledge, the USDA apparently allowed the USCOEA to be converted and used as an organic certificate-exchange mechanism from any non-Canadian country.

320. The USCOEA should be set aside under 5 U.S.C. § 706(2)(A) or (C) because its worldwide implementation was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."

E. Fifth Cause Of Action – the USDA's ad hoc creation of the USCOEA should be set aside under 5 U.S.C. § 706(2)(A) as arbitrary and capricious

321. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

322. In a 2017 audit report published by the USDA Office Inspector General (OIG) that addressed NOP equivalency arrangements, including the USCOEA, the audit report stated:

> We understand that while procedural and/or technical differences may be identified during analysis of the respective organic standards, the foreign standard is deemed equivalent if it complies with the OFPA. OFPA does not require that the foreign standard be identical to the USDA organic standards. **Based on our review of equivalency arrangement documentation, we could not determine whether all identified differences in organic standards were resolved in such a way that the equivalence determinations were justified**. We concluded that the equivalence determination process lacked the transparency that would allow interested parties and the public to understand the basis for NOP's equivalence determinations.

U.S. Dep't of Agric., Off. of Inspector Gen., Audit Report No. 01601-0001-21, at 5 (Sept. 2017) (boldface added).

323. After conducting a formal audit, the USDA's OIG could not determine if the NOP complied with § 6505(b) in entering into the USCOEA.

324. The USCOEA should be set aside under 5 U.S.C. § 706(2)(A) because the USDA's implementation of the USCOEA was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

F. Sixth Cause Of Action – certain subsections of the USDA "Strengthening Organic Enforcement" (SOE) regulatory amendment should be set aside under 5 U.S.C. § 706(2)(A) & (C)

325. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

326. This cause of action is based on recent rule-making that added grower group certification practices to the federal regulations. These regulations violate the on-site farm inspection requirements of 7 U.S.C. § 6506(a)(5) (the "farm inspection statute"), and other OFPA statutes, by delegating independent, accredited certifier farm inspections to a conflicted system of "internal" inspectors who are under the control of the party who receives the organic certificate.

1. Grower group certificates: a sustained ultra vires shadow practice now codified in the SOE amendment to regulations

327. The USDA's implementation of the recent Strengthening Organic Enforcement (SOE) rule included amendments that added group certification practices to certain sections of largely unchanged federal regulations that had closely followed the OFPA's single-farm certification standards for decades.

a) The NOP and NOSB: unlawful delegation of authority to an advisory board

328. The National Organic Standard Board (NOSB) is an advisory body only, created by Congress pursuant to the Federal Advisory Committee Act (FACA). The OFPA did not change that directive.

(1) NOSB overreach creates group certificates

329. On information and belief, because Congress did not include group certification when it enacted the OFPA in 1990, from the very beginning the USDA's National Organic Program (NOP), members of the NOSB, and industry insiders recognized the ultra vires problem connected to permitting the practice. From that point forward, they collaborated to legitimize the practice as though it exists within the OFPA's statutes, while keeping it out of the U.S. public eye.

330. On information and belief, the original set of organic regulations was published in the Federal Register as a "Final Rule" on December 2000, set to go into effect on October 21, 2002. Like the OFPA, those regulations failed to mention group certification.

331. The NOP began "accrediting" certifier organizations before the effective date of the Final Rule. NOP audit records indicate most, or all existing certifier organizations were "provisionally" accredited by the NOP at least six months before the Rule's effective date.

332. The day before the Final Rule became effective, the NOSB made an ultra vires recommendation that approved group certification, as described in the NOSB's *Criteria for Certification of Grower Groups* (adopted Oct. 20, 2002). The recommendation engaged in no statutory analysis, and implied that group certification is an allowable practice because it was "historical" and those certifying organizations "who have received NOP accreditation" were already doing it.

333. Avoiding the prospect of accountability and transparency, or any requirements to disclose and respond to significant public comments arising under APA statute, 5 U.S.C. § 553, the NOSB, not the USDA, made a determination group certification should be allowed outside the regulations:

> While there is no need to change to [*sic*] the final rule, there is a need to provide guidance to the NOP to assure that certifying agents who operate grower group certification programs follow consistent procedures.

334. The NOP then adopted the NOSB recommendation without additional rule-making.

(2) The NOSB overrules the AMS Administrator on the group certification issue

335. When the AMS Administrator later found the practice to be illegal in 2006, the NOP side-stepped the Administrator because, by that time, the NOP had been permitting group certification as a secret industry practice for years. Rather than obey the AMS Administrator and discontinue the practice, NOP officials effectively delegated *de facto* policymaking authority back to the NOSB and continued the practice in tag-teamed coordination with the NOSB.

336. Citing to IFOAM grower group training manuals, in a follow up 2008 recommendation that responded to the Administrator, the NOSB dismissed the Administrator's decision, stating that it "accepts and extends the logic of the NOSB's 2002 recommendation"; called the Administrator's decision "informal" as though it had no binding effect; and noted that the NOP was continuing the practice despite the Administrator's determination, all described in the NOSB's *Certifying Operations with Multiple Production Units, Sites and Facilities under the National Organic Program* (adopted Nov. 19, 2008).

337. Any public discussion then lapsed for years, but the underlying issue persisted as the NOP allowed the practice to continue and grow.

338. In 2011, an NOP official issued a new memorandum informing the USDA's accredited certifiers to continue following both the 2002 and 2008 NOSB recommendations on an "interim" basis while the NOP drafted guidance that "will be requesting public comment before publishing final guidance and possible regulation change."

339. Public discussion then lapsed again for years. During this period, in a nonpublic 2014 meeting with European Union ("EU") officials, the NOP stated:

> NOP: there are no specific group certification allowances in the regulations, but an NOP policy memo allows it based on a recommendation from the NOSB.

340. By the time of SOE public notice and comment years later, the NOP had been allowing an ultra vires group certification system for decades, unknown to the general public. By that time, the Administrator's decision was conveniently lost or misplaced – effectively relegating it to obscurity.

341. NOP officials used the passage of time, coupled to a federal advisory board (the NOSB) that acted under color of authority, to bootstrap the practice into the regulations – using longevity to normalize and manufacture the appearance of legality outside statutory authority. During public notice and comment connected to the SOE amendment, the NOP actively solicited public comment only on issues like group size and geographical scope, sidelining any analysis of core OFPA statutes that defeat the practice, while forgetting the Administrator's decision, entirely.

2. Beekeeping operations are "farms" within the meaning of § 6506(a)(5)

342. The OFPA farm inspection statute is a single-farm certification statute that states, in pertinent part:

> A program established under this chapter shall—
>
> * * *
>
> (5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this chapter;

7 U.S.C. § 6506(a)(5).

343. Each and every beekeeper operation qualifies as a farm that must be inspected annually by an accredited certifier, within the meaning of § 6506(a)(5).

3. The SOE regulatory amendments

344. The Strengthening Organic Enforcement (SOE) rule codified group certification into federal regulations by regulatory amendment to 7 C.F.R. §§ 205.2, 205.201, 205.400, and 205.403(a).

345. § 205.2 is a definition section, only, having no subsections, and was amended to add a definition for "internal control system." The amendment to pre-existing § 205.201 added subsection "(c)," which codifies certain requirements specific to the "internal control system." The amendment to pre-existing § 205.400 added subsection "(g)," which codifies general "group" requirements, including a requirement that the group have an internal control system. Last, the amendment to § 205.403 added subsection "(a)(2)," which reduces on-site accredited certifier inspections from each and every farm, as required by 7 U.S.C. § 6506(a)(5), to a minimalist formula, set forth below:

> (a) ***On-site inspections.***
>
> * * *
>
> (2) Inspections of a producer group operation must:
>
> (i) Assess the internal control system's compliance, or ability to comply, with the requirements of § 205.400(g)(8). This must include review of the internal inspections conducted by the internal control system.
> (ii) Conduct witness audits of internal control system inspectors performing inspections of the producer group operation.
> (iii) Individually inspect at least 1.4 times the square root or 2% of the total number of producer group members, whichever is higher. All producer group members determined to be high risk by the certifying agent must be inspected. At least one producer group member in each producer group production unit must be inspected.

7 CFR § 205.403(a)(2) (underlining added).

a) 7 CFR § 205.403(a)(2) rewrites § 6506(a)(5) by significantly lowering the OFPA's single-farm inspection standards

346. The above regulation amendment reduces annual certifier inspections of every beekeeper farm operation to "1.4 times the square root or 2% of the total number" of beekeeper operations.

347. In honey, the regulatory amendment is inconsistent with the NOP's own stated expectations of USDA-accredited certifiers that they inspect and verify organic compliance of every bee forage zone. The expectations were consistent with the single-farm inspection requirements of § 6506(a)(5). The amendment minimizes scrutiny of beehives and bee forage zones in conflict with the statute, making it far easier for transient beekeepers with multiple apiaries to temporarily locate beehives in agricultural areas where prohibited substances are used.

b) 7 CFR § 205.403(a)(2) unlawfully permits "inspector" conflicts of interest

348. The regulatory amendment is also inconsistent with Congressional intent in enacting the OFPA as an independent third-party certification system. It is clear from the statutes, including USDA public messaging about the statutes, that Congress intended organic certification of farms and businesses to result from inspections by persons or entities having no connection to the enterprise that is being certified. A February 26, 2014, USDA publication, *Organic 101: Ensuring Organic Integrity through Inspections*, is illustrative:

> This separation between the farmer and the certifier maintains the "independent third party" nature of the transaction.

349. Group certification eliminates third-party inspection and verification of foreign honey producers because it effectively makes the entity who receives the organic certificate (the honey processor) into the certifier.

350. The regulation amendments that include the "internal control system" definition in 7 C.F.R. § 205.2, and newly added subsections 7 C.F.R. §§ 205.201(c), 205.400(g), and 205.403(a)(2) should all be set aside under 5 U.S.C. § 706(2)(A) or (C).

G. Seventh Cause Of Action – the New Zealand recognition agreement should be set aside under 5 U.S.C. § 706(2)(A) & (C)

351. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

352. The USDA's description of the New Zealand recognition agreement was updated in July 2026 to state:

> The United States has a recognition agreement with New Zealand, first established in 2002. Under the recognition agreement, the USDA authorizes a foreign government to accredit certifying agents in that country to the USDA organic standards. These foreign certifying agents are then allowed to certify organic operations in that country to the USDA organic standards. Products certified under the recognition agreement may then be exported to the United States.

353. The New Zealand recognition agreement violates the OFPA and has caused honey imports from New Zealand to be illegally labeled as organic.

354. Pursuant to 7 U.S.C. § 6514, Congress exclusively assigned to the USDA the task of accrediting USDA certifiers. Assigning certifier accreditation to New Zealand violates this statute.

355. The USDA could have entered into the New Zealand recognition agreement under § 6505(b) after New Zealand created its organic program in 2023. However, this

required the USDA to first determine New Zealand's organic program is equivalent to the OFPA, following proper administrative review. The USDA never made the necessary determination.

356. The New Zealand recognition agreement should be set aside under 5 U.S.C. § 706(2)(A) or (C).

H. Eighth Cause Of Action – the USCOEA, certain subsections of the SOE regulatory amendment, and the New Zealand recognition agreement violate 7 U.S.C. § 6501 and should be set aside under 5 U.S.C. § 706(2)(A)

357. Plaintiffs incorporate by reference the allegations and pleadings of the preceding paragraphs, as though fully set forth herein.

358. According to 7 U.S.C. § 6501(2), the purpose of the OFPA is "to assure consumers that organically produced products meet a consistent standard." The term "consistent standard" means uniformity in application.

359. In imported honey, the USDA organic seal is being applied to honey labels by using the USCOEA, the SOE regulatory amendments, and the New Zealand recognition agreement, all of which provide different certification pathways that are nonuniform.

360. Because of the damage they are collectively doing to the U.S. beekeeping industry, the USCOEA, the SOE regulatory amendments, and the New Zealand recognition agreement should be set aside under 5 U.S.C. § 706(2)(A) as not in accordance with law, because they violate Congress's stated purpose for enacting the OFPA.

VII. RELIEF REQUESTED

WHEREFORE, because of the above legal violations, Plaintiffs respectfully request that the Court grant the following relief:

a) A declaration under 28 U.S.C. § 2201 that USDA's labeling, certification, and promotional practices relating to foreign "organic" honey violate the Lanham Act, 15 U.S.C. § 1125(a)(1).

b) A declaration under 28 U.S.C. § 2201 that the organic honey certification pathway enabled by the USDA's implementation of the USCOEA, based on USDA interpretation of 7 U.S.C. § 6505(b), violates the Organic Foods Production Act, and the Administrative Procedure Act.

c) A declaration under 28 U.S.C. § 2201 that the USDA's New Zealand recognition agreement violates the Organic Foods Production Act, and the Administrative Procedure Act.

d) An Order requiring the USDA and the NOP Deputy Administrator to cease licensing the USDA organic seal for use on foreign organic honey imports, including labels to sell such products, unless and until (1) USDA-accredited certifiers annually inspect every foreign bee colony/hive location on-site and apply bee forage zone certification expectations consistent with the NOP's 2015 Standards Update; and (2) the USDA places the same requirement on other countries under any equivalency arrangement or agreement entered into pursuant to 7 U.S.C. § 6505(b). Pursuant to the terms and requirements of 15 U.S.C. § 1116(a), Plaintiffs respectfully request that the Order include a provision directing the USDA to file with the Court a report in writing setting forth in detail the manner and form in which the USDA complied with the Order.

e) An Order requiring the USDA to cease further use of the "retail toolkit" unless and until the USDA discontinues group certification practices.

f) An Order setting aside the USDA's current implementation of the U.S.–Canada Organic Equivalency Arrangement (USCOEA) and remanding the matter to the USDA with instructions to conduct a lawful review that includes a review of U.S. statutes against Canadian laws.

g) An Order setting aside the USDA's current implementation of the U.S.–New Zealand recognition agreement and remanding the matter to the USDA with instructions to conduct a lawful review that includes a review of U.S. statutes against New Zealand laws.

h) An Order setting aside SOE regulation amendments that added the "internal control system" definition in 7 C.F.R. § 205.2, and newly added subsections 7 C.F.R. §§ 205.201(c), 205.400(g), and 205.403(a)(2).

i) An award to Plaintiffs of reasonable attorneys' fees and costs associated with this litigation.

j) And finally, grant such further and additional relief as this Court deems necessary, just, and proper.

VIII. CONCLUSION

Congress did not intend that rules and policies should be created that enable honey to be called "organic" when it is produced from hives located on farmland where agrochemicals are used. Plaintiffs respectfully request that this Court grant Plaintiffs the above relief.

Dated: August 3, 2026

Respectfully submitted,

Plaintiffs

/s/ Bruce A. Kaser

Bruce A. Kaser (WSBA No. 13532)
Vantage Law, PLLC
414 NE Ravenna Blvd.
Ste A-1243
Seattle, WA 98115
Tel: (206) 909-7928
Email: bruce@vantagelaw.net
Attorney for Plaintiffs