

119TH CONGRESS
2D SESSION

S. _____

To amend the Organic Foods Production Act of 1990 to modernize oversight by directing a study on risk-based oversight, defining risk to organic integrity, and authorizing regulatory reforms, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. McCORMICK (for himself and Mr. SCHIFF) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Organic Foods Production Act of 1990 to modernize oversight by directing a study on risk-based oversight, defining risk to organic integrity, and authorizing regulatory reforms, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Risk-based Oversight
5 for Integrity Act”.

1 **SEC. 2. DEFINITIONS.**

2 (a) IN GENERAL.—Section 2103 of the Organic
3 Foods Production Act of 1990 (7 U.S.C. 6502) is amend-
4 ed—

5 (1) by redesignating paragraphs (2), (3), and
6 (6) through (22) as paragraphs (3), (6), (7), (8),
7 (9), (10), (11), (12), (13), (15), (17), (18), (20),
8 (21), (22), (23), (25), (26), and (27), respectively,
9 and moving all paragraphs of that section so as to
10 appear in numerical order;

11 (2) by inserting after paragraph (1) the fol-
12 lowing:

13 “(2) APPROPRIATE COMMITTEES OF CON-
14 GRESS.—The term ‘appropriate committees of Con-
15 gress’ means—

16 “(A) the Committee on Agriculture, Nutri-
17 tion, and Forestry of the Senate; and

18 “(B) the Committee on Agriculture of the
19 House of Representatives.”;

20 (3) by inserting after paragraph (13) (as so re-
21 designated) the following:

22 “(14) NATIONAL ORGANIC PROGRAM.—The
23 term ‘national organic program’ means the national
24 organic program established under this title.”;

25 (4) by inserting after paragraph (15) (as so re-
26 designated) the following:

1 “(16) NATIONAL ORGANIC STANDARDS
2 BOARD.—The term ‘National Organic Standards
3 Board’ means the National Organic Standards
4 Board established under section 2119.”;

5 (5) by inserting after paragraph (18) (as so re-
6 designated) the following:

7 “(19) OVERSIGHT PROTOCOLS.—The term
8 ‘oversight protocols’ means the regulations, policies,
9 and procedures issued by the Secretary under the
10 authorities provided by sections 2104, 2107, 2114,
11 2115, 2116, and 2120.”; and

12 (6) by inserting after paragraph (23) (as so re-
13 designated) the following:

14 “(24) RISK TO ORGANIC INTEGRITY.—The term
15 ‘risk to organic integrity’ means the likelihood that
16 a product marketed as organically produced is, or
17 contains, an agricultural product that—

18 “(A) was not produced using a system of
19 organic farming in compliance with this title; or

20 “(B) was not processed in compliance with
21 this title.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 2104(c) of the Organic Foods Pro-
24 duction Act of 1990 (7 U.S.C. 6503(c)) is amended
25 by striking “established under section 2119”.

1 (2) Section 2107(c)(2)(A)(ii) of the Organic
2 Foods Production Act of 1990 (7 U.S.C.
3 6506(c)(2)(A)(ii)) is amended by striking “estab-
4 lished under section 2119”.

5 (3) Section 2115(c) of the Organic Foods Pro-
6 duction Act of 1990 (7 U.S.C. 6514(c)) is amended
7 by striking “established under this title”.

8 (4) Section 2123(b) of the Organic Foods Pro-
9 duction Act of 1990 (7 U.S.C. 6522(b)) is amended,
10 in the matter preceding paragraph (1), by striking
11 “established under this title”.

12 **SEC. 3. STUDY AND REFORM OF NATIONAL ORGANIC PRO-**
13 **GRAM OVERSIGHT PROTOCOLS.**

14 (a) IN GENERAL.—The Organic Foods Production
15 Act of 1990 is amended by inserting after section 2122A
16 (7 U.S.C. 6521a) the following:

17 **“SEC. 2122B. STUDY AND REFORM OF NATIONAL ORGANIC**
18 **PROGRAM OVERSIGHT PROTOCOLS.**

19 “(a) STUDY.—Not later than 1 year after the date
20 of enactment of this section, the Secretary shall complete
21 a comprehensive study for the purpose of determining
22 whether the establishment of oversight protocols based on
23 risk to organic integrity and the implementation of related
24 reforms are necessary and appropriate.

25 “(b) ELEMENTS.—

1 “(1) IN GENERAL.—In conducting the study
2 under subsection (a), the Secretary shall examine
3 the feasibility of, opportunities for, and implications
4 of, implementing oversight protocols that—

5 “(A) are based on risk to organic integrity;

6 “(B) include differential treatment of non-
7 compliance that increases the risk to organic in-
8 tegrity versus noncompliance that does not in-
9 crease the risk to organic integrity;

10 “(C) utilize common organic plans under
11 section 2114 that are aligned with the risk to
12 organic integrity;

13 “(D) include a multi-tiered approach to
14 certification aligned with the risk to organic in-
15 tegrity and the scale of the organic operation;

16 “(E) provide for increased guidance and
17 interpretations of standards and criteria estab-
18 lished under this title, to be provided by the na-
19 tional organic program to—

20 “(i) certifying agents;

21 “(ii) certified organic farms; and

22 “(iii) certified organic handling oper-
23 ations; and

24 “(F) include virtual inspections as de-
25 scribed in subsection (e)(4).

1 “(2) CONSIDERATION OF RELEVANT FAC-
2 TORS.—In carrying out paragraph (1), the Secretary
3 shall, with respect to certified organic farms, cer-
4 tified organic handling operations, and certifying
5 agents, take into account—

6 “(A) the scope of certification or accredita-
7 tion of each entity;

8 “(B) the scale and complexity of each enti-
9 ty;

10 “(C) the domestic or international location
11 of each entity;

12 “(D) the history of compliance of each en-
13 tity; and

14 “(E) other relevant factors.

15 “(c) REPORT.—Not later than 18 months after the
16 date of enactment of this section, the Secretary shall sub-
17 mit to the appropriate committees of Congress, and make
18 publicly available on the website of the Department of Ag-
19 riculture, a report describing the findings of the study con-
20 ducted under subsection (a).

21 “(d) CONSULTATION.—In conducting the study
22 under subsection (a), the Secretary shall consult with—

23 “(1) the National Organic Standards Board;

24 “(2) certifying agents;

25 “(3) certified organic farms;

1 “(4) certified organic handling operations;

2 “(5) consumers of organically produced agricul-
3 tural products; and

4 “(6) other relevant stakeholders.

5 “(e) AUTHORITY TO ESTABLISH ADDITIONAL TERMS
6 AND CONDITIONS.—

7 “(1) OVERSIGHT PROTOCOLS.—Based on the
8 findings described in the report under subsection (c),
9 and after consultation with the appropriate commit-
10 tees of Congress, the Secretary may promulgate reg-
11 ulations to establish or modify oversight protocols
12 under this title that the Secretary determines are
13 necessary and appropriate, subject to the condition
14 that such regulations—

15 “(A) maintain strong organic integrity;

16 “(B) support a resilient domestic organic
17 sector; and

18 “(C) are consistent with the requirements
19 of this title.

20 “(2) PUBLIC COMMENT PERIOD.—Any rule-
21 making proceeding relating to the promulgation of
22 regulations under paragraph (1) shall include a pub-
23 lic comment period of not less than 90 days.

1 “(3) REDUCING OVERSIGHT COSTS;
2 PRIORITIZATION.—In promulgating regulations
3 under paragraph (1), the Secretary may seek—

4 “(A) to reduce oversight costs and admin-
5 istrative burdens for certified organic farms,
6 certified organic handling operations, and certi-
7 fying agents that present a lower risk to or-
8 ganic integrity; or

9 “(B) to prioritize oversight resources for
10 activities that present a higher risk to organic
11 integrity.

12 “(4) LIMITED VIRTUAL INSPECTIONS.—

13 “(A) IN GENERAL.—If the Secretary deter-
14 mines, based on the study, report, and consulta-
15 tion required under subsections (a) through (d)
16 and paragraph (1), that it would be appropriate
17 to allow certifying agents to conduct a limited
18 number of annual inspections under section
19 2107(a)(5) virtually pursuant to the protocol
20 described in subparagraph (B), the Secretary
21 may, subject to all other requirements of this
22 subsection, include in any regulations promul-
23 gated under paragraph (1) provisions allowing
24 for the use of virtual inspections consistent with
25 that protocol.

1 “(B) INSPECTION PROTOCOL.—The pro-
2 tocol referred to in subparagraph (A) is the fol-
3 lowing:

4 “(i) In the case of a farm or handling
5 operation located outside the United
6 States, all inspections shall be conducted
7 on-site.

8 “(ii) In the case of a farm or handling
9 operation located in the United States, in-
10 spections shall be conducted on-site once
11 every 3 years with intervening annual in-
12 spections being conducted on-site or vir-
13 tually based on the risk to organic integ-
14 rity at the farm or handling operation, as
15 determined by the Secretary.

16 “(iii) In the case of a handling oper-
17 ation that acquires but does not physically
18 receive, process, package, or store organic
19 product, inspections shall be conducted
20 through inspection methods, including vir-
21 tual methods, that provide sufficient assur-
22 ance of compliance with this title, as deter-
23 mined by the Secretary.

1 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion limits the authority of the Secretary to enforce com-
3 pliance with this title to protect organic integrity.”.

4 (b) CONFORMING AMENDMENT.—Section 2107(a) of
5 the Organic Foods Production Act of 1990 (7 U.S.C.
6 6506(a)) is amended by striking paragraph (5) and insert-
7 ing the following:

8 “(5) provide for annual inspections by the certi-
9 fying agent of each farm and handling operation
10 that has been certified under this title, which shall
11 be conducted—

12 “(A) on-site; or

13 “(B) if the Secretary has promulgated reg-
14 ulations under section 2122B(e) allowing for
15 the limited use of virtual inspections, pursuant
16 to those regulations.”.

17 (c) CLERICAL AMENDMENT.—The table of contents
18 in section 1(b) of the Food, Agriculture, Conservation, and
19 Trade Act of 1990 (Public Law 101–624; 104 Stat. 3370)
20 is amended by striking the item relating to section 2123
21 and inserting the following:

“Sec. 2122A. Organic agricultural product imports interagency working group.

“Sec. 2122B. Study and reform of national organic program oversight proto-
cols.

“Sec. 2123. Funding.”.