

# SHOULD HYDROPONIC PRODUCTS BE CERTIFIED AS ORGANIC?

*Hodgson Russ Food & Beverage Alert*  
March 16, 2020

According to the Center for Food Safety (CFS), an organization representing organic food producers, handlers, certifiers, retailers, and consumers, the answer is a resounding “no.” So, in response to the USDA’s denial of CFS’s petition requesting the issuance of regulations *prohibiting* organic certification of hydroponic agricultural production, on March 2, 2020, CFS and its co-plaintiffs took their fight to the Northern District of California.

In the action, titled *Center for Food Safety et al. v Perdue, et al.*, 3:20-cv-01537, the CFS plaintiffs are suing the United States Department of Agriculture (USDA) for declaratory and injunctive relief surrounding what they claim is the unlawful denial of CFS’s petition for rulemaking. According to plaintiffs, the USDA’s denial violates the Organic Foods Production Act (OFPA), which was established to ensure uniform national standards for foods labeled and sold as “organic.” The reasoning is that, because OFPA contains soil-based production requirements (intended to create an equal playing field for organic food producers), hydroponically-grown food (*i.e.*, food grown without soil in nutrient-enriched water) cannot qualify for the coveted certification.

A deep philosophical divide exists between the two sides. Organic farmers believe that their operations improve the health and fertility of the soil – something that hydroponically-grown food cannot do (and need not do – making their operations less costly). They assert hydroponically grown food does not benefit from microbiomes in the soil. But hydroponically grown food may be an important part of sustainable agriculture for the future and, like organic farming, does not depend on synthetic chemicals. It uses less water and allows cultivation in areas with less desirable soils, even indoor urban areas.

So does the future of sustainable agriculture lie with the soil or with the water? Stay tuned for future updates to find out.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us at: <https://forms.hodgsonruss.net/sign-up-for-email-and-other-communications.html>.

## Attorneys

Christine Bonaguide  
Joseph Braccio  
David Bradley  
Paul Comeau  
George Eydt  
Rob Fluskey  
Kenneth Friedman  
Neil Friedman  
Nathaniel Lucek  
Ryan Lucinski  
Michael Maxwell  
Elizabeth McPhail  
Adam Perry  
David Reed  
R. Kent Roberts  
Patricia Sandison  
Gary Schober  
Christian Soller  
Daniel Spitzer  
Melissa Subject  
James Zawodzinski Jr.

## Practices & Industries

Food & Beverage