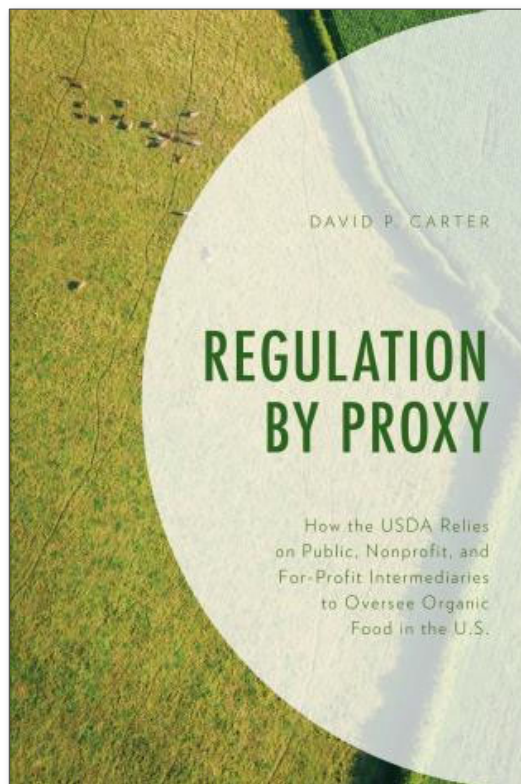


## The regulator, the target, and the intermediary: A comprehensive look at the regulation of organic food in the United States

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Review of *Regulation by Proxy: How the USDA Relies on Public, Nonprofit, and For-Profit Intermediaries to Oversee Organic Food in the U.S.*, by David P. Carter. (2019). Rowman & Littlefield/Lexington Books. Available as hardcover and eBook; 262 pages. Publisher's website: <https://rowman.com/ISBN/9781498574198/>



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**I**n *Regulation by Proxy: How the USDA Relies on Public, Nonprofit, and For-Profit Intermediaries to Oversee Organic Food in the U.S.*, Dr. David P. Carter,

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assistant professor of political science at the University of Utah, provides a comprehensive analysis of organic food regulation in the United States. The regulation of organic food is complex, and, as the book title suggests, organic regulation involves many actors with various roles. Although the federal government, through the U.S. Department of Agriculture (USDA), plays a role in organic certification, “the regulatory arrangement is not as simple as a regulator . . . regulating an industry activity . . .” (p. 7). Instead, The National Organic Program (NOP), a regulatory entity housed under the USDA’s Agricultural Marketing Service, relies

on “an assortment of ‘regulatory intermediaries’” (p. 7) independent from the NOP to develop and enforce uniform national standards for organically produced agricultural products sold in the United States. As a result, the regulation of the USDA organic standard is “decentralized” such that organic food is regulated by proxy.

*Regulation by Proxy* describes the various actors, or “proxies,” involved in organic regulation, examines their relationships with each other, and considers the incentives and constraints they face. The book also analyzes how this complex regulatory scheme affects the consistency and integrity of organic certification in the U.S. Throughout, Carter identifies the strengths and weaknesses of the USDA’s decentralized regulatory system for organic food—something he calls “an illustrative example of the complexity found across many regulatory settings” (p. 5). Carter uses the regulation of U.S. organic food “to examine the theoretical implications of a decentralized regulatory system that depends on public, nonprofit, and private action” (p. 6). As such, *Regulation by Proxy* would be of interest to organic food advocates as well as academics interested in regulation, public policy, and public administration more generally.

Relying on both primary and secondary data, Carter’s research is extremely thorough and balanced. The primary data comes mostly from his work with the Organic Regulation Research Project (a three-year research project carried out by a research team spanning multiple universities). This data includes both quantitative data from surveys and qualitative data from interviews with the various actors involved in organic regulation. The secondary data comes from publicly available reports and databases published by federal and state agencies. Carter also draws heavily from and acknowledges the scholarship of others, particularly as it relates to the evolution of organic food governance in the U.S.

Chapter 1 explains what Carter means by the phrase “regulation by proxy” and places it in the context of U.S. organic certification. Chapter 2, “A Framework for Examining Decentralized Regulation,” offers a framework for his analysis. Carter explains the regulator-intermediary-target model of USDA organic certification, with the NOP as the

“regulator” and the organic farmer as the “target” (p. 18). The intermediaries are entities that act “on behalf of a regulatory authority, or in conjunction with it, to achieve regulatory goals” (p. 13). Important to Carter’s analysis are four dimensions through which the outcomes and processes of decentralized regulation can be analyzed: regulatory fidelity, regulatory integrity, program feedback, and policy durability (p. 24). This framework guides Carter’s subsequent analysis of the various actors involved in organic certification.

Chapter 3, “Institutional Emergence and Evolution: The History of Organic Food and Governance in the U.S.,” describes the roots of organic agriculture and its evolution from self-regulation to third-party certification (or regulation by proxy). This chapter also includes a summary of the Organic Food Production Act of 1990 and the NOP regulations that followed. This chapter illustrates how the USDA organic certification’s decentralized regulatory design is a direct result of “the institutional legacy” of the organic movement (p. 43).

Chapter 4, “Systems-Based Regulations and Rulemaking Counsel: The USDA National Organic Standards and the NOSB,” discusses both the content of the USDA Organic standards and the development of those standards through the National Organic Standards Board (NOSB). This chapter acknowledges the growing discontent with both the development and content of organic standards and points to the recent emergence of supplemental certifications or “add-ons” as evidence of this disapproval.

“The Regulator: The National Organic Program” is the subject of Chapter 5. This chapter describes the structure and evolution of the NOP. In addition to this history, Chapter 5 offers a detailed description of the process through which the NOP accredits independent organic certifiers and monitors them for compliance with national organic standards. Carter notes the lack of data available to analyze this actor. Specifically, “no database exists by which audit findings can be readily aggregated and analyzed” (p. 80) and “no effort” has been made to “systemically assemble or assess all of the enforcement actions that organic certifiers take on [the NOP’s] behalf” (p. 82).

Consequently, while Carter concludes that the NOP has been “active in its accreditation oversight role,” he cannot state “the extent to which National Organic Program accreditation oversight ensures fidelity and integrity in the administration of USDA organic standards” (p. 87).

Chapters 6 through 9 discuss distinct intermediaries involved in organic regulation and their interactions with the regulator, target, and each other. These intermediaries include accredited certifying agents, organic inspectors, the California State Organic Program, professional associations like the Accredited Certifiers Association (ACA) and the International Organic Inspectors Association (IOIA), and materials review organizations like the Organic Materials Review Institute (OMRI). Each intermediary has a different responsibility: administrator, inspector, state-level enforcer, coordinator, and informer. These chapters make important points related to regulatory fidelity and integrity. For example, the chapter on accredited certifying agents (chapter 6) concludes that certifiers vary in decision-making, which could raise some regulatory fidelity concerns, “but there is no evidence . . . to indicate that certifiers respond to competitive certification environments in a manner that threatens the integrity of the USDA organic label” (p. 112). Inspector surveys analyzed in Chapter 7 reveal that “certifiers appear to demand ethical behavior from the inspectors they hire and are willing to issue penalties if they deviate from it” (p. 132).

The regulated target, certified organic producers, is the focus of Chapter 10. This chapter provides data on organic production over time and information on the motivations and perceptions certified organic producers have about practicing organic agriculture and maintaining compliance with the NOP standards. Carter concludes that regulatory integrity is a strong motivator of producers and that “willful violations of the National Organic Program regulations occur among a relatively small producer subset” (p. 184).

Chapter 11 provides a summary of findings from earlier chapters and offers ways in which Carter’s analysis could be extended. While Carter acknowledges that his “analysis raises as many questions as it answers” (p. 200), he offers several avenues for future inquiry, including the “‘black box’ of NOP rulemaking to determine how the USDA officials weigh NOSB recommendations against other forms of stakeholder input” (p. 200).

The book concludes with Chapter 12, which offers final reflections on the theoretical implications of regulation by proxy. Earlier scholarship has shown unease with the idea of “intermediaries assuming important regulatory responsibilities” (p. 207). Accountability and intermediary capture are common concerns. Carter’s findings “substantiate some of these concerns while tempering others” (p. 207). While reliance on third-party administrators may lead to lack of uniformity with enforcing standards, systemic intermediary capture does not seem to be a problem, at least when it comes to the NOP (pp. 207–208). In fact, it would be a “gross oversimplification to conclude that the decentralized administration of regulatory standards invites nothing but program liabilities” (p. 209).

*Regulation by Proxy* is both empirical and theoretical, making it useful to those interested in the regulatory process and regulatory theory. It makes important contributions to both the narrower topic of organic regulation and the broader discussions of regulatory policy. In a time when many are questioning the legitimacy of the organic food label, the book offers measured reassurance. Perhaps the focus on the occasional producer is misplaced. Instead, perhaps it is the regulator that deserves greater attention. Toward the end of the book, Carter states that he set out “to conduct the most thorough analysis possible of the complex regulatory architecture by which organic food is governed in the U.S.” (p. 199). On all counts, he has succeeded. 