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CIAA Bulletin

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Update

USDA's Proposed Rules on Organic Enforcement

The United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS) has [proposed to amend the organic regulations](#) to strengthen oversight and enforcement of the production, handling, and sale of organic agricultural products. This is one of the largest overhauls since the National Organic Program (NOP) was established. The proposed regulation would implement new oversight authority mandated by the [2018 Farm Bill](#), following notable investigations regarding organic grain fraud.

The purpose of the proposed amendments is to protect the integrity in the organic supply chain; build consumer and industry trust in the USDA organic label; improve farm to market traceability; and provide robust enforcement of the USDA organic regulations. If adopted as written, the proposed rule could add additional barriers to the import of organic cheese and dairy products.

USDA has proposed to change the NOP regulations by:

- Reducing the types of uncertified entities in the organic supply chain that operate without NOP certification and oversight—including importers, brokers, and traders of organic products.
- Requiring the use of NOP Import Certificates, or equivalent data, for all organic products entering the United States.
- Clarifying NOP's authority to oversee certification activities, including the authority to act against an agent or office of a certifying agent.
- Obliging certifying agents to notify NOP upon opening a new office.

- Requiring certified operations and certifying agents to develop improved recordkeeping, organic fraud prevention procedures, trace-back audit processes, and information sharing between certifying agents.
- Clarifying the labeling of non-retail containers used to ship or store organic products. Requiring additional information on non-retail containers will clearly identify organic products, reduce the mishandling of organic products, and support traceability. This is needed to maximize the linkage between operation certificates and import certificates and the organic product.
- Clarifying the method of calculating the percentage of organic ingredients in a multi-ingredient product to promote consistent interpretation and application of the regulation.
- Reducing paperwork burden and specifying that certifying agents must maintain current data in the USDA-NOP Integrity Database on all operations that they certify.
- Specifying certification requirements for grower group operations to provide consistent, enforceable standards and ensure compliance with the USDA organic regulations.
- Clarifying conditions for establishing, evaluating, and terminating equivalence determinations with foreign government organic programs, based on an evaluation of their organic foreign conformity systems
- Requiring and specifying the minimum number of unannounced inspections of certified operations that must be conducted annually by accredited certifying agents, and requiring that supply chain audits be completed during on-site inspections.
- Requiring certifying agents to issue standardized certificates of organic operation generated from USDA's Organic Integrity Database, and to keep accurate and current certified operation data in the database.
- Clarifying that certified operations only need to submit changes to their organic system plan during annual updates, and clarifying that certifying agents must conduct annual inspections of certified operations.
- Establishing specific qualification and training requirements for certifying agent personnel, including inspectors and certification reviewers.
- Clarifying requirements to strengthen and streamline enforcement processes, specifically noting that the NOP may initiate enforcement action against any violator of the Organic Foods Production Act, defining the term adverse action to clarify what actions may be appealed and by whom, and clarifying NOP's appeal procedures and options for alternative dispute resolution.
- Clarifying that a person who is responsibly connected to an operation that violates the Organic Food Production Act or the organic regulations may be subject to suspension of certification (if the responsibly connected person is certified), civil penalties, criminal charges or ineligibility to receive certification.
- Revising the existing requirements for mediation to clarify the process for engaging in mediation and clarifying that a settlement agreement is the outcome of successful mediation.

Comments on the proposed rules can be submitted to USDA through [regulations.gov](https://www.regulations.gov) (Docket No. AMS-NOP-17-0065) by October 5, 2020.

We will continue to monitor developments that may impact the import of organic cheese and dairy products. Should you have any questions regarding this alert, contact the Husch Blackwell LLP team at CIAAGeneralCounsel@huschblackwell.com.

Cheese Importers Association of America

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Dates to Remember

AUGUST 31, 2020

Last day to enter dairy products into U.S. Customs territory that may be used to qualify and establish eligibility for a calendar year 2021 license.

SEPTEMBER 1, 2020

First day of license eligibility period for next quota year-plus one. Example: entries made on or after September 1, 2020 can be used to establish eligibility for a license for calendar year 2022.

SEPTEMBER 3, 2020

Last date to request globalization of a calendar year 2020 license. First transmission date for applications for reallocated license amounts for calendar year 2020. First transmission date for all applications for calendar year 2021 licenses.

SEPTEMBER 15, 2020

Last transmission date for licensees applying for reallocated license amounts for calendar year 2020.

OCTOBER 1, 2020

Last transmission date for licensees to surrender all or the unused portion of their calendar year 2020 licenses.

OCTOBER 15, 2020

(no exceptions!) Last transmission date for all applications for calendar year 2021 licenses.

OCTOBER 31, 2020

Exporting countries that are designating U.S. importers for calendar year 2021 must submit their designations to FAS by this date.

DECEMBER 20, 2020

(approximately) FAS issues first notice of calendar year 2021 licenses to licensees.

DECEMBER 31, 2020

Last day for licensees to make entries to fulfill the requirement to use 85% of their calendar year 2020 license amount. Last day for which calendar year 2020 licenses are valid.

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