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February 08, 2023

USDA Issues New “Organic” Labeling Rule, Strengthening Enforcement



The U.S. Department of Agriculture (USDA) announced on January 18, 2023, that it has issued a new final rule titled Strengthening Organic Enforcement (the SOE Rule). The new [regulation](#) becomes effective on March 20, 2023, and its provisions will be enforced one year later, on March 19, 2024.

### **Background**

Under the Organic Foods Production Act of 1990 (OFPA), the USDA oversees national standards for the production, handling, labeling, and sale of organically produced agricultural products. Since 1990, the market for goods marketed as "organic" has experienced significant changes, with the sale of "organic" products in the United States exceeding \$63 billion in 2021 and global supply chains experiencing increasing complexity.

The new final rule is the culmination of a rulemaking process that began in August 2020. The SOE Rule reflects the agency's work to incorporate more than 1,500 public comments received from stakeholders. The USDA noted that a majority of public comments supported the proposed amendments and agreed that the SOE Rule was needed to improve oversight and enforcement, drive consistent implementation of the organic regulations, and reduce organic fraud.

### **The SOE Rule**

The USDA announced that the new rule is intended to strengthen the integrity of food products sold as "organic" and avoid mishandling of "organic" products. Given the increased complexity of global supply chains, the

agency noted that the new regulation is intended to provide strong organic control systems, improve farm-to-market traceability, increase import oversight authority, and provide robust enforcement of the organic regulations. The USDA's senior leadership remarked that the SOE Rule represents "the biggest update to the organic regulations since the original Act [OFPA] in 1990, providing a significant increase in oversight and enforcement authority to reinforce the trust of consumers, farmers, and those transitioning to organic production. This success is another demonstration that USDA fully stands behind the organic brand."

The USDA noted that the new SOE Rule was designed in part to expand agency authority over alleged violators of the OFPA. Knowingly selling or labeling a product as "organic" in violation of the OFPA is subject to potential civil penalties of \$20,130 per violation. *See* 7 C.F.R. 3.91(b)(1)(xxxvi); 7 C.F.R. § 205.662(g)(1) (as modified by the SOE Rule). In 2021, more than half of all complaints of alleged violations of the OFPA involved uncertified operations representing products as "organic." In issuing the SOE Rule, the agency noted that "continued [Agricultural Marketing Service] AMS enforcement against uncertified operations is central to the effective administration of the OFPA." Specifically, the SOE Rule allows the USDA to initiate enforcement actions against violators of the OFPA, clarifying that the USDA's enforcement authority is not limited to certification status.

In announcing the SOE Rule, the USDA outlined a series of "key updates" to its regulation of "organic" products, including the following:

- Requiring certification of more businesses at critical links in organic supply chains, such as brokers and traders.
- Requiring National Organic Program (NOP) Import Certificates for all imports of organic food.
- Requiring organic identification on nonretail containers.
- Increasing authority for more rigorous on-site inspections of certified operations.
- Requiring uniform qualification and training standards for organic inspectors and certifying agent personnel.
- Requiring standardized certificates of organic operation.
- Requiring additional and more frequent reporting of data on certified operations.
- Creating authority for more robust recordkeeping, traceability practices, and fraud prevention procedures.
- Specifying certification requirements for producer groups.

## **What Does This New Regulation Mean?**

Among other things, this new regulation will mean that entities will see (1) new certification requirements and (2) new compliance procedures. For example, certifying agents will be required to conduct unannounced inspections of at least 5% of the operations they certify. Nonretail containers used to ship or store organic products will also need to be labeled appropriately so they can be identified as organic and traceable to auditable records. The regulation will also mandate the use of import certificates for organic products entering the country.

Compliance with these new requirements may take time to implement. Consequently, businesses should familiarize themselves with the SOE Rule and take steps to comply well ahead of the March 2024 deadline. One step in compliance is identifying counsel familiar with the USDA's organic program requirements to help guide compliance programs, especially for entities that may see new compliance obligations under the SOE Rule. Complying with certification requirements, obtaining import certificates, preparing for inspections, and maintaining appropriate labeling are all parts of a well-functioning compliance program.

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