

USDA Issues Draft Guidance Regarding the National Organic Program

February 7, 2012

On February 3, 2012, the U.S. Department of Agriculture's ("USDA") Agriculture Marketing Service ("AMS") published [draft guidance](#) clarifying how exemptions and exclusions from certification as a producer or handler of organic food products apply to handling operations. Under USDA regulations governing the production and handling of products labeled as "100 percent organic," "organic," or "made with organic [specified ingredients]," handling operations must be certified by a certifying agent accredited by the USDA. Handling operations include any operation or portion of an operation--except for final retailers that do not process the products--that receives or acquires agricultural products for processing, packaging, or storing. Section 205.101 of USDA regulations exempts handling operations from certification if they receive in and ship out products in the same container without opening, relabeling or otherwise handling the products. In October 2010, the National Organic Standards Board ("NOSB")--a board consisting of members of the agricultural community that advises the USDA about organic food products--recommended that the USDA clarify section 205.101's exemption limitations.

The resulting draft guidance provides examples of handling operations that are and are not excluded under section 205.101. Examples of the type of handling operations that are excluded include: wholesale distribution houses that receive organic products in wholesale or retail containers and ship them in the same container without opening, repacking, relabeling, or otherwise handling the products; transportation companies that transport organic products in retail or wholesale containers that are labeled in accordance with USDA regulations; and produce brokers that do not open, repack, or relabel boxes, or otherwise handle the product. The USDA's guidance, however, notes that the following types of handling operations are **not** excluded from certification: transportation companies that move bulk grain from elevators to milling facilities; livestock hauling companies and auctions; milk tankers; and entities that move organic products in anything other than sealed retail or wholesale containers. If an organic product is handled by an uncertified handling operation that is not subject to the USDA's certification exemption, the product loses its organic status and may not be labeled or marketed as an organic product.

Comments regarding the USDA's draft guidance must be submitted by April 3, 2012.