



LEGISLATION, REGULATIONS & STANDARDS

## USDA Accepting Comments on Organic Rule Amendments

The U.S. Department of Agriculture (USDA) is accepting comments on the Agricultural Marketing Service’s proposed amendments to organic regulations concerning oversight and enforcement of the production, handling and sale of organic agricultural products. The proposed rule would require the use of National Organic Program Import Certificates for all organic products entering the United States and “[r]educ[e] the types of uncertified entities in the organic supply chain that operate without USDA oversight—including importers, brokers, and traders of organic products.”

The proposed amendment also contains provisions that would clarify “the method of calculating the percentage of organic ingredients in a multi-ingredient product” and “conditions for establishing, evaluating, and terminating equivalence determinations with foreign government organic programs, based on an evaluation of their organic foreign conformity systems.” Comments will be accepted until October 5, 2020.

## FDA Announces Voluntary Agreements to Phase Out PFAS

The U.S. Food and Drug Administration (FDA) has announced that several manufacturers of per- and polyfluoroalkyl substances (PFAS) have agreed to phase out the use of the material on food packaging, such as fast-food wrappers, to-go boxes and pizza

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Shook offers expert, efficient and innovative representation to clients targeted by food lawyers and regulators. We know that the successful resolution of food-related matters requires a comprehensive strategy developed in partnership with our clients.

For additional information about Shook’s capabilities, please contact



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boxes. The phase-out will begin in January 2021 and will occur over three years, with an additional 18 months anticipated to exhaust existing stocks of paper and paperboard products containing PFAS.

The announcement coincides with a [report](#) from Toxic-Free Future purportedly finding PFAS in the packaging of several restaurants.

## FDA Issues Guidance on Arsenic in Infant Rice Cereals

The U.S. Food and Drug Administration (FDA) has issued [final guidance](#) on inorganic arsenic in rice cereals for infants that sets the action level at 100 micrograms per kilogram, or 100 parts per billion. “FDA has made the determination that this level is achievable based on sampling and testing results,” the guidance states. “This guidance applies to all types of infant rice cereals (e.g., white-rice, brown-rice, organically grown, and conventionally grown). Though not binding, the action level for inorganic arsenic in infant rice cereals is intended to encourage manufacturers to reduce levels of inorganic arsenic in their products, thus reducing the possible risk for infants fed rice cereal.”

## WHO Issues Call for Food Safety Experts

The World Health Organization (WHO) has issued a [call for experts](#) to join the Technical Advisory Group on Food Safety: Safer Food for Better Health, which “will serve as an advisory body to WHO through providing technical guidance and inputs to support WHO’s efforts and work in food safety by analyzing the current and future challenges in agri-food supply chains, advising innovative solutions and approaches with greatest public health benefits. Eventually, the aim is to strengthen national food safety systems and lower the burden of foodborne illnesses.” The organization is taking online applications until August 21, 2020.

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### LITIGATION

## TTAB Finds “Gruyere” Generic

The U.S. Trademark Trial and Appeal Board (TTAB) has determined that “gruyere” is a generic name for the type of cheese



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### ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility

and cannot be registered as a certification mark. *Int'l Dairy Foods Assn. v. Interprofession du Gruyère & Syndicat Interprofessionnel du Gruyère*, No. 91232427 (T.T.A.B., entered August 5, 2020). Swiss and French associations attempted to register the mark and limit its use to cheese originating from the Swiss and French region of Gruyère, but several organizations filed notices of opposition, arguing that the term is generic. TTAB agreed, finding that a large number of cheese products sold in the United States as gruyere are produced outside of the Gruyère region, and consumer understanding of the term is not tied to a specific area. Accordingly, TTAB sustained the oppositions on the grounds that “gruyere” is generic.

inspections, subject to FDA, USDA and FTC regulation.



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