

115TH CONGRESS
2D SESSION

S. 2927

To amend the Organic Foods Production Act of 1990 to increase interagency cooperation in the enforcement of standards for importing organic agricultural products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 23, 2018

Ms. BALDWIN (for herself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Organic Foods Production Act of 1990 to increase interagency cooperation in the enforcement of standards for importing organic agricultural products, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Organic Farmer and
5 Consumer Protection Act of 2018”.

6 **SEC. 2. EXCLUSIONS FROM CERTIFICATION.**

7 Not later than 1 year after the date of enactment
8 of this Act, the Secretary of Agriculture shall issue regula-

1 tions to limit the type of operations that are excluded from
 2 certification under section 205.101 of title 7, Code of Fed-
 3 eral Regulations (or successor regulations), and any other
 4 corresponding sections.

5 **SEC. 3. DEFINITIONS.**

6 Section 2103 of the Organic Foods Production Act
 7 of 1990 (7 U.S.C. 6502) is amended—

8 (1) in paragraph (3)—

9 (A) by striking “The term” and inserting
 10 the following:

11 “(A) IN GENERAL.—The term”; and

12 (B) by adding at the end the following:

13 “(B) FOREIGN OPERATIONS.—When used
 14 in the context of a certifying agent operating in
 15 a foreign country, the term ‘certifying agent’ in-
 16 cludes a certifying agent—

17 “(i) accredited in accordance with sec-
 18 tion 2106(b)(1); or

19 “(ii) accredited by a foreign govern-
 20 ment that acted under an equivalency ar-
 21 rangement negotiated between the United
 22 States and the foreign government.”;

23 (2) by redesignating paragraphs (13) through
 24 (21) as paragraphs (14) through (22), respectively;
 25 and

1 (3) by inserting after paragraph (12) the fol-
2 lowing:

3 “(13) NATIONAL ORGANIC PROGRAM IMPORT
4 CERTIFICATE.—The term ‘national organic program
5 import certificate’ means a form developed for pur-
6 poses of the program under this title—

7 “(A) to provide documentation sufficient to
8 verify that an agricultural product imported for
9 sale in the United States satisfies the require-
10 ment under section 2106(b)(1); and

11 “(B) which shall include, at a minimum,
12 information sufficient to indicate, with respect
13 to the agricultural product—

14 “(i) the origin;

15 “(ii) the destination;

16 “(iii) the certifying agent issuing the
17 national organic program import certifi-
18 cate;

19 “(iv) the harmonized tariff code, if a
20 harmonized tariff code exists for the agri-
21 cultural product;

22 “(v) the total weight; and

23 “(vi) the organic standard to which
24 the agricultural product is certified.”.

1 **SEC. 4. DOCUMENTATION AND TRACEABILITY ENHANCE-**
2 **MENT; DATA COLLECTION.**

3 Section 2106(b) of the Organic Foods Production Act
4 of 1990 (7 U.S.C. 6505(b)) is amended—

5 (1) by striking “Imported” and inserting the
6 following:

7 “(1) STANDARDS FOR IMPORTED PRODUCTS.—
8 Imported”; and

9 (2) by adding at the end the following:

10 “(2) FRAUDULENT OR MISREPRESENTED PROD-
11 UCTS.—The Secretary, to the maximum extent prac-
12 ticable, shall reduce the risk of fraudulent or mis-
13 represented organic products entering the United
14 States and being marketed for sale in the United
15 States.

16 “(3) IMPORT CERTIFICATION.—

17 “(A) IMPORT CERTIFICATES.—For an ag-
18 ricultural product being imported into the
19 United States to be represented as organically
20 produced, the Secretary shall require the agri-
21 cultural product to be accompanied by a com-
22 plete and valid national organic program import
23 certificate, which shall be available as an elec-
24 tronic record.

25 “(B) TRACKING SYSTEM.—

1 “(i) IN GENERAL.—The Secretary
2 shall establish a system to track national
3 organic program import certificates.

4 “(ii) INTEGRATION.—In establishing
5 the system under clause (i), the Secretary
6 may integrate the system into any existing
7 information tracking systems for imports
8 of agricultural products.

9 “(4) MODERNIZATION OF TRADE TRACKING
10 AND DATA COLLECTION SYSTEMS.—

11 “(A) IN GENERAL.—The Secretary shall
12 modernize international trade tracking and data
13 collection systems of the national organic pro-
14 gram established under this title.

15 “(B) ACTIVITIES.—In carrying out sub-
16 paragraph (A), the Secretary shall modernize
17 trade and transaction certificates to ensure full
18 traceability without unduly hindering trade,
19 such as through an electronic trade document
20 exchange system.

21 “(5) REPORTS.—

22 “(A) IN GENERAL.—On an annual basis,
23 the Secretary shall submit to Congress and
24 make publically available on the website of the
25 Department of Agriculture a report providing

1 detailed quantitative data on imports of organi-
 2 cally produced agricultural products accepted
 3 into the United States during the year covered
 4 by the report.

5 “(B) REQUIREMENTS.—The data de-
 6 scribed in subparagraph (A) shall be broken
 7 down by agricultural product type, quantity,
 8 value, and month.

9 “(C) EXCEPTION.—Any data that is spe-
 10 cific enough to be protected as confidential
 11 business information shall not be provided in
 12 the report under subparagraph (A).”.

13 **SEC. 5. ACCREDITATION PROGRAM.**

14 Section 2115 of the Organic Foods Production Act
 15 of 1990 (7 U.S.C. 6514) is amended—

16 (1) by redesignating subsection (c) as sub-
 17 section (d);

18 (2) by inserting after subsection (b) the fol-
 19 lowing:

20 “(c) OVERSIGHT OF SATELLITE OFFICES AND FOR-
 21 EIGN OPERATIONS.—As part of the accreditation of certi-
 22 fying agents under this section, the Secretary shall oversee
 23 any certifying agent operating in a foreign country.”; and

24 (3) in subsection (d) (as so redesignated)—

1 (A) by striking “section shall” and insert-
 2 ing the following: “section—
 3 “(1) subject to paragraph (2), shall”; and
 4 (B) in paragraph (1) (as so designated), by
 5 striking “Secretary, and may” and inserting the
 6 following: “Secretary;
 7 “(2) in the case of a certifying agent operating
 8 in a foreign country, shall be for a period of not to
 9 exceed 1 year, as determined appropriate by the Sec-
 10 retary; and
 11 “(3) may”.

12 **SEC. 6. INVESTIGATIONS.**

13 Section 2120(b) of the Organic Foods Production Act
 14 (7 U.S.C. 6519(b)) is amended by adding at the end the
 15 following:

16 “(3) INFORMATION SHARING DURING ACTIVE
 17 INVESTIGATION.—In carrying out this title, all par-
 18 ties conducting an active investigation under this
 19 subsection (including certifying agents, State organic
 20 certification programs, and the national organic pro-
 21 gram) shall share confidential business information
 22 with Federal and State government officers and em-
 23 ployees and certifying agents involved in the inves-
 24 tigation as necessary to fully investigate and enforce
 25 potential violations of this title.

1 “(4) EXPEDITED PROCEDURES FOR FOREIGN
2 OPERATIONS.—

3 “(A) ESTABLISHMENT.—The Secretary
4 shall establish expedited investigative proce-
5 dures under this subsection to review the ac-
6 creditation of a certifying agent operating in a
7 foreign country under any of the circumstances
8 described in subparagraph (B).

9 “(B) EXPEDITED PROCEDURES.—The Sec-
10 retary shall promptly carry out expedited inves-
11 tigative procedures established under subpara-
12 graph (A) to review the accreditation of a certi-
13 fying agent operating in a foreign country if—

14 “(i) the accreditation of the certifying
15 agent is revoked by a foreign govern-
16 ment—

17 “(I) operating an organic certifi-
18 cation program described in section
19 2106(b)(1); or

20 “(II) that acted under an equiva-
21 lency arrangement negotiated between
22 the United States and the foreign gov-
23 ernment; or

24 “(ii) the Secretary determines that
25 there is a sudden and substantial increase

in the rate and quantity of imports of an individual organically produced agricultural product from the foreign country, in which case the expedited investigative procedures shall be carried out with respect to each certifying agent of that agricultural product in that foreign country.”.

SEC. 7. DATA ORGANIZATION AND ACCESS.

Section 2122 of the Organic Foods Production Act of 1990 (7 U.S.C. 6521) is amended by adding at the end the following:

“(c) DATA RELATING TO IMPORTS OF ORGANICALLY PRODUCED AGRICULTURAL PRODUCTS.—

“(1) ACCESS TO DATA DOCUMENTATION SYSTEMS.—The head of each Federal agency that administers a cross-border documentation system shall provide to the head of each other Federal agency that administers such a system access to available data from the system, including—

“(A) the Automated Commercial Environment system of U.S. Customs and Border Protection; and

“(B) the Phytosanitary Certificate Issuance and Tracking System of the Animal and Plant Health Inspection Service.

1 “(2) DATA COLLECTION AND ORGANIZATION
2 SYSTEM.—

3 “(A) IN GENERAL.—The Secretary shall
4 establish a new system or modify an existing
5 data collection and organization system to col-
6 lect and organize in a single system quantitative
7 data on imports of each organically produced
8 agricultural product accepted into the United
9 States.

10 “(B) ACCESS.—The single system under
11 subparagraph (A) shall be accessible by any
12 agency with the authority to engage in—

13 “(i) inspection of imports of agricul-
14 tural products;

15 “(ii) trade data collection and organi-
16 zation; or

17 “(iii) enforcement of trade require-
18 ments for organically produced agricultural
19 products.”.

20 **SEC. 8. ORGANIC AGRICULTURAL PRODUCT IMPORTS**
21 **INTERAGENCY WORKING GROUP.**

22 The Organic Foods Production Act of 1990 is amend-
23 ed by inserting after section 2122 (7 U.S.C. 6521) the
24 following:

1 **“SEC. 2122A. ORGANIC AGRICULTURAL PRODUCT IMPORTS**
2 **INTERAGENCY WORKING GROUP.**

3 “(a) ESTABLISHMENT.—

4 “(1) IN GENERAL.—The Secretary and the Sec-
5 retary of Homeland Security shall jointly establish a
6 working group to facilitate coordination and infor-
7 mation sharing between the Department of Agri-
8 culture, U.S. Customs and Border Protection, and
9 the Food and Drug Administration relating to im-
10 ports of organically produced agricultural products
11 (referred to in this section as the ‘working group’).

12 “(2) MEMBERS.—The working group—

13 “(A) shall include—

14 “(i) the Secretary (or a designee);

15 “(ii) the Commissioner of Food and
16 Drugs (or a designee); and

17 “(iii) the Secretary of Homeland Se-
18 curity (or a designee); and

19 “(B) shall not include any non-Federal of-
20 ficer or employee.

21 “(3) DUTIES.—The working group shall facili-
22 tate coordination and information sharing between
23 the Department of Agriculture, U.S. Customs and
24 Border Protection, and the Food and Drug Adminis-
25 tration for the purposes of—

1 “(A) identifying imports of organically pro-
2 duced agricultural products;

3 “(B) verifying the authenticity of organi-
4 cally produced agricultural product import doc-
5 umentation, such as national organic program
6 import certificates;

7 “(C) ensuring imported agricultural prod-
8 ucts represented as organically produced meet
9 the requirements under this title;

10 “(D) collecting and organizing quantitative
11 data on imports of organically produced agricul-
12 tural products; and

13 “(E) reporting to Congress on—

14 “(i) enforcement activity carried out
15 by the Department of Agriculture, U.S.
16 Customs and Border Protection, or the
17 Food and Drug Administration in the
18 United States or abroad; and

19 “(ii) barriers to preventing agricul-
20 tural products fraudulently represented as
21 organically produced from entry into the
22 United States.

23 “(4) DESIGNATED EMPLOYEES AND OFFI-
24 CIALS.—An employee or official designated to carry
25 out the duties of the Secretary, the Secretary of

1 Homeland Security, or the Commissioner of Food
 2 and Drugs on the working group under subpara-
 3 graph (A) or (B) of paragraph (2) shall be an em-
 4 ployee or official compensated at a rate of pay not
 5 less than the minimum annual rate of basic pay for
 6 GS-12 under section 5332 of title 5, United States
 7 Code.

8 “(b) REPORTS.—On an annual basis, the working
 9 group shall submit to Congress and make publically avail-
 10 able on the websites of the Department of Agriculture,
 11 U.S. Customs and Border Protection, and the Food and
 12 Drug Administration the following reports:

13 “(1) ORGANIC TRADE ENFORCEMENT INTER-
 14 AGENCY COORDINATION REPORT.—A report—

15 “(A) identifying existing barriers to co-
 16 operation between the agencies involved in agri-
 17 cultural product import inspection, trade data
 18 collection and organization, and organically pro-
 19 duced agricultural product trade enforcement,
 20 including—

21 “(i) U.S. Customs and Border Protec-
 22 tion;

23 “(ii) the Food and Drug Administra-
 24 tion;

1 “(iii) the Agricultural Marketing Serv-
2 ice; and

3 “(iv) the Animal and Plant Health In-
4 spection Service;

5 “(B) assessing progress toward integrating
6 organic trade enforcement into import inspec-
7 tion procedures of U.S. Customs and Border
8 Protection, the Food and Drug Administration,
9 and the Animal and Plant Health Inspection
10 Service, including an assessment of—

11 “(i) the status of the development of
12 systems for—

13 “(I) tracking the fumigation of
14 imports of organically produced agri-
15 cultural products into the United
16 States; and

17 “(II) electronically verifying na-
18 tional organic program import certifi-
19 cate authenticity; and

20 “(ii) training of U.S. Customs and
21 Border Protection personnel on—

22 “(I) the use of the systems de-
23 scribed in clause (i); and

24 “(II) requirements and protocols
25 under this title;

1 “(C) establishing outcome-based goals for
2 ensuring imports of agricultural products rep-
3 resented as organically produced meet the re-
4 quirements under this title;

5 “(D) recommending steps to improve the
6 documentation and traceability of imported or-
7 ganically produced agricultural products;

8 “(E) recommending and describing steps
9 toward the goals of—

10 “(i) achieving complete compliance
11 with the requirements of this title for all
12 agricultural products imported into the
13 United States and represented as organi-
14 cally produced; and

15 “(ii) ensuring accurate labeling and
16 marketing of imported agricultural prod-
17 ucts represented as organically produced
18 by the exporter;

19 “(F) providing a timeline for implementing
20 the steps described in subparagraph (E);

21 “(G) identifying additional resources need-
22 ed to achieve any unmet goals; and

23 “(H) describing staffing needs at U.S.
24 Customs and Border Protection, the Food and
25 Drug Administration, and the Department of

1 Agriculture to achieve the goals for ensuring or-
 2 ganic integrity described in the report.

3 “(2) REPORT ON ENFORCEMENT ACTIONS
 4 TAKEN ON ORGANIC IMPORTS.—A report—

5 “(A) providing detailed quantitative data
 6 (broken down by commodity type, quantity,
 7 value, month, and origin) on imports of agricul-
 8 tural products represented as organically pro-
 9 duced found to be fraudulent or lacking any
 10 documentation required under this title at the
 11 port of entry during the report year;

12 “(B) providing data on domestic enforce-
 13 ment actions taken on imported agricultural
 14 products represented as organically produced,
 15 including—

16 “(i) the number and type of actions
 17 taken by United States officials at ports of
 18 entry in response to violations of this title;
 19 and

20 “(ii) the total quantity and value of
 21 the agricultural products that were the
 22 subject of the actions, broken down by
 23 product variety and country of origin;

24 “(C) providing data on fumigation of agri-
 25 cultural products represented as organically

produced at ports of entry and notifications of fumigation actions to shipment owners, broken down by product variety and country of origin; and

“(D) providing information on enforcement activities under this title involving overseas investigations and compliance actions taken within that year, including—

“(i) the number of investigations by country; and

“(ii) a descriptive summary of compliance actions taken by certifying agents in each country.”.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 2123 of the Organic Foods Production Act of 1990 (7 U.S.C. 6522) is amended—

(1) by striking the section heading and inserting “**FUNDING**”;

(2) in subsection (b), by striking paragraphs (1) through (7) and inserting the following:

“(1) \$15,000,000 for fiscal year 2018;

“(2) \$16,500,000 for fiscal year 2019;

“(3) \$18,000,000 for fiscal year 2020;

“(4) \$20,000,000 for fiscal year 2021;

“(5) \$22,000,000 for fiscal year 2022; and

1 “(6) \$24,000,000 for fiscal year 2023.”; and

2 (3) by adding at the end the following:

3 “(d) MODERNIZATION OF TRADE TRACKING AND
4 DATA COLLECTION SYSTEMS.—

5 “(1) IN GENERAL.—Of the funds of the Com-
6 modity Credit Corporation, the Secretary shall use
7 to carry out section 2106(b)(4) \$5,000,000 for fiscal
8 year 2019, to remain available until expended.

9 “(2) ADDITIONAL AMOUNT.—The amount made
10 available under paragraph (1) shall be in addition to
11 any other amounts made available to carry out sec-
12 tion 2106(b)(4).”.

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