

Strengthening Organic Enforcement (SOE) Q&A



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Background

The U.S. Department of Agriculture (USDA) published the [Strengthening Organic Enforcement \(SOE\) final rule](#) on January 19, 2023. This is the biggest change to the organic regulations since the creation of the National Organic Program (NOP). Compliance is required by March 19, 2024. ***This is likely to impact many operations in organic supply chains, and it is important to start now, to ensure compliance by the effective date.***

This rule is designed to ***protect organic integrity and bolster consumer confidence in the USDA organic seal.*** It is a response to documented cases of fraud in the organic system - which harms the entire organic sector and shakes the trust of consumers in organic. ***The rule closes gaps in organic oversight, improves oversight at critical points in supply chains, and builds consistent practices to prevent fraud and improve the transparency and traceability of organic products.*** It clarifies the responsibilities of participants across the supply chain - from farmers to handlers, as well as USDA, certifiers, and inspectors - in protecting the integrity of the organic seal against fraud.

General Tips

Reach out to your certifier!

One of your best resources for understanding how the new SOE rule will impact you and your supply chain is your certifier - if you haven't started this conversation, do so today. Your certifier will be able to share resources and guide you along in your preparations to ensure your supply chain is in compliance by the ***deadline of March 19, 2024.*** There could be supply chain disruption after the compliance deadline - do your part to ensure this doesn't impact you!

The NOP maintains the [Organic Integrity Learning Center \(OILC\)](#), with ***free online training*** in a formal Learning Management System. Consider taking courses that are relevant to your business and supply chain (some are identified below).

Failing to comply with SOE can trigger the ***enforcement mechanisms*** found in the organic regulations - including being issued a noncompliance, having your organic certification suspended or revoked, and financial penalties. It is important to comply with the new regulation. Refresh your memory on compliance and enforcement with [OILC](#) courses on this topic.

Reducing Uncertified Entities: Who Must be Certified and Who is Exempt from Certification

The biggest change in SOE is that more operations in the organic supply chain will need to become certified organic. NOP has indicated that it strongly encourages certification of all businesses engaged in organic, and it will interpret the rule with a **bias towards certification** to increase oversight and mitigate the risks of uncertified entities handling organic products. Most operations in the middle of the supply chain will need to be certified. **When in doubt, the safest action is to encourage entities within your supply chain to become certified.** The exemptions are intended to be narrow - and not a roadmap to avoid certification. Also, remember that your contracts with buyers may be more strict than the regulations, to further mitigate risk.

Who needs to be certified?

Anyone who produces or handles organic products (except for some narrow exemptions, discussed below).

What does handle mean?

"To sell, process, or package agricultural products, including but not limited to trading, facilitating sale or trade on behalf of a seller or oneself, importing to the United States, exporting for sale in the United States, combining, aggregating, culling, conditioning, treating, packing, containerizing, repackaging, labeling, storing, receiving, or loading." Even businesses that do not physically handle products may still need to be certified if they conduct one of these activities. Check out the [OILC](#) course on handling and processing for more information on this.

The rule includes **narrow exemptions for operations conducting certain low-risk activities** - these are exemptions from certification, but not from the rules for producing and handling organic products. Moreover, operations may conduct many different activities - if even one activity requires certification, then the operation must be certified (regardless of whether it also conducts activities that would otherwise qualify for an exemption). The exemptions are as follows:

- A. A production or handling operation that sells agricultural products as organic, but whose gross agricultural income from organic sales totals \$5,000 or less annually. (No change from prior policy)
- B. A retail establishment that does not process organically produced agricultural products. (No change from prior policy). This means that a retail establishment that does not process organically produced agricultural products - but does otherwise transport or handle those products - is exempt.¹
- C. A retail establishment that processes, at the point of final sale, organic agricultural products. This exempts a broader range of retailers from certification (including restaurants and stores that cook or prepare food).
 - a. Online retailers that process, but do not have a physical location where they sell products must be certified.
 - b. Physical retailers that process organic agricultural products but not at the point of final sale, must certify the location of off-site processing OR the on-site processing location if that is where the processing occurs.

¹ The Preamble offers examples of processing, including "cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, pre-serving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container." The Preamble goes on to state that "[a] retail establishment that is not processing may do other handling activities without certification... including], for example, removing produce from shipping boxes and washing and transferring product to display cases or opening bags of oats and transferring contents to bulk food dispensers."



- D. A handling operation that only handles agricultural products that contain less than 70 percent organic ingredients, or that only identifies organic ingredients on the information panel. (No change from prior policy)
- E. An operation that only receives or stores organic products that are enclosed in sealed, tamper-evident packages or containers, and remain in those same packages. This exempts warehouses, distribution centers, and storage operations that only receive or store packaged (both retail and non-retail) organic products.
 - a. This exemption applies to products that are enclosed in sealed, tamper-evident retail or non-retail packaging.
 - b. Operations that do other handling activities must be certified.
 - c. Operations that receive or store products that are not in sealed, tamper-evident packages or containers must be certified. This includes receiving or storing bulk or unpackaged products.
 - d. Operations that receive or store products in sealed, tamper-evident packages or containers, but the products do not stay in that packaging (including being opened for QC inspections, or otherwise altered) must be certified.
- F. An operation that only buys, sells, or stores organic products labeled for retail sale that are enclosed in sealed, tamper-evident packages or containers and remain in those same packages. This exempts operations (including private label owners) that only buy, sell, or store certain retail-packaged products.
 - a. This exemption only applies if the retail packaging is sealed, tamper-evident.
 - b. Operations that do other handling activities must be certified.
 - c. Operations that buy, sell, or store products labeled for retail sale that are not in sealed, tamper-evident packages or containers must be certified. This includes buying, selling, or storing bulk or unpackaged products.
 - d. Operations that buy, sell, or store products labeled for retail sale in sealed, tamper-evident packages or containers, but the products do not stay in that packaging (including being opened or altered) must be certified.
- G. **A customs broker that only conducts customs business.** This exempts CBP-licensed customs brokers that file import paperwork, but do not touch or handle products.
- H. An operation that **only arranges for the shipping, storing, transport, or movement of organic agricultural products.** This exempts logistics brokers – businesses that connect operations with carriers and storage facilities for a fee.

Businesses that only transport (and do not otherwise handle) organic products do not require organic certification.

Transport is not regulated by USDA, and is not included in the regulatory or statutory definition of handle. SOE requires that certified operations use audit trails and traceability to verify that uncertified transporters do not compromise integrity. And again, if a transporter might otherwise handle organic products – such as repackaging if a package opens during transport – then that transporter would not be exempt.

Exemptions (e) and (f) apply to products in **“sealed, tamper-evident packages or containers”**. What does that mean? USDA does not define this phrase, and it will be important to work with a certifier to understand whether either of these narrow exemptions apply to your operation. The Accredited Certifiers Association (ACA) has indicated that they interpret “sealed, tamper-evident” as sealed in a manner where an attempt to break the seal, access the contents (including to take out or put in product), or reclose the package would be obvious. For example, a mesh bag of onions with a metal closure that must be torn to be opened could be considered tamper-evident retail packaging. A plastic bag of grapes with a slide or zipper seal is not tamper-evident. Moreover, if sealed, tamper-evident packaging is opened or altered while in an otherwise exempt operation’s control (even if accidental), the exemptions do not apply and certification is required, otherwise the product may not be sold as organic. A certified handling operation may of course open or alter sealed, tamper-evident packaging – the requirement that sealed, tamper-evident packaging be intact applies only to operations claiming specific exemptions.

At the end of the day, a risk-based approach will be used in determining compliance with the rule. Businesses seeking certification should be able to provide rationale for how the organic programs at their operations are compliant with the relevant portions of the rule and how the practices they have chosen reduce the risk of organic fraud.



If you have a previously uncertified entity in your supply chain that will be required to be certified under SOE, encourage them to connect with a certifier as soon as possible.

Their certifier will be able to help them navigate things like drafting an Organic System Plan, meeting recordkeeping requirements, and meeting the March 2024 deadline. These things take time and there could be a backlog of applications as the deadline approaches. Encourage your supply chain to get into the pipeline with a certifier as soon as possible! There is also an [OILC](#) course on Organic System Plans, which may be helpful to previously uncertified entities.

Import Certificates

The new rule requires that all organic products imported into the United States must be associated with an **NOP Import Certificate**, generated in the Organic Integrity Database (OID) and uploaded to the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) system. By providing an auditable record trail of the import process, Import Certificates support traceability and verification of organic integrity.



Import Certificates contain detailed information about the quantity, origin, and organic status of imported products, and provide trackable and auditable documentation to demonstrate organic compliance. Specifically, they must include:

- origin
- destination
- name of certifier issuing the Import Certificate
- harmonized tariff code, when applicable
- total weight
- organic standard to which the product is certified
- 10-digit identifier for exporter in the OID
- unique numerical identifier

They may be issued for an individual shipment or for multiple shipments across a defined timeframe and volume, depending on the certifier's control systems.

The **process** for Import Certificates is as follows:

1. Exporter requests Import Certificate from their certifier.
2. Exporter's certifier evaluates request and, if approved, generates Import Certificate and provides it to exporter.
3. Exporter sends Import Certificate to importer.
4. Importer or designated customs broker enters Import Certificate data into CBP's ACE system.
5. Exporter and importer maintain records of Import Certificates and make available for inspection by NOP or certifiers.
6. Importer verifies that products received are associated with a valid Import Certificate and have not been fumigated or irradiated.

For more information, consider taking the [OILC](#) course on import oversight.



Certificates of Organic Operation

The SOE rule requires certifiers to generate standardized organic certificates electronically, using the USDA Organic Integrity Database. Standardized, electronic certificates maintained in a publicly accessible database will help deter and prevent the use of fraudulent organic certificates. The requirement also ensures that organic certificates have consistent information and format, allowing easier validation.

Supply Chain Traceability Requirements

One of SOE's primary goals is to improve oversight of organic integrity within increasingly complex supply chains. Organic integrity can be compromised not only in cases of fraud, but also by mere accidental mishandling. The new rule implements traceability requirements designed to protect against both. It ensures organic products can be traced from retail all the way back to production. The rule requires that **certified operations are responsible for traceability within their operation, back to their suppliers, and forward to their customers**. This means that certified operations must:

- maintain records of their activities from purchase or acquisition, through production, to sale or transport
- maintain records that trace back to the last certified operation in the supply chain (which will be easier, the more certified operations are in the supply chain!)
 - Records must describe all activities and transactions of the operation – including physical and financial possession, production, handling, title, and contractual oversight responsibilities.
 - Records must span the time of purchase or acquisition through production, to sale or transport.
 - This can include receipts, invoices, shipping or receiving manifests, shipping logs, bill of lading, or transaction certificates.
- maintain audit trail documentation, including identification of agricultural products as organic, name of last certified handler, and information that determines the source transfer of ownership, and transportation of the product
- describe in their OSP their fraud prevention plan

For more details on supply chain traceability and preventing organic fraud, consider taking the relevant [OILC](#) courses.

Contact

Sara L. Neagu-Reed

Director, Production & Environmental Policy
sneagu@freshproduce.com

Dr. Emily Moyer

VP, Regulatory Compliance and Global Food Safety Standards
emoyer@freshproduce.com

