



The Organic Sprout

MOFGA's Newsletter for Organic Producers

Strengthening Organic Enforcement Summary for Certified Organic Operations

Final Rule Full Implementation Date of March 19, 2024

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On January 18, 2023, the USDA National Organic Program (NOP) published a mammoth rule, titled Strengthening Organic Enforcement (SOE), which was touted as the most substantive change to the NOP regulations since they were first introduced in 2002. Congress mandated that the NOP enhance its oversight of the organic industry after several high-profile fraud cases emerged in the last several years. The rule adds to many current sections, as well as creating new definitions, reducing exemptions to certification, and codifying longstanding guidance to accredited certifiers. The following is a detailed breakdown of the new rule, and its effect on certified organic producers and certifiers. The final implementation date of SOE is March 19, 2024.

In May 2023, MCS provided a [detailed article](https://mofgacertification.org/wp-content/uploads/OS_May2023_SOE-Final-Rule.pdf) (https://mofgacertification.org/wp-content/uploads/OS_May2023_SOE-Final-Rule.pdf) in our *Organic Sprout* newsletter outlining the entirety of the SOE rule changes. With many rule changes affecting certifiers and certification activities, we are focusing this article on SOE changes that are specific to certified organic operations.

MCS has also launched a detailed webpage for SOE, which provides helpful resources and answers important questions, especially regarding the changes to “who needs to be certified.” The webpage can be found at this link: <https://mofgacertification.org/strengthening-organic-enforcement-soe>.

As MCS works to adjust our current certification program to conform to SOE, we are moving forward with these changes to be effective as of January 2024, which is the typical timing of our annual certification renewal cycle launch.

NOTE to Processor/Handlers

Most processor/handler clients will see their 2024 renewal updates coming to them earlier in the year than in the past, which is designed to allow MCS more time to process the renewal. This may change the timing of inspections, as well as when fees may be due. We want to stress that MCS offers payment plans and that submitting updates (for renewing clients) by the due date does not have to coincide with submission of fees.

Summary

The SOE rule amends the National Organic Standards to strengthen oversight and enforcement of the production, handling and sale of organic agricultural products. One significant change is how SOE expands the types of activities and producers that will need to be certified.

SOE will change the following areas of organic certification:

1) Applicability and exemptions from organic certification. The SOE webpage noted above has two crucial tools for identifying the changes to previously exempted operations:

- Self-Assessment Flowchart — https://mofgacertification.org/wp-content/uploads/SOE_Certification-Self-Assessment-Flowchart.pdf.
- Exempt Handler Affidavit — https://mofgacertification.org/wp-content/uploads/SOE_Exempt-Handler-Affidavit.pdf.

2) Imports to the United States — requiring electronic import certificates for any product being imported to the United

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States. The import certificate is created and verified by the exporting organic operation and the exporter's certifier.

- 3) Record-keeping, product traceability and fraud prevention requirements.
- 4) Labeling of non-retail containers – requiring lot numbers and certified organic product status to be included on labels accompanying shipments.
- 5) Standardized certificates of organic operations and data reporting – requiring certifiers to issue certificates directly from the Organic Integrity Database.
- 6) On-site and unannounced inspections of certified operations – codifies into regulation the previous guidance from NOP to certifiers requiring unannounced inspections annually, of at least 5% of a certifier's clients.
- 7) Calculating organic content of multi-ingredient products.
- 8) Compliance and appeals.
- 9) Certification of producer group operations in the United States.
- 10) Certifying agent personnel qualifications and training.
- 11) Foreign conformity assessment systems.

Details and additional resources for the rule can be found on the NOP website here: www.ams.usda.gov/rules-regulations/strengthening-organic-enforcement. The NOP has also created a handy side-by-side comparison of changes to the regulation, which can be found here: www.ams.usda.gov/sites/default/files/media/SOE-FR-RegTextSideBySide.pdf.

MCS will make efforts to inform producers of the changes to the regulations, both in this article as well as other notices and publications ahead of the March 19, 2024 implementation date. You'll see new questions in your 2024 Organic System Plan (OSP) materials and supplements, as well as new

items that MCS will verify at on-site inspections.

Dates

This rule became effective on March 20, 2023, with a full implementation date of March 19, 2024. This means that all entities affected by this rule, including certified operations and certifying agents, must comply with the provisions of this final rule by March 19, 2024.

Affected Operations

You may be affected by this action if you are engaged in the organic industry. Potentially affected entities may include, but are not limited to, the following:

- Individuals or business entities that are considering organic certification.
- Existing production and handling operations that are currently certified organic under the USDA organic regulations, particularly those who utilize uncertified handlers in your supply chain.
- Brokers, traders, exporters and importers of organic products that are not currently certified under the USDA organic regulations.
- Operations that use non-retail containers for shipping or storing organic products.
- Retailers that sell organic products or handle organic products in facilities – but not where final sales take place.
- USDA-accredited certifying agents, inspectors and certification review personnel.
- Operations that import organic products into the United States.
- Operations that export organic products to the United States and the corresponding certifying agents.

Key Provisions

1) **Who Must Be Certified.** This new rule expands the types of operations now requiring certification in the organic supply chain. Operations who have been previously exempted but now must be certified include importers,

brokers, distributors and trader of organic products, to safeguard organic integrity and improve traceability throughout the entire supply chain. There are some exceptions which are highlighted in the Self-Assessment Flowchart linked above.

2. **The definition of “handle” has been updated** (as well as defining a “handling operation”), and NOP has signaled that most all activity within the supply chain will now require certification oversight. The new definition, listed at §205.2 (terms defined) reads as follows:

Handle. 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.

Handling Operation. Any operation that handles agricultural products, except final retailers of agricultural products that do not process agricultural products.

Some handlers with more complex supply chains will need to identify uncertified handlers used and determine if the activity of the uncertified handler now requires certification. MCS will be contacting those processor/handlers that identify using uncertified handlers, asking that the certified operation makes the uncertified handler aware of the new provisions.

3) **Exemptions from Certification.** There are still a few limited low-risk exemptions from certification described in §205.101(a)-(h). Exempt operations must still follow the applicable production and handling requirements, including appropriate labeling as well as keeping required records for five years. Exempt products used as ingredients



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must not be represented as organic in products processed and marketed by other operations.

There is no change to the exemption at §205.101(a), which covers operations that gross \$5,000 or less, as well as the exemption for retailers that do not process and sell directly to customers. Operations that only handle products containing less than 70% organic ingredients or that only identify organic ingredients in the information panel will remain exempt from SOE.

An operation that only receives, stores and/or prepares for shipment, but does not otherwise handle, remains exempt, but only if the products stay enclosed in sealed, tamper-evident packaging or containers for the entire time under the control of the operation. Tamper-evident packaging or containers mean that the contents are sealed in a manner where an attempt to break the seal, access the contents or reclose the package would be obvious.

The above also applies to retail contexts and may cover, for example, some distributors, brand name owners and sales brokers that purchase and/or receive products in their finished retail packaging. In addition, an operation that only arranges for the shipping, storing, transport or movement of organic agricultural products but does not otherwise handle organic products continues to be exempt. NOP has signaled that transportation only remains an activity exempt from certification, though loading or unloading of unpackaged products into or from a storage facility must be certified, as this is not a form of transportation within the exempt category.

Certified operations are responsible for verifying that products handled by uncertified entities in their supply chain remain in compliance with the organic regulations including verifying organic products transported by an uncertified transporter. Organic system plans will need to be updated with a full description of how the certified operation verifies any uncertified operations in the

supply chain. Records back to the last certified operation are required and must demonstrate prevention of commingling and contamination during transportation. Please contact MCS if you have any questions regarding exemption from SOE.

4) Supply Chain Traceability and Fraud Prevention. All certified operations are required to develop organic fraud prevention processes and procedures as applicable, depending on risk. New definitions for “organic fraud” and “supply chain traceability audit” were added to the regulations. Certifying agents will conduct risk-based supply chain traceability audits between certifiers to fully verify organic integrity. Your OSP must also include measures implemented to prevent fraud. MCS will provide guidance for operations requiring fraud prevention plans and supply chain verifications.

5) NOP Import Certificates. The use of NOP Import Certificates for all organic products entering the United States is required. This change expands the use of NOP Import Certificates to all organic products imported into the United States and must be generated by the exporter and their certifier. All import documents must identify products as organic, as well as the non-retail container carrying the organic product. Lot numbers, shipping identification or other unique information that links the container to audit trail documentation must be present on the container and tied to the import certificate and other shipping documentation.

6) Organic Certificates and Data Reporting. Certifying agents will now be required to issue publicly available standardized certificates generated from the USDA's Organic Integrity Database (OID). While the certificate must be issued from the OID, the product list (MCS refers to this as the Product Verification list) or addendum listing specific products certified under a NOP scope can be issued from the certifier and not the OID.

7) On-site and Unannounced Inspections. SOE requires certifiers to annually conduct unannounced inspections for at

least 5% of clients. Mass-balance audits during annual on-site inspections are now also required. In addition, inspectors must verify traceability back to the previous certified operation in the supply chain during on-site inspections. Traceability audits must show that organic products and ingredients are traceable by the operation from the time of purchase or acquisition through production to sale or transport.

8) Producer Group Operations. SOE adds definitions and options for producer group certification, which has previously taken place outside of the United States. Producer groups must meet certain criteria to qualify for certification, and must use an internal control system to monitor compliance. Please review the specific criteria and contact MCS if you think you may qualify.

SOE changes how the regulations have been interpreted and verified since they began in 2002. As the industry has grown significantly over the last 20 years, so too have challenges with fraud and oversight. This rule responds to congressional requests while also working to strengthen consumer confidence in the certified organic label. For more information or if you have questions, please contact the MCS office or your certification specialist.

If you would like to read the full published rule, you can find it here: www.federalregister.gov/documents/2023/01/19/2023-00702/national-organic-program-nop-strengthening-organic-enforcement.

