



SOE & Non-Processing Handlers

Does your supply chain include handlers that now need to be certified?

“Protecting and growing the organic sector and the trusted USDA organic seal is a key part of the USDA Food Systems Transformation initiative,” said Under Secretary for Marketing and Regulatory Programs Jenny Lester Moffitt. “The Strengthening Organic Enforcement (SOE) rule is the biggest update to the organic regulations since the original Act in 1990, providing a significant increase in oversight and enforcement authority to reinforce the trust of consumers, farmers, and those transitioning to organic production. This success is another demonstration that USDA fully stands behind the organic brand.”

SOE protects organic integrity and bolsters farmer and consumer confidence in the USDA organic seal by supporting strong organic control systems, improving farm to market traceability, increasing import oversight authority, and providing robust enforcement of the organic regulations. All MOSA clients will receive an extensive overview of all the changes this rule will require, and an updated copy of The National Organic Standards, in an April mailing.

One of the most critical changes in the new [Strengthening Organic Enforcement \(SOE\) rule](#) is the requirement that many previously exempt handlers must now be certified organic. These include importers and exporters, certain brokers, and traders of organic products, known collectively now as “**non-processing handlers**.”

This means that operations conducting activities described in the definition of *handle* must be certified organic and must follow all applicable portions of the OFPA and the USDA organic regulations. The SOE rule strengthens enforcement of the USDA organic regulations, and reduces fraud, through several actions mandated by the Agriculture Improvement Act of 2018 including: Reduces the number of uncertified entities in the organic supply chain

These “**non-processing handlers**” will be required to certify by March 19, 2024.

National Organic Standards Definitions:

- *Handling operation*. Any operation that handles agricultural products, except final retailers of agricultural products that do not process agricultural products.
- *Handler*. Any person that handles agricultural products, except final retailers of agricultural products that do not process agricultural products.
- *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.

The definition of *handle* includes the term *processing*, defined in §205.2. Operations that process organic agricultural products must be certified. The definition further explains what to “*sell*” and “*package*” mean by including additional examples of handling activities. The examples represent typical supply chain activities that have the potential to affect organic integrity. Operations that conduct these activities must be certified (unless exempt per §205.101). The definition of *handle* is not an exhaustive list of activities that must be certified. There may be activities not listed that are similar to the listed activities and require certification. The absence of a specific term in the definition of *handle* does not mean the activity is not handling or that an operation conducting this activity does not need certification.

Activities where there **is** physical contact with organic products include, but are not limited to:

- Combining
- Aggregating
- Culling
- Conditioning
- Treating
- Packing
- Containerizing
- Repackaging
- Labeling, including private labeling
- Storing
- Receiving
- Loading

Operations that often conduct these activities may include:

- Grain elevators
- Bulk grain handlers
- Warehouses that cull, label, or repackage
- Central bakeries or kitchens that serve grocery chains
- Ports of entry

Activities where there **may not** be physical contact with organic products include, but are not limited to:

- Selling
- Trading
- Facilitating sale or trade on behalf of a seller or oneself
- Importing to the United States
- Exporting from a foreign country for sale in the United States

Operations that often conduct these activities may include:

- Sales brokers
- Commodity traders
- Ingredient sourcers
- Importers
- Exporters

Contract Handlers are sometimes used to provide services to certified operations. Any contractor performing handling activities, such as those described above, on behalf of an operation must be certified or, if exempt, described in the OSP of a certified operation and an Exempt Handler form submitted.

It is common for some operations to handle both organic and nonorganic agricultural products (*i.e.*, a *split operation*). For a split operation, only the portion(s) of the operation that produces or handles organic agricultural products must be certified. For example, a grocery store chain's retail locations may be exempt under § 205.101(b) or (c), but importing and some distribution activities would likely need to be certified.

Who does NOT need to be certified:

Limited exemptions for operations that handle organic agricultural products are described in §205.101(a)-(h). These exemptions include:

- Operations with less than \$5000 gross income. §205.101(a)
- Retail establishments that do not process and sell directly to the consumer or that only process at the point of final sale to the consumer. §205.101(b) and (c)
- Operations that only handle products with less than 70% organic ingredients, or that only identify organic ingredients on the information panel. §205.101(d)
- Operations that only handle products that are in enclosed, sealed, tamper-evident packaging or containers prior to being received, and they remain in the same packages throughout handling. §205.101(e) and (f)
- Customs brokers that only conduct customs business and do not handle. §205.101(g)
- Operations that only arrange for the shipping, storing, transport, or movement of organic products and do not handle organic products. §205.101(h)

*While these operations are not required to be certified, certification is often a better choice. Operations that are exempt in §205.101(a) and (c-f) **must** keep required records to verify the organic integrity of the supply chain.*

Transporters: All transport operations conducting any activities other than the movement of product on a transportation vehicle or moving products between transportation vehicles (transloading) must be certified organic. Handling activities which are adjacent to transport require certification unless they are covered by exemptions §205.101(e) or (f) for packaged products. Examples include:

- Combining
- Splitting
- Containerizing
- Packing/repacking
- Treating
- Sorting

- Opening
- Enclosing
- Labeling/relabeling

In addition, loading or unloading of unpackaged products into or from a storage facility is not a form of transportation and must be certified. Operations that store bulk products or products not packaged in sealed, tamper-evident packaging must be certified.

What should operations expect: Next steps

Please evaluate your supply chain and use this guide to determine if your supply chain includes any non-processing handlers that must now be certified. Contact MOSA if you need help identifying these operations. Non-Processing Handlers now requiring certification must be certified by March 19, 2024. We are happy to provide certification services in an efficient manner, and we have created a streamlined Organic System Plan (OSP) for non-processing handlers. Please encourage them to contact MOSA as soon as possible. They can create a MOSA account on the [MyMOSA website](#) and complete MOSA's new Non-Processing Handler Organic System Plan. All certified organic operations must follow the portions of the [USDA organic regulations](#) that apply to activities they conduct and some portions will not apply to every operation. The scope of a handling operation's certification only covers the activities it conducts. For example, the OSP of a certified broker will describe the operation's system to maintain transaction records and audit trails, verify suppliers and NOP Import Certificates, and verify traceability. On-site inspection will focus on a records review and evaluation, rather than evaluation of physical facilities. Organic certification for new operations must be in place by March 19, 2024.

If you have any questions about the Strengthening Organic Enforcement rule, and how it will impact your organic certification, please call or email MOSA.