

Guidance on Uncertified Operations and the Uncertified Operation Affidavit

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Under the NOP Strengthening Organic Enforcement published rule, effective March 20, 2023, the NOP has severely limited the types of operations in organic supply chains that are NOT required to be certified organic. Exemptions are intended only for low-risk activities. The NOP has indicated a bias towards certification. Unless qualifying for an exemption, any operation that produces, handles, or stores organic agricultural products must be certified organic. Exemptions are found in 7 CFR §205.101(a)-(h). Brokers, traders, wholesalers, distributors, importers, brand owners, and storage facilities are considered handlers per NOP §205.2 "Handle, Handler." Certification will be required unless the operation qualifies for one of the few strict exemptions listed in the NOP Final Rule. When in doubt, operations are encouraged to get certified.

Instructions And Guidance for Completing the Uncertified Operation Affidavit

1. The Uncertified Operation Affidavit (UOA) is to be completed by any operation, in an organic supply chain or audit trail of a certified organic grower or handler that is not certified organic by an accredited organic certifying agent and believes it qualifies for an exemption from organic certification. The UOA form will aid the certifier in verifying this exemption and also in ensuring supply chain traceability.
2. The Americert-certified operation must complete Section A of the UOA form. The UOA affidavit and any sample audit trail records will become part of the certified operation's Organic System Plan (OSP).
3. The uncertified operation claiming an exemption must complete Sections B - E of the UOA.
4. This form must be submitted to Americert for review and approval and must be maintained by the Americert certified operation and be current. It must be updated annually.
5. Americert requires form for uncertified operations, including but not limited to, the following scenarios:
 - Warehouses: An Americert-certified operation contracts with a storage or warehouse for storage of organic crops, ingredients, or product. This form is required to be completed by each such storage or warehouse.
 - Transporters: If an Americert-certified operation arranges transport (inbound, outbound, or from last certified organic source to customer) AND the organic item (crop, ingredient, or product) transported is UNPACKAGED within the transport vehicle, this form is required to be completed by each transporter involved in transport of that item.
 - Purchase or Sale: If an Americert-certified operation purchases, buys, brokers, trades, or distributes FROM an operation other than the last certified organic source, this form is required to be completed by each such seller, broker, trader, or distributor.
 - Import or Export: If an Americert-certified operation purchases, buys, brokers, trades, or distributes product it receives from an uncertified operation that has imported products into the U.S. this form is required to be completed by each such importer, exporter, seller, broker, trader, or distributor.
6. **Retail establishments** must have a physical location and sell directly to consumers, end-users, or the public in order to be exempt. Wholesalers are not retail establishments. Retail establishments include restaurants, delicatessens, bakeries, grocery stores, or any retail business with a restaurant, delicatessen, bakery, salad bar, bulk food self-service station, or other eat-in, carry-out, mail-order, or delivery service of raw or processed agricultural products. Retail establishments may do activities such as removing produce from shipping boxes, washing and transferring product to display cases, or opening bags of oats and transferring contents to bulk food dispensers.
7. **Sealed, tamper-evident packaging or containers** has a specific meaning in the NOP Final Rule. Sealed and tamper-evident means the contents are 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. Sealed, tamper-evident does not mean impermeable to gas and water. The key factor is whether something could be swapped out from the package or the product inside accessed without damaging the package or leaving evidence of tampering. For **§205.101(e)** exemption to apply, **either the retail or nonretail package** must be sealed and tamper-evident. For **§205.101(f)** exemption to apply, **the retail package** must be sealed and tamper-evident; the nonretail package is not relevant.

- **Examples of nonretail tamper-evident packaging:** Produce boxes with “DO NOT TAMPER WITH” tape placed across box flaps, sealed bulk bags of flour, sealed drums or totes of olive oil, nonretail burlap bags that are sewn shut.
- **Examples of retail tamper-evident packaging:** Aseptically sealed jars, boxes of individually wrapped granola bars, clamshells with sticker closing the clamshell, zip-top produce bags (usually have holes for air flow) with a sealed top (sticker or strip that consumer must rip off to open), plastic containers with film top (tomatoes, salad greens, etc.) that is fully sealed and must be ripped off to access product (though container may have holes for air flow), produce wrapped in plastic wrap (have to rip off plastic wrap to access product), mesh produce bags with a label that seals the bag (have to rip open to access product), plastic bags tied off with stickers that would rip the bag if removed, jarred foods with button-top security lids, products whose lid or cap is shrink banded, cans, wax seal, wine bottles, tetra pack.
- **Examples of packaging that is NOT tamper-evident:** Clamshells without a sticker closing the clamshell; zip-top bags for cucumbers, apples, nectarines, grapes, etc. (usually have holes for air flow), without a sealed top (sticker or strip that consumer must rip off to open); plastic containers with lid (tomatoes, salad greens, etc.) that can be opened and resealed, no sticker; mesh bags for sweet potatoes, avocados, onions, peanuts, etc. that are closed with a twisty tie that could be removed without damaging the packaging or label; plastic bags tied off with twisty ties or bread-bag clips that could be removed without damaging the packaging or label; produce with PLU label not wrapped in individual packaging; egg cartons; floral products; burlap bags that are not sewn shut; unsealed drums; drums sealed in a non-tamper-evident way (for example, where the lid can be taken off and on).
- **Additional examples of packaging that is NOT tamper-evident:** Packaging that does not fully enclose the organic crops, products, or ingredients (e.g., lugs, RPC’s, harvest crates and bins, or open containers of crops; bulk loaded items such as unpackaged items in trucks; open top containers; etc.); and unsealed or permeable packaging (e.g., unsealed cardboard cartons or cases, open boxes or flats, clamshells that are not sealed in tamper-evident manner, trucks, etc.)

8. Certification is required (and the UOA affidavit is not applicable) for:

- Storage facilities or warehouses receiving organic product that is unpackaged or is packaged but not in sealed, tamper-evident packaging.
 - Brokers, traders, wholesalers, distributors who sell (or facilitate sale of) organic products that are not in sealed and tamper-evident final retail packaging.
 - Importers or exporters of organic products into the United States.
 - Private label or brand owners who purchase organic ingredients for their co-packers, sell organic products in nonretail packaging, or sell finished organic products in packaging that is not sealed or tamper-evident.
 - Operations that provide transport or transloading services that unload *unpackaged* organic products into *uncertified* facilities or storage areas before loading into the next transport vehicle. Certification of location where unpackaged organic products are loaded/unloaded is required.
 - Transporters and transloaders who combine, split, containerize, pack, repack, treat, sort, open, enclose, or label organic products.
 - Moving unpackaged organic agricultural products from storage to transport, or from transport to storage.
 - Wholesalers that sell unpackaged products or nonretail-packaged products.
 - Transload facilities where unpackaged product is transferred into another container.
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