



## AMERICERT INTERNATIONAL

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### Guidance on SOE Provisions Requiring Certification for Most Operations

Feb. 22, 2023

#### Introduction and Take-Aways:

- With the publication of the new Strengthening Organic Enforcement Rule, the USDA National Organic Program has broadened the types of operations that need to be certified as organic handlers. This now includes importers, traders, brokers, and distributors.
- Americert expects to receive many questions about what operations have to be certified. This guidance is intended to provide information on how to determine if an operation needs to be certified.
- Each operation certified by Americert or operating in the organic market has an independent obligation to understand and comply with these rules. You should not wait or depend on Americert making these determinations for you.
- A basic rule of thumb that would serve an operation well is to assume that if an operation receives a financial benefit from a transaction involving organic products, crops, or ingredients, they probably need to be certified.
- Americert will err on the side of caution in making such determinations and will favor determinations that an operation does need to be certified. This promotes the NOP goal of increased transparency and accountability in the supply chain.
- If you are wondering if an operation should be certified you should assume it should be certified.
- Americert will start enforcing these rules on April 1, 2023.
- The USDA National Organic Program will commence its active enforcement of these rules in March of 2024.

#### Part One: What does the Strengthening Organic Enforcement (SOE) Rule do and where can I find more information?

SOE has reduced the number of allowed uncertified entities in organic supply chains. The SOE:

- 1) Requires certification of more businesses, like brokers and traders, at critical links in the organic supply chains. The NOP has stated that there should be a bias favoring certification rather than an exemption.
- 2) Provides limited exemptions to organic certification for certain entities and activities that present a low risk to organic integrity, **reducing the types of uncertified entities in the organic supply chain that operate without USDA oversight—including importers, traders, and certain brokers of organic products.** Exemptions are only for certain types of operations that conduct low-risk activities and are, therefore, less likely to compromise the organic integrity of the agricultural products they handle.
- 3) Requires organic certification of businesses that sell, process, or package organic agricultural products as handling operations, clarifying that most operations that operate in the middle of the organic supply chains must be certified organic.
- 4) Removes the term "exclusion." Prior exclusions are incorporated into §205.101 exemptions.

SOE 205.100(a) now states: "Except for the exempt operations described in §205.101, each operation or portion of an operation that produces or handles agricultural products intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part."

Unless an operation falls under a limited exemption under §205.101, all operations (or portions of an operation) that are HANDLERS of or HANDLE agricultural products intended to be sold, labeled, or represented as 100%



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Organic, Organic, or Made with Organic (Specified Ingredients or Food Groups) must be certified organic. SOE requires certification of any operation that produces or handles organic agricultural products.

More information on the SOE Rule can be found at: <https://americertorganic.com/blog/entry/24201581/usda-strengthening-organic-enforcement-final-rule-is-published>

### Part Two: Understanding the Rule's Requirements for Certification of Organic Handlers:

#### I. Handler, Handling, Handle, and Processing Defined

SOE §205.2 contains the definitions of Handler, Handling, and Handle.

SOE requires organic certification of businesses selling, processing, or packaging organic agricultural products as handling operations. **Operations that PROCESS agricultural products must be certified.**

SOE contains only limited exemptions to organic certification for certain entities and activities that present a low risk to organic integrity. Any operation that produces or handles organic agricultural products must be certified organic. Exemptions are found in §205.101(a)-(h).

##### A. What is a Handler?

Under SOE §205.2, a handler is “any person that handles agricultural products, except final retailers of agricultural products that do not process agricultural products.”

##### B. What does it mean to Handle?

###### 1. Definition:

Under SOE §205.2, handle means “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.

###### 2. The Definition of Handle is Not an Exhaustive List of Activities That Must Be Certified:

Additional activities not listed in the definition may require certification. There may be different words or synonyms for the same or similar activities. 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.

##### C. What is a Handling Operation?

Under SOE §205.2, a handling operation is “any operation that handles agricultural products, except final retailers of agricultural products that do not process agricultural products.”

Handling includes activities where there is physical contact with agricultural products and activities where there may not be physical contact with agricultural products.



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1. Physical Contact: Handling includes activities where there is **physical contact with agricultural products**, such as combining, aggregating, culling, conditioning, treating, packing, containerizing, repackaging, labeling, storing, receiving, or loading.

2. No Physical Contact: Handling also includes activities where there **may not be physical contact with agricultural products**, such as selling, trading, facilitating sale or trade on behalf of a seller or oneself, importing to the United States, or exporting from a foreign country for sale in the United States.

Handling means to "sell, process, or package." Under SOE, most operations that operate in the **MIDDLE** of the organic supply chain must be certified organic. Contractors (providing services to certified operations) performing handling activities on behalf of an operation must be certified (unless they qualify for an exemption per §205.101(a) – (f)) or, if certification is not required, described in the OSP of a certified operation).

### D. What is Processing?

Under SOE §205.2, processing includes “cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.”

### E. Not Every Certified Organic Operation Has to Comply with All the Regulations

All certified operations must follow the portions of the USDA organic regulations that apply to the activities they conduct.

Conversely, some portions of the regulation will only apply to some operations (e.g., a certified operation that only produces crops does not have to follow the livestock requirements of subpart C).

Similarly, the scope of a handling operation’s certification only covers the activities it conducts.

For example, the Organic System Plan of a certified importer would likely describe the operation's system to maintain transaction records and audit trails, verify suppliers and NOP Import Certificates, and verify traceability. On-site inspection of such an operation would likely focus on records review and evaluation rather than an evaluation of physical facilities.

Americert requires all applicants and renewing operations to fully disclose in their application or renewal all scopes of handling and activities conducted by the operation with organic products or ingredients.

Certified organic operations must follow **all applicable portions of the NOP regulations**.

### F. Portions of an Operation:

SOE §205.100(a) refers to “each operation or portion of an operation.”

For a split operation (handling both organic and non-organic), only the portions of the operation that produce or handle organic agricultural products must be certified. If a portion of an operation qualifies for an exemption from certification described in §205.101(a) – (h), only that portion may be exempt, and the remainder of the operation must be certified if it produces or handles organic agricultural products.



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For example, a grocery store chain's retail locations may be exempt under §205.201(b) or (c), but importing and distribution activities would likely need certification.

However, Americert requires all applicants and renewing operations to waive any partial exemptions and to fully disclose in their application or renewal all scopes of handling and activities conducted by the operation with organic products or ingredients.

### II. Exempt Operations: General

An operation receiving products produced or processed by an exempt operation cannot represent the products as certified organic, cannot display the USDA organic seal on the products, and cannot use the products as organic ingredients in a product produced by the receiving operation.

However, an exempt warehouse may receive, store, and prepare for shipment packaged certified organic products without those products losing their organic status.

Exemptions (as in §205.101(e)) which allow storage of packaged organic products without certification, would be limited to only the portions of an operation that meet the narrow criteria of this exemption. A portion of a split operation that stores unpackaged organic products needs to be certified.

Agricultural products produced or processed by these exempt operations must not be identified or represented as organic in a product processed by another operation.

### III. Exemptions: What Must Be Certified, Does Not Have to Be Certified, and May Have to Be Certified

Regulation	MUST be Certified	Does NOT Have To Be Certified	MAY Have to be Certified
205.101(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.		<u>Sales &lt; \$5,000:</u>  This exemption is aimed at small organic producers and handlers.	
205.101(b). A retail establishment that does not process organically produced agricultural products.	1) Operations where the sale occurs at a different location from the processing, such as central bakeries/kitchens/ processing facility that prepares food sold in bakery and deli sections of grocery stores or serves grocery chains.  2) Online-only retail establishments without a physical location where a consumer can physically purchase a	<u>Final Retailers That Do NOT Process Agricultural Products:</u>  By definition, this group is also not a handler.  <u>What is a Retail Establishment under §205.2?</u> Restaurants; delicatessens, bakeries, grocery stores, or any retail business	Retail establishments not qualifying for this exemption or 205.101(c) are required to be certified.  <u>Virtual Sales:</u> The definition of retail establishment allows for virtual retail transactions.



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	<p>product.</p> <p>3) Wholesaler: Business that sellsto other businesses (wholesale) do not qualify as retail establishments.</p>	<p>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.</p> <p>This exemption includes a range of transaction modes for selling to consumers that commonly occur in the modern marketplace. Such activities are also commonly described as selling directly to consumers, end-users, or the public.</p> <p><u>What examples of 'Not Processing' would fall under this exemption?</u></p> <ol style="list-style-type: none"> <li>1) Removing produce from shipping boxes</li> <li>2) Washing and transferring products to display cases</li> <li>3) Opening bags of oats and transferring contents to bulk food dispensers.</li> </ol> <p>Retail establishments that do not process 100% OG and OG unpackaged products may use the USDA organic seal (and seal of the certifying agent) in retail labeling and display of these unpackaged products (§ 205.308).</p> <p>Retail establishments that do not process MWO unpackaged products may use that claim in retail labeling and displays (§ 205.309).</p>	<p>Retail establishments may use virtual transactions for sales. Still, they <b>must also have a physical location</b> for consumers to purchase products. For a retail establishment to be exempt, the sales must occur at the same location as the processing. There must also be a physical location for consumers to purchase products.</p> <p>[Note: Virtual businesses that only sell retail packaged products to consumers, but do not qualify as retail establishments, may be exempt from certification if they meet the criteria of §205.101(f).]</p>
<p>205.101(c). A retail establishment that processes, at the point of final sale, agricultural products certified under this part as “100 percent organic,” “organic,” or “made with</p>	<ol style="list-style-type: none"> <li>1) Operations where the sale occurs at a different location from the processing, such as central bakeries/kitchens/ processing facility that prepares food sold in bakery and deli sections of grocery stores or serves grocery chains.</li> <li>2) Online-only retail establishments without a physical location where a consumer can physically purchase products.</li> <li>3)Wholesaler: Business that sells to other businesses (wholesale) do not qualify as</li> </ol>	<p><b><u>Retail Establishments That Process Agricultural Products:</u></b></p> <p>To qualify, a retail establishment must process organic products at the point of final sale to the consumer, meaning the products must be processed and sold in the same physical location.</p> <p>An example could include repackaging bulk containers of organic products into individual</p>	<p>Distributors or Brand Name owners that do not qualify as retail establishments should review the exemptions from certification at 205.101(e) and (f), as those may apply to their activities.</p>



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<p>organic (specified ingredients or food group(s)).”</p>	<p>retail establishments.</p> <p>4) Retail Establishments packing or processing the products from bulk to retail packaging that contains the USDA seal.</p> <p>5) Retailers that process and sell to consumers virtually without having a physical location for retail sales.</p> <p>6) Retailers that process and sell to consumers only via virtual transactions (i.e., any transaction that does not occur in person, such as telephone, mail-order, and online sales). Retailers that process and sell to consumers virtually without having a physical location for retail sales must be certified. These businesses do not meet the definition of retail establishment and, by extension, the conditions for exemption from certification.</p> <p>7) Retail establishments that sell organic products to consumers which are processed at a location separate from the point of sale (e.g., an online retailer that sells products processed at an uncertified facility or a central processing facility that prepares food sold in bakery and deli sections of grocery stores). In these scenarios, the processing facility is not co-located in the same physical location as the point of sale, and the retail establishment exemption does not cover separate processing facilities. The processors would need to be separately certified in order for a retail establishment to sell their products as organic.</p>	<p>units for retail sale within an individual grocery store or a retail establishment that prepares ready-to-eat meals and sells them online to consumers from the processing location.</p> <p>Exempt retail establishments may process certified organic products regardless of whether the products are labeled for retail sale. However, only retail establishments that are certified organic may use the USDA seal (or make certified organic claims) on products they process.</p> <p>This exemption also includes a service that delivers a product from a retailer to the consumer after the final sale and does not engage in handling. Such an activity (such as Uber Eats) is transport and does not require certification.</p>	
<p>205.101(d). A handling operation that only handles agricultural products that contain less than 70 percent organic ingredients (as described in §205.301(d)) or that only identified organic ingredients on the information</p>		<p><u>ING LIST Only:</u></p> <p>Such operations are exempt from certification under subpart E and from submitting an OSP. Still, they must follow all applicable organic production and handling requirements of subpart C and labeling requirements of subpart D.</p>	



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<p>panel.</p> <p>205.101(e). An operation that only receives, stores, or prepares for shipment, but does not otherwise handle, organic agricultural products that:</p> <p>(1) Are <b>enclosed in sealed, tamper-evident packages or containers</b> prior to being received or acquired by the operation; and</p> <p>(2) <b>Remain in the same sealed, tamper-evident packages or containers</b> and are not otherwise handled <u>while in the control</u> of the operation.</p>	<p>1) Warehouses/Storage/Receivers that store unpackaged organic product OR store product that is NOT packaged in sealed, tamper-evident packaging or containers. Produce boxes without "DO NOT TAMPER WITH" tape placed across the box flaps would not qualify as tamper-evident.</p> <p>2) Distributors or Brand Name Owners distributing or having brand name packing of product NOT enclosed in sealed, tamper-evident packages or containers (such as unpackaged produce or produce not in tamper-evident flats/boxes).</p> <p>3) Operations that buy, sell, receive, store, or load unpackaged products. This may include operations some refer to as 'cross-dock' locations, if such location handles unpackaged products or products not in sealed, tamper-evident packages/containers and if such location is not merely a transfer location from one trailer to another trailer.</p> <p>4) <u>Storage/Warehouse of NOT Sealed</u>: Storage facilities or warehouses that receive products not in sealed, tamper-evident packaging, must be certified. Storage of unpackaged products is a high-risk activity. Operations that store unpackaged products need to be certified.</p> <p>5) Operations that store bulk products or products not packaged in sealed, tamper-evident packaging.</p> <p>6) Operations that handle unpackaged organic products.</p> <p>7) Grain Elevators. These operations deal with unpackaged products, so they do not qualify for an exemption.</p> <p>8) Bulk Grain Handlers. These operations deal with unpackaged products, so they do not qualify for an exemption.</p> <p>9) Warehouses/Storage/Operations that combine, aggregate, cull, label, or repackage.</p> <p>10) Warehouses that engage in handling</p>	<p><u>Storage and Warehouse Facilities--Storing Packaged Organic Products in Sealed, Tamper-Evident Packaging or Containers:</u></p> <p>This exemption <b>involves only organic agricultural products in sealed, tamper-evident packaging or containers.</b></p> <p><u>What does tamper-evident mean?</u> Tamper-evident packaging or container means that the contents are sealed so that an attempt to break the seal, access the contents or reclose the package would be apparent. Examples of tamper-evident packaging include produce boxes with "DO NOT TAMPER WITH" tape placed across the box flaps, sealed bulk bags of flour, or sealed drums and totes of olive oil.</p> <p>Products must remain in their packages, and the exempt operation must not handle the product beyond storing, loading, and preparing for shipment.</p> <p><u>Storage/Warehouse of Packaged Products:</u></p> <p>This exemption applies to handlers that only receive, store, or prepare for shipment products that are received and remain in sealed, tamper-evident packaging until the product leaves their custody.</p> <p>This exemption is intended primarily for storage and warehouse facilities, including some cold storage facilities that only receive and store packaged products and prepare them for shipment to another entity.</p> <p>Such facilities only receive, store, or prepare for shipment products that are received and remain in sealed, tamper-</p>	<p>1) Distributors or Brand Name Owners: Distributors or brand name owners that do not qualify as retail establishments should review the exemptions from certification at §205.201(e) and (f), as those may apply to their activities. However, if the product distributed or brand name packaging of the product is not enclosed in sealed, tamper-evident packages or containers (such as unpackaged produce or produce not in tamper-evident flats/boxes), certification would be required.</p> <p>2) Warehouses/Storing/ Receiving/Loading/ Preparing for Shipment. If the warehouse does not store packaged organic products in Sealed, Tamper-Evident Packaging or Containers, it must be certified, as do not qualify for 205.101(e). Produce boxes without "DO NOT TAMPER WITH" tape placed across the box flaps would not qualify as tamper-evident.</p>
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	<p>activities.</p>	<p>evident packaging until the products leave their custody.</p> <p>The movement of packaged and sealed organic products through the supply chain is a lower-risk activity, as packaged products are less likely to be commingled, exposed to contaminants, or tampered with, and alterations are easier to detect.</p> <p>Products must remain in their packages, and the exempt operation must not handle the product beyond storing, loading, and preparing for shipment. This exemption is for operations that only store packaged products that are sealed upon arrival and remain in their packaging.</p> <p>These exempt operations may not perform packaging or loading bulk products into containers.</p> <p>This exemption includes operations for products that may or may not be in final retail packaging.</p> <p>Transport vehicles associated with a retail establishment do not require certification if they only transport and do not handle organic agricultural products per §205.2.</p> <p>Cold storage of organic agricultural products may be exempt from organic certification if the activity meets the criteria in §205.101(e) (i.e., only sealed, tamper-proof packaged organic products are stored). Cooling packaged organic products is a common low-risk storage activity different from "chilling" performed as part of organic product processing.</p> <p><u>What does "preparing for shipment" mean?</u> Preparing for</p>	
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		<p>shipment means that these operations may move products into or onto a mode of transport, provided that the products are packaged per §205.101(e)-(f). Examples may include various tasks to be performed with the sealed, tamper-evident packaging remaining intact and without altering product contents or any retail labeling:</p> <ul style="list-style-type: none"> <li>--putting packaged products into shipping containers,</li> <li>--applying internal tracking numbers,</li> <li>--shrink-wrapping shipping cartons to a pallet,</li> <li>--breaking down pallets of fully packaged products,</li> <li>--adding protective packaging to nonretail containers or retail displays of organic products,</li> <li>--packing individually packaged products onto a shipping pallet,</li> <li>--loading/unloading packaged products onto or from transport vehicles, and</li> <li>--placing individual retail packages into a retail display that the certifying agent of the last certified handling operation has verified as compliant.</li> </ul>	
<p>205.101(f). An operation that only buys, sells, receives, stores, and/or prepares for shipment, but does not otherwise handle, organic agricultural products already labeled for retail sale that:</p> <p>(1) Are <b>enclosed in sealed, tamper-evident packages or containers that are labeled for</b></p>	<ol style="list-style-type: none"> <li>1) Private labeling operations that process organic agricultural products.</li> <li>2) Sales brokers, sellers, traders, or other handlers that buy and sell organic products that are not in their final retail packaging (e.g., bulk; unpackaged; packaged for nonretail sale; unsealed, non-tamper-evident packaging).</li> <li>3) Sales brokers, traders, or other handlers that buy and sell products that are not in their final retail packaging.</li> <li>4) Operations that package or load bulk products into containers.</li> <li>5) Buying, selling, receiving, storing, or loading unpackaged products.</li> <li>6) Sales brokers, traders, or other handlers</li> </ol>	<p><u>Distributors/Brand Owners--Buying, Selling, or Storing RETAIL Packaged Organic Product(s) in Sealed, Tamper-Evident Packaging or Containers:</u></p> <p>Examples:</p> <ol style="list-style-type: none"> <li>1) Distributors/Brand Owners of PACKAGED RETAIL PRODUCT in Tamper-Evident Packaging</li> <li>2) Cold Storage of PACKAGED RETAIL PRODUCT in Tamper-Evident Packaging</li> <li>3) Storage/Warehousing PACKAGED RETAIL PRODUCT in Tamper-Evident Packaging</li> </ol> <p>This exemption covers operations that buy and sell in</p>	<ol style="list-style-type: none"> <li>1) Distributors or Brand Name Owners: Distributors or brand name owners that do not qualify as retail establishments should review the exemptions from certification at §205.201(e) and (f), as those may apply to their activities. Brand owners or operations that sell or distribute organic products produced by another operation on their behalf may be exempt from certification if they meet the criteria in §205.101(f). This exemption allows the</li> </ol>



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<p><u>retail sale prior to being received or acquired</u> by the operation; and</p> <p>(2) <b>Remain in the same sealed, tamper-evident packages or containers that are labeled for retail sale</b> and are not otherwise handled <u>while in the control of</u> the operation.</p>	<p>that buy and sell products that are not in their final retail packaging.</p> <p>7) Sales Brokers/Sellers/Traders/Facilitating Sale or Trade (on behalf of a seller or oneself) that are buying and selling products that are not in their final retail packaging. Such operations would not qualify for 205.101(f).</p> <p>8) Commodity Traders. Commodities generally are not in their final retail packaging. Therefore, such operations would not qualify for 205.101(f).</p> <p>9) Ingredient Sourcers. Ingredients generally are not in their final retail packaging. Therefore, operations that engage in ingredient sourcing (including operations that source ingredients for shipment to copackers) would not qualify for 205.101(f).</p> <p>10) Packers/Copackers that pack, containerize, or repackage organic products.</p> <p>11) Operations that Label or Relabel organic products.</p> <p>12) Operations that process/manufacture organic products: conditioning, treating, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing food in a container.</p>	<p>addition to receiving, storing, or preparing for shipment.</p> <p>This exemption involves only organic agricultural products in sealed, tamper-evident packaging or containers labeled for RETAIL SALE.</p> <p>For products to qualify, they must be sealed in tamper-evident packaging and labeled for retail sale. The operation must not open or otherwise handle or alter the retail packages.</p> <p><u>What does tamper-evident mean?</u> Tamper-evident packaging or container means that the contents are sealed so that an attempt to break the seal, access the contents or reclose the package would be apparent. Examples of tamper-evident packaging include produce boxes with "DO NOT TAMPER WITH" tape placed across the box slaps, sealed bulk bags of flour, or sealed drums and totes of olive oil.</p> <p><u>Distributors/Brand Owners of Retail-Packaged Products:</u> This exemption is intended primarily for distributors or brand owners that sell or distribute organic products produced by another operation on their behalf. It applies to handlers that only buy, sell, receive, store, or prepare for shipment the retail-packaged organic agricultural products. This allowance may cover, for example, some distributors, brand name owners, and sales brokers that purchase or receive products in their final retail packaging.  <b>Products must be received and remain in the final retail packaging (tamper-evident) without alteration throughout their custody.</b></p>	<p>buying, selling, receiving, storing, and preparing for shipment of organic products that are packaged for retail sale. The products must be sealed in tamper-evident packaging and ready for retail sale. The operation must not open or otherwise handle the retail packages.</p> <p>However, if the product distributed or brand name packaging of the product is not enclosed in sealed, tamper-evident packages or containers (such as unpackaged produce or produce not in tamper-evident flats/boxes), certification would be required.</p> <p>2) Sales Brokers/Sellers/Traders/Facilitating Sale or Trade (on behalf of a seller or oneself. See 205.101(f) below). If sales brokering/selling/trading/facilitating sale or trade for organic products NOT in RETAIL packaging, the operation must be certified as it does not qualify for 205.101(f).</p>
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		<p><u>What does “preparing for shipment” mean?</u> Preparing for shipment means that these operations may move products into or onto a mode of transport, provided that the products are packaged per §205.101(e)-(f). Examples may include various tasks that must be performed with the sealed, tamper-evident packaging remaining intact and without altering product contents or any retail labeling:</p> <ul style="list-style-type: none"> <li>--putting packaged products into shipping containers,</li> <li>--applying internal tracking numbers,</li> <li>--shrink-wrapping shipping cartons to a pallet,</li> <li>--breaking down pallets of fully packaged products,</li> <li>--adding protective packaging to nonretail containers or retail displays of organic products,</li> <li>--packing individual packaged products onto a shipping pallet,</li> <li>--loading/unloading packaged products onto or from transport vehicles, and</li> <li>--placing individual retail packages into a retail display that the certifying agent of the last certified handling operation has verified as compliant.</li> </ul>	
<p>205.101(g). A Customs broker (per 19 CFR 111.1) that only conducts customs business but does not otherwise handle organic agricultural products.</p>		<p><u>Customs Brokers:</u></p> <p>Customs brokers facilitate the entry of products into the United States by helping meet import documentation and filing requirements and acting as intermediates between importers and the U.S. government.</p> <p>Customs brokers do not take ownership or physical possession of organic products, and their actions present minimal risk to organic integrity.</p> <p>They are often distinct from sales or commodity brokers,</p>	



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		<p>who sell or facilitate the sale of organic products. Those operations must be certified if they handle organic products.</p> <p>Customs brokers also play a critical role by filing NOP Import Certificate data in the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) import entry system.</p> <p>This exemption is limited to Customs brokers as defined by 19 CFR 111.1 (a person who is licensed under this part to transact customs business on behalf of others). Customs business is further defined in 19 CFR 111.1 (activities involving transactions with CBP [U.S. Customs and Border Protection] concerning the entry and admissibility of merchandise...payment of duties, taxes, or other charges...the preparation...of documents in any format and the electronic transmission of documents...intended to be filed with CBP in furtherance of any other customs business activity).</p> <p>To qualify for this exemption, Customs brokers must only conduct customs business. If a Customs broker conducts any additional activity within the definition of handle—such as selling, importing, or trading—the Customs broker must be certified.</p>	
<p>205.101(h). An operation that only arranges for the shipping, storing, transport, or movement of organic agricultural products but does not otherwise</p>	<p>1) Any activities [other than the movement of product on a vehicle or moving products between vehicles (transloading)] are handling and require certification.</p> <p>2) Handling activities that are adjacent to transport require certification [unless covered by 205.101(e) or (f) exemptions for packaged products]. Examples of adjacent activities which do not qualify as transport = combining, splitting,</p>	<p><u>Logistics Brokers:</u></p> <p>Transport is generally described as the movement of products in commerce. Transport of organic agricultural products <b>does not</b> need to be certified; however, any handling activities that occur during transport must be.</p> <p>Example = A milk hauler would be exempt from certification if</p>	<p>1) Loading and Receiving: Transloading is sometimes used to describe the movement of agricultural products from storage to transport or transport to storage. AMS considers these activities to be loading and receiving. Moving unpackaged organic agricultural products from storage to</p>



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<p>handle organic products.</p>	<p>containerizing, packing/repacking, treating, sorting, opening, enclosing, or labeling/relabeling.</p> <p>3) Loading or unloading unpackaged products into or from a storage facility is not a form of transportation; this activity must be certified.</p> <p>4) Moving unpackaged organic agricultural products (or products not enclosed in sealed, tamper-proof containers) from storage to transport or transport to storage requires certification.</p> <p>5) Ports of entry must be certified if the activities they conduct meet the definition of HANDLE and do not clearly fit an exemption at s 205.101.</p> <p>6) Importing into the United States.</p> <p>7) All organic exporters exporting from a foreign country to the United States for sale in the United States. No exemptions apply due to the SOE requirement for mandatory use of NOP Import Certificates.</p> <p>8) Operations that package or load bulk products into containers.</p> <p>9) Buying, selling, receiving, storing, or loading unpackaging products.</p>	<p>they ONLY transport organic milk (e.g., move milk from a dairy to a processor) but do not otherwise handle the milk (e.g., process or package loads of milk).</p> <p><u>What are Logistics Brokers (entities covered by this exemption)?</u> Freight forwarders; only arrange for the shipping, storing, transport, or movement of organic agricultural products; facilitate the movement and storage of agricultural products by connecting a consigner (or consignee) with a carrier who can transport/store the products. Logistics brokers do not take ownership or physical possession of organic products.</p> <p>This exemption is limited to operations that only arrange for the shipping, storing, transport, or movement of agricultural products and do not conduct any other activity in the definition of HANDLE. If such an operation conducts other handling activities—such as selling, importing, or trading—the operation must be certified.</p> <p><u>Transloading:</u> Transloading is commonly defined as the movement of agricultural products between modes of transport. Transloading strictly between modes of transportation does not need to be certified.</p> <p>Certified operations are responsible for verifying that products handled by uncertified entities in their supply chain comply with organic regulations. This verification includes verifying organic products transported by an uncertified transporter. Certified operations must maintain records of the last certified operation, which may encompass uncertified</p>	<p>transport or transport to storage requires certification. If the organic agricultural products are enclosed in sealed, tamper-proof containers or packages, loading and receiving are exempt from certification. Loading or unloading unpackaged products into or from a storage facility is not a form of transportation; this activity must be certified.</p> <p>2) Ports of entry must be certified if the activities they conduct meet the definition of HANDLE and do not clearly fit an exemption at s 205.101.</p>
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		<p>operations that fall between certified entities.</p> <p>The certified organic operation responsible for the organic products that are transported must:</p> <ul style="list-style-type: none"> <li>--maintain records, for the audit trail and traceability, in sufficient detail as to be readily understood and audited;</li> <li>--demonstrate prevention of commingling and contamination during transportation (§205.272);</li> <li>--fully describe the transportation practices in the OSP;</li> </ul> <p>And</p> <ul style="list-style-type: none"> <li>--ensure that the transportation records for organic products are available for inspection.</li> </ul> <p>Certified operations that load or receive products from uncertified transporters can verify the prevention of contamination/contact with prohibited substances through, for example, affidavits or other documentation of vehicle clean-out.</p> <p>Examples:</p> <ol style="list-style-type: none"> <li>1) Moving organic hay or milk from a certified producer to a certified organic buyer or certified processing facility,</li> <li>2) Moving organic grain or organic livestock from certified organic farms to a certified handling or slaughter facility,</li> <li>3) Transloading (moving products between vehicles), and</li> <li>4) Food delivery services transporting prepared foods from a retail establishment to a consumer.</li> </ol>	
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**IV.Organic Agricultural Products Received from an Exempt Operation**

**A. Permitted and Prohibited Labeling and Representation of Products from Exempt Operations:**

SOE §205.301 "Agricultural products produced or processed by an exempt or excluded operation" states as follows:



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“(a) An agricultural product organically produced or processed by an exempt operation must not:  
(1) Display the USDA seal or any certifying agent’s seal or other identifying mark which represent the exempt operation as a certified organic operation, or  
(2) Be represented as a certified organic product or certified organic ingredient to any buyer.

(b) An agricultural product organically produced or processed by an exempt operation may be identified as an organic product or organic ingredient in a multi-ingredient product produced by the exempt operation. Such product or ingredient must not be identified or represented as “organic” in a product processed by others.”

Agricultural products produced or processed by an exempt operation must follow all requirements of §205.310. Per §205.310, organic agricultural products that are processed by exempt operations:

1. Must NOT be sold, labeled, or represented as “certified” organic (§205.310(a)(2)); (no COB statement allowed)
2. Must NOT display the USDA seal or identify the certifying agent (§205.310(a)(1)); and
3. Must NOT be used by another operation as ingredients in a certified organic product (§205.310(b)).

Agricultural products produced or processed by an exempt operation must not be identified or represented as organic in a product processed by another operation.

An operation receiving products produced or processed by an exempt operation cannot represent the products as certified organic, cannot display the USDA organic seal on the products, and cannot use the products as organic ingredients in a product produced by the receiving operation. In effect, products received and then processed by an exempt operation lose their certified organic status and cannot be represented as organic.

Exempt operations may perform limited handling of certified organic products, as described in each exemption of 205.101. If an exempt operation handles certified organic products in a manner consistent with its applicable exemption, the products maintain their organic status. For example, an exempt warehouse may receive, store, and prepare packaged certified organic products for shipment without those products losing their organic status. However, if this warehouse opens or relabels such packaged products, the certified organic status of the products is lost, and an operation receiving these products must not represent them as certified organic.

### B. Responsibilities of Exempt Operations:

The introductory paragraph to SOE §205.101 states: “The following operations in paragraphs (a) through (h) of this section are exempt from certification under subpart E of this part and from submitting an organic system plan for acceptance or approval under §205.201 but must comply with the applicable organic production and handling requirements of subpart C of this part, the applicable labeling requirements of subpart D of this part, and any requirements described in paragraphs (a) through (i) of this section.”

Exempt operations are exempt from the requirement to be certified organic under subpart E of regulations and from submitting an OSP. However, these exempt operations must still follow all other applicable portions of the organic regulations, including the production and handling requirements of subpart C, implementing §205.272 practices to prevent commingling and contact with prohibited substances, and labeling requirements of subpart D (i.e., MUST NOT represent the agricultural products they produce or process as certified organic and MUST NOT use the USDA organic seal).



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Example: A small vegetable farm may be exempt from certification per 205.101(a); this means the farm does not have to be certified and inspected annually and does not have to develop and submit an OSP. However, the farm MUST follow the other organic production and handling requirements of subpart C, including soil and fertility practices, crop rotation, weed management, and seed use practices.

Exempt operations are only permitted to perform the limited handling activities described in the applicable exemption; any handling outside of that described in the exemption may result in the loss of the organic status of products.

Operations that qualify for an exemption may voluntarily choose to become certified. By becoming certified, the operation may market the products it produces and processes as certified organic, display the USDA organic seal on its products, and represent these products as ingredients for other organic products.

Exempt operations are still subject to penalties for violating the regulations (§205.100(c)).

Exempt operations must NOT represent the agricultural products they produce or process as certified organic. They must not use the USDA organic seal.

### C. Recordkeeping for Exempt Operations

SOE states that exempt operations still must maintain certain records. Exempt operations must maintain records of the organic products they produce and handle, including documents that: demonstrate that agricultural products identified as organic were organically produced and handled; and verify quantities of organic agricultural products received and shipped or sold. SOE §205.101(i) "Recordkeeping by exempt operations" states as follows:

"(1) Exempt operations described in paragraphs (a) and (c) through (f) of this section must make available to representatives of the Secretary, upon request, records that:

- (i) Demonstrate that agricultural products identified as organic were organically produced and handled; and
- (ii) Verify quantities of organic agricultural products received, shipped, or sold.

(2) All records described in this section must be maintained for at least three years beyond their creation. The operations must allow representatives of the Secretary and the applicable State organic programs' governing State official access to these records for inspection and copying during normal business hours to determine compliance with the applicable regulations set forth in this part."

#### 1. Production Records:

Exempt operations must maintain records of the organic products they produce and handle. Such records must demonstrate that agricultural products identified as organic were organically produced and handled (§205.101(i)(1)(i)). Such records must also verify quantities of organic agricultural products received and shipped or sold (§205.101(i)(1)(ii)).

Note: Retail establishments that do NOT process agricultural products (§205.2 Handle and 205.101(b)) do NOT need to maintain such records.

#### 2. Record Retention and Availability:





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Exempt handlers must have required records available and show those records to a representative of the Secretary upon request. Exempt operations must maintain records for at least three years.

### D. Responsibilities of Certified Operations Receiving Products from Exempt/Uncertified Operations

Certified operations are responsible for implementing recordkeeping and verification practices that ensure the integrity of organic agricultural products they receive, **including products received from exempt or uncertified operations.**

#### 1. Traceability:

Records must trace organic products **back through any exempt operations to the last certified operation in the supply chain**, and **operations must verify their suppliers, including exempt operations.** Certified operations must maintain records back to the last certified operation, which may encompass uncertified operations that fall between certified entities (§ 205.103(b)(2)). Certified operations must ensure the traceability of products transported by uncertified operations, including if several uncertified transporters are used in sequence.

#### 2. Uncertified Handler Affidavit:

SOE § 205.201(a)(3) now requires a certified operation's OSP to include monitoring practices and procedures to verify suppliers (including exempt suppliers) and the organic status of products they receive.

If uncertified entities (like transport, storage, sellers, marketers, distributors, brokers, and traders) are used in their audit trail, certified operations are responsible for verifying that products handled by uncertified entities in their supply chain remain in compliance with the organic regulations. This includes verifying organic products transported by an uncertified transporter.

A certified operation needs to describe procedures for verifying suppliers in the supply chain and the organic status of products received (§ 205.201(a)(3)). The certified organic operation responsible for the organic products that are transported must:

- Maintain records, for the audit trail and traceability, in sufficient detail as to be readily understood and audited;
- Demonstrate prevention of commingling and contamination during transportation (§205.272);
- Fully describe the transportation practices in the OSP; and
- Ensure that the transportation records for organic products are available for inspection.

Certified operations that load or receive products from uncertified transporters can verify the prevention of contamination/contact with prohibited substances through, for example, affidavits or other documentation of vehicle clean-out.

Many uncertified entities in the supply chains now no longer qualify for exempt status, and certification of many of those entities will be required by 3/19/24. For example, ingredient sellers (or sales departments or marketing arms) in many of Americert-certified operations' supply chains are frequently sellers of non-retail packaged organic products. Therefore, such entities would not qualify for an exemption.

In addition, if operations choose to contract with a storage, warehouse, or cold storage facility that is not certified organic, the operation must implement the practice that any items stored at that third party are packaged in sealed, tamper-evident packages or containers, as defined in SOE.