

## STRENGTHENING ORGANIC ENFORCEMENT (SOE) FINAL RULE

On January 19, 2023, the USDA National Organic Program published the final rule on Strengthening Organic Enforcement (SOE), the biggest change to organic regulations since the creation of the National Organic Program. The rule closes gaps in the current regulations and builds consistent certification practices to detect and prevent fraud, improve the transparency and traceability of organic products across the supply chain, and protect organic integrity to support continued growth of the organic market.

### WHO IS IMPACTED?

- All producers, processors, and handlers of organic products
- All organic certifying agents and inspectors
- Organic supply chain participants who are currently not certified organic

### COMPLIANCE DATES

- Operations and certifying agents must comply with new requirements **by March 19, 2024**. This includes currently certified operations as well as uncertified operations that are required to become certified as a result of this final rule (e.g., importers, exporters, certain brokers, and traders).

### RESOURCES

- [Full Text of Final Rule](#)
- [NOP Website & Resources](#)
- [OTA Website & Resources](#) (including information about additional support for OTA members)

### SUMMARY OF NEW REQUIREMENTS

- 1. Exemptions from Certification** – The requirement for organic certification is expanded to include operations that are trading, facilitating sale or trade on behalf of a seller or oneself, importing, and/or exporting organic products. Importers, exporters, traders, and certain brokers that were previously exempt from certification will need to get certified under the new rule, unless they qualify for an exemption.

Exemptions (activities that do not require organic certification) are limited to a few low-risk activities such as: very small operations; certain retail establishments (that do not process; or that process only at final point of sale to consumers); storage and warehouse facilities that only handle products in sealed tamper-evident packages or containers; distributors that only handle final retail-packaged products; and Customs brokers and logistics brokers that do not take ownership or physical possession of organic products. Exempt operations must still follow all other applicable portions of the organic regulations including commingling/contamination prevention, labeling requirements and record keeping.

The rule continues to require certification for operations combining, splitting, containerizing, packing/ repacking, treating, sorting, opening, enclosing, labeling/relabeling, loading or unloading of unpackaged products into or from a storage facility. Transporters that only move organic products between certified operations, or transload between modes of transportation, do not need to be individually certified but are the responsibility of the certified operation that loads or receives the product.

**2. NOP Import Certificates** – All imported organic products must be declared to U.S. Customs and Border Protection (CBP)'s Automated Commercial Environment (ACE) system using data from an NOP Import Certificate generated by the exporter's accredited certifier in the Organic Integrity Database. Certifiers may issue NOP Import Certificates for an individual shipment or for multiple shipments across a defined timeframe and volume. NOP will access CBP-ACE's data on quantity and origin of imported organic products and validate against certifier-approved data in the Organic Integrity Database to monitor and identify indicators of potential fraud.

**3. Supply Chain Traceability and Fraud Prevention** – Operations must include a fraud prevention plan in their Organic System Plan that describes the monitoring practices and procedures used to prevent organic fraud and verify suppliers and organic product status. Operations must maintain records that: span the time of purchase or acquisition, through production, to sale or transport; are traceable back to the last certified operation in their supply chain; and identify agricultural products as organic.

Certifiers must identify high-risk operations and products, and conduct risk-based supply chain traceability audits that identify and track the movement, sale, custody, handling, and organic status of products along a supply chain. Certifiers must collaborate with each other on fraud investigations and report credible evidence of fraud to the USDA.

**4. Labeling of Nonretail Containers** – All nonretail container labels must include organic identification (may use abbreviations or acronyms) and information that links the container to audit trail documentation (e.g., lot numbers or shipping information). Audit trail documentation associated with a nonretail container must identify the last certified operation that handled the product, and be sufficient to determine the source, transfer of ownership, and transportation of the product. There is a limited exception to organic identification for nonretail containers of retail-labeled products when the organic identification of the retail label is visible.

**5. Organic Certificates and Data Reporting** – Certifiers must provide uniform organic certificates that are electronically generated in the Organic Integrity Database (OID), using a standardized certificate format and data fields. Certifiers may continue to add their own unique addenda to certificates that provide additional details about the certified operation, provided that the addenda include certain information such as a link to the operation's profile in the OID and the operation's unique OID identification number.

Certifiers must maintain current and accurate data for certified operations in the OID. Mandatory data fields that are publicly viewable in the OID are: certification status, scope(s) of certification, and the organic commodities products or handled by the operation. Acreage is a mandatory data field that will not be publicly available. Certifiers must update the OID within 72 hours of an operation's suspension, revocation, or surrender of certification.

**6. Producer Group Operations** – Producer groups (previously called "grower groups") have been and continue to be eligible for organic certification under one Organic System Plan and certification. The SOE final rule, for the first time, adds specific requirements for group certification to the NOP regulations. Producer groups must meet specific eligibility criteria to qualify for certification as a group, such as members are organized into production units, use common production practices and inputs, and use centralized collection, processing, distribution, marketing systems and facilities.

Groups must have an Internal Control System (ICS) to oversee and ensure compliance of group members with organic regulations, conduct internal inspections of group members, maintain traceability records, and other activities related to the review, monitoring, surveillance, training, inspection, auditing, and sanctions of group members and the producer group operation.

Certifiers must conduct on-site inspections of group operations to assess compliance of the group's ICS, conduct witness audits of the internal inspectors, and directly inspect a sample of individual group members (at least 1.4 times the square root or 2% of the total number of producer group members, whichever is higher) including all high-risk members and all handling facilities.

- 7. On-site and Unannounced Inspections** – During all annual on-site inspections, inspectors are required to conduct mass-balance (“in-out”) and traceability (“trace-back”) audits. Mass-balance audits verify that quantities of organic product and ingredients produced or purchased by an operation account for organic product and ingredients used, stored, sold, or transported by the operation. Traceability audits verify that organic products and ingredients are traceable by the operation from the time of purchase or acquisition through production to sale or transport. Certifiers must verify compliance back to the last certified operation.

Certifiers must additionally conduct unannounced inspections of at least 5% of the operations they certify. Unannounced inspection may be limited in scope but must be conducted without advance notice to the operator (no more than 4 hours prior to inspector arriving on-site).

- 8. Personnel Training and Qualifications** – The regulations specify the minimum requirements for knowledge, skills, training, and experience that inspectors and certification reviewers are required to have to work for a certifying agent. Personnel must have at least 1 year full-time (2,000 hours) relevant qualifying experience; if less than 1 year experience, then must have at least 50 hours of training. Personnel must meet ongoing annual training requirement of 10 hours plus 5 hours per additional scope.

Certifiers must conduct annual evaluations of personnel. Inspector must have a witness inspection at least once every 3 years. Inspectors with less than 3 years' experience must have a witness audit every year.

- 9. Continuation of Certification** – As part of the annual certification update process, certified operations do not need to submit a full Organic System Plan (OSP) every year and only need to submit sections of the OSP that have changed. Operations do not need to include updates on the correction of previous minor non-compliances with the annual OSP update. Annual on-site inspections must be conducted at least once per calendar year, regardless of when the certified operation was last inspected or when the operation last submitted its annual update.

- 10. Noncompliance, Mediation, and Appeals** – Certifiers must update the certification status of an operation in the Organic Integrity Database within 3 business days of issuing a notification of suspension or revocation, or from effective date of surrender. The rule more clearly explains the procedures for mediation, settlement agreements, and the appeals process for adverse actions against an operation.

- 11. Calculating Percent Organic Ingredients** – The percentage of organic ingredients in multi-ingredient products must be calculated from the weight of ingredients at formulation (i.e., *before* processing such as baking or cooking). Water and salt added as ingredients at formulation are excluded from the calculation.

- 12. Oversight of Certification Activities** – NOP's oversight of certifiers extends to any person in any certification office conducting certification activities on behalf of a certifier, including subcontractors and satellite offices. Certifiers must notify NOP within 90 days of opening a new certification office.

- 13. Foreign Conformity Assessments** – The regulations clarify existing practices and procedures for USDA to follow when establishing, overseeing, and terminating equivalence determinations with foreign organic certification programs.