



Strengthening Organic Enforcement (SOE) Fact Sheet

What Types of Operations are Exempt & Who Requires Certification

Operations Required to Get Certification:

SOE requires many operations that were previously exempt from certification to now get certified, including storage locations, brokers, private label brand owners, and importers. We encourage you to review the regulations in full (<https://www.ecfr.gov/current/title-7/section-205.101>).

The following operations now need to seek certification:

- Operations that **buy, sell, trade, or facilitate the sale or trade** of organic goods in **nonretail packaging or containers**. This includes brokers, traders, distributors, wholesalers, and private label brand owners who sell organic products that are not labeled for retail sale—all are required to be certified.
- Note that brand owners that buy ingredients in nonretail packaging to send to co-packers are required to get certified for the purchase of ingredients.
- Keep reading to learn more about operations who buy and sell organic products in *retail* packaging.
- Operations that buy, sell, trade, or facilitate the sale or trade of retail-labeled product that is **not in sealed, tamper-evident retail packaging or containers** are required to be certified.
- Tamper-evident means 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. Examples of sealed, tamper-evident retail packaging:
 - Berry clamshells with a sticker enclosing the clamshell
 - Zip-top grape bags with a sealed top (sticker or strip that consumer must rip off to open bag)
 - Cauliflower individually wrapped in plastic
 - Mesh bags of potatoes with a label that seals the bag (consumer must rip open bag to access produce)
- The *retail* packaging must be sealed and tamper-evident packaging. If only the nonretail packaging is sealed and tamper-evident, certification is required.
 - For example: Brokers and private label brand owners selling unpackaged produce in non-retail boxes are required to be certified because the retail labeled product is unpackaged.
- Importers into the United States must get certified. Certification is required, regardless of product packaging type.
- Storage facilities that store product that is *not* in sealed, tamper-evident packaging must get certified.
 - Either the non-retail or retail packaging must be sealed and tamper-evident.
 - All locations where unpackaged product is stored must be certified.

Exempt Operations:

The following operations are exempt under the SOE regulations. These operations may choose to get certified but are not required to. Additional caveats may apply, and we encourage you to review the regulations in full before concluding you are exempt.

If not listed below, your operation will likely need to gain certification.

- Operations such as distributors or brand name owners that are buying, selling, or storing organic products that are in retail, tamper-evident packaging and remain in the same packaging and are not otherwise handled while in the operation's control are not required to be certified.
 - Note that brand owners that buy ingredients in nonretail packaging to send to co-packers *will* be required to get certified for the purchase of ingredients.
- Storage facilities that receive product that remains in sealed, tamper-evident packaging throughout the time the product is in their custody are not required to be certified. These storage facilities do not take ownership of the product.
- Customs brokers who do not import, trade, sell, or take ownership or physical possession of organic products are not required to be certified.
- Logistics brokers who do not take ownership or physical possession of organic products are not required to be certified. Exempt logistic brokers may only arrange for the movement of organic product and may not buy, sell, trade, or import.
- Transport companies that do not otherwise handle products are not required to be certified.
 - More guidance for unpackaged products: Combining or splitting are considered handling and are common with transport of unpackaged products. If a transporter is combining or splitting, either the transporter must be certified or the activity must be described in the organic system plan of the certified operation contracting the transporter. If the combining or splitting is performed on behalf of a certified operation (not the transporter), their organic system plan must describe transportation practices and the certified operation must maintain transportation records showing no contamination or commingling during transport, such as a clean truck affidavit.

Baystate-certified operations may request an Exempt Handler Affidavit (EHA) from non-organic operations in their network. Please promptly complete and return these forms to certified operations well before the March 19, 2024 deadline. Contact Baystate with any questions you might have.