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# STRENGTHENING ORGANIC ENFORCEMENT AT LAST!

*How the New Rule will Affect Farmers,  
Certifiers, and Inspectors.*

By, Harriet Behar



The Organic Farmers Association applauds the release of the final Strengthening Organic Enforcement rule, a significant improvement to the USDA organic regulations. **All operations will need to be in full compliance by March 2024.** Spurred by a few high-profile cases of fraudulent organic sales, this new regulation closes many loopholes and seeks to enhance the quality of organic audits and oversight.

Organic farmers will see these changes in the certification process and the organic supply chain, as well as being required to do their part in the prevention of fraud.

## **TYPES OF OPERATIONS NOW REQUIRING CERTIFICATION**

A variety of operations that were exempt from organic certification, will now be required to go through the organic certification process annually. Operations that trade, or facilitate trade including importers and brokers that own organic product, even if they do not take physical possession of the organic product, are now required to have oversight through the organic certification process.

The exemptions to organic certification are limited to very small operations, retail stores that do not process organic products, warehouses that store products in tamper-proof sealed containers, and brokers that do not take ownership or possession of products. These exempt operations still must follow rules that require recordkeeping and legal labeling of organic, prevent commingling with nonorganic products and prevent contamination of organic items. Transportation companies are not required to be certified, but those certified organic entities hiring these companies must make sure the integrity of the organic products is maintained during transport.

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Importers and brokers who facilitate trade of organic goods will now be required to be certified. Import certificates will also be required for ALL organic products coming into the U.S. and will be checked by Customs and Border Protection.

## **NEW SUPPLY CHAIN TRACKING**

Import certificates for all organic product coming into the U.S. is being integrated with Customs and Border Protection (CBP), so CBP officials are aware to look for this organic status on incoming shipments. Organic certification agencies are required to collect and oversee production and purchasing information and share this with other certifiers in the supply chain for full transparency. The National Organic Program maintains a listing of all organic operations and their products, entitled the Organic Integrity Database (OID), which will be improved to manage this data. The acreage of every certified organic operation will be updated yearly, but only certification agencies can view that information. As part of this transparency, all certifiers will use one organic certificate template, so those certificates will have the same information, the same terminology describing the items, and the same place on the certificate to find the information. When an operation has lost organic status, this information must be posted to the public OID within 72 hours.



## NEW REQUIREMENTS FOR CERTIFIERS

Certifiers are required to work together on fraud investigations and to do supply chain traceability audits on high-risk operations and products on a regular basis. Other information, such as where inputs are purchased and production yields, may be shared among certifiers to verify organic status, but this information is protected under this rule as confidential and is not to be released to the public.

## NEW REQUIREMENTS FOR FARMERS

Organic farmers are required under the new regulation to do their part to deter and detect fraud in the supply chain. All organic operations, including farmers, must have a fraud prevention plan in their Organic System Plan (OSP).

Certifiers are now reviewing the OSPs they provide their farmer clients and will be adding a new section where the farmer will describe what systems they have in place to verify and prove the organic status of all purchased organic labeled feedstuffs, seeds, livestock or other items used to produce their own organically labeled products.

Records must be maintained and kept that verify the organic status throughout the growing season, the life of the animal, or any movement of crops or animals (off-farm storage or custom heifer pasturing for instance). Proof of organic certification of the last entity in the supply chain before the farmer received that product, must be kept, as well as the farmer providing their organic status when the product is sold. The point of this requirement is to keep every link in the supply chain transparent and traceable. For bulk products, the name of the most recent certified organic operation that owned/and or handled that product, must be present on the documentation that goes with that bulk item.

# New Recordkeeping for Farmers

Strengthening Organic Enforcement Act

### NEW OSP SECTION: Proof of Organic Status of all Purchased Organic Inputs

Description of systems in place to verify and prove the organic status of all purchased organic labeled feedstuffs, seeds, livestock or other items used to produce your own organically labeled products.

### NEW RECORDS: Organic Status through Growing Season/ Animal Life

Records must verify the organic status throughout the growing season, the life of the animal, or any movement of crops or animals.

### NEW RECORDS: Organic Status of Last Entity in Supply Chain

Proof of organic certification of the last entity in the supply chain before the farmer received that product. The farmer must also provide their organic status when the product is sold.

### NEW RECORDS: Bulk Products

The name of the most recent certified organic operation that owned/and or handled that product, must be present on the documentation that goes with that bulk item.





## NEW REQUIREMENTS FOR INSPECTORS

All inspections will now include a traceability audit which shows the organic status from purchase or growing through sale and a balance audit which tracks that enough organic product was present or produced to justify the volumes of final organic product sold. This would include enough approved seed to grow a crop, enough organic feed purchased for the number of animals on the farm, or enough acreage with reasonable yields for the number of bushels or boxes sold.

Certification agencies must conduct more unannounced inspections equaling at least 5% of all of the certifier's clients, with no more than 4 hours of notice given before the inspector arrives. Certification inspections must be done at least once during the calendar year, even if the timing is different between years. There have been operations that have gone 14-16 months or even longer between inspections, this will no longer be allowed.

To lessen paperwork, OSP updates are allowed to be streamlined to only require yearly updates to the operation's OSPs where there have been changes, such as seed purchased or what crops are grown in which fields, but not what equipment is present, if nothing new has been purchased.

## HIGHER STANDARDS FOR CERTIFICATION STAFF & INSPECTORS

The SOE rule has greatly enhanced the qualifications for personnel working within the organic certification system. All inspectors need at least 2,000 hours of experience relevant to the areas they will be inspecting before they are allowed to inspect those specific types of operations. New organic inspectors must complete at least 50 hours of training in their first year prior to performing organic inspections independently. Experienced inspectors must have at least 10 hours of training every year, and if they are

inspecting a new area, such as starting to visit dairy farms, they need another 5 hours of training. People reviewing OSPs, organic inspection reports, organic materials and other certification duties within the certification office must have knowledge, skills and experience to perform their duties, including understanding the various types of traceability and balance audits present in the organic inspection reports. At least 50 hours of training is needed to start this work, with 10 more hours of training annually. Once every three years, every inspector will be accompanied on at least one inspection by a certification agency staff member to evaluate their expertise on-site; they will also be required to undergo an annual evaluation.

## NEW REGULATIONS FOR GROWER GROUPS

Grower group certification, common in many developing countries, is rare in the U.S. This rule clarifies that it is allowed domestically.

Grower group certification works best for farmer-cooperatives of small growers and allows for one certificate for the group rather than each individual. But the group must act as one entity. In a grower group certification, the group is reviewed internally by the group and the inspections may cover a few group-member farms each year, but not every operator.

Most grower groups support organic coffee or chocolate farmer cooperatives in developing countries.

SOE clarifies how domestic producers can utilize this type of certification.



There is no monetary or size limit to who can participate in a grower group, which is most typically present in developing countries with very small landowners to provide a pathway for their low-income farms to achieve organic certification.

While OFA supports the grower group certification model and sees a lot of positive ways it can support small-scale domestic growers, the new rule does pose some concerns. An example of OFA concern under this rule would be applying it to large vertically integrated poultry operations, where each operation is run by an individual family, and they all purchase feed and birds from the same company that then buys their eggs or birds. These individual operations could gross a million dollars a year, but might never have an on-site inspection. Many international grower groups are farmer cooperatives, but there is no requirement for this type of producer control or input into the management of the grower group in the Strengthening Organic Enforcement rule.

## RISE IN CERTIFICATION COSTS?

OFA is concerned the implementation of the rule will cause the cost of organic certification to rise significantly. While the NOP has assured OFA that this rule is not intended to negatively affect small operations, it is something OFA will be watching. The highest risk for fraud comes from larger operations because they put more product into the marketplace, and small farms should not bare the financial burden of their increased impact on market integrity.

OFA expects the requirement for training will most likely lead to higher inspection fees, as well as the salaries paid to certification agency personnel. More time will be given to each organic certification, both at inspection and during review to do the detailed and comprehensive audits, leading to higher costs as well. For this reason, OFA has asked Congress to provide more money to the organic certification cost share program, to provide up to \$1500 per type of production, instead of \$750 annually and 100% reimbursement rather than capping it at 75%.

## STRONG ORGANIC ENFORCEMENT IS NEEDED

Organic popularity in the marketplace continues to grow. The stronger oversight found within this rule offers both fraud deterrents as well as confidence that those doing certification activities are skilled enough to detect fraud. Those doing the hard work of organic production deserve strong enforcement of the organic label. 🌱

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