



### **Questions regarding exemptions**

#### **1. Do shippers like USPS, UPS, and FedEx need to get certified?**

- a. **PCO Answer:** No, so long as products are packaged or containerized when the shipper receives the organic product. This type of activity is outside the scope of the USDA's authority.

#### **2. Will warehouses need to be certified?**

- a. **PCO Answer:** Warehouses are exempt if they ONLY receive, store and/or prepare for shipment products that are: enclosed in sealed, tamper packages or containers remain in the same sealed, tamper evident package while in their possession.

If product is not in sealed, tamper evident package upon acquisition then the operation must be certified. Additionally, chilling (i.e., the act of freezing) even if product is in a sealed, tamper evident package requires certification. However, if product if product arrives frozen and is maintained frozen at the warehouse, then certification is not required.

#### **3. Do brokers that only represent us on sales calls, but never see organic products need to be certified?**

- a. **PCO Answer:** There are many types of brokers.
  - Logistic brokers or freight forwarder that facilitate the movement and storage of organic products and do not take ownership or physical possession of organic products 205.101(h) do not require certification so long as they do not do any other handling (e.g., sell, import, trade)
  - Customs brokers that act as an intermediary between importers and the US government and do not take ownership or physical possession of organic products 205.101(g) do not require certification so long as they do not do any other handling (e.g., sell, import, trade)
  - Brokers that buy or sell packaged organic products or ingredients (they may also receive, store, and/or prepare for shipment) that is labeled for retail sale and in sealed, tamper evident packaging are not required to be certified. If product is not labeled for retail sale or is not in sealed, tamper evident packaging then certification is required.

If a broker doesn't meet any of the above types of brokers, then this operation will need to get certified or provide justification of how they meet one of the exemptions at §205.101.

**4. Does this new regulation apply to non-food items such as suppliers of tins, labels, etc.?**

- a. **PCO Answer:** No, the regulatory changes do not apply to non-organic items such as packaging, labels, inputs (cleaners, tools), etc. It only applies to suppliers of organic ingredients.

**5. We are the importer of record. All product goes directly to our customers or is warehoused in our third-party logistics (3PL) warehouses. We do not handle or further process any of the ingredients once they are in the US. Do we need to get certified?**

- a. **PCO Answer:** Importers of organic product will be required to obtain certification, even if you perform no further processing or handling of the products. As the importer of record, certification will be required. Furthermore, the new regulations will require the use of NOP Import Certificates for all organic products entering the United States. You can find the new regulations pertaining to imports at [7 CFR 205.273](#).

**6. Do the following types of operations need to be certified:**

- **3rd Party Logistics company**
- **Carriers our 3PL uses**
- **Ocean Forwarders/Carriers**

a. **PCO Answer:**

i. 3rd Party Logistics and Ocean Forwarders/Carriers: - *Depends on specific activity...*

1. Logistic brokers or freight forwarder that facilitate the movement and storage of organic products and do not take ownership or physical possession of organic products 205.101(h) do not require certification so long as they do not do any other handling (e.g., sell, import, trade)
2. Operations that receive, store, and/or prepares for shipment and do not do other handling (e.g., buy, sell or import) AND product is in sealed, tamper evident packaging and remains in the same package do not require certification.
3. IF an operation:
  - a. does other handling; or
  - b. does not do other handling but product is not in sealed, tamper evident packaging; or
  - c. product doesn't remain in the same sealed, tamper evident packaging

THEN certification is required

- ii. Carriers our 3PL uses: No, so long as products are packaged or containerized when the shipper receives the organic product. This type of activity is outside the scope of the USDA's authority.

**7. We have some storage locations that only store, or case pick organic product, but the product never leaves the customers' cases. Do we still need to be organic certified or are we exempt for these warehouses?**

- a. **PCO Answer:** Operations that receive, store, and/or prepare for shipment organic products but do not buy, sell, or import AND the product is in sealed, tamper evident packaging when received and remains in the same packaging are not required to be certified. If product is not in sealed, tamper evident packaging upon receipt or does not remain in the same packaging then certification is required.

**8. Do my input suppliers need to get certified?**

- a. **PCO Answer:** The regulatory changes apply to operations in the supply chain who sell or otherwise handle certified organic products. If an operation is only selling/ handling non-agricultural inputs (that are not eligible for certification but are approved for use in organic production), they would not need to be certified. If they sell or handle any certified organic products, certification may be required.

**9. Does the supplier of my organic seed need to be certified?**

- a. **PCO Answer:** If the seed supplier is handling (e.g., buys, sells, receives, stores, and/or prepares for shipment) organic seed in that is labeled for retail sale (e.g., seed packet, bulk bag with seed tag) and it is in sealed/tamper evident packaging then the seed supplier does not need to be certified. However, if the organic seed is not labeled for retail or it is not in sealed/tamper evident, then the seed supplier would be required to be certified. If an operation performs additional handling activities regardless of the labeling and packaging, certification is required.

**10. I would like to buy organic agricultural product (onions, potatoes, etc.) from my neighbors who are exempt under 205.101(a). I would like to resell it as-is (no further processing). Can I add these products to my certificate and sell as certified organic? If yes, how do I document this?**

- a. **PCO Answer:** No, §205.302(a)(2) prohibits organically produced product by an exempt operation from being represented as a certified organic product to any buyer (i.e., prohibits from including an exempt product on the certificate of an organic producer)

**11. A producer grows produce, but also buys certified produce for processed product, which is processed at a different certified organic facility. The produce that is bought come frozen, in tamper evident sealed containers. The producer stores the produce, untouched, in their freezer until they are ready to ship everything to the processor. Does this client require handler certification?**

- a. **PCO Answer:** If an operation is purchasing ingredients to send to a co-packer and the ingredients are labeled for retail sale and are in sealed, tamper evident packaging and remain the same packaging while in their control until sent to the co-packer then the operation is exempt according to §205.101(f) and does not require certification.

However, if the ingredient purchased is not labeled for retail sale (i.e., labeled for nonretail, bulk, or unpackaged) or if product is retail labeled but not in sealed, tamper evident packaging and/or doesn't remain the same packaging while in their control until sent to the co-packer then the operation is required to be certified.

### **Questions related to PCO Process/Form Updates and Fees**

#### **1. Is the application deadline of 10/31/2023 for all SOE applicants, referrals, all applications in general?**

- a. **PCO Answer:** Application deadline of 10/31/23 is for the referral; if an operation applies after that date, they won't get the referral credit. New applicants should apply asap; if they apply after 10/31/23 they also risk not meeting the implementation deadline of 3/19/24.

#### **2. What is the discount amount? Is it available to everyone, or only referrals?**

- a. **PCO Answer:** The \$250 referral credit for existing clients and \$250 discount for new marketer/trader clients. There is a space on the OSP General Info form for the applicant to indicate the referral (i.e., the current PCO client that referred them). Current clients can receive up to \$2000 in referral credits.

### **Questions related to Imports**

#### **1. When will the NOP Import Certificate Database be ready to use?**

- a. **PCO Answer:** It appears that this module will be ready by March 2024. NOP is working to get all trade partners, certifiers and certified operations entered into OID to enable this new functionality to be ready by the implementation date of March 19, 2024.