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## Draft Guidance

# Handling Bulk, Unpackaged Organic Products

### 1. Purpose

This guidance document clarifies the requirements and limitations of 7 CFR § 205.101 of the National Organic Program (NOP) regulations regarding the organic certification of handlers and the handling of bulk, unpackaged organic products.

### 2. Scope

This policy applies to all accredited certifying agents, certified operations, and non-certified handlers of certified organic products.

### 3. Background

The NOP regulations require handlers of organic products to be certified, unless specifically exempt or excluded as described in § 205.101(b) of the NOP regulations. In an October 2010 recommendation, the National Organic Standards Board (NOSB) expressed concerns regarding the potential for fraud in the organic market place due to the movement of organic products through unregulated segments of the marketing chain.

The NOSB requested that the NOP clarify the limits of § 205.101(b), which excludes handlers of packaged organic products from the certification requirement if they receive in and ship out products in the same container without opening, relabeling or otherwise handling the products. The NOSB noted that uncertified brokers, distributors, and traders lack the regular oversight of accredited certifying agents and the NOP.

While the regulations at § 205.101(b)(1) exclude handlers of finished packaged products from certification, they do not exclude handlers of unpackaged organic products such as bulk grain, soybeans, hay, milk, and livestock. In response to the NOSB, the NOP is issuing guidance to clarify the requirements of § 205.101 regarding the organic certification of handlers and the handling of bulk, unpackaged organic products.

### 4. Discussion

Section 205.101 of the NOP regulations describes the exemptions and exclusions from the requirements for certification. Section 205.101(b)(1) provides two conditions which must be met in order for persons other than retailers who handle organic products to be excluded from the requirements for organic certification. These conditions exclude operations or portions of operations that sell organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic [specified ingredients]” from certification only (emphasis added) if:



1. The products are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and (emphasis added)
2. The products remain in the same package or container and are not otherwise processed while in the control of the handling operation.

Examples of handling operations that are excluded under this provision include, but are not limited to:

1. Wholesale distribution houses that receive certified organic products in wholesale or retail containers and ship them out in the same container without opening, reconstituting, altering, repackaging, relabeling or otherwise handling the products;
2. Trucking or other transportation companies that transport certified organic products in retail or wholesale containers that have been labeled in accordance with NOP regulations; and
3. Produce brokers who do not open boxes, repack, trim, relabel, or otherwise handle the product.

Examples of handling operations that are NOT excluded under § 205.101(b)(1) include, but are not limited to:

1. Hay brokers that receive, sell, transport or deliver certified organic baled hay;
2. Trucking, rail, or other transportation companies that move bulk certified organic grain from elevators to milling facilities;
3. Fruit and vegetable terminal market vendors that receive and reconstitute containers of certified organic produce for resale as organic;
4. Livestock hauling companies (other than the certified producer) that move certified organic livestock from production operations to auctions or slaughter facilities;
5. Livestock auctions;
6. Milk tankers that are picking up from organic farms and delivering bulk milk to an organic processing plant; and
7. Brokers, traders, or distributors that manage or direct the movement of organic products in anything other than sealed retail or wholesale containers that are labeled in compliance with the NOP regulations.



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## 5. Policy

NOP regulations require brokers, traders or distributors of bulk, unpackaged organic commodities or livestock to be certified organic operations, maintaining product segregation and records sufficient to verify compliance with NOP regulations. Uncertified brokers, traders or distributors of bulk, unpackaged organic commodities or livestock must either:

1. Seek and obtain organic certification, or
2. Be specifically included by direct reference in the Organic System Plan (OSP) of the certified seller or buyer of the organic products, subject to approval and inspection by the certifying agent of the certified operation.

Unpackaged certified organic commodities that are handled by an uncertified, non-retail operation that is not specified in the OSP of a certified organic operation lose their certified organic status and may no longer be sold, labeled or represented as organic. Handlers currently engaged in brokering, trading or distributing organic products beyond the exclusions provided in § 205.101(b) are not in compliance with the NOP regulations and may be subject to civil penalties of up to \$11,000 pursuant to § 205.100(c)(1).

Certified organic operations that receive bulk products from uncertified handlers and subsequently label the products as organic are in violation of NOP regulations, and are also subject to proposed suspension or revocation of certification and possible civil penalties. Certifying agents are required to review OSPs to ensure producers and handlers receive hay, grain, milk, livestock, or other non-packaged organic products via a certified organic handler.

## 6. References

### 6.1 NOP Regulations

#### § 205.2 Terms defined.

*Commingling.* Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, processing, transportation, storage or handling, other than during the manufacture of a multi-ingredient product containing both types of ingredients.

*Handle.* To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

*Handler.* Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.



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*Handling operation.* Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

*Organic system plan.* A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the Act and the regulations in subpart C of this part.

### **§ 205.101 Exemptions and exclusions from certification.**

(b) *Exclusions.* (1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in § 205.272 with respect to any organically produced products, if such operation or portion of the operation only sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” that:

- (i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and
- (ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.

## **6.2 NOSB Recommendations**

October 2010 NOSB Meeting - Clarifying the Limitations of § 205.101(b)