

## What farms and businesses are exempt from organic certification?

*According to the USDA organic regulations in 7 Code of Federal Regulations (CFR) 205, some farms and businesses are exempt from the requirement for organic certification. These farms and businesses may represent and sell their products as organic because they have less than \$5,000 gross annual organic sales. Here we discuss the details of this particular exemption, describe the rights and responsibilities of the exempt farms and businesses, and answer common questions.*

### What kinds of producers and growers are exempt from organic certification?

7 CFR 205.101

There are four classes of producers and growers that are exempt from obtaining organic certification prior to making an organic claim, *and this document focuses on the **first** exemption as listed below:*

- **Organic farms and businesses with less than \$5,000 gross annual organic sales**  
USDA organic regulations 7 CFR 205.101(a)
- Retail food establishments that only handle organic agricultural products but do not process them (including grocery stores) 205.101(b)
- Handling operations that only handle products that contain less than 70% organic ingredients 205.101(c)
- Handling operations that only identify organic ingredients on the information panel. 205.101(d)

Although exempt operations are not required to obtain organic certification in order to represent their products as “organic,” they still need to comply with all regulations as outlined in 7 CFR 205.200 - 205.299 of the USDA organic standards.

### What else should farms and businesses with less than \$5,000 in gross annual organic sales know?

Farmers and businesses should know that for the purposes of calculating the exemption, only gross annual organic sales are used. Gross sales are total sales before expenses are deducted. Non-organic sales are not used to calculate the exemption. If an exempt farm or business reaches \$5,000 in gross organic sales, representing products as organic must immediately stop until organic certification is obtained from an accredited certifying agent.

If a farmer or business foresees over \$5,000 in gross organic sales, the farmer or business should consider planning and applying for organic certification in advance, as application processes can take varying amounts of time.

### What are the rights and responsibilities of exempt operations?

#### Rights

The most significant right an exempt producer has is the right to market a product as organic. In addition, exempt producers do not have to submit an Organic System Plan, also known as an

OSP, for approval to an organic certifying agent and therefore do not have to pay certification fees.

### **Responsibilities**

An exempt producer must comply with sections 7 CFR 205.200 - 205.299 of the USDA organic regulations. In addition, the exempt producer:

- Must not use the USDA organic seal or the seal of a certifying agency to market products. 205.310 (a)(1)
- Must not represent agricultural products as certified organic, or as a certified organic ingredient to any buyer. 205.310 (a)(2)
- May identify an organic product or ingredients in a multi-ingredient organic product as organic if same exempt producer is processing the product, but **must not** identify or represent an ingredient as organic if they are used in processed products produced by another handler. 205.310 (2)(b)

### **Can you provide an example describing when an exempt producer's organic ingredients sold to a buyer can or cannot be called organic?**

Yes, if an exempt organic farmer grows organic kale and organic mustard greens and decides to sell them as a mixed salad at their own farm stand, this product can be represented and sold as organic.

Conversely, if an exempt farmer sells organic kale to a grocery store, and the grocery store in any way repackages it, or processes it, or uses it as an ingredient in a conventional salad with no-organic greens, the kale can no longer be represented as organic.

### **How do I know what organic standards I have to comply with?**

The full text of the [USDA organic regulations](#) can be found online at the U.S. Government Publishing Office (GPO) website in the Electronic Code of Federal Regulations (e-CFR).

### **Do organic products in my exempt business need to be stored or handled differently than other non-organic products?**

Exempt businesses are still required to comply with the requirements in 205.200 - 205.299 of the USDA organic standards in order to represent and sell their products as organic. Steps must be in place to prevent organic products from commingling (mixing) with non-organic products or contact with prohibited substances.

### **What are the recordkeeping requirements for exempt farmers and business owners have less than \$5,000 in gross annual sales of organic products?**

7 CFR 205.101

There are no recordkeeping requirements for farms and businesses that are claiming that they are exempt because they have less than \$5,000 in gross annual sales of organic products. There are recordkeeping requirements for other exemptions but not for this one. It is still

*recommended* that exempt operations maintain as many records as they can in case they are questioned about qualifying for the exemption.

It is also recommended that farms and businesses that are exempt because they have less than \$5,000 in gross annual sales of organic products also maintain financial records in case a question arises about qualifying for the exemption.

### **Do I have to register my small-scale operation with the USDA or a local certifying agent?**

No. Small-scale organic operations do not have to register with the USDA or a local certifying agent. However, certifying agents have the authority to verify whether agricultural products marketed as organic are truly organic. Certifying agents may contact a farm to verify that the farm is meeting the exemption requirements and is complying with the organic standards.

### **What happens to exempt producers who may be violating the organic standards?**

A consumer or other entity may file a complaint about an operation if they question the production, handling and marketing of organic products. Exempt producers should be prepared to answer any complaint with proof of compliance with the requirements of the exemption, and the USDA organic standards. Lack of compliance may result in significant fines.

### **Can I still get certified, even though my farm is exempt?**

Yes, farmers and businesses that are technically exempt can still choose to seek certification.

### **What if I don't qualify for the exemption? Can I represent my product as organically grown or non-certified organic if I don't use the USDA seal?**

No. There are two types of operations that can make an organic claim: certified operations and operations that are exempt or excluded from certification.

## **Business-Specific Q & A**

**Q: I am a broker, distributor or trader that has annual gross sales of over \$5,000 in organic products. I don't seem to qualify for the exemption; do I need to be certified?**

A: If you're handling organic products in packaged containers (cereal boxes, canned goods, packaged items) and they are not opened, modified or changed, seeking organic certification is not necessary. However, brokers of bulk unpackaged organic products (milk, cattle, and grain) that are transported in a container other than sealed retail packaging must obtain organic certification.

**Q: What signs can I use at a farmer's market to identify my produce or eggs?**

A: You can use a sign that identifies any of your agricultural products as organic. You can't use the USDA organic seal or the seal of a certifying agent or claim your products are certified organic. If consumers ask, you may want to tell them you are exempt and explain why you are exempt.

**Q: I want to sell both organic apples and non-organic apples at my farmer's market table. Can I do that?**

A: Yes, but you must store, transport and display the organic and non-organics separately. No commingling of organic and non-organic products should occur.

**Q: I own a grocery store and I purchase bulk quantities of organic products packaged for retail sale. Does my grocery store need to be certified by an accredited certifying agent to re-sell organic products packaged for retail sale?**

A: No, you do not need to seek certification. Grocery stores and other retailers are exempt operations, although they may choose to become certified.

**Q: I am a small farm that follows all the organic standards. My gross sales are \$3,000 each year. Do I need certification to represent my produce as "organic"?**

A: No, you do not need to be certified by a USDA accredited agency, you are an exempt producer because your gross annual sales of organic products are less than \$5,000.

**Q: I am a small farm that follows all organic standards. Last year my gross sales were \$4,500. This year I expect my gross sales to be \$7,000. Am I an exempt producer?**

A: The day your gross sales reach \$5,000 you must be certified organic to represent your product as organic.

**Q: I am a processor that purchases 100lb bags of certified organic rice. I open the bulk package and re-package the product in 1lb bags. Do I need certification to label the rice as organic?**

A: Yes, you must seek certification from a USDA accredited certifying agent whenever you repackage any organic product.

## **For Further Reading & Questions**

The full text of the [USDA organic regulations](#) can be found online at the U.S. Government Publishing Office (GPO) website in the Electronic Code of Federal Regulations (e-CFR).

Specifically, these regulatory sections may be helpful to those with specific questions about organic certification exemption:

<a href="#">7 CFR 205.100</a>	What has to be certified?
<a href="#">7 CFR 205.101(a)</a>	Exemptions from certification
<a href="#">7 CFR 205.102</a>	Use of the term “organic”
<a href="#">7 CFR 205.310</a>	Agricultural products produced on an exempt operation

For general information about the USDA’s National Organic Program (NOP), visit [www.ams.usda.gov/nop](http://www.ams.usda.gov/nop).

Further questions may also be directed to your certifying agency.

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