

Exemption from Organic Certification

Organic is a regulated claim because it has value only as long as buyers believe a product labeled “organic” truly is. In order to limit the financial burden on smaller organic operations while maintaining the integrity of organic agricultural products and consumer confidence in them, the USDA’s National Organic Program (NOP) exempts qualifying growers and processors from organic certification.

This fact sheet is provided by the Minnesota Department of Agriculture (MDA) to answer some of the most common questions about “exempt” status for organic operations.

I’m a small organic grower or handler and heard I may be “exempt” from certification requirements. Can you explain?
The NOP rules allow small farmers and handlers who follow the national organic standards to sell their product as “organic”, if and only if they: a) sell less than \$5,000 worth of organic agricultural products per year; **and** b) follow the national standards for production, labeling, and record keeping.

Where can I get a copy of the national organic rule?

At www.ams.usda.gov/nop, click “I Want Information On/NOP Regulations” and look for “Standards,” or call (202) 720-3252.

Can you be more specific about who doesn’t have to be certified?

- ❖ Growers who follow the national organic standards and sell less than \$5,000 (total gross sales) of organic product per year §205.101(a)(1)
- ❖ Handlers (processors) who sell less than \$5,000 (total gross sales) of organic product per year §205.101(a)(1)
- ❖ Retailers and other handlers who do not process or repackage organic products §205.101(a)(2)

I don’t use chemicals and sell less than \$5,000 worth of organic products per year. I can say they’re organic, right?

Not necessarily. The only thing the “exempt” provision exempts you from is filing an organic system plan and paying for certification/inspection. You still have to follow the National Organic Standards. The standards require more than not using synthetic chemicals. They include promoting natural resource conservation, using only approved materials, preventing contamination, and making proper label claims. If you are a grower or a handler, review the exemption/exclusion requirements in §205.101 thoroughly. You must understand and follow the requirements and maintain records for at least three years [see §205.101(c)(2)] before you can claim your crops are organic.

If I want to sell organic products as an exempt operation, what parts of the national organic standards are important for me to know about?

You should be familiar with all of the standards and pay special attention to:

- §205.101 Exemptions and Exclusions from Certification
- §205.200-205.239 Organic Production and Handling Requirements (growers)
- §205.300 Use of the Term “Organic”
- §205.301-205.309 Labels, Labeling, and Market Information (processors/handlers)
- §205.310 Agricultural Products Produced on an Exempt or Excluded Operation
- §205.601-205.606 The National List of Allowed and Prohibited Substances

What kind of records should I keep?

Whatever records you think you might need to be able to prove that you are following the organic standards and that you qualify as an exempt operation. For farmers, these might include records of seed or transplant sources, receipts for purchased inputs, field operations, herd health records, harvest records, storage, and sales records, including receipts. For handlers, these might include scale tickets, bills of lading, raw and finished inventory logs, lot numbering protocols, sales journals, production reports, cleaning logs, and ingredient calculations. More examples are listed in Subpart A of the National Organic Program Overview published in the Federal Register Vol. 65, No. 246, Dec. 21, 2000, page 80553.

How can I tell if a fertilizer, pesticide, or cleaning product is ok to use in my exempt operation?

Consult two sources: 1) the National List of Allowed and Prohibited Substances - §205.601-205.606 of the national organic standards and 2) the Organic Materials Review Institute (www.omri.org), which provides information by generic and brand names.

What kind of trouble can I get into for fudging a little bit?

Misrepresenting non-organic product as organic or claiming to be an exempt operation when you sell more than \$5,000 per year are both considered fraud. Certified and exempt operations that violate the national organic standards (including provisions about who qualifies as exempt from certification) are subject to civil penalties of up to \$11,000 per violation.

Who investigates complaints and enforces the National Organic Program rules in Minnesota?

The National Organic Standards are federal standards and are enforced by the United States Department of Agriculture. Complaints may be also investigated by the MDA under the State Food Misbranding Law.

Has the MDA ever received complaints about fraudulent “exempt” organic growers in Minnesota?

Yes. Complaints have been referred to MDA’s Dairy and Food Inspection Division and to USDA Compliance.



If I’m an exempt organic grower, can I still use the “USDA Organic” seal?

No. While you may use the word “organic” to market your product, you may not use the USDA Organic seal. That seal may be used only on certified organic products.

I want to be an exempt organic grower and sell my vegetables at a farmers market. Is that allowed?

Yes, provided you follow the national organic standards and don’t sell more than \$5,000 (total gross sales) of organic product per year. You must also comply with the rules of the market (some markets require certification; others do not).

I want to be an exempt organic grower and sell my vegetables to a grocery store or restaurant. Can they sell my product as “organic”?

Yes. As long as the retailer does not process or repackage your product, the retailer may sell it as “organic.”

I want to be an exempt organic grower and sell my strawberries to an organic jam outfit. Can they use my organic strawberries in an organic jam?

No. A processor may not buy exempt organic ingredients, process them, and label the product “organic” or “certified organic.”

How about if I make the jam myself?

Yes, if you grow organic strawberries as an “exempt” grower, you may process them yourself (subject to state food safety laws, of course) and sell the jam as “organic.”

I sell fresh organic strawberries at the farmers market but also make organic jam on my farm. Does the \$5,000 limit include income on both the berries and the jam?

No. If you are a grower and a processor, you may sell up to \$5,000 (gross sales) of unprocessed organic agricultural product AND \$5,000 (gross sales) of processed agricultural product before the certification requirement kicks in.

I want to sell exempt organic tomatoes and non-organic tomatoes at my farmers market stall. Is that ok?

Yes, as long as you store, transport, and clearly display the organic and non-organic products separately.

Even if I’m a small operation, can I still get certified if I want to?

Sure. For organic operations that fit into the “under \$5,000” category, certification is voluntary. You can get a list of accredited organic certifiers that operate in Minnesota by calling the MDA at 651-201-6616 or at www.mda.state.mn.us/food/organic

How much does organic certification cost?

According to information collected by MDA, cost of certification typically varies with volume of organic sales. In 2009, the least amount any Minnesota organic grower reported paying was about \$350. The median cost was about \$834. There is currently a limited organic certification cost share program that reimburses farmers and processors for a portion of their certification costs. Call 651-201-6616 for more information.