

Introductory Factsheet for this Series On Balancing Food Safety and Organic Requirements

January 2018



Introduction

Before diving into all of the topics covered in this factsheet series, you should start here by learning about the three main farm categories under the Food Safety Modernization Act (FSMA). Under FSMA farms are categorized as fully exempt farms, qualified exempt farms (aka partial exemption), or fully subject farms. Fully exempt farms and qualified exempt farms do not have to adhere to the full FSMA requirements explained in the rest of these factsheets, although farms from these categories may choose to follow all of the requirements if they so choose. Read on to learn more about the three farm categories and figure out which category your farm falls into.

Note that all italicized words or phrases are explained in more detail in the FAQs section.

Fully Exempt Farms

A farm is fully exempt from FSMA if all of the farm's activities fit into one or more of the scenarios below.

- All of the produce grown on the farm is only for on-farm consumption.
- All of the produce grown on the farm goes to processing that contains a kill step (e.g. tomatoes canned into tomato sauce, grapes fermented into wine).
- All of the produce grown on the farm is on the ***FDA's list of produce rarely consumed raw.***

OR

A farm is fully exempt from FSMA if total gross annual sales of **produce** (averaged over the last three years and converted to 2011 dollars) are less than \$25,000. It does not matter what you are growing or where you are selling or how you are processing if you are under this threshold.

If your farm is fully exempt from FSMA than you are not legally bound to adhere to the FSMA requirements listed on these factsheets. A farm can, however, choose to adhere to them. This might be advisable, for example, if a buyer requests compliance.

If your farm is not fully exempt, it may fit the criteria for a qualified exemption from FSMA. Read on below.

Qualified Exempt Farms

Qualified exempt farms are farms that meet **BOTH** of these two criteria:

- Sell on average less than **\$500,000 in total gross farm food sales over the previous three years (converted to 2011 dollars)** and
- Annually sell more than 50% of those sales to a **qualified end user**.

If your farm is qualified exempt from FSMA, then you are not legally bound to adhere to the **full** FSMA requirements listed on these factsheets. A farm can, however, choose to adhere to them. This might be advisable if a buyer requests compliance or if you are close to the \$500,000 threshold and think you might fall into the fully covered farm category at some point. Table 1 shows the FSMA requirements for qualified exempt farms.

Table 1: FSMA Produce Safety Regulations for Qualified Exempt Farms

The FDA requires that FSMA Qualified Exempt farms keep:

1. Financial records to prove the farm's average gross food sales were less than \$500,000 on average (adjusted into 2011 dollars) over the previous three years.
2. **Financial records** that demonstrate that more than 50% of the farm's sales in each of the previous three years was to a qualified end user.
3. A record that shows that you conducted an annual review of the farm's status and determined that the farm was still in the correct FSMA farm category.
4. An example of how you are **labeling boxes** and/or posting signs for your product at point of sale, with the farm's name and complete business address.

Note: FDA can revoke your qualified exempt status if you are involved in a foodborne illness outbreak or you are found to have "egregious" public health violations on your farm.

Frequently Asked Questions

What crops are on the FDA's rarely consumed raw list?

asparagus	chickpeas	hazelnuts
beans, black	cocoa beans	horseradish
beans, great Northern beans,	coffee beans	lentils
kidney	collards	okra
beans, lima	corn, sweet	peanuts
beans, navy	cranberries	pecans
beans, pinto	dates	peppermint
beets, garden (roots and tops)	dill (seeds and weed)	potatoes
beets, sugar	eggplants	pumpkins
cashews	figs	squash, winter
cherries, sour	ginger	sweet potatoes
		water chestnuts



Photo by E. Chris Wisner

This is a complete list, and the FDA will not consider any other crops as rarely consumed raw. All of the crops you grow have to be on this list if you are claiming a full exemption from FSMA based on the rarely consumed raw list.

What if I grow two crops on FDA’s rarely consumed raw list (figs, black beans) but then also a crop not on that list (lettuce)?

If you gross over \$25,000, you cannot claim the full exemption from FSMA based on the rarely consumed raw list if you also grow produce crops that are not on the list (even if it’s just one!). However, if you gross under \$25,000 you can grow any crops and still be fully exempt from FSMA.

I’m trying to figure out if I qualify for the less than \$25,000 in gross produce sales exemption. How do I calculate the 3 year rolling average adjusted to 2011 dollars?

The full exemption from FSMA based on less than \$25,000 in produce sales is calculated by taking the last three years of gross produce sales numbers and averaging them together. Next, this average is compared to the 2011 adjusted (for inflation) dollar average provided by the FDA. Looking at Table 2, the FDA calculates the three-year average for 2014-16 as \$26,632. So if your farm had a gross produce sales average for 2014-16 that is less than \$26,632, then the farm would be fully exempt from FSMA.

Table 2: FDA Inflation-Adjusted Values for a Complete Exemption from FSMA

Baseline Value for Cut-off 2011	2012	2013	2014	2015	2016	3 Year Average Value 2014-16
\$25,000	\$25,460	\$25,871	\$26,332	\$26,608	\$26,956	\$26,632

I grow produce and eggs and gross \$20,000 annually from both. Would my farm be fully exempt?

Remember, for the full exemption the financial threshold of \$25,000 is for **produce sales only**. In this scenario, even though the farm grosses \$40,000 annually, as long as the farm grosses less than the adjusted \$25,000 amount in produce then they would remain fully exempt from FSMA. If you sell over \$25,000 in produce then look into the criteria to see if the farm fits into the qualified exempt category.

Why do I have to adjust the last three years’ gross farm sales into 2011 dollars for the Qualified Exemption? How do I do that?

FSMA was enacted in 2011, and one criterion of the qualified exemption is based on gross annual food sales by a farm being below \$500,000. In 2011, \$500,000 was \$500,000, but over time, due to inflation, a dollar is worth less. The FDA has a chart that shows the new inflation-adjusted value for \$500,000 in 2012-2016 (below). For example, in 2017, to prove the farm is qualified exempt you would take your total gross food sales from 2014, 2015, and 2016, add them up and divide by 3. If your total is less than the amount on the chart for “3 Year Average Value 2014-16”--\$532,645—then your farm would satisfy the qualified exempt sales threshold of less than \$500,000 in all food sales. The FDA will update the chart online each year to add the latest data.

Table 3: FDA Inflation-Adjusted Values for a Qualified Exemption from FSMA

Baseline Value for Qualified Exempt Cut-off 2011	2012	2013	2014	2015	2016	3 Year Average Value 2014-16
\$500,000	\$509,199	\$517,417	\$526,645	\$532,170	\$539,170	\$532,645

The \$500,000 threshold is for all farm food sales. Does that even include sales of grain we grow for animal feed? And dairy? Meat?

Yes. The \$500,000 threshold includes all food sales the farm makes annually, including food grown for animals. If a farm grows produce, eggs, milk, grain for animals, and raises lamb then all of those sales (if they are all under the same business) contribute towards determining if the farm is under the \$500,000 threshold.

When do I need to start keeping the financial records to prove my qualified exemption?

Farms were required to start keeping these records in March 2016. If you have not been keeping records, then go back and gather as much financial documentation from March 2016 onward as possible. You could use tax filings and/or Quickbooks reports to show your annual gross sales for each year.

What if my farm is a fully covered farm under FSMA? What do I have to do?

Read the rest of the factsheets in this series to learn about the records you need to keep and practices that need to be implemented.

What's a qualified end user?

FSMA defines a qualified end user as the consumer of the food or a restaurant or individual retail food establishment located within the same state or tribal territory as the farm or within 275 miles. If a farm sells product at a farmer's market, through a Community Supported Agricultural Program (CSA), at a farm stand, directly to consumers through internet sales, or directly to a restaurant or grocery store then those would all be sales to a qualified end user. The FDA will release further guidance on how or if sales through a Food Hub are considered sales to a qualified end user.

For the qualified exemption, what does the label on boxes that leave the farm with product need to say on it?

Any product that leaves the farm in a box (delivery to restaurant, grocery store, or in a CSA box) needs to have a label on it that includes the farm name and complete business address. The complete business address can be either a P.O. Box or a physical farm address. Any product that you sell at a farm stand, farmers market, or other direct point of sale needs to have a sign posted with the farm name and business address. (The FDA has told the State of California that signs at farmers' markets are sufficient if they have the farm name and county/city.)

If I sell product to a restaurant or grocery store are they now required to post the farm name and business address on the menu or on the shelf next to the price?

No, as long as the product arrives at the restaurant, grocery store, or food co-op grocery store with a label on the box that is sufficient to fulfill this requirement.

Conclusion

No farm, no matter how it is classified under FSMA, is allowed to sell contaminated food or to have public health issues on the farm that the FDA considers "egregious." If a qualified exempt farm is involved in a foodborne illness outbreak, or if it is inspected under FSMA and "egregious" conditions are found, then the FDA may revoke the farm's qualified exempt status. We highly recommend that fully exempt and qualified exempt farms take a look at all the other fact sheets in this series, particularly those on risk assessments and farm food safety plans to learn how to implement practical on-farm risk reduction strategies, no matter your FSMA farm classification. Farms that are fully subject and must be in compliance with the whole law should utilize the other factsheets in this series to learn more about each of the topic areas where FSMA requires certain practices and records to be kept.

Resources and References

1. National Sustainable Agriculture Coalition's FSMA Flow Chart: http://www.caff.org/wp-content/uploads/2012/08/2016_NSAC_FSMA_flowchart.pdf
2. CAFF webinar explaining the three farm categories: <https://www.youtube.com/watch?v=AWKf-yKMkA>
3. CAFF webinar homepage with webinars for growers and organic professionals: <http://www.caff.org/webinars/>
4. FDA Adjusted Values can be found at: <https://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm554484.htm>

Acknowledgments

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This material is based upon work that is supported by the National Institute of Food and Agriculture, U.S. Department of Agriculture, under award number 2015-38640-23779 through the Western Sustainable Agriculture Research and Education program under subaward number EW16-015. USDA is an equal opportunity employer and service provider. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture.
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