



CONSUMER NEWS

SAN DIEGO CITY ATTORNEY'S OFFICE

Certified "Organic"

September 2009

Any business directly involved in food production can be certified "organic." This includes seed suppliers, farmers, food processors, retailers, and restaurants. This newsletter explains what it means to be certified "organic" and offers information to help consumers decipher organic food labels.

WHAT DOES IT MEAN TO BE CERTIFIED "ORGANIC"?

In 1990, Congress passed the Organic Food Production Act, creating national standards for organic foods. In 2002, Congress enacted the National Organic Program (NOP) to restrict the use of the term "organic" to certified organic producers only, and to enforce the standards of the Organic Food Production Act.

In California, organic regulation is enforced through the California Organic Products Act of 2003. This Act is codified in the California Health & Safety Code, Sections 110810- 110959, and closely follows the federal NOP regulations.

Under the California Organic Products Act, any business

advertising a product as "organic," and whose gross income from organic sales is greater than \$5000, must get "organic" certification. Certification is handled by state, non-profit, and private agencies that have been approved by the U.S. Department of Agriculture (USDA). (The USDA's Agricultural Marketing Service website contains a list of accredited certifying agents.) To become certified "organic", a business must:

- Choose an organic certifier.
- Meet national organic product standards.
- Keep records of practices and materials used for the past three years.
- Allow the certifying agent to inspect any premises where organic food is to be produced.

In general, to meet national organic product standards, a business must:

- Avoid use of sewage sludge, ionizing radiation, and genetically modified organisms.

- Avoid use of most synthetic chemicals (fertilizer, pesticides, antibiotics, or food additives).
- Require 100% organic feed for organic livestock.
- Use farmland that has been free from chemicals for at least 3 years.
- Maintain strict physical separation of organic products from non-certified products.
- Undergo periodic on-site inspections.
- Keep detailed written production and sales records.

WHY CALIFORNIA REGULATES ORGANICS... THE ORGANIC BOOM:

California is the U.S. leader in the number of certified organic operations. Nationwide, the number of new organic products has sky-rocketed from 290 in 2004, to 1030 in 2008. The organic marketing boom has pushed retail sales of organic foods from \$3.6 billion in 1997, up to \$21.1 billion in 2008 (over 3% of total food

sales). Projected sales for 2009, will reach \$23 billion, according to the Nutrition Business Journal. The number of Farmer's markets has also steadily increased from 1755 markets in 1994, to over 4685 in 2008. Additionally, organic products are now available in over 20,000 natural food stores and nearly 3 of 4 conventional grocery stores.

Consumers of organic products have shown a willingness to pay the price premiums associated with organic status. However, organic farmers have struggled to keep up with the rapid growth in demand. The mandatory 3 years before a farm's products can be labeled as "organic" creates a lag between increases in retail demand and supply from farms. Responding to the market surge for organic products, Congress passed the Food, Conservation, and Energy Act of 2008 (2008 Farm Act), which provided, in part, a five-fold increase in mandatory funding for organic programs. The 2008 Farm Act is designed to expand support for organic research, as well as provide cost-sharing incentives for businesses wishing to convert to organic production.

ORGANIC LABELING:

For consumers, certified "organic" serves as a product assurance, similar to "no artificial preservatives" or "100% whole wheat." But what does it mean for a product to be labeled organic?

Agricultural products that are sold, labeled, or represented as "organic" must be produced in accordance with NOP standards. In California, products must also comport with specific regulations in the Organic Products Act of 2003.

Organic labeling requirements include:

- Products labeled "100% organic" must be made entirely with certified organic ingredients and processing aids. (This excludes water, air, and salt; as well as several products adopted by the U.S. Secretary of Agriculture representing less than 5% of the weight of the total finished product).
- Products labeled "organic" must consist of at least 95% organically produced ingredients.
- Product labels meeting the above requirements may also display the USDA organic label.
- Products labeled "made with organic ingredients" on the product's principal display panel must contain at least 70% organic ingredients.
- A product may not be labeled "organic" anywhere on its principal display panel if it is composed of less than 70% organic ingredients. However, the product may identify specific ingredients that are organically produced on the information panel.
- There are no restrictions on non-organic claims such as "no drugs or growth hormones", "free range", or "sustainably harvested."
- No aquaculture, fish, or seafood product may be labeled as "organic."
- No product may be advertised as "organic when available" or other similar terminology that leaves the consumer unsure whether the food being sold is organic.

- Cosmetic products represented as "organic" or "made with organic ingredients" must contain at least 70% organically produced ingredients.

To bypass certification requirements, some producers have begun to use undefined terms like "authentic" or "natural." These terms are not regulated, and as such have no real meaning. California's law prohibiting false or misleading advertising would be applicable to these situations.

ADDITIONAL RESOURCES:

For more information about organic certification and labeling, see the USDA's Agricultural Marketing Service link at www.ams.usda.gov.

ORGANIC FOOD COMPLAINT?

If you believe that an organic product you have purchased does not meet the above labeling requirements, please download a complaint form at www.sdcountry.ca.gov/awm/organic.html, or call the City Attorney's hotline below:

**San Diego
City Attorney's Office
Consumer and Environmental
Protection Unit
(619) 533-5600**

Newsletter written by Jen Gustafson.

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The information provided in this newsletter is intended to convey general information and is not intended to be relied upon as legal advice.

To report violations of consumer protection laws, call the City Attorney's Hotline at **(619) 533-5600**.