

Organic Certification Merits Careful Attention Under Impending Law

09.10.1998

SAN FRANCISCO— In a matter of days, USDA will propose rules under the Organic Foods Production Act of 1990 (OFPA) that will set a unified standard for organic products and make certification mandatory. Companies successfully operating under state organic programs by registration only, or by self-certifying their goods as organic, will soon need to provide complete certification. The hurdle for operating an organic foods business is being raised.

Organic foods and fiber companies need to understand the risks under this new system and how to prevent or minimize problems. For example, an organic producer can lose its certification for up to five years if any person with an interest in the farm or handling organization makes a false statement about an organic product or incorrectly labels a product as organic when the person knows or should know it is not organic. In addition to disqualification, the USDA can fine violators up to \$10,000 per violation. And there is always the threat of class action or other litigation for incorrectly labeled products that reach the marketplace.

While it is not possible to eliminate all the risks of operating an organic foods business, active prevention can minimize those risks. Each producer will need an "organic plan" that meets the minimum OFPA standards and is agreed to by a USDA-approved certifying agent. One of the most important decisions is choosing a certifying agent. Does that certifying agent have sufficient inspectors, a record-keeping system, and the ability to provide financial assurances to be able to gain rapid approval from USDA so that existing operations can continue uninterrupted? Can the certifying agent organization perform the "clearing house" function for products with multiple ingredients? For multiple-ingredient products, an error in the characterization of one ingredient can cause a product to fall below the mandatory 95% content requirement, thereby jeopardizing an entire production run or season.

Organic companies must also examine their own product liability insurance and that of their certifier to ensure organic labeling risks are included. Do you require bonding or indemnity from certifiers? If you import or export organic products, do you have a complete understanding of the differing certification standards overseas? European, Japanese or other foreign regulations may require additional standards from domestic U.S. standards or may use practices prohibited in domestic organic products. Finally, do you have your own internal quality assistance/quality control program for your distribution and production chains? OFPA certification will protect the integrity of the organic foods industry, and the industry will need to comply with the new federal rules. The health of the industry will depend on maintaining business standards that preserve both the high consumer confidence and premium prices that organic products now enjoy.

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