

FOOD LABELING  
**Issue Brief**

## Organic Food Labeling: Overview

### National Organics Program Background

In 1990 Congress passed the Organic Foods Production Act (OFPA), in response to the growing organic food movement. Organic food is basically food produced and handled without the use of synthetic chemicals.<sup>1</sup> Prior to the passing of this federal legislation, private organizations and some state governments had established a series of unconnected organic certification systems. These systems often used different standards and processes.<sup>2</sup> The OFPA sought to unify these diverse programs by creating a national standard that would govern the marketing of organic products, assure consumers as to the quality of their food, and facilitate interstate commerce in organic foods.<sup>3</sup>

The United States Department of Agriculture (USDA) was tasked with creating and administering the National Organics Program (NOP) that would dictate the production and handling standards for food that was marketed as organic.<sup>4</sup> As part of this program, the USDA was tasked with creating the National List, a collection of approved and prohibited substances for the production and handling of organic foods.<sup>5</sup> The National List was developed with the help of the National Organics Standards Review Board, a panel of experts appointed by the Secretary of Agriculture.<sup>6</sup>

To implement the national organic standards, the OFPA created an enforcement system in which the USDA accredits private and state government certifications agents to ensure compliance.<sup>7</sup> These certifying agents review production and handling plans, conduct inspections, and certify operations that comply with the NOP.<sup>8</sup>



## Organic Food Labeling Standards

The NOP also established a national standard regarding the use of the term “organic” in food labeling. There are four permissible uses of the term and they are all based on percentage of organic ingredients included in a food product.

**100 Percent Organic:** To use the term “100 percent organic,” a food product must contain 100 percent organically produced ingredients by weight or fluid volume, excluding water and salt.<sup>9</sup> In addition, use of this term requires compliance with an extensive list of prohibited production and processing practices, e.g., use of ionizing radiation and sewage sludge fertilizer.<sup>10</sup> If these requirements are met, a food **may** be labeled “100 percent organic” on its principal display panel, information panel, and any other panel or marketing information.<sup>11</sup> In addition, these foods **may** utilize the USDA’s organic seal and the seal or logo of the certifying agent who certified their operations.<sup>12</sup> However, the certifying agent’s mark **may not** be displayed more prominently than the USDA’s organic seal.<sup>13</sup>

Foods labeled “100 percent organic” **must** also identify the certifying agent of the final product on the information panel.<sup>14</sup>

**Organic:** To use this term, the product must contain at least 95 percent organic ingredients by weight or volume, excluding salt and water.<sup>15</sup> The remaining nonorganic ingredients **must** be agricultural products that are not commercially available as organic and/or nonagricultural products from the National List.<sup>16</sup> Products labeled as “organic” are subject to an extensive list of prohibited production practice, e.g., use of ionizing radiation and sewage sludge fertilizers.<sup>17</sup> If these requirements are met, a food **may** be labeled as “organic” and the percentage of organic ingredients in the product listed on its principal display panel, information panel, and any other panel or marketing information.<sup>18</sup> In addition, these foods **may** utilize the USDA’s organic seal and the seal or logo of the certifying agent who certified their operations.<sup>19</sup> However, the certifying agent’s mark **may not** be displayed more prominently than the USDA’s organic seal.<sup>20</sup>

Foods labeled as “organic” **must** also identify each organic ingredient in the ingredient statement and the certifying agent of the final product on the information panel.<sup>21</sup>

**Made with Organic:** This term maybe used on the packaging of a food product if it has at least 70 percent certified organic ingredients by weight or volume, excluding water and salt.<sup>22</sup> “Made with organic” **may** be used on the food label to identify which ingredients or specified food groups comply with organic standards.<sup>23</sup> The USDA identifies 14 food groups that qualify for this labeling approach: beans, fish, fruits, grains, herbs, meats, nuts, oils, poultry, seeds, spices, sweeteners, vegetables, and processed milk products.<sup>24</sup> For example, a food product that meets the applicable standards could state “made with organic peas, corn, and carrots” or “made with organic beans, grains, and meat.” However, these statements cannot identify more than three ingredients or three special food groups.<sup>25</sup> These food products **may** also identify the percentage of organic ingredients and bear the mark of the certifying agent who certified the handler of the finished product.<sup>26</sup>

In addition, foods labeled “made with organic” **must** identify each organic ingredient in the ingredient statement and the certifying agent of the final product on the information panel.<sup>27</sup> However, food products that only meet the standards for the “made with organic” label **may not** use the USDA’s organic seal.<sup>28</sup>

**Identification of Organic Ingredients:** Food products with less than 70 percent organic ingredients **may** only identify organic ingredients in the product ingredient list on the information panel.<sup>29</sup> If organic ingredients are identified in the ingredient statement, then the percent of organic ingredients **may** be identified on the information panel.<sup>30</sup> Food products with less than 70 percent organic ingredients **may not** use the USDA’s organic seal or any certifying agent’s mark on their product label.<sup>31</sup>

### State Organic Programs

The Organic Foods Production Act allows states to develop their own organic certification programs.<sup>32</sup> However, any state interested in creating its own program must prepare and submit a programmatic plan to the Secretary of Agriculture for approval.<sup>33</sup> The OFPA requires that a state program must further the purpose of the OFPA, not be inconsistent with the OFPA, and not discriminate against the agricultural products produced in other states.<sup>34</sup> States may create programs that are more restrictive than the national standard with regard to the certification of farms and food handling operations, as well as to the organic production and handling standards themselves.<sup>35</sup> However, adoption of more restrictive requirements is only permitted in select situations, e.g., in response to environmental conditions particular to a specific region.<sup>36</sup> Also, if a state chooses to create its own program it must assume enforcement responsibility for the program.<sup>37</sup> California is the only jurisdiction with an approved State Organic Program.<sup>38</sup>

The development of a state program does not allow a state to create its own organic food labeling scheme. However, if a state proposes a plan with more restrictive certification standards, production standards, and/or handling standards, and this plan is approved by the Secretary of Agriculture, it may affect which food products qualify for the organic labeling scheme discussed above.



### SUPPORTERS

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<sup>1</sup> See 7 U.S.C. § 6504 (explaining generally which food products may be sold and labeled as organic).

<sup>2</sup> The National Agricultural Law Center, The National Organic Program-An Overview, available at <http://nationalaglawcenter.org/overview/organic/> (last visited January 14, 2019).

<sup>3</sup> See Organic Food Production Act of 1990, 7 U.S.C. § 6501 (establishing the goals of the statute).

<sup>4</sup> 7 U.S.C. § 6503.

<sup>5</sup> 7 U.S.C. § 6517.

<sup>6</sup> 7 U.S.C. § 6518.

<sup>7</sup> 7 U.S.C. § 6514.

<sup>8</sup> See 7 C.F.R. §§ 205.400-.403 (discussing the review of production and handling system plans and the on-site inspections conducted by certifying agents).

<sup>9</sup> 7 C.F.R. § 205.301(a).

<sup>10</sup> 7 C.F.R. § 205.301(f).

<sup>11</sup> 7 C.F.R. § 205.303(a); The **principal display panel** is the "part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale." 7 C.F.R. § 205.2. The **informational panel** is the "part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes. . . ." 7 C.F.R. § 205.2.

<sup>12</sup> 7 C.F.R. § 205.303(a); see also 7 C.F.R. § 205.311 (describing the USDA organic seal).

<sup>13</sup> *Id.*

<sup>14</sup> 7 C.F.R. § 205.303(b).

<sup>15</sup> 7 C.F.R. § 205.301(b).

<sup>16</sup> *Id.*

<sup>17</sup> 7 C.F.R. § 205.301(f).

<sup>18</sup> 7 C.F.R. § 205.303(a).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 7 C.F.R. § 205.303(b).

<sup>22</sup> 7 C.F.R. § 205.301(c).

<sup>23</sup> 7 C.F.R. § 205.304(a).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> 7 C.F.R. § 205.304(b).

<sup>28</sup> 7 C.F.R. § 205.304(c).

<sup>29</sup> 7 C.F.R. § 205.305(a).

<sup>30</sup> *Id.*

<sup>31</sup> 7 C.F.R. § 205.305(b).


<sup>32</sup> 7 U.S.C. § 6507.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 7 C.F.R. § 205.620.



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<sup>37</sup> 7 C.F.R. § 205.620.

<sup>38</sup> United States Department of Agriculture, California State Organic Program, *available at* <https://www.ams.usda.gov/services/enforcement/organic/state-compliance-ca> (last visited March 4, 2019).