University of Arkansas · Division of Agriculture
www.NationalAgLawCenter.com

Food Labeling for Specialty Crop Producers

Elizabeth Rumley
Staff Attorney

The requirements and restrictions on food labels are an important part of the food safety and regulation system in the United States. The topic of "food labeling," however, is very broad, encompassing several specific areas of the law that may affect specialty crop producers. These areas include nutritional labeling, descriptive claims, organic labeling and irradiation labeling.

In the United States, these areas are generally regulated by the USDA and the FDA. Regulation based on food labeling began in 1938, with the passage of the Food, Drug, and Cosmetic Act, or "FDCA."[1] The FDCA focused on issues of food misbranding and adulteration and serves as the basic framework for food regulation by the FDA and the USDA. It created food standards, authorized inspections of factories, and provided for court injunctions as remedy for violations, in addition to the already existing seizure and prosecution remedies. Since 1938, the FDCA has been amended a number of times and related laws have been enacted.

Nutrition Labeling

In 1990, Congress passed the Nutrition Labeling and Education Act (NLEA)[2], which required uniform nutrition labeling. These standards focus on the relationship between food contents and healthy diets, and are meant to provide adequate information to consumers regarding the content of food, including a disclosure of the food's nutritional properties and added nutrients. As a result of these statutes, food labeling addresses nutritional information and is required for most prepared foods, such as breads, cereals, snacks, desserts, and drinks. Food items, including specialty crops, that have been canned or frozen are also required to contain nutrition information. However, nutrition labeling for raw produce (fruits and vegetables) and fish remains voluntary.

Nutrition labeling, as a result of NLEA, has become widely standardized and defined. For foods that must be labeled (and those that choose to be), the label must feature a prominent "product identity statement," ensuring that consumers are able to identify the product and obtain important information about the type and form of food contained in the package. Other labeling

[1] 21 U.S.C.A. §§ 301 to 399D.
[2] Nutrition Labeling and Education Act of 1990, PL 101–535, November 8, 1990, 104 Stat 2353.

requirements ensure that the "net quantity of contents," or package amount, is listed on the package, as well as a list of all ingredients, listed in descending order of predominance and in specifically defined wording. Other regulations require specific wording, type size and placement of the labeling information.

In order to ensure consistency, both FDA and USDA regulations are very explicit about the layout of the nutrition facts panel, detailing the type of information that may be included as well as the format and order. Nutrition labels are required to provide information on fourteen nutrients, which must appear in a specific order on the label. However, in addition to information on the nutrient by measure of weight (gram or milligram), the "Percent Daily Value" must also be declared. This helps to standardize food labeling, so that people who are unfamiliar with the recommended daily value may measure and evaluate foods based on their nutrient contents.

Finally, food labels must also outline the serving size, which is the amount of food upon which the nutrient content is based. In order to ensure consistent serving sizes between similar products, NLEA defines serving size as the amount of food customarily eaten at one time. While, the serving size included on the Nutrition Facts panel may vary slightly between similar products, it is based on the Reference Amounts Customarily Consumed Per Eating Occasion (RACC), as established by the FDA. The serving size is the household measure (e.g., cups, tablespoon, piece, slice, fraction, or container) closest to the RACC.

While raw fruits, vegetables and fish are not required to label their products with nutrition information, in order to encourage retails stores that sell those products to participate in the voluntary labeling program, the FDA has created downloadable posters for printing. The posters show nutrition information for the 20 most frequently consumed raw fruits, vegetables, and fish in the United States, and stores are encouraged to download the posters, print, display and/or distribute them to consumers in close proximity to the relevant foods in the stores.[3]

Descriptive Labeling

Another labeling issue that affects specialty crop producers occurs when engaging in descriptive labeling of their product for the purpose of marketing their crop. Commonly used words such as "fresh" or "natural" have specific meaning

The word "fresh" has a precise regulatory meaning, specifically that "the food is in its raw state and has not been frozen or subjected to any form of thermal processing or any other form of preservation." However, the term "fresh frozen" or "frozen fresh" can be used, as long as the food was quickly frozen while still fresh, and those terms can still be used if food is simply blanched before being frozen. Food that is refrigerated, treated with approved waxes or coatings, treated post-harvest with approved pesticides or cleaned with a mild chlorine wash or mild acid wash may also use the word "fresh" in labeling the product.

[3] The posters are available at: http://www.fda.gov/Food/LabelingNutrition/FoodLabelingGuidanceRegulatoryInformation/InformationforRestaurantsRetailEstablishments/ucm063367.htm.

The phrase “natural” on the other hand, is not so clearly defined. Instead, both FDA and USDA have policies regarding natural food labeling. They both provide that "natural" means that no artificial or synthetic ingredients have been added. USDA specifically prohibits artificial flavor, coloring ingredients, or chemical preservatives but allows minimal processing, specifying that such processing is limited to traditional processes used to make food safe for human consumption, ones that preserve it, and those that do not alter the raw product. On the other hand, FDA allows a limited group of chemical reactions such as roasting, heating, and enzymolysis that can be used to produce natural flavors.

Organic Labeling

When and if to label a product “organic” is another potential concern for specialty crop producers. For foods to be labeled and sold as “organic,” they must be produced and processed according to the National Organic Program standards. The farm where organic food is grown, as well as the companies that handle or process the organic food, must meet the USDA organic standards.

There are four approved organic labeling claims that can be used, based on levels of organic content. To label a product "100 percent organic," the product must be composed of wholly organic ingredients and must not have any nonorganic ingredients or additives. To label a product "organic," the product must contain at least 95% organically produced ingredients. To label a product "made with organic ingredients," the product must contain 70% organic ingredients. Other products with less than 70% organic ingredients can only specify the organic ingredient(s) in the ingredients statement. The USDA seal can be placed only on foods that qualify as "100 percent organic" and "organic." However, it is important to note that operations with a gross annual income from sales of organic products totaling $5,000 or less are not required to obtain NOP certification.

For those operations that exceed the $5,000 threshold and must obtain NOP certification in order to sell their products as “organic,” NOP outlines production and handling standards, which set forth requirements for land management, soil fertility and crop nutrient management practices, seeds and planting stock use, crop rotation, crop pest, weed, and disease management, and the harvesting of "wild crops.”

Potential organic producers must set forth an "organic system plan," which is "[a] plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes a written plan concerning all aspects of agricultural production or handling . . . ." It must describe the practices and procedures that the producer or handler will implement and maintain in its operation and explain how often these practices and procedures will be performed. Further, it must describe the recordkeeping system that a producer or handler will use in its operation to ensure compliance with the recordkeeping requirements for certified operations.

An organic system plan is submitted to a certifying agent. After review and approval of the plan and an on-site investigation, the agent decides whether the operation has met the requirements

and can be certified organic. The certification is then subject to periodic review and reevaluation.

Irradiation Labeling

In response to the 2006 *E.Coli* outbreak, on August 22, 2008 the FDA published a final rule allowing the use of irradiation of fresh iceberg lettuce and fresh spinach in order to control harmful bacteria and other microorganisms and keep longer without spoiling. The products that may be irradiated include loose, fresh iceberg lettuce and fresh spinach as well as bagged iceberg lettuce and spinach. However, the FDA requires that foods which have been irradiated bear the "radura" logo along with the statement "treated with radiation" or "treated by irradiation." Additionally, leafy greens that have been treated with irradiation are not prohibited from using the word “fresh” as part of their labeling and marketing scheme.

Conclusion

Because of the extensive range of food labeling requirements, it encompasses several specific areas of law. As a specialty crop producer, therefore, it is important to be familiar with all of those areas. For more information, please refer to the National Agricultural Law Center’s Reading Room on food labeling, which is available at:
http://www.nationalaglawcenter.org/readingrooms/foodlabeling/