

AN ACT  
RELATING TO ORGANIC COMMODITIES; AMENDING AND ENACTING  
CERTAIN SECTIONS OF THE ORGANIC COMMODITY ACT; IMPOSING A  
CIVIL PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 76-22-4 NMSA 1978 (being Laws 1990, Chapter 122, Section 4, as amended) is amended to read:

"76-22-4. DEFINITIONS. -- As used in the Organic Commodity Act:

A. "advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag or oral statement;

B. "agricultural commodity" means any distinctive type of agricultural, horticultural, floricultural, viticultural, vegetable or animal product of any class in its natural or processed state;

C. "assessment" means funds collected by the commission as provided for in the Organic Commodity Act;

D. "certification" means formal verification by a certifying agent that food articles are organically produced;

E. "certification handbook" means a collection of production and handling standards and rules adopted and promulgated by the commission;

F. "certifying agent" means the commission and any other person designated as a certifying agent by the United States department of agriculture;

G. "commission" means the organic commodity commission;

H. "food article" means any raw or processed agricultural commodity or product derived from livestock, including any fruits, vegetables, berries, eggs, seeds or dairy or grain products marketed in New Mexico for human or animal consumption;

I. "handle" means to sell, process, transport or package organically produced food articles;

J. "handler" means any individual in the business of handling organically produced food articles;

K. "handling operation" means any operation or portion of an operation that:

(1) receives or otherwise acquires organically produced food articles from the producer of those organically produced food articles;

(2) prepares organically produced food articles for market; or

(3) processes, packages, transports or stores organically produced food articles;

L. "label" means a commercial message in a printed medium that is affixed by any method to a receptacle,

including a container or package;

M. "materials list" means a list of approved and prohibited substances to be determined by the commission, in compliance with the national materials list, and set forth in the certification handbook;

N. "ombudsman" means a member of the commission, who has the function of facilitating communication between certified persons and the commission by addressing certified persons' complaints, participating in the fact-finding process, investigating complaints, arbitrating when possible and advocating for the certified person when necessary; except that the ombudsman shall not represent a certified person before the commission or any other fact-finding body;

O. "organic certification program" means a program designed to ensure that a product is produced, handled, transported and marketed in compliance with the Organic Commodity Act and the federal Organic Foods Production Act of 1990;

P. "organically certified farm" means a farm or portion of a farm that is certified by the commission as utilizing organic productive techniques as set forth by the commission in the certification handbook provided for in the Organic Commodity Act;

Q. "organically certified handling operation" means any handling operation or portion of any handling

operation that is certified by the commission and operated by organically certified handlers;

R. "organically produced label" means a label established for the purpose of indicating compliance with the certification standards promulgated pursuant to provisions of the Organic Commodity Act;

S. "organically produced" means food articles produced using organic productive techniques on an organically certified farm and handled by an organically certified handling operation;

T. "organic productive technique" means a system of farming that substitutes appropriate farm management practices for chemical and technological methods and enhances rather than replaces existing biological systems to ensure minimum adverse effects on human health and the environment;

U. "person" means any individual, group of individuals, corporation, association, cooperative or other entity;

V. "processing" means cooking, baking, heating, drying, mixing, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing or otherwise manufacturing food articles and includes packaging, canning, jarring or otherwise enclosing such food articles in a container;

W. "producer" means a person who engages in the

business of growing or producing organically produced agricultural commodities; and

X. "steward" means an individual appointed by the commission to oversee the verification component of the certification program."

Section 2. Section 76-22-7 NMSA 1978 (being Laws 1990, Chapter 122, Section 7, as amended) is amended to read:

"76-22-7. ORGANIC COMMODITY COMMISSION--DUTIES.--The commission:

A. shall adopt and promulgate certification standards for the production and handling of organically produced food articles in the state. The certification standards shall include agricultural commodities used but not consumed as foods by humans and animals. The standards shall be compiled in a certification handbook to be included in the annual report to the legislature;

B. shall conduct studies to increase commercial value of and discover new markets for organically produced food articles;

C. shall disseminate reliable information relative to market conditions, current prices and sources of supply and demand for organically produced food articles;

D. may sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred by the Organic Commodity Act;

E. may enter into contracts;

F. may appoint subordinate officers and employees of the commission, prescribe their duties and fix their compensation;

G. shall cooperate with local, state or national organizations or government agencies engaged in activities similar to that of the commission;

H. shall adopt, rescind, modify or amend regulations, orders and resolutions for the exercise of its powers and duties after providing public notice and the opportunity for public comment on the action;

I. shall adopt the federal materials list upon its promulgation and shall prepare a registration program for all purveyors of these materials and an assessment schedule for the purveyors of the class of materials appearing on that list; and

J. is designated as the "state organic program" pursuant to the United States department of agriculture's national organic program and, in that capacity, may:

(1) regulate all aspects of the organic agriculture marketplace in New Mexico;

(2) take all actions necessary to ensure that all agricultural products in New Mexico that are labeled or represented as "certified organic", "organic" or "made with organic ingredients" have been produced under a valid

certification issued by a certifying agent; and

(3) assume investigative and enforcement responsibilities relating to such labeled agricultural products, including products certified by a certifying agent other than the commission and labeled products not certified."

Section 3. Section 76-22-26 NMSA 1978 (being Laws 1990, Chapter 122, Section 26, as amended) is amended to read:

"76-22-26. LABELING. --

A. The commission shall establish a label to be affixed to agricultural products that have been produced on organically certified farms and have been handled by organically certified handlers.

B. The label shall state that a food article has been organically produced and shall bear the seal of the commission.

C. Except as otherwise provided in the Organic Commodity Act, the terms "organic", "organically produced", "certified organic", "certified organically grown", "natural", "naturally grown", "pesticide-residue free" or derivatives of these terms shall not be used by any person for advertising, labeling or otherwise affixing the terms to a food article or its container, unless the food article has been produced and marketed in compliance with the provisions

of the Organic Commodity Act and certified by a certifying agent.

D. The commission shall have the exclusive authority under the state certification program to approve the affixing of labels to food articles."

Section 4. Section 76-22-27 NMSA 1978 (being Laws 1990, Chapter 122, Section 27, as amended) is amended to read:

"76-22-27. VIOLATIONS AND ENFORCING AUTHORITY-- CIVIL PENALTY. --

A. In addition to a civil penalty that may be enforced pursuant to Subsection D of this section, any producer or handler of organically produced food articles who issues a false certification, attempts to have an organically produced label affixed to a food article that the producer or handler knows, or should have known, to have been produced in a manner that is not in compliance with the Organic Commodity Act or otherwise violates the purposes of the certification program, as determined by the commission, shall be subject to the following procedures and penalties:

(1) the commission shall cause notice of the violations to be given to the producer or handler having responsibility for the violation in the form of a complaint; any person so notified shall be given an opportunity to be heard under the rules prescribed by the commission. If the



commission finds no violation has occurred, it shall dismiss the complaint and notify the parties to the complaint;

(2) if at the conclusion of the hearing the commission finds that a violation has occurred, either in the presence or absence of the person notified, it shall enter findings to that effect and notify the parties to the complaint. If such a finding is made, the person shall not be eligible to receive certification for a period of five years with respect to any farm or handling operation in which the producer has an interest; and

(3) notwithstanding Paragraph (2) of this subsection, the commission may reduce or eliminate the period of ineligibility if the commission determines that modification or waiver would be in the best interest of the certification program.

B. No person shall be subject to the penalties and procedures described in Subsection A of this section for having violated the provisions of the Organic Commodity Act or the standards contained in the certification handbook if he possesses a guaranty that states that the food article is labeled in compliance with the Organic Commodity Act and the standards contained in the certification handbook.

C. The commission may apply for, and the court may grant, a temporary or permanent injunction restraining any person from violating or continuing to violate any of the

provisions of the Organic Commodity Act or any certification standard adopted and promulgated under that act, notwithstanding the existence of other remedies at law. The injunction shall be issued without bond.

D. Any person who, except in accordance with the provisions of the Organic Commodity Act and rules adopted pursuant to that act, knowingly represents, labels or sells a product as "certified organic", "organic", "made with organic ingredients" or similar language intended to convey the impression that the product is organically produced is subject to a civil penalty of not more than five thousand dollars (\$5,000) for each violation. Any penalties collected pursuant to this subsection shall be deposited in the organic market development fund."

Section 5. A new section of the Organic Commodity Act is enacted to read:

"CERTIFYING AGENTS--REPORTS TO COMMISSION.--A certifying agent, other than the commission, that certifies any food article in New Mexico as being organically produced shall:

A. simultaneous with its issuance, report to the commission any information regarding denials of certification, notifications of noncompliance, notifications of noncompliance correction, notifications of proposed suspension or revocation and notifications of suspension or

revocation sent to any person in New Mexico; and

B. on January 2 of each year, submit to the commission a list, including the name, address and telephone number of each operation granted certification in New Mexico during the preceding year. "

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