

USDA Request to Affirm Hydroponics Organic Labeling

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- The U.S. Department of Agriculture (USDA) has asked the Ninth Circuit to uphold a California federal judge's finding that it may continue to permit hydroponic growers to label their products as "organic," assuming that they meet relevant USDA requirements for "organic" certification. In 2019, the Center for Food Safety (CFS) submitted a petition to USDA for a proposed rulemaking that would exclude hydroponic produce from "organic" certification because the products are not grown in soil. USDA denied the 2019 petition, stating that the Agency's practices fully comply with the federal Organic Foods Production Act (OFPA), which doesn't explicitly prohibit certification of hydroponically grown food.
- In 2020, a group of consumer interest advocates, including CFS and traditional organic farmers, sued USDA in the Federal District Court for the Northern District of California, claiming that organic certification of hydroponic operations that do not work with or build soil is prohibited under OFPA. The US Court held that USDA could continue with the practice of allowing hydroponic growers to be certified and label their products "organic." CFS has appealed the Ninth Circuit decision, arguing that, "[t]he Organic Foods Production Act (OFPA)'s language is plain and mandatory: organic crop producers 'shall . . . foster soil fertility, primarily through the management of the organic content of the soil through proper tillage, crop rotation, and manuring.' 7 U.S.C. § 6513(b)."
- USDA counters that the statute does not clearly proscribe the organic certification of hydroponic crop production, noting that, "[t]here is no reason to conclude, and certainly no reason the department was required to conclude, that Congress forbade the organic certification of an entire category of crop production in that roundabout way." USDA posits that the soil requirement outlined in the CFS appeal is naturally read to apply to producers that do use soil in growing crops, not limiting organic certification and labeling to crops that are grown in soil. As a result, USDA has requested that the Ninth Circuit affirm the District Courts decision that the Agency may continue to allow hydroponic growers to label hydroponically grown food as organic, assuming that the other OFPA requirements are met.

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