

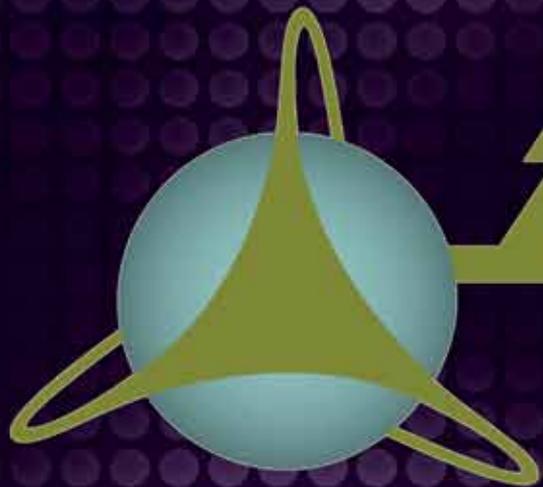
AB 856

AB 856 – CALIFORNIA'S NEW ORGANIC LAW

by Donald Lester

This article outlines the key components of the bill AB 856, which have ramifications outside of California.

In 2008, the California Department of Food and Agriculture (CDFA) investigated a California-based organic fertilizer manufacturing company that claimed its product was suitable for organic food production. The product had been approved as organic by a third-party reviewer, but the CDFA found the material to be adulterated. This revelation in the media created a backlash from the organics industry, environmental groups, consumers, the U.S. Department of Agriculture (USDA) and even Congress had hearings on the matter. The California Senate Subcommittee on Food and Agriculture conducted an oversight hearing and found gaps in CDFA's authority to deal with such an issue, so in February 2009 assembly bill AB 856 was introduced into the California State Legislature to fill gaps in CDFA's authority to ensure the integrity of organic input materials (OIM) sold in California.



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The measure was signed into law by the governor on January 1, 2010.

Although AB 856 is now officially on the books, the CDFA is still in the implementation phase where it

is setting up the infrastructure to handle the new program. Fortunately, this implementation phase gives organic growers some time to familiarize themselves with the new law. Perhaps the most important component of AB 856 is that all materials sold to be applied on California crops and fields for organic food production must be registered with the CDFA. These materials include lime, gypsum, manures, compost and other materials previously not required to undergo organic review and certification. Manufacturers of these ingredients who previously did not have to label their products must do so now in order to sell those products in California for organic food production. This includes OIM's for commercial organic food production as well as home and garden organic food

production. AB 856 also sets up new enforcement authority and fines for the CDFA to enforce compliance.

The reason why manures and composts are now regulated is because high levels of arsenic have been observed in chicken manure. The poultry industry uses arsenic-based compounds in chicken feed to promote growth, kill



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parasites that cause diarrhea and improve the pigmentation of chicken meat. In 2006 the Environmental Protection Agency (EPA) reduced the maximum contaminant levels of arsenic in tap water from 50 ppb down to 10 ppb. Even at 10 ppb the EPA estimates the risk of cancer is one in 2,000.

AB 856 requires that OIM labels be registered with the CDFA to ensure compliance with the USDA National Organic Program standards—a fee of \$500

per product will be assessed for a two year registration. Existing Organic Materials Review Institute (OMRI), Washington State Department of Agriculture Organic Foods Program (WSDA) or other organically approved product labels and supporting materials must be submitted to the CDFA for evaluation between January 1, 2011 and April 30, 2011. These labels will be reviewed by the CDFA and ready

for use in California by January 2012, the start of the two year registration period, which occurs only on even years. Label submissions will be made primarily through the new CDFA online fertilizer database, but paper hardcopies can be submitted. In order to submit

labels to the CDFA for consideration the manufacturer must have a current California fertilizer license.

It is important to note that the CDFA organic registration will now be required by law in California, while certifications by OMRI, WSDA or others will be optional. Since California is the largest producer of organic foods, it is expected that OMRI and WSDA organic registrations will diminish significantly over time, but at this point it is unclear if states other than California will recognize the CDFA organic certification.

Another important aspect of this law is that all manufacturers of materials for use on California organic food production fields must have their manufacturing facilities inspected every year—this also applies to manufacturers located outside of California. The CDFA is still in the implementation phase of AB 856, however, so many of the details about how this will be accomplished on a practical level are still being worked out.

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The current thinking is that third-party reviewers might be allowed to perform this activity for manufacturers outside of California.

One concern about AB 856 is that if California is going to take on the review of these materials the turnaround time for label reviews will be lengthened significantly, since the CDFA has not hired a large number of new investigators or reviewers to do the additional work. In October 2010 OMRI announced that it had passed the threshold of 2,000 certified or listed materials on its books, which gives you some idea of the size of the effort that the CDFA is taking on. And in a climate of staggering budget deficits, it is hard to imagine that more state employees will be hired to perform the additional work required.

There are many more details about AB 856 to be released in the coming months by the CDFA, but this article summarizes the core of the legislation and the key points that organic materials manufacturers need to know if they want to do business in California.



“California organic growers must be made aware that when they buy OIM products, OMRI and WSDA organic materials certifications will no longer be sufficient..”



California organic growers must be made aware that when they buy OIM products, OMRI and WSDA organic materials certifications will no longer be sufficient, and that CDFA-registered products will be the only OIM certification recognized in California from now on. The CDFA

OIM logo is still in the design phase, but it is expected to be released soon for use on CDFA-compliant product packaging and marketing materials. California-based organic growers will need to recognize this emblem and be sure it is on the products they buy for use on their organically certified fields.

Organic growers outside of California should expect to see the new CDFA emblem on the OIM's they purchase. For these growers the CDFA emblem will be optional, at least for now.

Opponents of AB 852 argue that the law is merely a tool for California to generate revenue for the state. Whether or not that is the case, many observers on the outside are watching this issue carefully. Depending on how the implementation of AB 856 goes, other states may follow California's model as well. **MY**

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