



## Tackling the Tough Questions

Dear Food Law Guy:

Is it necessary for food labels to receive prior approval from the Canadian Food Inspection Agency (CFIA)?

*Hannah in Huntsville, Ont.*

Dear Hannah:

There are two broad groups of food labels that must receive prior approval and be registered by the CFIA:

- Most labels intended for pre-packaged prepared edible meat products for domestic sale that come from federally registered meat and poultry establishments (there are a few exceptions); and
- All processed fruit and vegetable products from federally registered plants where grades, identity standards and/or prescribed container sizes exist in the Processed Product Regulations.

Note that these requirements relate solely to products from federally registered establishments. Many smaller provincial facilities impose no such requirement. Labels for single-ingredient meats that make an animal production claim (such as “raised without antibiotics” or “organic”) also require prior approval if they come from a federally registered establishment. Most consumers do not know that provincial facilities do not require this level of control. So, for example, “raised without antibiotics” would require meeting the full federal traceability rules for this claim, including a third-party audit, whereas provincial plants do not require such rigour and prior approval.

You have to be careful when looking at the second broad category. There is, of course, absolutely no logic on the matter of which fruits and vegetables have identity standards, and even less logic on which have mandatory standard container sizes. As a result, some jams and juice labels require prior approval and some do not.

Dear Food Law Guy:

I continue to be confused about the legal difference between a food additive and a processing aid. Can you help me?

*Julia in Johnson's Corners, Que.*

Dear Julia:

Welcome to the club. This is a confusing area. It's the subject of much controversy because the definitions overlap and there are a growing number of cases that seem to fall into the middle. The distinction is critical because the approval process for additives can take years and there can be major labelling

issues, whereas a processing aid can simply require a “no-objection letter” and there are usually no labelling problems.

In Canada, the definition of a food additive is broader than in the U.S. as it “means any substance the use of which results, or may reasonably be expected to result, in it or its by-products becoming a part of or affecting the characteristics of a food.” However, there are a number of exceptions. By comparison, processing aids are defined by the CFIA as “substances that are added to a food for a technological effect during processing and which are not present in the finished food product or are present at insignificant and non-functional levels. Note that food additives are not processing aids.”

So you can imagine, for instance, debating with Health Canada on whether 50 ppb is insignificant. This is another example of how food law is more a branch of administrative law than anything else, with a great deal of discretion and uncertainty necessary.

Dear Food Law Guy:

At my local farmers' market this spring tomatoes were being sold as “local.” When I asked the vendor how tomatoes could be grown in our area so early in the season he refused to provide a clear answer to my question. What's going on here?

*Oscar in Ottawa*

Dear Oscar:

Many “farmers' markets” early in the season are actually selling produce from countries to the south. The CFIA has received a number of complaints about this and has released a policy on the use of the term “local produce,” relying on the general prohibition in the *Food and Drugs Act* not to label or sell any food in a manner that is false, misleading or deceptive. In addition to the confusing definition of “local food” in the regulations (B.01.012), the CFIA issued its guidance that “local” or “locally grown” “shall mean that the domestic goods being advertised originated within 50 km of the place where they are sold.” However, the CFIA has exempted terms such as “Product of Nova Scotia,” “Foodland Ontario,” “Buy B.C.” or “Quebec Vrai,” for example, to describe fresh produce that is produced and grown within a province. So maybe your tomatoes were grown in Ontario after all, at Leamington, just 800 km away.

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