

**TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**  
**ARTICLE 6.1 STATE ORGANIC PROGRAM**  
(Notice published June 25, 2010)

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend, Title 3, Article 6.1 of the California Code of Regulations (CCR) sections 1391 and 1391.1. The Department also proposes to add the following sections to Title 3, Article 6.1 of the California Code of Regulations: 1391.2; 1392.3; 1391.4; 1391.5; 1391.6; 1391.7; and 1391.8.

**PUBLIC HEARING**

The Department will hold a public hearing starting at 10:00 a.m. on August 10, 2010 at the California Department of Food and Agriculture's Main Auditorium located at 1220 N Street, Sacramento, California. The Main Auditorium is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest/Policy Statement Overview. The Department requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit their written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 445-2427 or by e-mail to [spatton@cdfa.ca.gov](mailto:spatton@cdfa.ca.gov). The written comment period closes at **5:00 p.m. on August 9, 2010**. The Department will consider only comments received at the Department by that time. Submit comments to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

**AUTHORITY AND REFERENCE**

Sections 407, 46000, 46001, 46002, and 46018.1 of the Food and Agricultural Code authorize the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Sections 46000, 46001, 46002, 46016.1, 46018.1 of the Food and Agricultural Code.

Section 407 of the Food and Agricultural Code authorizes the Secretary of the

Department to adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which the Secretary is directed or authorized to administer or enforce.

Section 46000 of the Food and Agricultural Code, mandates, in part, the Secretary of the Department and county agricultural commissioners under the supervision and direction of the Secretary to enforce regulations adopted by the National Organic Program (NOP) (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and the California Organic Products Act of 2003 applicable to any person selling products as organic.

Section 46001 of the Food and Agricultural Code establishes, in part, that sections 46000 through 46029 (also referred to as the California Organic Products Act of 2003), shall be interpreted in conjunction with Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and regulations adopted by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec 6501 et seq.)).

Section 46002(a) of the Food and Agricultural Code mandates, in part, that all organic food or product regulations and any amendments to those regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.), that are adopted after that date, shall be the organic food and product regulations of this state.

Section 46002(b) of the Food and Agricultural Code authorizes the Secretary of the Department to prescribe conditions under which organic foods or other products not addressed by the National Organic Program may be sold in this state.

Section 46016.1 of the Food and Agricultural Code establishes, in part, the mandates for handling and filing complaints concerning suspected noncompliance with the California Organic Products Act of 2003. In addition, this section mandates that the organic complaint process in this state must also meet the complaint process outlined in regulations adopted by the National Organic Program.

Section 46018.1 of the Food and Agricultural Code authorizes the Secretary of the Department and agricultural commissioners to conduct a program of spot inspection to determine compliance with the California Organic Products Act of 2003.

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Proposed regulation section 1391 expresses the intent of Article 6.1 State Organic Program. The specific purpose of this proposed regulation is to clarify the intent of Article 6.1. Accordingly, the intent of Article 6.1 is to facilitate the sale of organic products in the State of California while maintaining regulatory control by means of spot inspections, investigations, and sampling.

Proposed regulation section 1391.1 adopts the National Organic Program's regulations governing the federal Organic Foods Production Act of 1990 by reference into the California Code of Regulations. The National Organic Program regulations may be found in the Code of Federal Regulations, Title 7, Part 205 et seq. The specific purpose of this regulation is to adopt the National Organic Program's regulations into the California Code of Regulations. The Department is statutorily mandated to enforce the National Organic Program's regulations. The California Organic Products Act of 2003 establishes that the regulations of the National Organic Program shall be the regulations of the state.

Proposed regulation section 1391.2 adopts the California Organic Products Act of 2003 by reference into the California Code of Regulations. The California Organic Products Act of 2003 consists of Sections 46000 through 46029 of the Food and Agricultural Code and Sections 110810 through 110959 of the Health and Safety Code. The specific purpose of this proposed regulation is to adopt the California Organic Products Act of 2003 into the California Code of Regulations. The Department is statutorily mandated to enforce the California Organic Products Act of 2003.

Proposed regulation section 1391.3 promulgates the statutory authority of the Department and county agricultural commissioners to conduct inspections, investigations, and sampling under the California Code of Regulations. The specific purpose of this proposed regulation is to establish the regulatory authority for the state, county agricultural commissioners, and/or the operation's accredited certifying agent to inspect all areas, products, and documentation related to agricultural products and ingredients that are produced, processed, stored, sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)."

Proposed regulation section 1391.4 details the authority and criteria of the Department, county agricultural commissioners, and the operation's accredited certifying agent to collect samples for laboratory testing. The specific purpose of this proposed regulation is to establish the regulatory authority and criteria for sample collection.

Proposed regulation section 1391.5 establishes the Department's mandates for complaint investigations. The specific purpose of this section is to specify the mandates for the assignment of complaint investigations concerning suspected noncompliance with the California Organic Products Act of 2003, National Organic Program regulations, and/or the federal Organic Foods Production Act of 2003.

Proposed regulation section 1391.6 requires organic registrants to notify the Department of any change in the information reported on their registration form within 14 days or prior to the sale of additional product. In addition, this section requires the registrant to pay an additional fee if the change requires a higher fee. The specific purpose of this regulation is to ensure that organic registrants do not sell organic product(s) prior to registering additional product with the state as mandated by Food

and Agricultural Code Section 46013.2.

Proposed regulation section 1391.7 was previously Section 1391 in the California Code of Regulations. The specific purpose of amending this regulation is for continuity purposes.

Proposed regulation section 1391.8 was previously Section 1391.1 in the California Code of Regulations. The specific purpose of amending this regulation is for continuity purposes.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) Create or eliminate jobs within California;
- (2) Create new businesses or eliminate existing businesses within California; or
- (3) Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

### **EFFECT ON SMALL BUSINESS**

The Department has initially determined that the proposed changes to the regulations would result in no added costs to small businesses affected by these proposed changes. The proposed changes allow the Department to facilitate the sale of organic products within the State of California while maintaining sufficient regulatory control, by

means of spot inspections, investigations, and sampling, to determine compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and the California Code of Regulations.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has been otherwise identified and brought to the attention of the Department would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Brian Cote, Special Investigator  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Brian Cote at the above address.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Suite 220, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of

reasons, meeting minutes from various California Organic Products Advisory Committee meetings, Title 7, Part 205 of the Code of Federal Regulations, the California Organic Products Act of 2003 (Food and Agricultural Code sections 46000 through 46029 and Health and Safety Code sections 110810 through 110959), California Department of Food and Agriculture Press Release #10-007, and a summary of issues discussed at CDFA's organic listening sessions entitled "Response to Organic Listening Sessions." Copies may be obtained by contacting Brian Cote at the address or phone number listed on the previous page.

#### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Brian Cote at the address provided on the previous page. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Brian Cote at the address provided on the previous page.

#### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at: <http://www.cdfa.ca.gov/is/Regulations.html>

DEPARTMENT OF FOOD AND AGRICULTURE

6/15/2010

Date

ORIGINAL SIGNED BY

Nate Dechoretz, Deputy Secretary