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**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS**

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**TITLE 3. FOOD AND AGRICULTURE
DIVISION 3. ECONOMICS
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION
SUBCHAPTER 4. FRESH FRUITS, NUTS AND VEGETABLES
ARTICLE 6.1. STATE ORGANIC PROGRAM ~~APPEAL AND MEDIATION~~
PROCEDURES**

INTENT

§ 1391. Intent.

The intent of this article is to facilitate the sale of organic products within the state while maintaining sufficient regulatory control by means of spot inspections, investigations, and sampling, to determine compliance with the provisions of the Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.

Note: Authority cited: Sections 407, 46000, 46001, 46002, 46016.1(a), 46016.1(e), and 46018.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

ADOPTION OF NOP REGULATIONS BY REFERENCE

§ 1391.1. Adoption of National Organic Program Regulations by Reference.

The regulations governing federal Organic Foods Production Act provisions in the U.S. Government Code of Federal Regulations (CFR), Title 7, Code of Federal Regulations Part 205, as published in the Federal Register, are hereby adopted by reference.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code. Reference: Section 205, Title 7, Code of Federal Regulations, Section 401, Food and Agricultural Code.

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ADOPTION OF CALIFORNIA ORGANIC PRODUCTS ACT OF 2003 BY REFERENCE

§ 1391.2. Adoption of California Organic Products Act of 2003 by Reference.

The statutes governing the California Organic Products Act of 2003 in the Food and Agricultural Code, Sections 46000 through 46029, are hereby adopted by reference.

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

INSPECTION AND SAMPLING AUTHORITY

§ 1391.3. Organic Inspection and Sampling Authority.

- (a) All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)" shall be made accessible by production or handling operations for examination by the Department, county agricultural commissioner, or the operation's accredited certifying agent.
- (b) The Department, county agricultural commissioner, or accredited certifying agent may require preharvest or postharvest testing of any agricultural input used or agricultural product to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)." Sampling for analysis shall be conducted by the state, county agricultural commissioner, or the operation's accredited certifying agent at the official's or certifying agent's own expense.
- (c) The Department, county agricultural commissioner, or accredited certifying agent may, at any time, enter, inspect, and/or sample any of the following or related items in order 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 state regulations:
 - (1) Fields, areas, structures, and greenhouses where products or inputs may be produced, processed, handled, or stored.
 - (2) Equipment, including protective clothing and equipment, used to store, produce, process, transport, or handle commodities.
 - (3) Dressing areas and other facilities used by employees.
- (d) The Department and county agricultural commissioners shall have the right to inspect documentation and records pertaining to the production, processing, storage, transportation, or handling of commodities identified

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as “100 percent organic,” “organic,” and “made with organic (specified ingredients or food groups).” Such records may include and are not limited to the following:

- (1) Organic systems plan(s), if applicable.
 - (2) The quantity harvested from each field or management unit, the size of the field management unit, the field number, and the date of harvest.
 - (3) Unless the livestock, fowl, or fish was raised or hatched by the producer, the name and address of all suppliers of livestock, fowl, or fish and the date of the transaction.
 - (4) For each field or management unit, all substances applied to the crop, soil, growing medium, growing area, irrigation or post harvest wash or rinse water, or seed, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.
 - (5) All substances administered and fed to the animal, including all feed, medication and drugs, and all substances applied in any area in which the animal, milk, or eggs are kept, including the quantity administered or applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.
 - (6) All substances applied to the product or used in or around any area where product is kept including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.
 - (7) Except when sold to the consumer, the name and address of all persons, to whom or from whom the product is sold, purchased or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction.
 - (8) Any other records or documents deemed necessary to demonstrate compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.
- (e) Sample integrity shall be maintained through the chain of custody, and residue testing shall be performed in an accredited laboratory.
- (f) Chemical analysis shall be made in accordance with the methods described in the most current edition of the Official Methods of Analysis of the Association of Analytical Communities (AOAC) International or other current applicable validated methodology determining the presence of contaminants in agricultural products.
- (g) Results of all analyses performed under this section shall be provided to the Department by the testing facility.
- (h) When test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed National Organic

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Program, Food and Drug Administration, or Environmental Protection Agency regulatory tolerances, the Department, county agricultural commissioner, or accredited certifying agent shall report such data to the state and federal health agency whose regulatory tolerance or action level has been exceeded.

- (i) County agricultural commissioners that conduct certifying activities shall not be assigned inspections, investigations, or conduct sampling of operations that are certified by another accredited certifying agent.

Note: Authority cited: Sections 407, 46000, 46001, 46002, and 46018.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

SAMPLE COLLECTION

§ 1391.4. Sample Collection for Laboratory Analysis.

- (a) All samples for laboratory testing shall be collected by the state, county agricultural commissioner, or the accredited certifying agent authorized to collect samples for the purpose of testing under this article.
- (b) The Department, county agricultural commissioner, or accredited certifying agent may determine which samples shall be collected, including, but not limited to the type, amount, size, or volume.
- (c) A duplication of each sample may be taken and, if taken, shall be collected at the same time as the official sample.
- (d) Each sample collected shall include an identifying number, the date and time collected, the name of the individual collecting the sample, the address where collected, a detailed description of the product, its location on the premises, and any other information determined to be necessary.
- (e) Individual samples shall be enclosed in containers appropriate for the type of sample collected utilizing methods that prevent direct contact with contaminants.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

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COMPLAINT INVESTIGATIONS

§ 1391.5. Complaint Investigations.

- (a) Any person may file a complaint with the Department concerning suspected noncompliance with the California Organic Products Act of 2003, as provided in Section 46000 or regulations adopted by the National Organic Program.
- (b) The Department shall commence a complaint investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products. Upon conclusion of a complaint investigation, the Department shall provide a report of findings and enforcement action taken, if any, to the complainant within 60 days, if the complainant makes his or her identity available.
- (c) The Department's complaint process shall meet the complaint process outlined in regulations adopted by the National Organic Program.
- (d) The Department may refer cases to the National Organic Program under these or other conditions:
 - (1) Inability to resolve a case.
 - (2) Lack of expertise to resolve a case.
 - (3) Lack of resources or authority to pursue a civil action.
 - (4) If the case concerns issues outside the Department's jurisdiction.
 - (5) Inputs not currently addressed by California state law.
 - (6) Issues involving National Organic Program policy issues.
- (e) The county agricultural commissioner or accredited certifying agent shall provide a final report of inspection to the Department upon completion of an assigned investigation. If an accredited certifying agent fails to initiate appropriate action, the complaint and the agent's actions or inactions shall be referred to the National Organic Program.

Note: Authority cited: Sections 407, 46000, 46001, 46002, 46016.1(a), and 46016.1(e), Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

REGISTRATION

§ 1391.6. Amended Registrations.

A registrant shall notify the Department of any change in the information reported on the registration form within 14 days or prior to the sale of additional product

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and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.

Note: Authority cited: Sections 407, 46000, 46001, 46002, Food and Agricultural Code. Reference: Sections 401 and 46013.2(c), Food and Agricultural Code.

APPEALS

§ 1391.7. Appeal of Denial, Suspension or Revocation of Organic Certification.

- (a) A certification agent or the Secretary may propose denial, suspension or revocation of the organic certification of agricultural production and handling operations consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.662.
- (b) An applicant for certification may appeal a certification agent's or Secretary's notice of denial of certification, and a certified operation may appeal a certification agent's or Secretary's notification of the proposed suspension or revocation, to the Secretary consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.681.
- (c) Upon receipt of the appeal, the Secretary will evaluate the proposal of the certification agent or Secretary to deny, suspend or revoke a certification in order to determine if there is sufficient evidence to proceed to initiate formal administrative action to do so.
 - (1) A decision by the Secretary to decline to initiate a formal administrative proceeding shall be deemed a granting of the appeal, and the Secretary shall communicate the decision in writing to the appellant and the certification agent.
 - (2) A decision by the Secretary to proceed to initiate a formal administrative proceeding shall be deemed a denial of the appeal, and the service of the accusation shall be construed as the communication of the denial to the appellant and the certification agent.
- (d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.

MEDIATION

§ 1391.18. Mediation of Denial, Suspension or Revocation of Organic Certification.

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- (a) If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, pursuant to 1391(a), they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, pursuant to 1391(c), they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement. Mediation process must be consistent with Title 7, Code of Federal Regulations, Section 205.663.
- (1) Any settlement agreement shall be in compliance with the requirements of the State Organic Program.
- (2) The parties shall submit any proposed settlement agreement to the Secretary for review.
- (3) Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.
- (b) The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation or applicant for certification may voluntarily agree upon the choice of a mediator that is not on the list.
- (c) Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation or applicant for certification. The mediator, the certification agent and the certified operation or applicant for certification shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in conducting mediation by the Secretary as agreed to within the organic program contract or memorandum of understanding.
- (d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.