

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3. California Code of Regulations

Article 6.1 State Organic Program

INITIAL STATEMENT OF REASONS

California Food and Agricultural Code Sections 46000 and 46002(a) task the Secretary of the California Department of Food and Agriculture (CDFA) and county agricultural commissioners under the supervision and direction of the CDFA Secretary with enforcing the provisions of the California Organic Products Act of 2003 (COPA) and regulations adopted by the United States Department of Agriculture's (USDA) National Organic Program pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

Under the COPA (Food and Agricultural Code Sections 46000-46029), the Legislature authorized the CDFA Secretary to prescribe conditions under which organic foods or other products not addressed by the National Organic Program may be sold in the State of California. These proposed additions to the California Code of Regulations are intended 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 (COPA), the federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.

Upon passage of the COPA, the Legislature established that all National Organic Program regulations in effect on January 1, 2003 or adopted after that date, shall be the organic food and product regulations of the State of California. In accordance with Food and Agricultural Code Section 46002(a), the Department is proposing to adopt the National Organic Program's regulations (Code of Federal Regulations, Title 7, Sec. 205 et seq.) by reference. Adopting the National Organic Program's regulations by reference will ensure consistent application and uniformity of National Organic Program standards throughout the State of California. In addition, as the lead federal agency responsible for enforcing and implementing organic production and handling standards, incorporating the National Organic Program's regulations by reference will ensure the seamless application of enforcement activities designed to ensure the integrity of organic products for both the organic consumer and industry.

In December 2008, CDFA's California State Organic Program (SOP), the California Organic Products Advisory Committee, and participants from the organic industry formed the Organic Products Technical Planning Committee. The Organic Products Technical Planning Committee was tasked with reviewing and evaluating the SOP's policies, procedures, and responsibilities under the COPA and National Organic Program regulations. The Department, the Organic Products Technical Planning Committee, and the California Organic Products Advisory Committee determined that it was necessary for the SOP to establish a spot inspection program to ensure that

organic production and handling operations are following the provisions of the Food and Agricultural Code and the Code of Federal Regulations; implement technical changes to the SOP's registration program to ensure better service; develop a system to ensure that complaints related to organic products are investigated in a timely manner; and authorize CDFA personnel, county agricultural commissioners, and the operation's accredited certifying agent to collect samples as part of routine market surveillance and complaint investigations. These proposed regulations would allow CDFA personnel, county agricultural commissioners, or the operation's accredited certifying agent to collect samples for laboratory analysis during the investigative process in order to determine compliance with the COPA and the Code of Federal Regulations. In addition, these proposed regulations would establish the methodology for sample collection.

Food and Agricultural Code Section 46018.1 provides that the CDFA Secretary and county agricultural commissioners may conduct a program of spot inspections to determine compliance with the COPA. These proposed regulations will allow the Department, county agricultural commissioners, and the operation's accredited certifying agent to examine all 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)." Spot inspections will help ensure the integrity of organic products produced, processed, stored, sold, labeled, or represented as organic in the State of California.

The Department, the Organic Products Technical Planning Committee, and the California Organic Products Advisory Committee determined that it is necessary to promulgate regulations which establish the procedures and regulatory authority for conducting complaint investigations. These proposed regulations provide clarification in regard to Food and Agricultural Code Section 46016.1, which establishes the authority and mandates for complaint investigations. These proposed regulations would establish timelines for commencing a complaint investigation for fresh food and other products, establish the conditions for complaint referrals, and mandate that a county agricultural commissioner or the operation's accredited certifying agent shall provide a final report of inspection to the Department upon completion of an assigned investigation.

The Food and Agricultural Code mandates that organic registrants notify the CDFA Secretary of any change in the information reported on their registration within a reasonable period of time. These proposed regulations would include a clarifying and specific timeframe for notifying the CDFA Secretary of any change in the information reported on the organic registration form. The Department has determined that 14 days is a reasonable period for reporting these changes to the CDFA Secretary.

The Department is also proposing to renumber California Code of Regulations, Title 3, Sections 1391 and 1391.1 to 1391.7 and 1391.8, respectively. The actual text of these regulations will not be modified and are proposed to be renumbered for consistency purposes only. As currently provided in the California Code of Regulations, Title 3, Sections 1391 and 1391.1 provide the regulatory authority for appeal of denial, suspension, or revocation of organic certification and the mediation of denial,

suspension, or revocation of organic certification, respectively.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department is relying upon the following documents pertaining to the proposed regulatory changes:

- California Organic Products Advisory Committee meeting minutes dated November 17, 2009.
- California Organic Products Advisory Committee meeting minutes dated January 21, 2010.
- CDFA Press Release #10-007 announcing three listening sessions to discuss proposed regulations for the State Organic Program. The press release was distributed to all organic registrants (approximately 3,000), all accredited certifying agents operating in California, and various stakeholders. The listening sessions were held as follows:
 - February 9, 2010, California Department of Food and Agriculture, Main Auditorium, 1220 N Street, Sacramento, CA 95814
 - February 17, 2010, Monterey Agricultural Commissioner's Office, 1428 Abbott Street, Ag Center Conference Room, Salinas, CA 93901
 - March 3, 2010, Los Angeles Agricultural Commissioner's Office, 11012 So Garfield Avenue, South Gate, CA 90280
- Summary of issues discussed at CDFA's organic listening sessions.
- California Organic Products Advisory Committee meeting minutes dated April 30, 2010.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the Department in regard to the proposed rulemaking as written.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any alternatives that would lessen any adverse impact on small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING 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. This is based on the fact stated in the "SMALL BUSINESSES IMPACT STATEMENT."