

**DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED 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

§ 1391. Intent.

The intent of this article is 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 state regulations.

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

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

The regulations governing federal Organic Foods Production Act of 1990 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.

§ 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 and the Health and Safety Code, Sections 110810 through 110959, are hereby adopted by reference.

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Sections 110811 and 110812, Health and Safety Code. Reference: Section 401, Food and Agricultural Code.

§ 1391.3. Organic Inspection and Sampling Authority.

- (a) 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)” shall be made accessible by production or handling operations for examination by the state, county agricultural commissioner, or the operation’s accredited certifying agent.
- (b) The state, county agricultural commissioner, or the operation’s accredited certifying agent may require preharvest or postharvest testing of any agricultural product, ingredient, or input 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.
- (c) The state, county agricultural commissioner, or the operation’s accredited certifying agent may enter, inspect, and sample any of the following or related areas and items 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 state 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 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) When laboratory test results indicate a specific agricultural product contains substances or environmental contaminants that exceed state or federal regulatory tolerances, the state, county agricultural commissioner, or the operation's accredited certifying agent shall report such data to the state and federal agency whose regulatory tolerance or action level has been exceeded.

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

§ 1391.4. Sample Collection for Laboratory Analysis.

- (a) All samples for laboratory testing shall be collected by the state, county agricultural commissioner, or the operation's accredited certifying agent for the purpose of testing under this article.
- (b) The state 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.

- (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 identifying 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.

§ 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, National Organic Program regulations, or the federal Organic Foods Production Act of 1990.
- (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 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.
- (d) The 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. 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, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

§ 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 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.

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

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

§ 1391.48. Mediation of Denial, Suspension or Revocation of Organic Certification.

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