

DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS  
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

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture (the Department) proposes to amend the California Code of Regulations (CCR), Title 3, Division 3, sections 1391, 1391.1, 1391.3, and add section 1391.7.

**PROBLEM STATEMENT**

The State Organic Program (SOP) enforces the California Organic Food and Farming Act (COFFA), formerly the California Organic Products Act of 2003. These laws and regulations protect consumers, producers, handlers, processors, and retailers by establishing standards under which agricultural products and food may be labeled and/or sold as “organic.” Every person engaged in this state in the production or handling of raw agricultural products sold as organic shall register with the Secretary before the first sale of the product. In addition, all processors of organic agriculturally derived products that are not required to register with the California Department of Public Health (CDPH), shall register with the Secretary. Each registrant shall annually renew the registration with the Secretary, unless no longer engaged in the activities requiring the registration.

In conjunction with the California Organic Products Advisory Committee (COPAC), the SOP strives to make continual improvements to its statewide organic program. As a result of this collaboration towards continued success, under the direction of the Secretary, an ad hoc committee was established. This committee; the Organic Stakeholder Work Group (OSWG) was comprised of a diverse group of 23 representatives from several sectors including organic growers, distributors, producers, certifiers, trade associations, a County Agricultural Commissioner and state and federal agencies including representatives from the National Organic Program. Through a series of four regionally held meetings throughout the state, the group developed a series of recommendations with the intent to maximize the efficiency and responsiveness of the SOP.

On January 1, 2017, AB 1826 was enacted; renaming the California Organic Products Act of 2003 to the California Organic Food and Farming Act (COFFA), and reducing the amount of information the SOP could collect from organic operations for registration. The SOP has since received feedback from the organic industry, indicating the reduction in required organic registration information, specifically commodity and acreage data, limits the ability of the SOP to enforce organic regulations. In response to this feedback, at the annual January 2017 COPAC meeting, the COPAC Chairperson along with the Department, requested the formation of a subcommittee; to solicit input for expanding the information that the SOP could collect for organic registration.

Upon conclusion of the meeting, COPAC formed a Technical Subcommittee for the purpose of reviewing the value of expanding the commodity categories, identifying commodity information required for registration, and the value of reinstating the collection acreage and aggregate commodity gross sales information, used for organic registration (enforcement, administration, reporting, and marketing purposes). The Subcommittee also evaluated current processes and procedures. The COPAC Technical Subcommittee consisted of producers, market managers, agricultural commissioners, certifiers, and industry affiliates. The COPAC Technical Subcommittee and the SOP spent a significant amount of time and effort reviewing the information required from organic operations for registration with CDFA.

The COPAC Technical Subcommittee advised the COPAC members on their findings and recommendations; COPAC in turn recommended regulatory changes to alleviate deficiencies in the commodity categorical information collected for organic registration, and to reinstate the collection of acreage and commodity gross sales information.

These regulatory changes are needed to remove references to the California Organic Products Act of 2003, and to allow the SOP to conduct effective enforcement, reporting, and outreach and education activities.

## **PURPOSE**

This regulatory action is intended to interpret and make specific the recent statutory changes incorporated under AB 1826 (Stone) (Chapter 403, Statutes of 2016). It is intended to protect the integrity of organic products sold in California, promote consumer confidence in the organic industry, enhance and expand outreach and education to organic stakeholders, and ensure that the organic product supply chain is free of fraud, deception, and mislabeling. Promulgating regulations to interpret and make specific recent statutory changes enhances the ability of the SOP to enforce organic requirements, and is determined to be the most effective mechanism to protect and promote the organic industry.

## **BENEFITS**

Addressing changes in statute through regulatory action will assist in clarifying and making specific the requirements for organic registration. This will ensure that County Agricultural Commissioners and the Department are able to obtain specific information to conduct enforcement and investigate claims of fraudulent activities in a collaborative and seamless manner. The benefits of this regulatory action include protecting the integrity of organic products sold in California, promoting consumer confidence in the organic industry, enhancing and expanding outreach and education to organic stakeholders, and ensuring that the organic product supply chain is free of fraud, deception, and mislabeling. Promulgating regulations to interpret and make specific recent statutory changes also enhances the ability of the SOP to enforce organic requirements, and is determined to be the most effective mechanism to protect and promote the organic industry.

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):**

**Section 1391. Intent.**

Is amended to include an outreach and education component to the SOP and to remove the reference to the California Organic Products Act of 2003 and replace it with the California Organic Food and Farming Act.

This change is necessary to align with statutes promulgated under AB 1826.

**Section 1391.1. Organic Inspection and Sampling Authority.**

**Subsection 1391.1(c)** is amended to remove the reference to the California Organic Products Act of 2003 and replace it with the California Organic Food and Farming Act.

This change is necessary to align with statutes promulgated under AB 1826.

**Subsection 1391.1(d)(8)** is amended to remove the reference to the California Organic Products Act of 2003 and replace it with the California Organic Food and Farming Act.

This change is necessary to align with statutes promulgated under AB 1826.

**Section 1391.3. Complaint Investigations.**

**Subsection 1391.1(a)** is amended to remove the reference to the California Organic Products Act of 2003 and replace it with the California Organic Food and Farming Act.

This change is necessary to align with statutes promulgated under AB 1826.

**Section 1391.7. Registration Requirements.**

The Department proposes to add section 1391.7, to expand the minimum information required for organic registration. This will increase and make specific the commodity categories reported for registration, and allow for the collection of acreage by commodity, and aggregate commodity gross sales information; enhancing the ability of the SOP to confirm whether organic registrants are able to grow the organic products they are selling. Previously, organic operations were not required to provide this information.

This change is necessary to correspond with current statutes under FAC 46013.1.

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

The Department relied upon the following documents in establishing this proposed rulemaking action:

- A Recommendation Letter from the California Organic Products Advisory Committee (COPAC) to the Secretary

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

### Purpose

The purpose of this proposed regulatory action is to interpret and make specific the recent statutory changes incorporated under AB 1826 (Stone) (Chapter 403, Statutes of 2016). This regulatory action is intended to protect the integrity of organic products sold in California, promote consumer confidence in the organic industry, enhance and expand outreach and education to organic stakeholders, and ensure that the organic product supply chain is free of fraud, deception, and mislabeling. Promulgating regulations to interpret and make specific recent statutory changes enhances the ability of the SOP to enforce organic requirements, and is determined to be the most effective mechanism to protect and promote the organic industry.

### The Creation or Elimination of Jobs Within the State of California

The proposed amendments to Section 46013.1 are designed to improve the SOP's ability to enforce organic regulations, by providing additional commodity and acreage information. There will be no significant changes to current industry practices as they pertain to organic production. Therefore, the Department has determined that this regulatory proposal will not have an impact on the creation or elimination of jobs in the State of California.

### The Creation of New Businesses or the Elimination of Existing Businesses, Expansion of Businesses doing Business within the State of California

This amendment requires organic registrants to provide more specific commodity information and acreage information, and only affects the amount of information provided to the SOP. Therefore, the Department has determined that this regulatory action will not have a significant impact on the creation of new businesses or the elimination of existing businesses, and expansion of businesses doing business in the State of California.

### Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed rulemaking will have no impact on the protection of public health, worker safety, and the State's environment. For additional benefit analysis, please see page 2.

## **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Department has initially determined that these proposed changes to the regulations would not have a significant adverse economic impact directly affecting businesses including the ability of California business to compete with businesses in other states. This regulatory action is intended to interpret and make specific the recent statutory changes incorporated under AB 1826 (Stone) (Chapter 403, Statutes of 2016). It is intended to protect the integrity of organic products sold in California, promote consumer confidence in the organic industry, enhance and expand outreach and education to

organic stakeholders, and ensure that the organic product supply chain is free of fraud, deception, and mislabeling. Promulgating regulations to amend recent statutory changes enhances the ability of the SOP to enforce organic requirements, and is determined to be the most effective mechanism to protect and promote the organic industry.

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

The Department has not identified any reasonable alternatives to the proposed action and no adverse impacts to small businesses are expected as a result of this proposed action.