

**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**

July 18, 2017

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5345 or by e-mail to steve.patton@cdfa.ca.gov. The written comment period closes at **5:00 p.m. on September 11, 2017**. The Department will consider only comments received at the Department by that time. Submit comments to:

Steve Patton, Branch Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5030; Fax: (916) 900-5345

AUTHORITY AND REFERENCE

Food and Agricultural Code (FAC) section 14 authorizes the Department to adopt rules and regulations in accordance with the Administrative Procedure Act. Additional authority vested in the FAC grants the Department Secretary the authority to amend or repeal rules and regulations.

FAC section 407 authorizes the Secretary of the Department to adopt such regulations as are reasonably necessary to carry out the provisions of the FAC which the Secretary is directed or authorized to administer or enforce.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

This rulemaking action amends Title 3, Division 3, Chapter 1, Subchapter 4, Article 6.1; sections 1391 Intent, 1391.1 Organic Inspection and Sampling Authority, 1391.3 Complaint Investigations, and adds section 1391.7 Registration Requirements. Specifically, this rulemaking action clarifies the commodity categories, makes specific the acreage information required for organic registration, and makes aggregate gross sales a requirement for registration.

FAC section 46000 authorizes that this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code shall be known and may be cited as the California Organic Food and Farming Act.

The secretary and county agricultural commissioners under the supervision and direction of the secretary shall 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 this act applicable to any person selling products as organic.

FAC section 46001 authorizes that this chapter 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.)).

FAC section 46002 authorizes 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 in effect on the date this bill is enacted or that are adopted after that date, shall be the organic food and product regulations of this state.

The secretary may, by regulation, prescribe conditions under which organic foods or other products not addressed by the National Organic Program may be sold in this state.

FAC section 46004.1(b) authorizes that “Act” means the California Organic Food and Farming Act. It also means the federal organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.).

FAC section 46013.1(d)(1) authorizes that the information provided on the registration form shall include all of the following:

The nature of the registrant’s business, including the categorical products produced, handled, or processed that are sold as organic. For the purposes of registration, organic products shall be reported in accordance with the following specified categories unless the secretary, in consultation with the California Organic Products Advisory Committee,

establishes different categories.

FAC sections 46013.1(e)(1) through 46013.1(e)(6) establish the fee structure and specifies, in part, the types of operations that must register with the SOP and pay a fee. These regulations may include provisions to ensure organic integrity, while maintaining quality and wholesomeness of the products, and ensuring that the selling activities are conducted without fraud, deception, or misrepresentation.

The California State Organic Program ensures that organic producers, and those engaged in the marketing and selling of organic products are complying with organic program statutes and regulations, which are in place to ensure the integrity of the organic supply chain from production to final sale. (There are currently 4,500 registered organic operations in California). These statutes and regulations are intended to promote consumer confidence in the organic industry by ensuring that production and selling activities are conducted without fraud, deception, or misrepresentation.

On September 21, 2016, Assembly Bill (AB) 1826 (Stone) (Chapter 403, Statutes of 2016) was enacted. This measure modified various sections of the FAC related to organic program registration, administration, and enforcement. Specifically, this bill reduced the number of commodity categories, the types of operations required to register, and the information from organic operations that are required for registration. These changes bring the need for regulatory action to amend existing regulations with the newly enacted statutes provided in AB 1826 (Stone) (Chapter 403, Statutes of 2016). This action provides the following:

- Expansion of the commodity categories required for organic registration, in order to obtain more accurate and relevant information for enforcement and reporting purposes.
- Adding the collection of acreage by commodity, to provide confirmation that what is being sold as organic can be supported by what is being grown.
- Adding the collection of total gross sales to provide clarity that an aggregate of total gross sales is required, and not gross sales for each commodity.

Benefits of the Proposed Action: This proposed 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 and relevant information to conduct enforcement and investigate claims of fraudulent activities, in a collaborative and seamless manner. The benefits of this proposed regulatory action include increased consumer confidence, the promotion of a fair and equitable marketplace for organic producers and market operators, and greater collaboration among state and county partners. This regulatory action is intended to protect and promote the organic industry.

CONSISTENCY EVALUATION

The Department has determined that this proposed regulatory action is not inconsistent with existing regulations. After conducting a review for any regulations that would relate

to or affect this area, the Department has concluded that these are the only regulations that concern the Organic Program.

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 business: 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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Department concludes that it is: (1) likely that the proposal will not create or eliminate jobs and not eliminate existing business; (2) likely that this proposal will not create new business or expand current business opportunities; (3) likely that this proposal will not eliminate jobs; (4) Also, enhanced enforcement activities will protect consumers and the industry, and assure that consumers are purchasing organic produce. Finally, this proposed rulemaking will have no impact on the general public and protection of public health and safety.

Significant effect on housing costs: None.

SMALL BUSINESS DETERMINATION

The Department has initially determined that the proposed changes to the regulations would have no significant impact directly affecting small businesses. All organic operations would be operating under the same regulatory structure with regards to the regulatory changes.

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

otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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, Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5030; Fax: (916) 900-5345

The backup contact person for these inquiries is:

Danny Lee, Supervising Special Investigator
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 900-5030; Fax: (916) 900-5345

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 Danny Lee 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: 2800 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. 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, and the initial statement of reasons. Copies may be obtained by contacting Danny Lee at the address or phone number listed previously.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may amend 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 Danny Lee at the address listed above. 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 Danny Lee at the address listed previously.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

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