

# State of California

## CALIFORNIA ORGANIC PRODUCTS ACT OF 2003

Health and Safety Code Sections 110810-110959  
Food and Agricultural Code Sections 46000-46029

### **HEALTH AND SAFETY CODE SECTIONS 110810-110959**

#### §110810.

This article shall be known, and may be cited as, the California Organic Products Act of 2003.

#### §110811.

This article shall be interpreted in conjunction with Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code and the regulations promulgated 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.)).

#### §110812.

The director shall enforce regulations promulgated by the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), provisions of this article, and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

#### §110815.

Unless otherwise defined pursuant to the National Organic Program, the following words and phrases, when used in this article, shall have the following meanings:

- (a) "Animal food" means any food intended to be fed to any household animal, including, but not limited to, cats, or dogs and other carnivores. It does not include "feed" intended for livestock as defined in Section 205.2 of Title 7 of the Code of Federal Regulations.
- (b) "Director" means the Director of the Department of Health Services.
- (c) "Enforcement authority" means the governmental unit with primary enforcement jurisdiction, as provided in Section 110930.
- (d) "Handle" means to sell, process, or package agricultural products.
- (e) "Handler" means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.
- (f) "Handling operation" means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products, that (1)

receives or otherwise acquires agricultural products and (2) processes, packages, or stores agricultural products.

- (g) "NOP" means the National Organic Program established pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.
- (h) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.
- (i) "Prohibited materials" means any materials prohibited under regulations adopted by (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)). For products not covered by the National Organic Program, prohibited materials are anything not on the approved list.
- (j) "Secretary" means the Secretary of the California Department of Food and Agriculture.
- (k) "Sold as organic" means any use of the terms "organic," "organically grown," or grammatical variations of those terms, whether orally or in writing, in connection with any product grown, handled, processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any product and any ingredient in a multi-ingredient product.
- (l) "USDA" means the United States Department of Agriculture.

#### §110818.

Water, including substances dissolved in water, shall not be a prohibited material, even if it contains incidental contamination from a prohibited material, if the prohibited material was not added by, or under the direction or control of, the person in control of the product.

#### §110820.

Except as otherwise provided in this article, no product shall be sold as organic pursuant to this article unless it is produced according to regulations promulgated by the NOP, and consists entirely of products manufactured only from raw or processed agricultural products except as follows:

- (a) Water, air, and salt may be added to the product.
- (b) Ingredients other than raw or processed agricultural products may be added to the product if these ingredients include nonagricultural substances or nonorganically produced agricultural products produced in a manner consistent with, or which are on the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the NOP and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

§110825.

Materials acceptable in this state are those outlined by regulations promulgated by the NOP and the provisions of this article.

§110827.

No aquaculture, fish, or seafood product, including, but not limited to, farmed and wild caught species, shall be labeled or represented as "organic" until formal organic certification standards have been developed and implemented by the United States Department of Agriculture's National Organic Program or the California Department of Food and Agriculture.

§110830.

- (a) No product handled, processed, sold, advertised, represented, or offered for sale in this state, shall be sold as organic unless it also is prominently labeled and invoiced with similar terminology as set forth by regulations promulgated by the NOP.
- (b) No product may be advertised or labeled as "organic when available" or similar terminology that leaves in doubt whether the food is being sold as organic.

§110835.

The director may adopt regulations allowing or prohibiting the use of substances in the processing of products that are exempt or excluded from certification under the NOP, and animal food and cosmetics sold as organic.

§110838.

- (a) Cosmetic products sold, labeled, or represented as organic or made with organic ingredients shall contain, at least 70 percent organically produced ingredients.
- (b) The percentage of all organically produced ingredients in an agricultural product sold, labeled, or represented as "organic" or "100 percent organic," or sold, labeled, or represented as being made with organic ingredients or food groups, or as inclusive of organic ingredients, shall be calculated as follows:
  - (1) For products containing organically produced ingredients in solid form, by dividing the total net weight of combined organic ingredients at formulation, excluding water and salt, by the total weight of the finished product, excluding water and salt.
  - (2) For products containing organically produced ingredients in liquid form, by dividing the fluid volume of all organic ingredients, excluding water and salt, by the fluid volume of the finished product, excluding water and salt. If the liquid product is identified on the principal display panel or information panel as being reconstituted from concentrates, the calculation should be made on the basis of single-strength concentrations of the ingredients and finished product.
  - (3) For products containing organically produced ingredients in both solid and liquid form, by dividing the combined weight of the solid ingredients and the weight of the

liquid ingredients, excluding water and salt, by the total weight of the finished product, excluding water and salt.

- (c) The percentage of all organically produced ingredients in an agricultural product must be rounded down to the nearest whole number.
- (d) The percentage of all organically produced ingredients in an agricultural product must be determined by the handler who affixes the label to the consumer package and verified by the handler's certifying agent. The handler may use information provided by the certified operation in determining the percentage.

§110839.

Multi-ingredient cosmetic products sold as organic in California with less than 70 percent organically produced ingredients, by weight or by fluid volume, excluding water and salt, may only identify the organic content as follows:

- (a) By identifying each organically produced ingredient in the ingredient statement with the word "organic" or with an asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced.
- (b) If the organically produced ingredients are identified in the ingredient statement, by displaying the product's percentage of organic contents on the information panel.

§110840.

- (a) All persons who handle products sold as organic shall keep accurate and specific records of the following:
  - (1) Except when sold to the consumer, the name and address and, if applicable, the registration numbers issued pursuant to Section 110875 of this code or Section 46002 of the Food and Agricultural Code 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.
  - (2) Invoices, bills of lading, or other documents that show transfer of title of certified organic products must indicate the product is "organic" or "certified organic" and, if applicable, the California registration number of the person transferring the product.
  - (3) Any person selling a product which is exempt or excluded from certification under NOP rules, shall follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.
  - (4) 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.
- (b) All persons who sell, at retail, products sold as organic shall keep accurate and specific records of the following:
  - (1) Except when sold to the consumer, the name and address and, if applicable, the registration numbers issued pursuant to Section 110875 of this code or Section

46002 of the Food and Agricultural Code of all suppliers of persons, to whom or from whom the product is sold, purchased, or otherwise transferred, the quantity of product purchased or otherwise transferred, and the date of the transaction.

- (2) Invoices, bills of lading or other documents that show transfer of title of certified organic products must indicate the product is "organic" or "certified organic" and, if applicable, the California registration number of the person transferring the product.
  - (3) Any person selling a product that is exempt or excluded from certification under NOP rules, shall follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.
  - (4) 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.
- (c) All records required to be kept under this section shall be maintained as set forth by regulations promulgated by the NOP, when applicable, or as follows: by producers for not less than three years and by handlers for not less than two years from the date that the product is sold, and shall be maintained by retailers for not less than one year from the date that the product is sold, and shall be maintained by the retailers for not less than one year from the date that the product is received by the retailer. These records shall be made available for inspection at any time by the director or the secretary and by each certification organization that certifies the product, if any, for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code.

#### §110845.

- (a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of products sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the director, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, or the secretary of any record required to be kept under this section for purposes of carrying out this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code. Records acquired pursuant to this subdivision shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.
- (b) Upon written request of any person that establishes cause for the request, the director and the secretary shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this article that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial

information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

- (1) Records of a handler, as described in paragraph (4) of subdivision (a) of Section 110840, records of previous handlers, if any, without identifying the previous handlers or producers, and, if applicable, records obtained as required in subdivision (b).
- (2) Records of a retailer, as described in paragraph (4) of subdivision (b) of Section 110840, records of previous handlers, if any, as described in paragraph (4) of subdivision (a) of, Section 110840, without identifying the previous handlers, and, if applicable, records obtained as required in subdivision (b).

This subdivision shall be the exclusive means of public access to records required to be kept by handlers and retailers under this article. A person required to provide records pursuant to a request under this subdivision, may petition the director or the secretary to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary or director may, upon the issuance of this finding, waive the information production requirements of this subdivision for the specific request for information that was the subject of the petition.

- (c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a "trade secret" under Section 110165, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).
- (d) The director or the secretary may charge the person requesting records a reasonable fee to reimburse him or her self or the source of the records for the cost of reproducing the records requested.
- (e) Any person who first imports into this state, for resale, products sold as organic shall obtain and provide to the enforcement authority, upon request, proof that the products being sold have been certified by an accredited certifying organization or have otherwise been produced in compliance with this article.
- (f) The director shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this chapter in response to a subpoena, the director shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.

§110850.

- (a) Following initial United States Department of Agriculture accreditation of certifying agents as provided in Section 6514 of Title 7 of the United States Code and upon implementation of the federal organic certification requirement pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq., Sec. 2101, P.L. 101-624), all products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act. In addition products shall be sold as organic only in accordance with this section, Sections 110855 to 110870, inclusive, and Section 46009 of the Food and Agricultural Code. The secretary, director, and the county agricultural commissioners shall carry out this subdivision to the extent that adequate funds are made available for that purpose.
- (b) Products sold as organic may be certified only by a certification organization registered pursuant to Section 46014.1 of the Food and Agricultural Code or a federally accredited certification organization.
- (c) In order to be registered, a certification organization shall be accredited by the USDA, if required.
- (d) A certification organization that certifies processed products sold as organic shall register with the secretary.
- (e) The director may audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be released upon request or made publicly available shall not be released by the director except to other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.

§110855.

Prior to initial certification of a producer, a registered certification organization shall conduct at least one initial physical inspection of the premises where the food to be certified is produced. This inspection shall include the recordkeeping system necessary for compliance with Section 110840 and the area or facility at which the food is produced.

§110860.

- (a) A registered certification organization shall no less often than, at the end of each calendar quarter, prepare a list by name of all persons whose production or processing of food is certified or pending certification by the certification organization. This list shall be filed with the department or the Department of Food and Agriculture, as applicable, by the certification organization and made publicly available within 30 days after the end of each quarter.

- (b) A registered certification organization or a federally accredited certification organization shall, at least annually, physically inspect the premises where the food to be certified is produced and processed. The inspection shall include an examination of recordkeeping.

#### §110865.

A registered certification organization shall adopt and adhere to a certification plan filed annually and made publicly available. Except in the case of a certification program established pursuant to subdivision (e) of Section 110850, a certification plan shall be filed as part of the registration required pursuant to subdivision (d) of Section 110850. A certification plan shall at minimum include a detailed description of all of the following elements of the certification organization's program:

- (a) Minimum information required from producers or processors regarding growing or processing practices and methods for verifying that information.
- (b) Qualifications of and training requirements for all inspectors.
- (c) Procedures for inspection, including frequency and items covered.
- (d) Procedures for soil and tissue sampling and analysis.
- (e) Criteria for certification.
- (f) Process for certification decisionmaking, including identification of persons with decisionmaking authority.

#### §110870.

Only products that have been handled and processed in accordance with this article may be certified by a registered certification organization.

#### §110875.

- (a) Every person engaged in this state in the processing or handling of processed products for human consumption, including dietary supplements, alcoholic beverages, and fish or seafood sold as organic (except for processors and handlers of processed meat, fowl, or dairy products and retailers that are engaged in the processing or handling of products sold as organic), and every person engaged in the processing or handling of animal food and cosmetics sold as organic, shall register with the director, and shall thereafter annually renew the registration unless no longer so engaged. Handlers of processed food products that are registered with the department pursuant to Article 2 (commencing with Section 110460) shall register under this section in conjunction with the annual renewal of their registration pursuant to that article. Handlers of organic products that are required to be registered to manufacture, pack, or hold processed food pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104, licensed to bottle, vend, haul, or process water pursuant to Article 12 (commencing with Section 11070) of Chapter 5 of Part 5 of Division 104, certified to process or handle fresh or frozen seafood or fresh or frozen raw shellfish pursuant to

Chapter 5 (commencing with Section 112150) of Part 6 of Division 104, licensed to operate a cold storage facility pursuant to Chapter 6 (commencing with Section 112350) of Part 6 of Division 104, licensed to process low acid canned foods pursuant to Chapter 8 (commencing with Section 112650) of Part 6 of Division 104, licensed to manufacture olive oil pursuant to Chapter 9 (commencing with Section 112875) of Part 6 of Division 104, and licensed or registered to process or hold pet food in California pursuant to Chapter 10 (commencing with Section 113025) of Part 6 of Division 104, shall possess a valid registration or license in order to obtain a valid organic registration for the same facility under this section. All others required to register under this subdivision shall register within 30 days of forms being made available for this purpose. Any processor or handler of processed products required to register under this subdivision that does not pay the registration fee required by subdivision (c) within 30 days of the date on which the fee is due and payable shall pay a penalty of 1 1/2 percent per month on the unpaid balance.

- (b) Registration shall be on a form provided by the director and shall be valid for a period of one calendar year from the date of validation of the completed registration form. The director shall make registration forms available for this purpose. The information provided on the registration form shall include all of the following:
- (1) The nature of the registrant's business, including the specific commodities and quantities of each commodity that is handled and sold as organic.
  - (2) The total current annual organic gross sales, or if not selling the product, the total current gross annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic products for others, in dollars.
  - (3) The names of all certification organizations and governmental entities, if any, providing certification to the registrant pursuant to this article and the regulations adopted by the NOP.
  - (4) Sufficient information, under penalty of perjury, to enable the director to verify the amount of the registration fee to be paid in accordance with subdivision (c).
- (c) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants. When coordinating the organic registration with other required registrations or licenses identified in subdivision (a), the expiration date shall be the same expiration date as the valid license or registration. For persons that hold two-year licenses or registrations pursuant to subdivision (a), the organic registration shall be renewed annually using the same expiration month and day as the two-year license or registration.
- (d) A registration form shall be accompanied by payment of a nonrefundable registration fee payable to the department by handlers which shall be based on annual gross sales of organic product or annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic product for others, by the registrant

in the calendar year that precedes the date of registration. If no sales or revenue were made in the preceding year, then based on the expected sales or revenue during the 12 calendar months following the date of registration. Unless specified elsewhere, the fee is based according to the following schedule:

Gross Annual Sales or Revenue		Annual Registration Fee
\$ 0	– \$ 5,000	\$ 50
\$ 5,001	– \$ 50,000	\$ 100
\$ 50,001	– \$ 125,000	\$ 200
\$ 125,001	– \$ 250,000	\$ 300
\$ 250,001	– \$ 500,000	\$ 400
\$ 500,001	– \$ 1,500,000	\$ 500
\$ 1,500,001	– \$ 2,500,000	\$ 600
\$ 2,500,001	– and above	\$ 700

- (1) Any handler that does not take possession or title of the product but arranges for the sale of the product shall register and pay one hundred dollars (\$100) per year.
  - (2) Any person that only provides temporary storage for seven days or less, or only provides transportation for organic product and does not handle the processed packaged product, does not have to register.
  - (3) Any person that hires any other person to custom pack, repack, or label organic products shall register and pay a fee based on the total annual sales of products custom packed, repacked, or labeled for them as outlined in the chart above.
- (e) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050.
  - (f) The director shall reject a registration submission that is incomplete or not in compliance with this article and regulations promulgated by the NOP.
  - (g) The director shall provide a validated certificate to the registrant.
  - (h) Registration forms shall be made available to the public for inspection and copying at the main office of the department. Copies of registration forms shall also be made available by mail, upon written request and payment of a reasonable fee, as determined by the director. Registration information regarding quantity of products sold and gross sales volume in dollars shall be deleted prior to public inspection and copying and shall not be released to any person except other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.
  - (i) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.
  - (j) The director in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the director determines

that income derived from registration fees is insufficient to support a registration enforcement program.

- (k) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.
- (l) The registration revocation process must be in conjunction with other provisions of this article. The director can initiate the revocation process for failure to comply with this article or any part of the regulations adopted pursuant to the NOP. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal can be administered by either the state or county agricultural commissioner's office.
- (m) When the registration fee is not paid within 60 days from the expiration date the account may be considered closed and the registration voided. A notification will be sent to the registrant and the certifier will notify them that they are no longer able to market products as organic until the account is paid in full.
- (n) Any registration that is more than 60 days late will be considered invalid and it is a violation if product is sold as organic.

#### §110880.

This article shall apply to all products sold as organic within the state, wherever produced, handled, or processed, and to all products produced, that are handled or processed in the state, wherever sold as organic.

#### §110885.

This article shall not apply to the term "natural" when used in the labeling or advertising of a product.

#### §110890.

- (a) It is unlawful for any person to sell, offer for sale, advertise, or label any product in violation of this article.
- (b) Notwithstanding subdivision (a), a person engaged in business as a distributor or retailer of products who in good faith sells, offers for sale, labels, or advertises any product in reliance on the representations of a producer, handler, or other distributor that the product may be sold as organic, shall not be found to violate this article unless the distributor either:
  - (1) knew or should have known that the product could not be sold as organic;
  - (2) was engaged in producing or processing the product; or
  - (3) prescribed or specified the manner in which the product was produced or processed.

#### §110895.

- (a) It is unlawful for any person to certify products in violation of this article.

- (b) It is unlawful for any person to certify products as organic unless duly registered or accredited as a certification organization pursuant to Section 110850.
- (c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to Section 110850.

§110900.

- (a) It is unlawful for any person to produce, handle, or process products sold as organic unless duly registered pursuant to Section 110875.
- (b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 110875.

§110905.

It is unlawful for any person to forge, falsify, fail to retain, fail to obtain, or fail to disclose records pursuant to Sections 110840 and 110845.

§110910.

It is unlawful for any person to do any of the following:

- (a) Advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of products sold as organic if that fertilizer or pesticide chemical contains a prohibited material.
- (b) Alter any organic registration form.
- (c) Alter any certification document.
- (d) Falsify any document.
- (e) Use the term "transitional organic" in this state to represent a product for sale.

§110915.

- (a) In lieu of prosecution, the director may levy a civil penalty against any person who violates this article, any regulation adopted pursuant to this article, or any regulation promulgated by the NOP in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this article, and the impact of the penalty on the violator, including the deterrent effect on future violations.
- (b) Notwithstanding the penalties prescribed in subdivision (a), if the director finds that a violation was not intentional, the director may levy a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.
- (c) For a first offense, in lieu of a civil penalty as prescribed in subdivisions (a) and (b), the director may issue a notice of violation, if he or she finds that the violation is minor.

- (d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director, upon request made within 30 days after the date of issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.
- (e) If a hearing is held, review of the decision of the director may be sought by any person within 30 days of the date of the final order of the director pursuant to Section 1094.5 of the Code of Civil Procedure.
- (f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state.

§110920.

No fee established and collected pursuant to this article shall exceed the department's costs of regulating and enforcing the provisions of this article related to the function for which the fee is established.

§110925.

Any fees and civil penalties collected pursuant to this article shall be deposited in the General Fund and, upon appropriation by the Legislature, shall be expended to fulfill the responsibilities of the director as specified in this article.

§110930.

The director shall, to the extent funds are available, enforce this article applicable to all processors and handlers of processed products sold as organic, including handlers and processors of fish and seafood, cosmetics, and animal food products sold as organic, except for processors and handlers of processed meat, fowl, and dairy products.

§110935.

The director shall maintain in a central location, and make publicly available for inspection and copying, upon request, a list of all penalties levied within the past five years, including the amount of each penalty, the party against whom the penalty was levied, and the nature of the violation. The list also shall be available by mail, upon written request and payment of a reasonable fee, as determined by the director.

§110940.

- (a) Any person may file a complaint with the director concerning suspected noncompliance with this article by a person over whom the director has responsibility as provided in this article or regulations adopted by the NOP.

- (b) The director shall, to the extent funds are available, establish a procedure for handling complaints, including, provision of a written complaint form, and procedures for commencing an investigation within three working days of receiving a written complaint regarding fresh food, and within seven working days for other product, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 90 days thereafter.
- (c) The director may establish minimum information requirements to determine the verifiability of a complaint and may provide for rejection of a complaint that does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.
- (d) The responsibilities of the director under this section shall be carried out to the extent funds are available.
- (e) The complaint process in this state shall also meet all the complaint processes outlined in regulations promulgated by the NOP.

§110945.

This article shall apply notwithstanding any other provision of law that is inconsistent with this article. Nothing in this article is intended to repeal any other provision of law not inconsistent with this article.

§110950.

The director may adopt any regulations as are reasonably necessary to assist in the implementation of, or to make more specific, the provisions of, this article.

§110955.

Any reference in law to former Section 26569.11, whether existing or hereinafter enacted, shall be interpreted to refer to this article and Chapter 10 (commencing with Section 46000) of Division 17 of the Food and Agricultural Code as the successor section.

§110956.

- (a) All organic product regulations and any amendments to those regulations adopted pursuant to the NOP, that are in effect on the date this bill is enacted or that are adopted after that date shall be the organic product regulations of this state.
- (b) The director may, by regulation, prescribe conditions under which organic products not addressed by the National Organic Program may be sold in this state.

§110957.

It shall be unlawful for a person to represent in advertising or labeling that the person or the products of the person are registered pursuant to this article.

§110958.

Annually, the director shall compile and publish and submit to the California Organic Products Advisory Committee a summary of information collected under Section 110875, including, but not limited to, the following:

- (a) The total number of registrations received under this section.
- (b) The total number and quantity of each type of product sold as organic by all registrants combined.
- (c) The total annual organic gross sales volume or revenue of all registrants combined, and the median gross annual organic sales or revenue of all registrants.
- (d) The names of all registrants.
- (e) The number of registrants in each of the following ranges of annual gross sales volume:
  - (1) \$ 0 – \$ 5,000
  - (2) \$ 5,001 – \$ 25,000
  - (3) \$ 25,001 – \$ 50,000
  - (4) \$ 50,001 – \$ 125,000
  - (5) \$ 125,001 – \$ 250,000
  - (6) \$ 250,001 – \$ 500,000
  - (7) \$ 500,001 – \$ 750,000
  - (8) \$ 750,001 – \$ 1,000,000
  - (9) \$ 1,000,001 – \$ 1,500,000
  - (10) \$ 1,500,001 – \$ 2,500,000
  - (11) \$ 2,500,001 – \$ 10,000,000
  - (12) \$ 10,000,001 – \$ 30,000,000
  - (13) \$ 30,000,001 – \$ and above
- (f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants. 110959. Beginning January 1, 2003, the director shall conduct a program of spot inspections of persons required to register pursuant to Section 110875 to verify continuing compliance with this article and the regulations adopted by the NOP according to uniform procedures established by the director and regulations promulgated by the NOP.

**FOOD AND AGRICULTURAL CODE SECTIONS 46000-46029**

§46000.

- (a) This chapter shall be known, and may be cited as, the California Organic Products Act of 2003.
- (b) 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.

§46001.

This act 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.). 46002.

- (a) 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.
- (b) 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.

§46003.

- (a) The secretary shall establish an advisory committee, which shall be known as the California Organic Products Advisory Committee, for the purpose of advising the secretary with respect to his or her responsibilities under this act and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.
- (b) The advisory committee shall be comprised of 15 members. Each member may have an alternate. Six members and their alternates shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members and their alternates shall be processors, one member and his or her alternate shall be wholesale distributors, two members and their alternates shall be consumer representatives, one member and his or her alternate shall be environmental representatives, two members and their alternates shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member and his or her alternate shall be retail representatives. Except for the consumer, environmental, and technical representatives, the members of the advisory committee and their alternates shall have derived a substantial portion of their business income, wages, or salary as a result of services they provide which directly result in the production, handling, processing, or retailing of products sold as organic for at least three years preceding their appointment to the advisory committee. The consumer and environmental representatives and their alternates shall not have a financial interest in the direct sales or marketing of the organic product industry and shall be members or employees of representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives and their alternates shall not have a financial interest in the production, handling, processing, or marketing of the organic products industry. The technical

- representatives may be involved in organic research or technical review providing they have no financial benefit from results of the research project or technical review.
- (c) An alternate member shall serve at an advisory committee meeting only in the absence of, and shall have the same powers and duties as, the category whom he or she is representing as alternate, except for duties and powers as an officer of the committee. The number of alternates present who are not serving in the capacity of a member shall not be considered in determining a quorum.
  - (d) An alternate member may serve at an advisory committee subcommittee meeting only in the absence of, and shall have the same powers and duties as, the member whom he or she is designated as alternate, except for duties and powers as a subcommittee chairperson.
  - (e) The members of the advisory committee and their alternates described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory committee and approved by the secretary.
  - (f) The secretary or his or her representative, the State Public Health Officer or his or her representative, and a county agricultural commissioner may serve as ex officio members of the advisory committee.

§46003.5.

- (a) Following the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Secs. 6501 to 6522, incl.), the secretary, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances that are in compliance or not in compliance with the definition of "prohibited materials," as defined in subdivision (p) of Section 110815 of the Health and Safety Code, for use in the production and handling of organic foods. Prior to the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance may be allowed for use in the production and handling of organic foods in this state. Within 90 days of promulgation of the national materials list by the United States Department of Agriculture, the Organic Food Advisory Board, in consultation with the secretary, shall determine which, if any, substance allowed for use by the national materials list may be allowed for use in the production and handling of organic foods in this state.
- (b) Prior to adoption of these regulations, the secretary shall issue administratively a preliminary, nonexhaustive list of materials that are in compliance or not in compliance with subdivision (p) of Section 110815 of the Health and Safety Code based on the listings of permitted materials published by California Certified Organic Farmers, the

Organic Trade Association, and the Departments of Agriculture of the States of Oregon and Washington.

§46004.

- (a) Any person may file a complaint with the director concerning suspected noncompliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code by a person under the enforcement jurisdiction of the director, as provided in Section 46000.
- (b) The director shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other food, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.
- (c) The director may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.
- (d) The director shall carry out the functions and objectives of this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to the extent funds are available for those purposes.

§46004.1.

Unless defined pursuant to the National Organic Program (NOP), the following words and phrases, when used in this act, shall have the following meanings:

- (a) "Act" means this chapter. 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.).
- (b) "Categorical products" means categories of products of like commodity such as apples, salad products, etc. and does not require variety specific information.
- (c) "Enforcement authority" means the governmental unit with primary enforcement jurisdiction, as provided in Section 46008.
- (d) "Exempt handler" means a handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.
- (e) "Exempt producer" means a production operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals five thousand dollars (\$5,000) or less annually.
- (f) "Handle" means to sell, process, or package agricultural products.

- (g) "Handler" means any person engaged in the business of handling agricultural products, but does not include final retailers of agricultural products that do not process agricultural products.
- (h) "Handling operation" means any operation or portion of an operation, except final retailers of agricultural products that do not process agricultural products that (1) receives or otherwise acquires agricultural products, and (2) processes, packages, or stores agricultural products.
- (i) "NOP" means the National Organic Program established pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.
- (j) "Person" means any individual, firm, partnership, trust, corporation, limited liability company, company, estate, public or private institution, association, organization, group, city, county, city and county, political subdivision of this state, other governmental agency within the state, and any representative, agent, or agency of any of the foregoing.
- (k) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.
- (l) "Secretary" means the Secretary of Food and Agriculture.
- (m) "USDA" means the United States Department of Agriculture.

#### §46005.

This act shall apply notwithstanding any other provision of law that is inconsistent with this act. Nothing in this act is intended to repeal any other provision of law not inconsistent with this act.

#### §46006.

At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, within the enforcement jurisdiction of that commissioner.

#### §46007.

- (a) Any penalties collected by the secretary and any fees collected by a county agricultural commissioner pursuant to this chapter shall be deposited in the Department of Food and Agriculture Fund and, upon appropriation by the Legislature, shall be expended solely to fulfill the responsibilities of the secretary and county agricultural commissioner acting under the direction and supervision of the secretary, as specified in this act.
- (b) Any fees and penalties collected by a county agricultural commissioner pursuant to Section 46017 and any other penalties collected by a county agricultural commissioner

pursuant to this chapter shall be paid directly to the county agricultural commissioner and expended to fulfill the responsibilities of the county agricultural commissioner, as specified in this chapter.

- (c) The secretary shall establish a specific minimum amount to be reimbursed to each county agricultural commissioner per registrant in that county. This reimbursement shall not limit the amount of the reimbursement otherwise made to county commissioners for their enforcement activities.

#### §46008.

- (a) Article 14 (commencing with Section 43031) of Chapter 2 of the Food and Agricultural Code applies to any product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or the NOP.
- (b) The secretary, county agricultural commissioners, and the State Director of Health Services shall be considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

#### §46009.

Any person subject to this act that does not pay the registration fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

#### §46010.

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. 46010.5. No fee established and collected pursuant to this chapter shall exceed the department's costs or the county agricultural commissioner's costs, as the case may be, of regulating and enforcing the provisions of this chapter related to the function for which the fee is established.

#### §46011.

This act shall not apply to the term "natural" when used in the labeling or advertising of a product.

#### §46012.

Article 14 (commencing with Section 43031) of Chapter 2 applies to any food product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code. The director, agricultural commissioners, and the State Director of Health Services shall be

considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

§46013.

Any producer, handler, processor, or registered certification organization subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

§46013.1.

- (a) Every person engaged in this state in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production of products sold as organic, and retailers that are engaged in the processing, as defined by the NOP, of products sold as organic, shall register with the agricultural commissioner in the county of principal operation prior to the first sale of the product. All processors of organic agriculturally derived products that are not required to be registered as outlined in subdivision (b) must register with the secretary. Each registrant must annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the county agricultural commissioner in any county in which the registrant operates.
- (b) Every person engaged in this state in the processing or handling of processed products pursuant to Section 110460 of the Health and Safety Code, and pet food pursuant to Section 18653, and cosmetics pursuant to Section 111795 of the Health and Safety Code, including processors of alcoholic beverages, fish and seafood, shall register with the State Public Health Officer.
- (c) Registration pursuant to this section shall be on a form either provided by the secretary or approved by the secretary and shall be valid for a period of one calendar year from the date of validation by the secretary or county agricultural commissioner of the completed registration form.
- (d) The information provided on the registration form shall include all of the following:
  - (1) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic and the names and registration numbers of those persons for whom they sell product as applicable.
  - (2)
    - (A) For producers, a detailed physical description of the precise location and dimensions of the facility or farm where the products are produced.
    - (B) For exempt producers, in addition to the physical description specified in subparagraph (A), a map describing the boundaries and dimensions of the production area and all adjacent land uses, assigning field numbers to distinct

fields or management units, and describing the size of each field or management unit.

- (C) When the exempt producer or exempt handler has not had control of the property being registered for at least 36 months, documentation shall be provided from previous owners or managers that shows the 36-month land use history. When the exempt producer or exempt handler is not the owner, documentation shall be provided from the owner granting permission for the parcel to be registered as organic by the exempt producer or exempt handler.
- (3) Sufficient information, under penalty of perjury, to enable the secretary or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with this act.
- (4) The names of all certification organizations or governmental entities, if any, providing organic certification to them.
- (5) In the case of exempt producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium, growing area, irrigation water or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of application, and the total amount applied in each calendar year, for at least the applicable time periods specified in this act.
- (e) The registration form shall include a separate "public information sheet" or its equivalent that shall include:
  - (1) The name and address of the registrant.
  - (2) The nature of the registrant's business, including the categorical products produced, handled, or processed that are sold as organic.
  - (3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to the NOP and this act.
- (f) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of product sold as organic in the calendar year that precedes the date of registration or, if no sales were made in the preceding year, then based on the expected sales during the 12 calendar months following the date of registration. Unless specified elsewhere the fee is based according to the following schedule:

<b>Gross Sales</b>		<b>Registration Fee</b>
\$	0 – 4,999	\$ 25
\$	5,000 – 10,000	\$ 50
\$	10,001 – 25,000	\$ 75
\$	25,001 – 50,000	\$ 100
\$	50,001 – 100,000	\$ 175
\$	100,001 – 250,000	\$ 300
\$	250,001 – 500,000	\$ 450
\$	500,001 – 1,000,000	\$ 750
\$	1,000,001 – 2,500,000	\$ 1,000

\$ 2,500,001 – 5,000,000	\$ 1,500
\$ 5,000,001 – 15,000,000	\$ 2,000
\$ 15,000,001 – 25,000,000	\$ 2,500
–	
\$ 25,000,001 – and above	\$ 3,000
–	

- (1) Any person required to register pursuant to this section whose registration fee would be less than seventy-five dollars (\$75) shall pay an initial registration fee of seventy-five dollars (\$75). Thereafter, the amount of the annual fee shall be as specified above or, according to the applicable classification, as described in paragraphs (2) to (9), inclusive.
- (2) Any person selling a multi-ingredient product in which less than 70 percent of the ingredients are organic shall pay a fee of one hundred dollars (\$100) or one-half of the amount that would be due based on the above chart, whichever is more.
- (3) Producers that sell processed product shall pay fees based on the value of raw product prior to being processed and the value of any product sold as unprocessed.
- (4) Any person that packs, repacks, labels, sorts, or otherwise handles any organic product that is outside the jurisdiction of the State Public Health Officer and that does not take title or manage the sale of the product, but provides only handling services for organic product, shall register and pay one hundred dollars (\$100) per year.
- (5) Commission merchants or brokers that do not take possession or title of the product but arrange for the sale of the product shall register and pay one hundred dollars (\$100) per year.
- (6) A retail store engaged in the handling or processing of organic products shall register and pay a fee of one hundred dollars (\$100) for each store location that processes organic products onsite.
- (7) Any person that provides temporary storage or transportation for organic product and does not handle the raw unpackaged product does not have to register.
- (8) Any person that hires any other person for custom packing or labeling shall register and pay a fee based on the total sales of product custom produced for them as outlined in the chart above. In addition to the required registration information above the person must disclose on the registration form the names of all companies that pack and process for them.
- (9) Any person required to register pursuant to this section that fits the description of more than one of the persons described above shall pay the greater of the multiple amounts.
- (10) The secretary may require any producer, handler, processor, or other organic registrant to provide the exact dollar amount of gross sales of twenty-five million one dollars (\$25,000,001) or more in lieu of the range specified in subdivision (f).

- (11) The secretary may require any producer, handler, processor, or other organic registrant to submit gross sales by commodity and gross sales by acreage.
- (g) The secretary may adopt regulations that supersede the terms of this section to the extent reasonably necessary to provide an online system of registration for those required to register pursuant to this section.

§46013.2.

- (a) To the extent feasible, the secretary shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.
- (b) The secretary or county agricultural commissioner shall deny a registration submission that is incomplete or not in compliance with this act.
- (c) A registrant shall, within a reasonable time, notify the secretary of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.
- (d) At the request of any person, the "public information sheet" described in subdivision (e) of Section 46013.1 for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the "public information sheet" shall also be made available by mail, upon written request. The secretary or county agricultural commissioner may charge a reasonable fee for the cost of reproducing a "public information sheet." Except as provided in this subdivision, a registration form is exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.
- (e) The secretary, in consultation with the California Organic Products Advisory Committee, may suspend the registration program set forth in this section if the secretary determines that income derived from registration fees is insufficient to support a registration enforcement program.
- (f) A registration is considered legal and valid until revoked, suspended, or until the expiration of the registration.
- (g) The registration revocation process shall be in conjunction with other provisions of this act. The secretary or county agricultural commissioner's office may initiate the revocation process for failure to comply with the NOP or this act. Any person against whom the action is being taken shall have the opportunity to appeal the action and be afforded the opportunity to be heard in an administrative appeal. This appeal shall be administered by either the state or county agricultural commissioner's office.
- (h) When the registration fee is not paid within 60 days from the expiration date, the account shall be considered closed and the registration voided. A notification shall be sent to the registrant and the certifier, if applicable, notifying them the registrant is no longer able to market products as organic until the account is paid in full.

- (i) Any producer, handler, processor, or certification agency subject to this chapter that does not pay the fee within 10 days of the date on which the fee is due and payable shall pay a penalty of 10 percent of the total amount determined to be due plus interest at the rate of 1.5 percent per month on the unpaid balance.

#### §46014.

This chapter also applies to seed, fiber, and horticultural products. The terms "foods" and "raw agricultural commodities" as used in this chapter, and in Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, include seed, fiber, and horticultural products where the context requires to effectuate this section.

#### §46014.1.

- (a) Any certification organization that certifies product in this state sold as organic shall register with the secretary and shall thereafter annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the secretary, shall include a copy of accreditation by the USDA or proof of application if applicable.
- (b) Each certification organization shall pay to the secretary an annual registration fee of twenty-five dollars (\$25) for each client they have certified in this state up to a maximum of two hundred fifty dollars (\$250). Any registration submitted by a certification organization shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.
- (c) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a certification program. This program shall meet all of the requirements of this act. In addition, this program shall meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program that covers all of the county's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program. The certification fee authorized by this subdivision is due and payable on January 1 or may be prorated before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total

amount determined to be due, plus interest at the rate of 1.5 percent interest per month on the unpaid balance.

§46014.2.

- (a) All products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act.
- (b) Product shall be sold as organic only in accordance with this act.
- (c) A certification organization shall be accredited by the USDA as provided in the NOP.

§46014.4.

A registered certification organization shall submit to the secretary every January and June a list of all persons whose production or processing of product in California is certified. The list shall be publicly available within 30 days after the end of each filing period. A certifier that keeps a current list on a Web site available to the public may be deemed to meet this requirement.

§46014.6.

Only products that have been produced and handled in accordance with this act may be certified by a registered certification organization.

§46015.

Materials acceptable in this state are those outlined in Sections 205.600 to 205.607, inclusive, of Title 7 of the Code of Federal Regulations.

§46016.1.

- (a) Any person may file a complaint with the secretary concerning suspected noncompliance with this act, as provided in Section 46000 or regulations adopted by the NOP.
- (b) The secretary shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.
- (c) The secretary may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The secretary shall provide written notice of the reasons for rejection to the person filing the complaint.
- (d) The secretary shall carry out the functions and objectives of this act to the extent funds are available for those purposes.

- (e) The complaint process in this state must also meet all the complaint process outlined in regulations adopted by the NOP.

#### §46016.2.

- (a) Any county agricultural commissioner may, at any time, initiate a notice and hearing process to determine whether a violation of these provisions has occurred. The hearing process to determine if a violation has occurred may include a review of the actions or records of:
  - (1) The organic registrant.
  - (2) A family member, employee, or any other person authorized to act on behalf of the registrant.
  - (3) Any other person whose actions may have resulted in the violation.
- (b) The notice of hearing shall be on a form approved by the secretary and may contain:
  - (1) The reasons why the hearing is being held.
  - (2) A warning that failure to participate may result in other adverse actions or may be considered to be admission to a possible violation.
  - (3) A hearing date, time, and location of the hearing.
  - (4) The secretary or county agricultural commissioner may, upon determination that a violation has been made in accordance with subdivision (a) above, take any corrective action as specified in this act.

#### §46016.3.

Any person may appeal to the secretary for a hearing if aggrieved by any one of the following actions or decisions:

- (a) Denial of any registration.
- (b) Revocation of any registration.

#### §46016.4.

The appeal shall be submitted to the secretary in writing within 30 days of the date the action, or the letter proposing the action. The secretary's proceeding shall, insofar as practicable, comply with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that a department hearing officer may be used.

#### §46016.5.

As provided for in regulations adopted by the NOP, the action proposed by a NOP accredited certifier against a client may be appealed to the secretary for mediation.

§46017.

- (a) In lieu of prosecution, the secretary or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the secretary as provided in Section 46000 who violates this act, or any regulation adopted pursuant thereto or pursuant to this chapter, or regulations adopted by the NOP, in an amount not more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and the impact of the penalty on the violator, including the deterrent effect on future violations.
- (b) Notwithstanding the penalties prescribed in subdivision (a), if the secretary or county agricultural commissioner finds that a violation was not intentional, the secretary or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars (\$2,500) for each violation.
- (c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the secretary or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.
- (d) A person against whom a civil penalty is proposed shall be afforded an opportunity for a hearing before the secretary or county agricultural commissioner, upon request made in writing within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the secretary's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.
- (e) If a hearing is held, review of the final decision of the secretary or county agricultural commissioner may be requested in writing by any person, pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the secretary or county agricultural commissioner.
- (f) A civil penalty levied by the secretary pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county. After the exhaustion of the review procedures provided in this section, a county agricultural commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty and, if applicable, a copy of any order that denies a petition for a writ of administrative mandamus with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. Pursuant to Section 6103 of the Government Code, no fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

- (g) The secretary shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the secretary and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the secretary.

§46018.1.

The secretary and the county agricultural commissioners may conduct a program of spot inspections to determine compliance with this act.

§46018.2.

At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this act and the NOP within the enforcement jurisdiction of that commissioner.

§46020.

- (a) It is unlawful for any person to sell, offer for sale, advertise, or label any product in violation of this act.
- (b) Notwithstanding subdivision (a), a person engaged in business as a handler, distributor, or retailer of food who in good faith sells, offers for sale, labels, or advertises any product in reliance on the representations of a producer, processor, or other distributor that the product may be sold as organic, shall not be found to violate this act unless the distributor either:
  - (1) Knew or should have known that the product could not be sold as organic.
  - (2) Was engaged in producing or processing the product.
  - (3) Prescribed or specified the manner in which the product was produced or processed.

§46021.

- (a) It is unlawful for any person to certify any product in violation of this act.
- (b) It is unlawful for any person to certify a product or company as organic unless duly registered as a certification organization pursuant to this act.
- (c) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration for a certification organization pursuant to this act.

§46022.

- (a) It is unlawful for any person to produce or handle any product sold as organic unless duly registered pursuant to Section 46013.1.

- (b) It is unlawful for any person to willfully make a false statement or representation, or knowingly fail to disclose a fact required to be disclosed, in registration pursuant to Section 46013.1.

§46023.

It is unlawful for any person to forge, falsify, fail to retain, fail to obtain, or fail to disclose records pursuant to Section 46028.

§46024.

- (a) It is unlawful for any person to advertise, label, or otherwise represent that any fertilizer or pesticide chemical may be used in connection with the production, processing, or distribution of products sold as organic if that fertilizer or pesticide chemical contains a prohibited material.
- (b) It is unlawful for any person to refuse to submit for inspection.
- (c) It is unlawful for any person to mislabel any organic product.
- (d) It is unlawful for any person to alter any organic registration form.
- (e) It is unlawful for any person to alter any certification document.
- (f) It is unlawful for any person to falsify any document.
- (g) It is unlawful for any person to remove a hold off sale or disposal order from any lot of product.
- (h) It is unlawful to use the term "transitional organic" in this state.

§46027.

- (a) No food or product may be advertised or labeled as "organic when available" or similar terminology that leaves in doubt whether the food is being sold as organic.

§46028.

- (a) All persons who produce, handle, or retail products that are sold as organic shall keep accurate and specific records of the following as applicable:
  - (1) The quantity harvested from each field or management unit, the size of the field or management unit, the field number, and the date of harvest.
  - (2) 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.
  - (3) 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.
  - (4) 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.

(5)

(A) Invoices, bills of lading or other documents that show transfer of title of certified organic products shall indicate the product is "organic" or "certified organic" and, if applicable, the California registration number of the person transferring the product.

(B) Any person selling product that is exempt or excluded from certification under NOP rules, must follow the requirements of Section 205.101 of Title 7 of the Code of Federal Regulations.

(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.

§46029.

(a) Notwithstanding any other provision of law, any producer, handler, processor, or retailer of product sold as organic shall immediately make available for inspection by, and shall upon request, within 72 hours of the request, provide a copy to, the secretary, the Attorney General, any prosecuting attorney, any governmental agency responsible for enforcing laws related to the production or handling of products sold as organic, of any record required to be kept under this section for purposes of carrying out this act. Records acquired pursuant to this act shall not be public records as that term is defined in Section 6252 of the Government Code and shall not be subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(b) Upon written request of any person that establishes cause for the request, the secretary shall obtain and provide to the requesting party within 10 working days of the request a copy of any of the following records required to be kept under this act that pertain to a specific product sold or offered for sale, and that identify substances applied, administered, or added to that product, except that financial information about an operation or transaction, information regarding the quantity of a substance administered or applied, the date of each administration or application, information regarding the identity of suppliers or customers, and the quantity or price of supplies purchased or products sold shall be removed before disclosure and shall not be released to any person other than persons and agencies authorized to acquire records under subdivision (a):

(1) Records of a producer, as described in Section 46028.

- (2) Records of a handler, as described in Section 46028, records of previous handlers, if any, and producers as described in Section 46028 without identifying the previous handlers or producers, and, if applicable, records obtained as required in this act.
- (3)
- (A) Records of a retailer, as described in Section 46028, records of previous handlers, if any, and producers as described in Section 46028 without identifying the previous processors, handlers, or producers, and, if applicable, records obtained as required in subdivision (d). This subdivision shall be the exclusive means of public access to records required to be kept by producers, processors, handlers, and retailers under this act.
- (B) A person required to provide records pursuant to a request under this subdivision, may petition the secretary to deny the request based on a finding that the request is of a frivolous or harassing nature. The secretary may, upon the issuance of this finding, waive the information production requirements of this subdivision for the specific request for information that was the subject of the petition.
- (c) Information specified in subdivision (b) that is required to be released upon request shall not be considered a "trade secret" under Section 110165, Section 1060 of the Evidence Code, or the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code).
- (d) The secretary may charge the person requesting records a reasonable fee to reimburse himself or herself or the source of the records for the cost of reproducing the records requested.
- (e) The secretary shall not be required to obtain records not in his or her possession in response to a subpoena. Prior to releasing records required to be kept pursuant to this act in response to a subpoena, the secretary shall delete any information regarding the identity of suppliers or customers and the quantity or price of supplies purchased or products sold.