

ORGANIC FOODS

FOOD AND AGRICULTURAL CODE

SECTION 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 shall be a wholesale distributor, two members shall be consumer representatives, one member shall be an environmental representative, two members shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member

shall be a retail representative. Alternates at large may be appointed to serve in the absence of any of the following categories:

two alternates for producers, one alternate for processors, one alternate for consumer, and one alternate for technical 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, State Director of Health Services, 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) "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 federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(h) "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.

(i) "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.

(j) "Secretary" means the Secretary of the Department of Food and Agriculture.

(k) "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 1/2 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 1/2 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 alcohol beverages, fish and seafood, shall register with the State Director of Health Services.

(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 map showing the precise location and dimensions of the facility or farm where the products are produced. The map shall also describe the boundaries of the production area and all adjacent land uses, shall assign field numbers to distinct fields or management units, and shall describe the size of each field or management unit.

(B) When the registrant 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 registrant is not the owner, documentation shall be provided from the owner granting permission for the parcel to be registered as organic by the registrant.

(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 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:

Gross Sales	Registration Fee
\$ 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 annual fee shall be as specified above.

(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 Director of Health Services 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.

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 1/2 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 11/2 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.

(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.