

## AGRICULTURAL COMMISSIONER LEGAL MANDATES

### California Food and Agricultural Code

#### General Mandates

2001. There is in each county government the county department of agriculture.

2002. The county department of agriculture is under the control of the county agricultural **commissioner**.

2003. The California **Agricultural Commissioners and Sealers Association** shall be recognized as the official representative body on behalf of county **agricultural commissioners and sealers**.

2242. The **board of supervisors shall** provide a suitable office for the commissioner, and shall furnish and equip his office with all necessary furniture, supplies, and effects for the proper discharge of his duties.

2271. The **commissioner shall** keep a record of his official acts.

2272. (a) The **commissioner shall** make an annual report to the director on the condition of agriculture in his or her county and on what is being done to eradicate, control, or manage pests, and actions relating to the exclusion of pests or quarantine against pests. The **commissioner** may include in the annual report information relating to organic farming methods, biotechnology, integrated pest management, and biological control activities in the county. The **commissioner shall** also furnish from time to time to the director any other information the director may require.

(b) This section **shall** become operative July 1, 1999.

2273. The **commissioner shall** also make a monthly report to the board of supervisors if and when so required by the board.

2274. The **commissioner shall** learn about all pests that may exist, or are likely to exist, in his county.

2275. The **commissioner**, for the purpose of learning the best and most efficacious methods of performing his duties, **shall** attend the **annual meeting** of the California Agricultural **Commissioners Association** or its successor, **and such other meetings as the secretary or director shall require**.

2276. The **commissioner shall**, for the purpose of becoming informed about new and dangerous agricultural pests, observing and learning new and better methods of pest control, and determining the best and most efficacious methods of conducting the work of his department, consult with staff members of the United States Department of Agriculture, the State Department of Agriculture, the University of California, and with agricultural **commissioners** of other counties. He **shall** make such trips outside of the

county which are necessary for such purposes, if authorized by the board of supervisors.

2276.5. (a) The Legislature finds and declares that, acting under policy direction of the Secretary of Food and Agriculture, California's unique system of county **agricultural commissioners** forms the front line of defense in protecting the state from the many exotic and invasive species threatening our people, commerce, and environment.

(b) It is the intent of the Legislature that **agricultural commissioners** take an increasingly assertive and proactive role in the exclusion and detection of exotic and invasive species in the urban environment, particularly those potentially spread by human activities, such as landscaping and yard maintenance.

2279. The **commissioner shall** compile reports of the condition, acreage, production, and value of the agricultural products in his county. The **commissioner** may publish such reports, and **shall** transmit a copy of them to the director.

2281. Except as otherwise specifically provided, in all cases where provisions of this code place joint responsibility for the enforcement of laws and regulations on the director and the **commissioner**, the **commissioner shall** be responsible for local administration of the enforcement program.

2285. For the purpose of developing necessary information and securing the best results for agriculture in this state, the commissioner may correspond and meet with any interested individual, agency, group, association, or educational institution with an interest in, or information regarding, **agricultural** practices, as resources allow. As used in this section "agriculture" includes, but is not limited to, developments and issues regarding all **agricultural** practices, traditional and alternative pest control methodology, and other areas of agriculture resource management. The California **Agricultural Commissioners and Sealers Association** may provide a forum by which a commissioner keeps informed and may facilitate discussions with other associations, institutions, agencies, organizations, or groups relating to resource management and protection for agriculture.

### **Plant Quarantine and Pest Control**

5024. (a) The secretary or the **commissioner shall**, during the maintenance of any quarantine established by the secretary pursuant to Article 1 (commencing with Section 5301) of Chapter 5, inspect any plant or thing that is, or is liable to be, infested or infected by, or which might act as a carrier of, any pest. The person who conducts the inspection **shall** not permit any of those plants or things to pass over the quarantine line during the quarantine, except pursuant to a certificate of inspection and release that is signed by that person.

(b) Whenever the **commissioner** finds that a plant or thing does not, and will not, present a threat to the state, the **commissioner** may recommend to the secretary the waiver of, and the secretary may waive, the inspection and certification requirements specified in subdivision (a).

5101. Each **commissioner** is an enforcing officer of all laws and regulations which relate to the prevention of the introduction into, or the spread within, the state of pests. He is, as to such activities, under the supervision of the director.

5102. Each **commissioner** and each qualified representative of the **commissioner** is a state plant quarantine officer for the following purposes:

(a) Certifying to the pest condition or pest treatment of shipments, if certification as a condition of movement or entry is officially required.

(b) Enforcing laws and regulations which relate to plant quarantine.

5205. A **commissioner shall** make such inspections as may be necessary to determine the facts which are required by the state or country of intended destination and **shall** issue a certificate that states the facts which are determined upon receipt of the scheduled fee for a certificate or, if no scheduled fee has been established, upon request of the shipper.

5253. The **commissioner shall** disseminate all or any portion of the statement in whatever manner he may deem is best suited to inform persons that own or have charge or possession of any premises or appliances within the county where there is a probability of the presence of the pest.

### **Pest Abatement**

5403. If, after service of notice pursuant to this chapter a public nuisance is not abated within the time which is specified in the notice, the **commissioner shall** abate the nuisance by eradicating, controlling, or destroying the pest.

5561. The **commissioner shall**, in writing, notify the record owner or person in charge of any property having an abandoned or neglected plant or crop which the commissioner has found to be a public nuisance, of the need to remove or destroy the neglected or abandoned plant or crop. The notice required by this section shall be made by personal service or by certified mail to the address shown on the last equalized assessment roll of the county, and by posting copies of it in three conspicuous places on the property.

5563. The **commissioner shall**, in addition to the notice required by this article, advise the owner that, unless the abandoned or neglected plant or crop is removed or destroyed within 60 days, or less than 60 days if required by county ordinance, after the date the notice was served or mailed, or by such date as may be mutually agreed upon by the commissioner and the owner, the commissioner will report the existence of the nuisance to the district attorney or to the county counsel of the county with a request that an action be filed in the superior court praying for an order to remove or destroy the neglected or abandoned crop as provided for in Article 2 (commencing with Section 5571).

5571. If the **commissioner** of any county determines by inspection that there is a condition which constitutes a nuisance, as defined in Section 5551 or 5552, on any property or premises within his jurisdiction, he **shall** make a report of his inspection to the district attorney or to the county counsel if the board of supervisors has authorized the county counsel pursuant to Section 26528.5 of the Government Code to file the petition prepared pursuant to this article. The **commissioner** in the report **shall** do all of the following:

- (a) State that the property owner has been notified.
- (b) Describe the property upon which the nuisance exists.
- (c) Name the pest or other condition which in his opinion is dangerous to the agriculture of the county, district, or vicinity.
- (d) State, if his findings justify such a statement, that the removal or destruction of the neglected or abandoned plant or crop will provide the best means for the elimination of the menace to the agriculture of the county, district, or vicinity.

5702. If, in the opinion of the director or commissioner, the plant or other host or possible carrier is not infested or infected with the pest, or has been disinfected or cleaned so as to eradicate or control the pest, the director or **commissioner shall** in writing release it or issue the shipping permit or nursery stock certificate as the case may be.

5742. Except as otherwise provided in Section 5744, it is unlawful for any person to ship or move any used appliances unless there is **furnished to the commissioner** of the county of destination such proof as he may require that the appliances either:

- (a) Have not been exposed to infestation or infection by any pests.
- (b) Have been treated immediately prior to shipment or movement in the manner which is designated by the director.

5743. The **commissioner** of the county of destination **shall** refuse entry of the used appliances until the proof required in Section 5742 is furnished.

### **Field Rodents**

6022. The **commissioner shall** cooperate in suppressing field rodents and insects, or other associated vectors of rodent-borne diseases transmissible and injurious to humans.

### **Plant Material Shipment**

6401. It is unlawful for any person to transport, receive, or import into the state any plant or any thing against which quarantine has been established, or any plant, unless he does both of the following:

- (a) Notifies the director or the **commissioner** of the county in which the plant or thing is received, of the arrival of the plant or thing immediately after its arrival.
- (b) Holds the plant, or thing for immediate inspection by the director or **commissioner**, without unnecessarily moving it, or placing it where it may be harmful.

6501. Except as otherwise provided in Section 6502, 6504, 6506, or 6924, it is unlawful for any person to receive or bring into any county or locality of the state from another county or locality within the state any nursery stock, or any other plant, appliance, or thing subject to a federal or state quarantine or which the **commissioner** or the director considers and designates to be liable to be infected or infested with any pest, unless the person does all of the following:

- (a) Notifies the **commissioner** of the arrival of the article immediately after its arrival.
- (b) Holds it for immediate inspection by the **commissioner**, without unnecessarily moving or placing the article where it may be harmful.
- (c) Legibly marks the shipment in a conspicuous manner and place with all of the following:
  - (1) The name and address of the shipper or owner.
  - (2) The name of the person to whom the shipment is forwarded or shipped or the name of his or her agent.
  - (3) The name of the county where the contents of the shipment were grown.
  - (4) A statement of its contents.

### **Nursery Inspection**

6903. The **commissioner shall** inspect all nurseries within his jurisdiction when and as required by the regulations of the director.

6904. The **commissioner shall** issue such orders as may reasonably be necessary to insure compliance with the standards of cleanliness.

Any interested person, upon request, is entitled to a hearing before the director to review any order which is issued by a **commissioner** pursuant to this section.

### **Weed and Seed Pests**

7205. The director may adopt such regulations as may be necessary to carry out the provisions of this article. He, and the **commissioners** under the supervision and control of the director, **shall** enforce such provisions and regulations.

7533. The commissioner, upon receipt of a notice from any person who is the grower of any crop seed within the commissioner's jurisdiction of such person's intention to harvest crop seed not less than 10 days prior to the date of harvest, may cause a field inspection to be made of such crop. If any pest is found growing in such crop, the seed of which may be harvested with such crop seed, the **commissioner shall** serve a notice which specifies the particular pest that is growing in such crop and the methods to be used in removing the pest which is found in the crop.

7573. If, upon inspection by the commissioner, any seed screenings or cleanings from crop seed are found to contain the seed of any pest, the **commissioner shall** give notice in writing of such fact to the person in possession of the screenings or cleanings. The notice shall order that the screenings or cleanings be processed or destroyed, as provided in this article, within 60 days.

7601. Every person, before engaging for hire in the business of cleaning crop seed, **shall obtain a permit from the commissioner** to operate each separate portable seed cleaner which is being used for the first time in the county.

### **Pesticide Use Enforcement**

11501.5. The director, and the **commissioner** of each county under the direction and supervision of the director, **shall** enforce this division and the regulations which are issued pursuant to it.

11732. It is unlawful for any person to advertise, solicit, or operate as a pest control business in any county unless the person has registered with the **commissioner** for the current calendar year.

The registration **shall** be in the form prescribed by the **commissioner** and **shall** show all of the following information:

- (a) Name and address of the registrant.
- (b) Number and kind of units to be operated in the county.
- (c) Type of pests that are intended to be controlled.
- (d) Any other information as the **commissioner** may require.

11761. Any person that alleges any loss, nonperformance, or damage as a result of the use or application of any pesticide, or of any substance, method, or device for pesticidal purposes; or for the purpose of preventing, destroying, repelling, mitigating, or correcting any disorder of plants; or for the purpose of inhibiting, regulating, stimulating, or otherwise altering plant growth by direct application to plants or soil **shall**, within 30 days from the time that the occurrence of such loss, nonperformance, or damage became known to such person, file with the **commissioner** of the county in which the loss, nonperformance, or damage, or some part of the loss, nonperformance, or damage, is alleged to have occurred, a verified report of the loss, nonperformance, or damage.

11920. It is unlawful for any person to act as a pest control aircraft pilot in any county without first registering with the appropriate county agricultural **commissioner**.

11921. Each pest control aircraft pilot **shall** register in person with the agricultural **commissioner** of the county where he intends to work or with the director if the county does not have an agricultural **commissioner**. Registration in any additional county may be made in person or by mail on prescribed forms which may be obtained and processed in the county where personal registration is made.

12031. Each agricultural pest control adviser who makes any recommendation for agricultural use **shall** register in person with the agricultural **commissioner** in the county listed in the adviser's address on the license issued pursuant to Article 2 (commencing with Section 12021) or with the director if the county does not have an agricultural **commissioner**. If the address of the adviser on the state license is not within this state, the registration **shall** be in the county of occupational choice. Registration in any

additional county **shall** be made by mail or in person, at the discretion of the **commissioner** of the additional county. The additional registration by mail **shall** be made on prescribed forms which may be obtained and processed in the county listed in the address of the adviser on the state license or the county of occupational choice, as the case may be.

12977. The director, and the **commissioner** of each county under the direction and supervision of the director, **shall** enforce the provisions of this article and the regulations adopted pursuant to it.

12982. The director and the **commissioner** of each county under the direction and supervision of the director, **shall** enforce the provisions of this article and the regulations adopted pursuant to it. The local health officer may assist the director and the **commissioner** in the enforcement of the provisions of this article and any regulations adopted pursuant to it. The local health officer **shall** investigate any condition where a health hazard from pesticide use exists, and **shall** take necessary action, in cooperation with the **commissioner**, to abate the condition. The local health officer may call upon the State Department of Health Services for assistance pursuant to Section 105210 of the Health and Safety Code.

14004. The director, and the **commissioner** of each county under the direction and supervision of the director, **shall** enforce this chapter and the regulations issued pursuant to it.

14033. The director shall adopt regulations that govern the use of 2,4-D and any other herbicide which he finds and determines is injurious to any crop that is being grown in any area of the state. The regulations of the director may prescribe the time when, and the conditions under which, a restricted herbicide may be used in different areas of the state. They may provide that a restricted herbicide **shall be used only under permit of the commissioner or under the direct supervision of the commissioner**, subject to any of the following limitations:

- (a) In certain areas.
- (b) In excess of certain quantities or concentrations.

14093. The **commissioner**, or the director in any county where there is no commissioner, **shall** issue a private applicator certificate to each applicant who passes the examination.

### **Egg Quality Control**

27561. (a) The director **shall** enforce this chapter, and the regulations adopted pursuant to this chapter.

(b) The **commissioners** of each county, their deputies, and qualified inspectors, under the supervision and control of the director, **shall** enforce this chapter and the regulations which are adopted by the director pursuant to this chapter.

(c) Except as provided in Sections 27581 and 27601, and any of the violations enumerated in paragraph (1) of subdivision (a) of

### **Apiary Regulation**

29043. Registration of an apiary **shall** be filed with the **commissioner** of the county in which the apiary is located, or with the director if there is no **commissioner** in the county. The director **shall** adopt a form of registration to be used statewide, which **shall** include a request for notification of use of pesticide in accordance with Section 29101. All **commissioners shall** use the same form.

29300. The director, and the **commissioner** of each county under the direction and supervision of the director **shall** enforce this chapter.

### **Honey Quality Control**

29441. The director and the **commissioners** of each county of the state, their deputies and inspectors, under the supervision and control of the director **shall** enforce this chapter.

### **Fruit and Vegetable Standardization**

42651. The director and the **commissioners** of each county of the state, their deputies and inspectors, under the supervision and control of the director **shall** enforce this division.

42822. An **enforcing officer shall** cause the prosecution of any person whom he knows or has reason to believe is guilty of violating any provision of this division.

46000, *et al.* (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.

47020. (a) A certified farmers' market **certificate issued by a county agricultural commissioner shall** be valid for 12 months from the date of issue. The county agricultural **commissioner shall** inspect every certified farmers' market within his or her jurisdiction at least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the certified farmers' market manager prior to the payment of the fee.

(b) A certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural

**commissioner** in each county **shall** perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county **shall** perform at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections **shall** be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the producer prior to the payment of the fee.

(c) Renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter. The certificate shall be eligible for renewal when all outstanding balances and associated penalties or administrative fines have been paid to the department or the respective county or counties.

### **Seed Law Enforcement**

52282. The director and, under the supervision and direction of the director, the **commissioner** of each county and the qualified representatives of the **commissioner** **shall** enforce this chapter and carry out its provisions and requirements.

52361. The director, each **commissioner**, and any qualified representative of the **commissioner**, **shall** sample and inspect any agricultural or vegetable seed which is subject to this chapter at such time and place and to such extent as he may deem necessary to determine whether such agricultural or vegetable seed is in compliance with the provisions of this chapter, and notify promptly the person that is in possession or control of the seed of any violation.

53361. The director and the **commissioners** of each county of the state, their deputies and inspectors, under the supervision and control of the director, **shall** enforce this chapter.

53363. If the director or the **commissioner** **shall** find that any person has violated any provision of this chapter, he may institute proceedings in a court of competent jurisdiction in the area in which the violation occurred, to have such person convicted of the violation, or he may file with the district attorney such evidence that may be deemed necessary.

### **California Health and Safety Code Agricultural Burning**

41865. (a) This section shall be known, and may be cited, as the Connelly-Areias-Chandler Rice Straw Burning Reduction Act of 1991.

(b) As used in this section:

(1) "Sacramento Valley Air Basin" means the area designated by the state board pursuant to Section 39606.

(2) "Air pollution control council" means the Sacramento Valley Basinwide Air Pollution Control Council authorized pursuant to Section 40900.

(3) "Conditional rice straw burning permit" means a permit to burn granted pursuant to subdivisions (f) and (h).

(4) "Allowable acres to be burned" means the number of acres that may be burned pursuant to subdivision (c).

(5) "Department" means the Department of Food and Agriculture.

(6) "Maximum fall burn acres" means the maximum amount of rice acreage that may be burned from September 1 to December 31, inclusive, of each year.

(7) "Maximum spring burn acres" means the maximum amount of rice acreage that may be burned from January 1 to May 31 of the following year, inclusive.

(c) Notwithstanding Section 41850, rice straw burning in counties in the Sacramento Valley Air Basin shall be phased down, as follows:

(1) From 1998 to 2000, the maximum spring and fall burn acres shall be the following number of acres planted prior to September 1 of each year:

	Maximum Fall Burn	Maximum Spring Burn
Year	Acres	Acres
1998	90,000	110,000
1999	90,000	110,000
2000	90,000	110,000

(2) Notwithstanding paragraph (1), any of the 90,000 acres allocated in the fall that are not burned may be added to the maximum spring burn acres, provided that the maximum spring burn acres does not exceed 160,000 acres.

(3) Notwithstanding paragraph (1), the maximum acres burned between January 1, 1998, and August 31, 1998, shall be limited so that the total acres burned between September 1, 1997, and August 31, 1998, do not exceed 38 percent of the total acres planted prior to September 1, 1997.

(4) In 2001 and thereafter, the maximum annual burn acres shall be the number of acres prescribed in subdivision (i), subject to subdivisions (f) and (h).

(d) The number of allowable acres to be burned each day shall be determined by the state board and the air pollution control officers in the Sacramento Valley Air Basin and equitably allocated among rice growers in accordance with the annual **agricultural** burning plan adopted by the air pollution control council and approved by the state board.

(e) On or before September 1, 2000, the state board, in consultation with the department and the air pollution control council, shall adopt regulations consistent with the criteria provided in subdivisions (f) and (h). On or before September 1, 1996, an advisory group shall be established by the state board and the department to assist in the adoption of those regulations.

(f) Commencing September 1, 2001, the county air pollution control officers in the Sacramento Valley Air Basin may grant conditional rice straw burning permits once the county **agricultural commissioner has determined** that the applicant has met the conditions specified in subdivision (h). The county **agricultural commissioner shall** be responsible for all field inspections associated with the issuance of conditional rice straw burning permits. A conditional rice straw burning permit shall be valid for only one burn, per field, per year.

(g) The county agricultural commissioner may charge the applicant a fee not to exceed the costs incurred by the county agricultural commissioner in making the determination specified in subdivision

(f). This subdivision shall be operative only until January 1, 2009.

(h) If the terms and conditions for issuing conditional rice straw burning permits specified in paragraphs (1) to (4), inclusive, are met, a conditional rice straw burning permit may be issued unless the state board and the department have jointly determined, based upon an annual review process, that there are other economically and technically feasible alternative means of eliminating the disease that are not substantially more costly to the applicant. The terms and conditions for issuing the conditional rice straw burning permits are:

(1) The fields to be burned are specifically described.

(2) The applicant has not violated any provision of this section within the previous three years.

(3) During the growing season, the county agricultural commissioner has independently determined the significant presence of a pathogen in an amount sufficient to constitute a rice disease such as stem rot.

(4) The county agricultural commissioner makes a finding that the existence of the pathogen as identified in paragraph (3) will likely cause a significant, quantifiable reduction in yield in the field to be burned during the current or next growing season. The findings of the county **agricultural commissioner shall** be based on recommendations adopted by the advisory group established pursuant to subdivision (e).