

113TH CONGRESS
1ST SESSION

H. R. 2400

To amend the Organic Foods Production Act of 1990 to require recordkeeping and authorize investigations and enforcement actions for violations of such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 17, 2013

Mrs. CAPPS (for herself, Mr. HANNA, Mr. DEFazio, and Mr. FARR) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Organic Foods Production Act of 1990 to require recordkeeping and authorize investigations and enforcement actions for violations of such Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Organic Standards
5 Protection Act”.

1 **SEC. 2. RECORDKEEPING, INVESTIGATIONS, AND ENFORCE-**
2 **MENT.**

3 The Organic Foods Production Act of 1990 is amend-
4 ed by inserting after section 2120 (7 U.S.C. 6519) the
5 following:

6 **“SEC. 2120A. RECORDKEEPING, INVESTIGATIONS, AND EN-**
7 **FORCEMENT.**

8 “(a) RECORDKEEPING.—

9 “(1) IN GENERAL.—Except as otherwise pro-
10 vided in this title, all persons, including producers,
11 handlers, and certifying agents, required to report
12 information to the Secretary under this title shall
13 maintain, and make available to the Secretary on
14 the request of the Secretary, all contracts, agree-
15 ments, receipts, and other records associated with
16 the organic certification program established by the
17 Secretary under this title.

18 “(2) DURATION OF RECORDKEEPING REQUIRE-
19 MENT.—A record covered by paragraph (1) shall be
20 maintained—

21 “(A) by a person covered by this title, ex-
22 cept for a certifying agent, for a period of 5
23 years beginning on the date of the creation of
24 the record; and

1 “(B) by a certifying agent, for a period of
2 10 years beginning on the date of the creation
3 of the record.

4 “(b) CONFIDENTIALITY.—

5 “(1) IN GENERAL.—Subject to paragraph (2),
6 and except as provided in section 2107(a)(9) and as
7 otherwise directed by the Secretary or the Attorney
8 General for enforcement purposes, no officer, em-
9 ployee, or agent of the United States shall make
10 available to the public information, statistics, or doc-
11 uments obtained from or made available by any per-
12 son under this title, other than in a manner that en-
13 sures that confidentiality is preserved regarding the
14 identity of persons, including parties to a contract,
15 and proprietary business information.

16 “(2) VIOLATORS AND NATURE OF ACTIONS.—
17 The Secretary may release the name of the violator
18 and the nature of the actions triggering an order or
19 revocation under subsection (e).

20 “(c) INVESTIGATION.—

21 “(1) IN GENERAL.—The Secretary may take
22 such investigative actions as the Secretary considers
23 to be necessary to carry out this title—

1 “(A) to verify the accuracy of any informa-
2 tion reported or made available under this title;
3 and

4 “(B) to determine, with regard to actions,
5 practices, or information required under this
6 title, whether a person covered by this title has
7 committed, or will commit, a violation of any
8 provision of this title, including an order or reg-
9 ulation promulgated by the Secretary.

10 “(2) INVESTIGATIVE POWERS.—The Secretary
11 may administer oaths and affirmations, subpoena
12 witnesses, compel attendance of witnesses, take evi-
13 dence, and require the production of any records re-
14 quired to be maintained under subsection (a) or sec-
15 tion 2112(d) or 2116(c) that are relevant to the in-
16 vestigation.

17 “(d) UNLAWFUL ACT.—It shall be unlawful and a
18 violation of this title for any person covered by this title—

19 “(1) to fail or refuse to provide, or delay the
20 timely provision of, accurate information required by
21 the Secretary under this section;

22 “(2) to violate—

23 “(A) an order of the Secretary;

24 “(B) a revocation of the organic certifi-
25 cation of a producer or handler; or

1 “(C) a revocation of the accreditation of a
2 certifying agent; or

3 “(3) to sell, or attempt to sell, a product that
4 is represented as being organically produced under
5 this title (including an order or regulation promul-
6 gated under this title) if in fact the product has
7 been produced or handled by an operation that is
8 not yet a certified organic producer or handler under
9 this title.

10 “(e) ENFORCEMENT.—

11 “(1) ORDER.—

12 “(A) IN GENERAL.—The Secretary may
13 issue an order to stop the sale of an agricul-
14 tural product that is labeled or otherwise rep-
15 resented as being organically produced in cases
16 of suspected fraudulent or otherwise unlawful
17 acts as described in subsection (d) that are will-
18 ful, noncorrectable, or the subject of a com-
19 bined noncompliance and adverse action until
20 the product can be verified—

21 “(i) as meeting the national and State
22 standards for organic production and han-
23 dling as provided in sections 2105 through
24 2114;

1 “(ii) as having been produced or han-
2 dled without the use of a prohibited sub-
3 stance listed under section 2118; and

4 “(iii) as being produced and handled
5 by a certified organic operation.

6 “(B) AFFIRMATIVE DEFENSE TO STOP
7 SALE ORDER.—

8 “(i) IN GENERAL.—If a producer or
9 handler has a valid organic certification
10 from the Department of Agriculture, the
11 burden shall shift to the Secretary to prove
12 fraud or unlawful activity that is willful,
13 noncorrectable, or the subject of a com-
14 bined noncompliance and adverse action
15 before a stop sale order under subpara-
16 graph (A) may be implemented.

17 “(ii) INFORMATION.—

18 “(I) IN GENERAL.—The producer
19 or handler shall comply with any re-
20 quests of the Secretary for documents
21 and other information not later than
22 30 days after a request is made.

23 “(II) NONCOMPLIANCE.—If the
24 producer or handler fails to comply
25 within the period described in sub-

1 clause (I), the Secretary may issue a
2 stop sale order.

3 “(C) APPEAL OF STOP SALE ORDER.—

4 “(i) IN GENERAL.—If the Secretary
5 proves fraud or unlawful activity that is
6 willful, noncorrectable, or the subject of a
7 combined noncompliance and adverse ac-
8 tion, the determination may be appealed
9 through an expedited administrative appeal
10 process.

11 “(ii) DEADLINE.—The expedited ap-
12 peal process shall be completed not later
13 than 30 days after the date of the issuance
14 of the stop sale order.

15 “(iii) STAY.—Any stop sale order
16 shall be stayed pending the 30 day-expe-
17 dited appeal under this subparagraph.

18 “(2) CERTIFICATION OR ACCREDITATION.—

19 After notice and opportunity for an administrative
20 appeal under section 2121, if a violation described in
21 subparagraph (A)(ii) is determined to have occurred
22 and is an unlawful act under subsection (d), the Sec-
23 retary shall revoke the organic certification of the
24 producer or handler, or the accreditation of the cer-
25 tifying agent.

1 “(3) VIOLATION OF ORDER OR REVOCATION.—

2 A person who violates an order to stop the sale of
 3 a product as an organically produced product under
 4 paragraph (1), or a revocation of certification or ac-
 5 creditation under paragraph (2), shall be subject to
 6 1 or more of the penalties provided under sub-
 7 sections (a) and (b) of section 2120.

8 “(f) APPEAL.—

9 “(1) IN GENERAL.—An order under subsection
 10 (e)(1), or a revocation of certification or accredita-
 11 tion under subsection (e)(2)(B), shall be final and
 12 conclusive unless the affected person files an appeal
 13 of the order—

14 “(A) first, to the administrative appeals
 15 process established under section 2121(a); and

16 “(B) after a final decision of the Secretary,
 17 if the affected person so elects, to a United
 18 States district court as provided in section
 19 2121(b) not later than 30 days after the date
 20 of the determination under subparagraph (A).

21 “(2) STANDARD.—An order under subsection
 22 (e)(1)(A), or a revocation of certification or accredi-
 23 tation under subsection (e)(2), shall be set aside if
 24 the order, or the revocation of certification or ac-

1 creditation, fails to comply with section 706 of title
2 5, United States Code.

3 “(g) NONCOMPLIANCE.—

4 “(1) IN GENERAL.—If a person covered by this
5 title fails to obey an order, or a revocation of certifi-
6 cation or accreditation, described in subsection (f)(2)
7 after the order or revocation has become final and
8 conclusive or after the appropriate United States
9 district court has entered a final judgment in favor
10 of the Secretary, the United States may apply to the
11 appropriate United States district court for enforce-
12 ment of the order, or the revocation of certification
13 or accreditation.

14 “(2) ENFORCEMENT.—If the court determines
15 that the order or revocation was lawfully made and
16 duly served and that the person violated the order
17 or revocation, the court shall enforce the order or
18 revocation.

19 “(3) CIVIL PENALTY.—If the court finds that
20 the person violated the order or revocation, the per-
21 son shall be subject to a civil penalty of not more
22 than \$10,000 for each offense.”.

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