CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
A. G. Kawamura, Secretary

April 8, 2010

TO: CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE AND ALL INTERESTED PARTIES

A meeting of the California Organic Products Advisory Committee has been scheduled. Enclosed is the agenda.

Date: Friday, April 30, 2010
9:00 a.m. – 4:00 p.m.

Location: CA Department of Food and Agriculture
1220 N Street, Main Auditorium
Sacramento, CA, 95814

The auditorium is located inside the Dept. of Food and Agriculture building on the first floor. Directions are available at the front desk.

Notification of committee meetings and their agendas can be found via the Internet by accessing the following website address: http://www.cdfa.ca.gov/is/meetings.html.

Please find the enclosed agenda. If you have any questions regarding this meeting, please feel free to contact me at the number listed below.

Sincerely,

for

David Carlson, Senior Special Investigator
California Organic Program
Inspection and Compliance Branch
Inspection Services

Enclosure(s)

California Department of Food and Agriculture (CDFA)
California Organic Products Advisory Committee

Friday, April 30, 2010
9:00 a.m. – 4:00 p.m.

Inspection and Compliance Branch
560 J Street, Room 395
Sacramento, CA

1. Introductions

2. Review and Approval of January 21, 2010 Meeting Minutes (Attachment A)

3. State Organic Program Update
    1. Revenue from Registrations (Attachment B)
    2. New Registrations (Attachment (C)
    3. SOP 2009/10 Fund Condition (Attachment D)
    4. Organic Program Budget (Attachment E)
    5. Complaint Report (Attachment F)
    6. Appeals Report (Attachment G)
    7. Appeals Procedures (Attachment H)
    8. Mediation Procedures (Attachment I)
    9. Memorandum of Understanding (Attachment J)

4. California Department of Public Health Update – Patrick Kennelly

5. Office of Inspector General Report – Miles McEvoy and Mark Bradley

6. National Organic Standards Board Update – Steve DeMuri and John Foster

7. Approval of SOP Regulatory Package (Attachment K)

8. Assembly Bill 2612 (Assembly Committee on Agriculture) (Attachment L)

9. Public Comments

10. New Items

11. Next Meeting/Agenda Items

12. Adjournment

All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact David Carlson at (916) 445-2180. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.

http://www.cdfa.ca.gov/is/meetings.html

ATTACHMENT L

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2612

Introduced by Committee on Agriculture (Galgiani (Chair), Tom Berryhill (Vice Chair), Conway, Ma, *and* Mendoza~~, and Yamada~~)

February 19, 2010

~~An act to amend Sections 19204, 19220, and 19312 of the Food and Agricultural Code, relating to animals.~~ *An act to amend Sections 19204, 19220, 19312, 46003, 46004.1, 46009, 46013, 46013.1, 46013.2, and 46014.1 of the Food and Agricultural Code, relating to agriculture.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2612, as amended, Committee on Agriculture. Slaughtered animals: pet ~~food.~~ *food: organic products: registration.*

~~Existing~~

(1) Existing law requires a person engaged in the business of operating a collection center to obtain a license from the Department of Food and Agriculture for each collection center operated. "Collection center" is defined to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant. Existing law makes a violation of these provisions a crime.

This bill, instead, would define "collection center" to mean a receiving area for the temporary storage of animal carcasses, packinghouse waste, or other products before transportation to a licensed rendering plant or pet food processor. Because this bill would change the definition of an existing crime, it would impose a state-mandated local program.

~~Existing~~

(2) Existing law requires persons engaged in certain businesses, including, among others, rendering, pet food processing, and operating a collection center, to obtain a license from the department. Existing law provides that those licenses are valid for a year from the date of issuance.

This bill, instead, would provide that those licenses shall expire on December 31 of each year.

Existing law requires any person or entity who engages in the transportation of inedible kitchen grease, as defined, to be registered with the department. An applicant for registration as a transporter of inedible kitchen grease is required to include a registration fee of $100, except for any renderer who registers.

This bill would also exempt a collection center that registers from this registration fee.

(3) Existing law, the California Organic Products Act of 2003, provides that persons engaged in the production or handling of raw agricultural products sold as organic or the processing or handling of processed food sold as organic shall register with the Secretary of Food and Agriculture. Under existing law the registration must include, among other things, a map showing the location and dimensions of the facility or farm where the products are produced. If the registrant has not had control of the property for 36 months, existing law requires that the registrant provide the land use history of the property for the last 36 months from the previous owners. If the registrant does not own the property, existing law requires the registrant to provide documentation from the owner granting permission for the parcel to be registered as organic.

This bill would provide that the registration requirement of providing a map would only apply to exempt producers and would define an exempt producer as a producer whose annual gross agricultural income from organic sales totals $5,000 or less. This bill would provide that the above requirements regarding prior land use and permission from the owner would only apply to exempt producers or exempt handlers, and would define an exempt handler as a handler whose annual gross agricultural income from organic sales totals $5,000 or less.

(4) Under existing law a producer required to register with the secretary is required to list all substances applied to the crop, soil, or irrigation water as part of the registration.

Under this bill only producers whose annual gross agricultural income from organic sales totals $5,000 or less would be required to include this information in their registration.

(5) Existing law establishes a schedule of fees that the registrant is required to pay to the secretary based on the gross sales of the registrant.

This bill would allow the secretary to require the registrant to submit their gross sales by commodity and acreage and to provide the exact dollar amount of sales of $25,000,001 or more.

This bill would also authorize the secretary to adopt regulations that supersede the registration provisions applicable to persons engaged in organic production, processing, and handling to the extent reasonably necessary to provide an online system of registration.

(6) Existing law requires the secretary to establish the California Organic Products Advisory Committee to advise the secretary regarding his or her responsibilities under the act. Under existing law the committee is comprised of 15 members and allows the members to have alternates. Existing law provides that 6 members and their alternates must be producers, 2 processors, 2 consumer representatives, 2 technical representatives, one wholesale distributor, one environmental representative, and one retail representative. Existing law provides that alternates at large may be appointed as specified.

This bill would delete the provisions regarding the appointment of alternates at large.

(7) This bill would make other conforming changes.

~~The~~

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19204 of the Food and Agricultural Code
2 is amended to read:
3 19204. "Collection center" means a receiving area for the
4 temporary storage of animal carcasses, packinghouse waste, or

other products before transportation to a licensed rendering plant or pet food processor.

SEC. 2. Section 19220 of the Food and Agricultural Code is amended to read:

19220. A license granted under this chapter shall expire on December 31 of each year.

SEC. 3. Section 19312 of the Food and Agricultural Code is amended to read:

19312. (a) Registration shall be made with the department and shall include all of the following:

(1) The applicant's name and address.

(2) A description of the operations to be performed by the applicant.

(3) The vehicles to be used in the transportation.

(4) A registration fee of one hundred dollars ($100).

(5) A list of the names of the drivers employed by the transporter who transport inedible kitchen grease subject to this article and their drivers' license numbers.

(6) Any other information that may be required by the department.

(b) Any renderer or collection center that registers pursuant to this article is not required to pay the fee prescribed in this section.

(c) The department may refuse to issue an original or renewal registration certificate to any applicant for which the grounds specified in subdivisions (a) to (e), inclusive, of Section 19314 exist.

(d) (1) The applicant may appeal the decision of the department to refuse to register the applicant.

(2) The department shall establish procedures for the appeals process, to include a noticed hearing.

(3) The department may reverse a decision to refuse to register the applicant, upon a finding of good cause to do so.

SEC. 4. Section 46003 of the Food and Agricultural Code is amended to read:

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 ~~a~~ wholesal~~e distributor~~ *distributors*, two members *and their alternates* shall be consumer representatives, one member *and his or her alternate* shall be ~~an~~ environmental ~~representative~~ *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 ~~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~~ *Public Health Officer*, or his or her representative, and a county agricultural commissioner may serve as ex officio members of the advisory committee.

SEC. 5. Section 46004.1 of the Food and Agricultural Code is amended to read:

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.

~~(d)~~

(f) "Handle" means to sell, process, or package agricultural products.

~~(e)~~

(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.

~~(f)~~

(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.

~~(g)~~

(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.

~~(h)~~

(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.

~~(i)~~

(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.

~~(j)~~

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

~~(k)~~

(m) "USDA" means the United States Department of Agriculture.

SEC. 6. Section 46009 of the Food and Agricultural Code is amended to read:

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 ~~1½~~ *1.5* percent per month on the unpaid balance.

SEC. 7. Section 46013 of the Food and Agricultural Code is amended to read:

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 ~~1½~~ *1.5* percent per month on the unpaid balance.

SEC. 8. Section 46013.1 of the Food and Agricultural Code is amended to read:

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 ~~Director of Health Services~~ *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 *exempt* 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~~ *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 ~~registrant~~ *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 ~~registrant~~ *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:

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 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 ~~Director of Health Services~~ *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.

SEC. 9. Section 46013.2 of the Food and Agricultural Code is amended to read:

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 (c) 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 ~~1½~~ *1.5* percent per month on the unpaid balance.

SEC. 10. Section 46014.1 of the Food and Agricultural Code is amended to read:

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 ~~1½~~ *1.5* percent interest per month on the unpaid balance.

~~SEC. 4.~~

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

ATTACHMENT K

Response to Organic Listening Sessions

BACKGROUND

In November 2008, the State Organic Program (SOP) announced the formation of a Technical Planning Committee consisting of industry representatives and members from the California Organic Products Advisory Committee (COPAC). The Technical Planning Committee was tasked with reviewing various business functions of the SOP, e.g., registration, enforcement, and due process, as well as evaluating SOP's processes and procedures.

In partnership with the SOP, the Technical Planning Committee identified three primary areas that would enhance enforcement of the California Organic Products Act of 2003 and National Organic Program regulations: 1. spot inspections; 2. minor technical changes to SOP's registration process; and 3. sampling procedures. Accordingly, the SOP drafted regulations in response to a unanimous motion passed at the November 17, 2009 COPAC meeting, which iterated, "…whereas the COPAC supports and commends the new QSM [(Quality Systems Manual)], COPAC encourages the Secretary to fast track the regulatory process, in order to facilitate rapid resumption of inspections and other processes as outlined in the QSM."

The SOP conducted three public listening sessions in regard to the California Department of Food and Agriculture's (CDFA's) proposed regulations. The listening sessions were held at the following locations.

- February 9, 2010, California Department of Food and Agriculture (CDFA), 1220 N Street, Sacramento, CA 95814, Main Auditorium, 9:00 a.m. to 12:00 p.m.

- February 17, 2010, Monterey Agricultural Commissioner's Office, 1428 Abbott Street, Agricultural Center Conference Room, Salinas, CA 93901, 9:00 a.m. to 12:00 p.m.

- March 3, 2010, Los Angeles Agricultural Commissioner's Office, 11012 So. Garfield Avenue, South Gate, CA 90280, 9:00 a.m. to 12:00 p.m.

The listening sessions were designed to solicit public and industry input in regard to the Department's proposed regulations. Once the Department initiates the formal rulemaking process, there will be a 45-day comment period prior to the promulgation of the proposed regulations.

RESPONSE TO LISTENING SESSIONS

The following represents a composite of questions and concerns related to CDFA's proposed regulations. The proposed regulations are designed to facilitate the sale of organic products within the state while maintaining sufficient regulatory control by means of spot inspections, investigations, and sampling. Questions and concerns are included in *italicized* font and the SOP's responses follow.

Response to Organic Listening Sessions

Proposed regulation §1391.3(a) should be amended to include products listing organic in the ingredients label.

Proposed regulation §1391.3(a) was rewritten to address this issue.

The SOP has no authority over ACAs, only over California agricultural commissioners and Department personnel.

Title 7, §205.403(a)(ii) of the Code of Federal Regulations establishes, in part, that "The Administrator or State organic program's governing State official may require that additional inspections be performed by the certifying agent for the purpose of determining compliance with the Act and the regulations in this part."

The Department does not have the authority to adopt NOP regulations by reference.

In accordance with the Administrative Procedure Act, all regulations properly promulgated are enforceable. In addition, §46001 of the Food and Agricultural Code establishes that the California Organic Products Act of 2003, "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.).

County agricultural commissioners that conduct certifying activities should not be prohibited from conducting inspections, investigations, or sampling of operations that are certified by another accredited certifying agent.

In response to the NOP's clarifying finding, the potential for a conflict of interest may exist if a county agricultural commissioner conducting certifying activities conducts inspections or investigations of operations that are certified by another accredited certifying agent. Consequently, the SOP and/or ACA will assume responsibility for those inspections and investigations where the potential for conflict exists. This proposed regulation does not prohibit counties that conduct certifying activities from conducting inspections, investigations, or sampling of exempt operations.

How does CDFA expect ACAs not located within California to know about the proposed regulations?

Food and Agricultural Code §46014.1(a), establishes, in part, that "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 activities requiring the registration…" ACAs conducting certification activities entirely outside the State of California do not fall under the purview or jurisdiction of the SOP. Consequently, the Department shall only notify ACAs operating in the State of California about the proposed regulations.

Response to Organic Listening Sessions

In addition, the Administrative Procedure Act mandates specific requirements for notification and public comment when proposing potential regulatory changes. When the Department submits the proposed regulations to the Office of Administrative Law for official review, the Department will ensure that all ACAs operating in California will be notified of the potential regulatory changes.

The SOP and county agricultural commissioner activities and processes should be articulated into this regulation.

Title 7, §205.620 of the Code of Federal Regulations specifies the requirements of the SOP. The proposed regulations clarify how the SOP will fulfill those requirements. In addition, internal processes and procedures related to the SOP and county agricultural commissioners have been included in the SOP's Quality System's Manual.

CDFA must ensure that due process is available and applied equitability.

The SOP agrees with the assertion. Current regulation and statute specifies due process, including appeals and mediation. Consequently, the regulations concerning mediation, appeals, and due process are being renumbered with no substantive changes within the regulatory language. In addition, the SOP's Quality Systems Manual outlines the policies, scope, and procedures for the application of due process.

The regulations do not establish authority for operations exempt from certification.

The proposed regulations apply to both exempt and certified organic operations. Proposed regulations §1391.3 and §1391.4 establish authority for inspection and sampling without exemption clauses for uncertified operations.

SOP is requiring all sampling to be paid for by ACAs.

The ambiguity regarding payment for sampling has been corrected in proposed regulation §1391.3(b).

In regard to proposed regulation §1391.4(a), there is ambiguity surrounding the entity "authorizing" samples to be collected.

Proposed regulation §1391.4(a) was rewritten to reconcile this ambiguity.

Proposed regulation §1391.5(f) does not include assignment of investigations or actions against county agricultural commissioners.

The assignment of investigations is a procedural issue covered in the SOP's Quality Systems Manual. Food and Agricultural Code §46000 et seq. establishes, in part, that the CDFA and county agricultural commissioners are responsible for enforcement of the

federal Organic Foods Production Act of 1990, National Organic Program regulations, and the California Organic Products Act of 2003.

Establish timelines in proposed regulation §1391.7.

Regulations concerning appeals and mediation are currently in the California Code of Regulations in Title 3, §1391 and §1391.1, respectively. These regulations have been included in the regulatory package for renumbering purposes only. At this time, the Department is not amending existing regulations.

ACAs should only pay for mediation when they initiate it.

Proposed regulation §1391.8(a) (current regulation §1391.1, Title 3, California Code of Regulations) establishes that a certification agent **may voluntarily** participate in mediation. Proposed regulation §1391.8(c) establishes that compensation of the mediator, if other than a county agricultural commissioner, shall be paid for by the certification agent and the operation.

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DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

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Text proposed to be deleted is displayed in ~~strikethrough~~ type.

TITLE 3. FOOD AND AGRICULTURE
DIVISION 3. ECONOMICS
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION
SUBCHAPTER 4. FRESH FRUITS, NUTS AND VEGETABLES
ARTICLE 6.1. STATE ORGANIC PROGRAM ~~APPEAL AND MEDIATION PROCEDURES~~

INTENT

§ 1391. Intent.

The intent of this article is to facilitate the sale of organic products within the state while maintaining sufficient regulatory control by means of spot inspections, investigations, and sampling, to determine compliance with the provisions of the Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.

Note: Authority cited: Sections 407, 46000, 46001, 46002, 46016.1(a), 46016.1(e), and 46018.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

ADOPTION OF NOP REGULATIONS BY REFERENCE

§ 1391.1. Adoption of National Organic Program Regulations by Reference.

The regulations governing federal Organic Foods Production Act provisions in the U.S. Government Code of Federal Regulations (CFR), Title 7, Code of Federal Regulations Part 205, as published in the Federal Register, are hereby adopted by reference.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code. Reference: Section 205, Title 7, Code of Federal Regulations, Section 401, Food and Agricultural Code.

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ADOPTION OF CALIFORNIA ORGANIC PRODUCTS ACT OF 2003 BY REFERENCE

§ 1391.2. Adoption of California Organic Products Act of 2003 by Reference.

The statutes governing the California Organic Products Act of 2003 in the Food and Agricultural Code, Sections 46000 through 46029 and the Health and Safety Code, Sections 110810 through 110959, are hereby adopted by reference.

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Sections 110811 and 110812, Health and Safety Code. Reference: Section 401, Food and Agricultural Code.

INSPECTION AND SAMPLING AUTHORITY

§ 1391.3. Organic Inspection and Sampling Authority.

(a) All agricultural products and ingredients that are produced, processed, stored, sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)" shall be made accessible by production or handling operations for examination by the state, county agricultural commissioner, or the operation's accredited certifying agent.

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(b) The state, county agricultural commissioner, or the operation's accredited certifying agent may require preharvest or postharvest testing of any agricultural product, ingredient, or input to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)." Sampling for analysis shall be conducted by the state, county agricultural commissioner, or the operation's accredited certifying agent.

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(c) The state, county agricultural commissioner, or the operation's accredited certifying agent may enter, inspect, and/or sample any of the following or related items in order to determine compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations:

(1) Fields, areas, structures, and greenhouses where products or inputs may be produced, processed, handled, or stored.
(2) Equipment, including protective clothing and equipment, used to store, produce, process, transport, or handle commodities.
(3) Dressing areas and other facilities used by employees.

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(d) The state and county agricultural commissioners shall have the right to inspect documentation and records pertaining to the production, processing, storage, transportation, or handling of commodities identified as "100 percent organic," "organic," and "made with organic (specified ingredients or food groups)." Such records may include and are not limited to the following:

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(1) Organic systems plan(s), if applicable.
(2) The quantity harvested from each field or management unit, the size of the field management unit, the field number, and the date of harvest.
(3) 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.
(4) 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.
(5) 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.
(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.
(8) Any other records or documents deemed necessary to demonstrate compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.

(e) Sample integrity shall be maintained through the chain of custody.

Deleted: , and residue testing shall be performed in an accredited laboratory

(f) Chemical analysis shall be made in accordance with an applicable validated methodology used for determining the presence of contaminants in agricultural products.

Deleted: the methods described in the most current edition of the Official Methods of Analysis of the Association of Analytical Communities (AOAC) International or other current

(g) Results of all analyses performed under this section shall be provided to the state by the testing facility.

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(h) When test results indicate a specific agricultural product contains substances or environmental contaminants that exceed state or federal

Deleted: pesticide residues

regulatory tolerances, the state, county agricultural commissioner, or the operation's accredited certifying agent shall report such data to the state and federal agency whose regulatory tolerance or action level has been exceeded.

(i) County agricultural commissioners that conduct certifying activities shall not conduct inspections or investigations of operations that are certified by another accredited certifying agent.

Note: Authority cited: Sections 407, 46000, 46001, 46002, and 46018.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

SAMPLE COLLECTION

§ 1391.4. Sample Collection for Laboratory Analysis.

(a) All samples for laboratory testing shall be collected by the state, county agricultural commissioner, or the operation's accredited certifying agent for the purpose of testing under this article.

(b) The state may determine which samples shall be collected, including, but not limited to the type, amount, size, or volume.

(c) A duplication of each sample may be taken.

(d) Each sample collected shall include an identifying number, the date and time collected, the name of the individual collecting the sample, the address where collected, a detailed description of the product, its location on the premises, and any other information determined to be necessary.

(e) Individual samples shall be enclosed in containers appropriate for the type of sample collected utilizing methods that prevent direct contact with contaminants.

Note: Authority cited: Sections 407, 46000, 46001, and 46002, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

COMPLAINT INVESTIGATIONS

§ 1391.5. Complaint Investigations.

(a) Any person may file a complaint with the Department concerning suspected noncompliance with the California Organic Products Act of 2003, National Organic Program regulations, or the federal Organic Foods Production Act of 1990.

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Deleted: National Organic Program, Food and Drug Administration, or Environmental Protection Agency

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Deleted: and, if taken, shall be collected at the same time as the official sample.

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(b) The Department shall commence a complaint investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products. Upon conclusion of a complaint investigation, the Department shall provide a report of findings and enforcement action taken, if any, to the complainant within 60 days, if the complainant makes his or her identity available.

(c) The Department's complaint process shall meet the complaint process outlined in regulations adopted by the National Organic Program.

(d) The Department may refer cases to the National Organic Program under these or other conditions:
(1) Inability to resolve a case.
(2) Lack of expertise to resolve a case.
(3) Lack of resources or authority to pursue a civil action.
(4) If the case concerns issues outside the Department's jurisdiction.
(5) Inputs not currently addressed by California state law.
(6) Issues involving National Organic Program policy issues.

(e) The county agricultural commissioner or the operation's accredited certifying agent shall provide a final report of inspection to the Department upon completion of an assigned investigation. If an accredited certifying agent fails to initiate appropriate action, the complaint and the agent's actions or inactions shall be referred to the National Organic Program.

Note: Authority cited: Sections 407, 46000, 46001, 46002, 46016.1(a), and 46016.1(e), Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

REGISTRATION

§ 1391.6. Amended Registrations.

A registrant shall notify the Department of any change in the information reported on the registration form prior to the sale of additional product or within 14 days and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.

Note: Authority cited: Sections 407, 46000, 46001, 46002, Food and Agricultural Code. Reference: Sections 401 and 46013.2(c), Food and Agricultural Code.

APPEALS

§ 1391.7. Appeal of Denial, Suspension or Revocation of Organic Certification.
…

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Deleted: A certification agent or the Secretary may propose denial, suspension or revocation of the organic certification of agricultural production and handling operations consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.662.¶
¶
An applicant for certification may appeal a certification agent's or Secretary's notice of denial of certification, and a certified operation may appeal a certification agent's or Secretary's notification of the proposed suspension or revocation, to the Secretary consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.681.¶
¶
Upon receipt of the appeal, the Secretary will evaluate the proposal of the certification agent or Secretary to deny, suspend or revoke a certification in order to determine if there is sufficient evidence to proceed to initiate formal administrative action to do so.¶
A decision by the Secretary to decline to initiate a formal administrative proceeding shall be deemed a granting of the appeal, and the Secretary shall communicate the decision in writing to the appellant and the certification agent. ¶
A decision by the Secretary to proceed to initiate a formal administrative proceeding shall be deemed a denial of the appeal, and the service of the accusation shall be construed as the communication of the denial to the appellant and the certification agent.¶
¶
Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

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THIS DOCUMENT IS BEING RELEASED IN ORDER TO FACILITATE PUBLIC DISCUSSION

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.

MEDIATION

§ 1391.~~1~~8. Mediation of Denial, Suspension or Revocation of Organic Certification.

…

Note: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.

Deleted: <#>If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, pursuant to 1391(a), they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, pursuant to 1391(c), they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement. Mediation process must be consistent with Title 7, Code of Federal Regulations, Section 205.663.¶
<#>Any settlement agreement shall be in compliance with the requirements of the State Organic Program.¶
¶
<#>The parties shall submit any proposed settlement agreement to the Secretary for review.¶
¶
<#>Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.¶
¶
<#>The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation or applicant for certification may voluntarily agree upon the choice of a mediator that is not on the list.¶
¶
<#>Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation or applicant for certification. The mediator, the certification agent and the certified operation or applicant for certification shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in condu … [1]

If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, pursuant to 1391(a), they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, pursuant to 1391(c), they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement. Mediation process must be consistent with Title 7, Code of Federal Regulations, Section 205.663.

Any settlement agreement shall be in compliance with the requirements of the State Organic Program.

The parties shall submit any proposed settlement agreement to the Secretary for review.

Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.

The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation or applicant for certification may voluntarily agree upon the choice of a mediator that is not on the list.

Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation or applicant for certification. The mediator, the certification agent and the certified operation or applicant for certification shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in conducting mediation by the Secretary as agreed to within the organic program contract or memorandum of understanding.

Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

ATTACHMENT J

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE AND THE CALIFORNIA DEPARTMENT OF PUBLIC HEALTH

This **MEMORANDUM OF UNDERSTANDING** ("MOU") is effective as of this 30th day of March, 2010 (the "Effective Date"), by and between the **California Department of Food and Agriculture**, hereinafter "CDFA," and the **California Department of Public Health**, hereinafter "CDPH."

RECITALS

A. On February 6, 2004, the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS), approved the California State Organic Program (SOP) under the USDA National Organic Program (NOP). The SOP is statutorily mandated to protect consumers, producers, handlers, processors, and retailers by establishing standards under which fresh agricultural products and food may be sold and/or labeled as organic. CDPH is tasked with enforcing statutes pertaining to processed products marketed as organic. The SOP's enforcement activities are coordinated with the California Organic Products Advisory Committee, the NOP, and county agricultural commissioners.

B. The federal Organic Foods Production Act of 1990, NOP regulations as provided in Title 7, Section 205 et seq. of the Code of Federal Regulations (CFR), the California Organic Products Act of 2003 (COPA) [Food and Agricultural Code (FAC) Section 46000 et seq. and Health and Safety Code Section 110180 et seq.], and Section 1391 et seq. of the California Code of Regulations (CCR) establish the statutory and regulatory authority for registration, spot inspection, and complaint resolution of fresh and processed organic products.

C. This MOU is intended to set forth the legislative and regulatory responsibilities of CDFA and CDPH. CDPH and CDFA enter into this MOU to ensure a cost effective and responsive SOP that is compliant with the COPA, federal Organic Foods Production Act of 1990, NOP regulations, and Section 1391 et seq. of the CCR.

D. CDFA and CDPH enter into this MOU in order to ensure a cooperative effort in fulfilling its statutory obligations under the SOP. Nothing in this MOU shall be construed or is intended to abridge, limit or curtail any other statutory or regulatory authorities otherwise available to CDPH or CDFA.

AGREEMENT

I. Registration Requirements For Handling Raw Or Processed Organic Products

CDFA shall adhere to Food and Agricultural Code Section 46013.1(a) which states, in part, that "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 and are not required to be registered as outlined in subdivision (b) must register with the [CDFA 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."

CDPH shall adhere to Food and Agricultural Code Section 46013.1(b) which states, in part, that "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 [CDPH Director]."

CDPH shall adhere to Health and Safety Code Section 110811, which requires the Health and Safety Code provisions of the California Organic Products Act of 2003 "...[to] 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.))."

CDPH shall adhere to Health and Safety Code Section 110812, which requires the "...[the Director of CDPH to] 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."

II. Spot Inspections

CDFA shall adhere to Food and Agricultural Code Section 46018.1 which states, in part, that "the [CDFA Secretary] and county agricultural commissioners may conduct a program of spot inspections to determine compliance with [the COPA]." Upon promulgation of state regulations in the CCR, CDFA shall also adhere to CFR Section 205.620, which mandates that the SOP must meet the requirements for organic programs specified in the act.

CDPH shall adhere to Health and Safety Code Section 110959, which states, in part, that "...the Director of CDPH 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 of CDPH] and regulations promulgated by the NOP."

III. Complaint Resolutions

CDFA shall adhere to Food and Agricultural Code Section 46016.1, which states, in part, that "(a) Any person may file a complaint with the [CDFA Secretary] concerning suspected noncompliance with [the COPA]... (b) The [CDFA Secretary] shall [commence] an investigation within three working days after receiving a compliant regarding fresh food, and within seven days for other products, and completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter... (e) The complaint process in this state must also meet all the complaint process[es] outlined in regulations adopted by the NOP."

CDPH shall adhere to Health and Safety Code Section 110940, which states, in part, that "(a) Any person may file a complaint with the [Director of Public Health] concerning suspected noncompliance with [the COPA] by a person over whom the [CDPH] has responsibility as provided in [the COPA] or regulations adopted by the NOP... (b) The [CDPH Director] shall...[commence] an investigation within three working days of receiving a written complaint regarding fresh food, and within seven working days for other product, and complete an investigation and reporting findings and enforcement action taken, if any, to the complainant within 90 days thereafter... (e) The complaint process in this state shall also meet all the complaint processes outlined in regulations promulgated by the NOP."

IV. Appeals

CDFA and CDPH shall adhere to Title 7, Code of Federal Regulations Sections 205.680 and 205.681 et seq.

A. <u>CDFA Services to CDPH</u>

1. On the date of execution of this MOU, CDFA shall receive all appeals filed with the State of California in accordance with Title 7, Code of Federal Regulations Sections 205.680 and 205.681 et seq.

2. CDFA shall provide a Hearing Officer to review appeals filed with the State of California in relation to Title 7, Code of Federal Regulations Sections 205.680 and 205.681 et seq.

B. <u>CDPH Services to CDFA</u>

1. CDPH shall serve as a technical advisor to the CDFA Appeals Hearing Officer for all appeals filed consistent with the State of California in relation to Title 7, Code of Federal Regulations Sections 205.680 and 205.681 et seq.

2. CDPH shall reimburse CDFA for any costs associated with appeals filed in accordance with Title 7, Code of Federal Regulations Sections 205.680 and 205.681 et seq., including, but not limited to: costs associated with formal administrative hearings and California Attorney General representation.

V. Miscellaneous

A. Severability. If any term or provision of this MOU or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this MOU shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.

A. Term and Termination. This MOU shall be effective as of the Effective Date, and shall be remain in effect for one (1) year following the effective date, subjective to automatic renewal unless either party seeks to terminate without cause upon provision of thirty (30) days written notice prior to renewal. This MOU shall be immediately terminated upon federal or state action that eliminates the authority of CDFA and CDPH to administer the SOP. Upon termination, neither party shall have any further obligations or responsibilities to the other party, except as expressly set forth by federal or state statute and regulation.

IN WITNESS WHEREOF, this MOU has been executed by the parties hereto as of the Effective Date.

By: _____
Rick S. Jensen, Chief
Inspection and Compliance Branch
Inspection Services

By: _____
Patrick Kennelly, Chief
Food Safety Section
California Department of Public Health

ATTACHMENT I

CALIFORNIA STATE ORGANIC PROGRAM
MEDIATION POLICY AND PROCEDURES

As mandated, the California State Organic Program (SOP) has adopted the mediation policy of the National Organic Program as laid out in the Code of Federal Regulations, California Organic Products Act of 2003, and the California Code of Regulations. As an approved SOP, it is the responsibility of the state to provide dispute resolution.

CODE OF FEDERAL REGULATIONS

§ 205.663 Mediation.

Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this part may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation shall be requested in writing to the applicable certifying agent. If the certifying agent rejects the request for mediation, the certifying agent shall provide written notification to the applicant for certification or certified operation. The written notification shall advise the applicant for certification or certified operation of the right to request an appeal, pursuant to §205.681, within 30 days of the date of the written notification of rejection of the request for mediation. If mediation is accepted by the certifying agent, such mediation shall be conducted by a qualified mediator mutually agreed upon by the parties to the mediation. If a State organic program is in effect, the mediation procedures established in the State organic program, as approved by the Secretary, will be followed. The parties to the mediation shall have no more than 30 days to reach an agreement following a mediation session. If mediation is unsuccessful, the applicant for certification or certified operation shall have 30 days from termination of mediation to appeal the certifying agent's decision pursuant to §205.681. Any agreement reached during or as a result of the mediation process shall be in compliance with the Act and the regulations in this part. The Secretary may review any mediated agreement for conformity to the Act and the regulations in this part and may reject any agreement or provision not in conformance with the Act or the regulations in this part.

CALIFORINA ORGANIC PRODUCTS ACT OF 2003

Food and Agricultural Code §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.

CALIFORNIA CODE OF REGULATIONS

§1391.1. Mediation of Denial, Suspension or Revocation of Organic Certification.

(a) If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, pursuant

to 1391(a), they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, pursuant to 1391(c), they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement. Mediation process must be consistent with Title 7, Code of Federal Regulations, Section 205.663.
(1) Any settlement agreement shall be in compliance with the requirements of the State Organic Program.

(2) The parties shall submit any proposed settlement agreement to the Secretary for review.

(3) Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.

(b) The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation or applicant for certification may voluntarily agree upon the choice of a mediator that is not on the list.

(c) Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation or applicant for certification. The mediator, the certification agent and the certified operation or applicant for certification shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in conducting mediation by the Secretary as agreed to within the organic program contract or memorandum of understanding.

(d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq.

ATTACHMENT H

State Organic Program Appeals Procedures

Step 1. Upon receipt, an organic appeal is date stamped and routed to State Organic Program (SOP) support staff to enter into the tracking log located on the SOP's shared drive. SOP program support staff are required to immediately establish an appeal number and create a master working file which follows the appeal throughout the process. A copy is made for backup purposes.

The original appeal file is forwarded to the SOP Senior Special Investigator, who shall review the appeal file to ensure that it contains the original appeal and a copy of the proposed action. The Senior Special Investigator shall adhere to and review the appeal file in accordance with the National Organic Program's (NOP's) procedures for Adverse Action Appeals – Certified Operation or Applicant for Certification dated February 19, 2010 (see attachment).

Step 2. Upon approval, the appeal file shall be forwarded to the Hearing Officer within five (5) business days of original receipt. The Senior Special Investigator is required to enter the date the appeal file was delivered to the Hearing Officer. Upon receipt of the appeal file, the Hearing Officer shall enter the date received into the appeal tracking log.

Step 3. Within twelve (12) business days of original receipt, the Hearing Officer shall mail a letter of acknowledgment and request for information to the operation and respective Accredited Certifying Agent (ACA). The letter of acknowledgment shall notify each party that they have thirty-five (35) calendar days to submit information related to the case. The Hearing Officer shall log the date the request was mailed.

Step 4. Within thirty-five (35) calendar days, the ACA and appellant must submit supporting documents to the Hearing Officer. The responses from the ACA and appellant shall be date stamped and entered into the tracking log by the Hearing Officer. Copies shall be forwarded to the SOP for inclusion in the SOP backup file.

Step 5. Within fourteen (14) calendar days of the receipt of information supplied by each party, the Hearing Officer must conduct an initial review and determine the need for additional information. If the initial review indicates the need for additional information, the Hearing Officer may make such a request for additional information. The Hearing Officer may indicate the date of response in the request. Upon receipt, additional information must be date stamped, entered into the tracking log, and copied for SOP's backup file.

If either party files a "discovery request," the timeline for required review is temporarily postponed. The Hearing Officer must provide the information requested within fourteen (14_ days of the receipt of the discovery request. The cover letter attached to the information supplied must indicate a date (within 14 days of the receipt) by which additional information will be submitted. The response to the request shall be documented in the tracking log.

Excerpted from the State Organic Program Quality Systems Manual

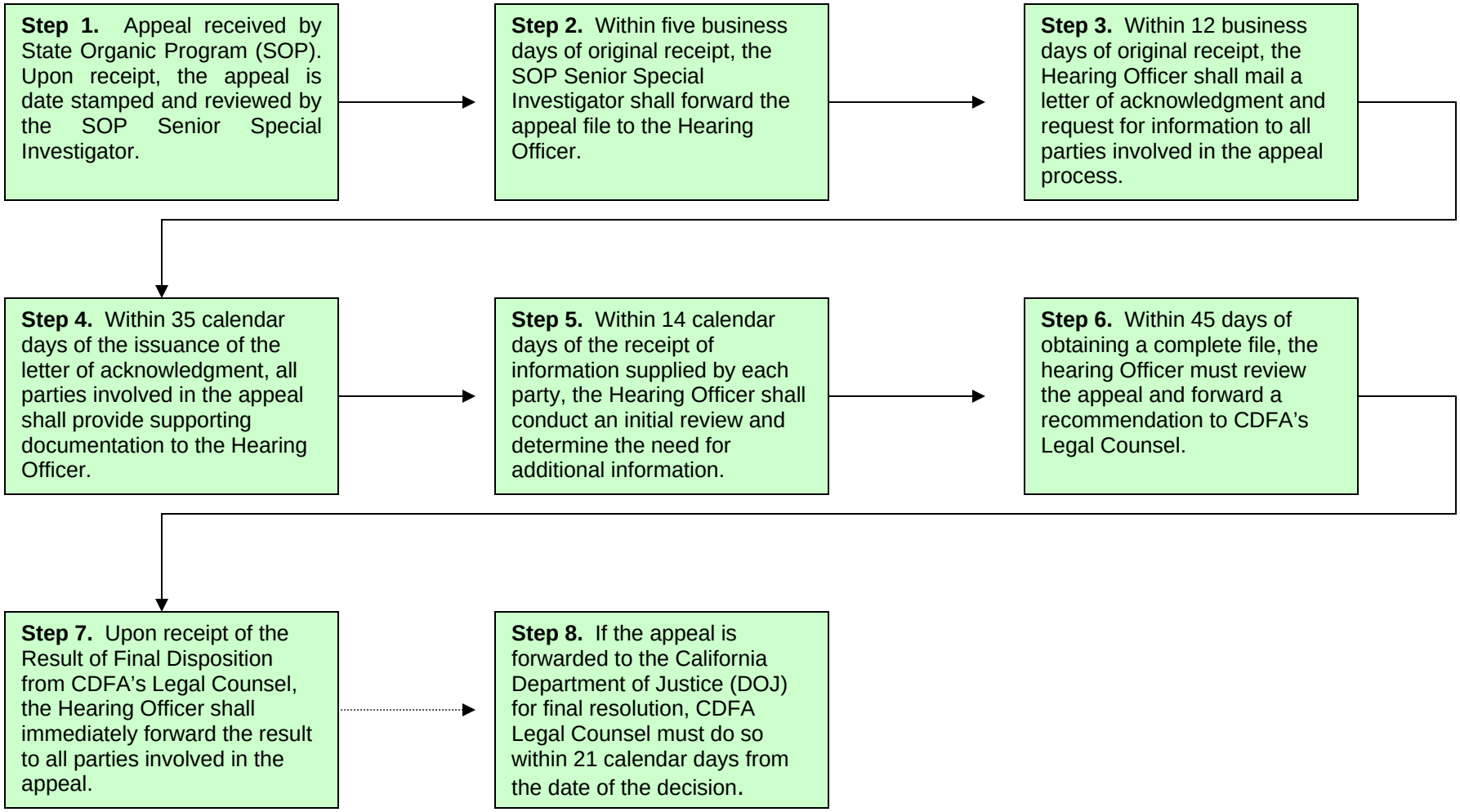
State Organic Program Appeals Procedures

Step 6. Within forty-five (45) calendar days of obtaining a complete file, the Hearing Officer must review the appeal and forward a recommendation to CDFA's Legal Counsel. The Hearing Officer's recommendation may include, but is not limited to: dismissing the appeal, sustaining the appeal, referring the appeal to another entity due to lack of jurisdiction, or forwarding the appeal to the California Department of Justice for formal proceeding.

Step 7. After Legal Counsel has reviewed the Hearing Officer's recommendation and provided a final disposition, CDFA's Legal Counsel shall provide a copy of the Result of Final Disposition to the Hearing Officer. Upon receipt, the Hearing Officer shall immediately forward the Result of Final Disposition to all parties involved in the appeal.

Step 8. If the appeal is forwarded to the California Department of Justice (DOJ) for final resolution, CDFA Legal Counsel must do so within twenty-one (21) calendar days from the date of the decision. Accordingly, both parties must be notified that the appeal has been forwarded to the DOJ.

Abridged Organic Appeal Process Timeline



Adverse Action Appeals - Certified Operation or Applicant for Certification

Purpose

This document details the procedures for determining the disposition of an appeal filed by a National Organic Program (NOP) certified operation or applicant for certification, which disputes an adverse decision of an accredited certifying agent. This document also outlines the factors which are weighed during consideration of the appeal. The NOP regulations are available online in the Electronic Code of Federal Regulations.

Scope

These procedures apply to internal operations of the Agricultural Marketing Service (AMS) Compliance and Analysis office personnel to whom the NOP has delegated responsibilities for the administration of this part of the Rule.

Standards of Reference

§ 205.681 Appeals. (a) Certification appeals. An applicant for certification may appeal a certifying agent's notice of denial of certification, and a certified operation may appeal a certifying agent's notification of proposed suspension or revocation of certification to the Administrator, Except, That, when the applicant or certified operation is subject to an approved State organic program the appeal must be made to the State organic program which will carry out the appeal pursuant to the State organic program's appeal procedures approved by the Secretary.

(1) If the Administrator or State organic program sustains an applicant's or certified operation's appeal of a certifying agent's decision, the applicant will be issued organic certification, or a certified operation will continue its certification, as applicable to the operation. The act of sustaining the appeal shall not be an adverse action subject to appeal by the affected certifying agent.

(2) If the Administrator or State organic program denies an appeal, a formal administrative proceeding will be initiated to deny, suspend, or revoke the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedure.

Policy

NOP certified operations or applicants for NOP certification may appeal an adverse action initiated by an accredited certifying agent that has been proposed to suspend, revoke or deny the organic certification of their operation. Filing an appeal has the effect of staying the proposed adverse action until a decision has been rendered and certification status remains unchanged throughout the proceedings. The appeal is reviewed by persons not involved with the decision being appealed.

The appeal goes through an initial procedural review to determine whether the appellant has properly filed the appeal in terms of timeliness and has also submitted the required documentation. The initial procedural review also will determine whether the accredited certifying agent followed proper

noncompliance procedures. An appellant who does not meet the filing requirements under the NOP regulations fails to preserve its appeal rights and may have its case dismissed.

After the initial appeal is filed and has been acknowledged, the NOP Appeals Team may request in its acknowledgement letter that the appellant provide a copy of the appellant's applicable record under the NOP regulations and all documents related to the appeal. In consideration of the proposed adverse action, the record is reviewed for evidence of willful violations. An appellant may be subject to additional proposed adverse actions, separate from the appeal proceeding, if other noncompliances are discovered during the course of the appeal review or investigation. Alternatively, any additional noncompliances revealed during appeal proceedings may be introduced as evidence to support the course of action as decided by the AMS Administrator.

The AMS Administrator independently reviews the appeal and comments from the Agency's Compliance and Analysis Office, NOP Deputy Administrator, and Office of the General Counsel (OGC). In rendering a decision, the AMS Administrator has the discretion to change the scope of action, reducing or expanding the terms of a suspension or revocation as applicable to the appellant's operation. In addition, the Administrator may sustain an appeal, but still may seek a punitive penalty. The AMS Administrator may not prescribe the specific penalty, but determine whether the allegations warrant a sanction that would be detailed through formal complaint or settlement agreement process.

An appeal that has been denied by the AMS Administrator may be prepared for formal administrative Complaint by persons assigned by the NOP Compliance and Enforcement Branch in consultation with OGC.

Certified operators or applicants for certification that reside entirely in a state where there is an approved SOP will file appeals with the SOP. Where the appeal decision involves operations that are multijurisdictional, the appeal should be sent to the NOP Appeals Team for review.

Procedural Review

Procedure to address appeals by certified operations or applications for certification

1. The NOP Appeals Team assigns an appeal number to the request for an appeal.

2. The appeal is subject to a Procedural Review by a Compliance Officer(s) designated on the NOP Appeals Team.

   Procedural Review Part I: Appellant

   (A) Is the appellant subject to the Act and is the appeal in response to an adverse action proposed by an accredited certifying agent or the NOP Deputy Administrator?
   (B) Is the written appeal filed within 30 days of receipt of the notice of noncompliance/proposed adverse action, or within 30 days of receipt of the notification of rejection of mediation?
   (C) Does the appeal contain a copy of the proposed adverse action letter?

(D) Does the appeal state the appellant's reason(s) for believing the proposed adverse action is not proper or was not made in accordance with the applicable NOP regulations, policies or procedures?

(E) Was the appeal sent using a delivery service which provides dated return receipts?

If the appeal was not filed in accordance with the procedural guidelines, the appeal may be **dismissed** at this time. If the appeal has been filed incorrectly, the appellant has the opportunity to cure the procedural deficiencies in the appeal if the time to file an appeal has not been exhausted. When a request for an appeal does not meet the procedural requirements under the NOP regulations, the NOP Appeals Team will issue a dismissal letter to the appellant stating the reasons for the dismissal. The accredited certifying agent or NOP is also informed of the dismissal in writing. The appellant does not have further avenues of appeal once an appeal has been dismissed for procedural deficiencies.

Procedural Review Part II: Notification of Proposed Adverse Action

(F) Has the certifying agent followed noncompliance procedures according to the NOP regulations? See § 205.662 and § 205.405.

(i) If a Notice of Proposed Suspension or a Notice of Proposed Revocation has been issued: First, was a Notice of Noncompliance issued and does the Notice of Noncompliance include the following information: (1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and, (3) The date by which the certifying agent must rebut or correct each noncompliance and submit supporting documentation of each correction when correction is possible. See § 205.662(a). Second, does the Notice of Proposed Suspension or Notice of Proposed Revocation include the following information: (1) The reasons for the proposed suspension or revocation; (2) The proposed effective date of the suspension or revocation; (3) The impact of a suspension or revocation on future eligibility for accreditation; and, (4) The right to file an appeal pursuant to § 205.681. See § 205.662(c). When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or proposed revocation of certification may be combined in one notification.

(ii) If a Notice of Denial of Certification has been issued: was a Notice of Noncompliance issued and does the Notice of Noncompliance include the following: 1) A description of each noncompliance; (2) The facts upon which the notification of noncompliance is based; and (3) The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible. Second, was a Notice of Denial issued and does the Notice of Denial include the following: the reason(s) for denial and the applicant's right to: (1) Reapply for certification pursuant to §§205.401 and 205.405(e); (2) Request mediation pursuant to §205.663 or, if applicable, pursuant to a State organic program; or (3) File an appeal of the denial of certification pursuant to §205.681 or, if applicable, pursuant to a State organic program. When correction of a noncompliance is not possible, a notification of noncompliance and a

notification of denial of certification may be combined in one notification. See § 205.405.

3. If the proposed adverse action does not comply with the procedural requirements of the NOP regulations, the appeal may be **sustained** for this reason. A copy of the decision is sent to the appellant, the certifying agent, and NOP providing information about the appellant's certification status.

4. If the appeal is procedurally compliant with the NOP regulations, as determined by the Procedural Review, the NOP Appeals Team will send an acknowledgement letter to the appellant via a method that provides dated return receipts. At this time, the appellant may be requested to provide evidence in support of the arguments in its appeal.

Substantive Review

5. Once the appeal has been accepted for review based on procedural compliance, the AMS Administrator will review the appeal and make a determination based on the substantive evidence provided by the appellant.

   (A) Factors for consideration:
   - (i) Is the noncompliance(s) substantiated by the preponderance of the evidence?
   - (ii) Are all violations listed in the proposed action appeal?
   - (iii) Are there violations which were omitted from the proposed action, but subject to inclusion in the appeal?
   - (iv) Is there evidence that the violation(s) was committed knowingly or willfully and subject to civil penalty?

6. Evidence is analyzed and organized into findings of fact based on the noncompliance(s).

7. The findings of fact substantiate the conclusions which underlie the decision to sustain or deny the appeal.

   <u>Appeal Decision</u>

   (A) The following factors are considered in the determining the disposition of the appeal:
   - (i) If not all violations are appealed, can the accredited certifying agent or NOP's action be sustained?
   - (ii) Will all, or selected violations provide sufficient evidence for litigation?
   - (iii) Will additional violations, not cited in the agent's proposed adverse action, be introduced and substantiated for litigation?
   - (iv) Is the proposed sanction, revocation or suspension of certification, or denial of certification suitable giving the violation(s)?

   (B) An appeal may be **sustained** when the preponderance of evidence does not substantiate the accredited certifying agent or the NOP's action or there is insufficient evidence for litigation; the accredited certifying agent or the NOP incorrectly interpreted or applied the

regulations; and/or the accredited certifying agent or NOP did not follow the proper adverse action procedures.

(C) An appeal may be **denied** when the preponderance of evidence demonstrates noncompliance with the regulations and there is sufficient evidence for litigation. In denying the appeal, the Administrator may elect to reduce or extend the scope of the proposed adverse action, and indicate whether there are grounds to pursue civil or criminal penalties. The regulations, specifically § 205.100(c)(2), provide that any official, or an accredited certifying agent shall be subject to the provisions of section 101, Title 18, United States Code, Crimes and Criminal Procedure, Fraud and False Statement.

(i) If any appellant appeals some, but not all of the violations as listed in the adverse action letter, the appeal may be denied if there is sufficient evidence to support the noncompliances which have not been addressed.

(ii) If the appellant successfully argues that other portions of the operation were in compliance and the act was not intentional the Administrator may reduce the scope of a suspension.

(iii) If the Administrator believes the scope was too limited the Administrator may seek a broader scope when filing the complaint.

(iv) If the Administrator determines that the proposed adverse action is too severe, the Administrator may reduce the proposed adverse action in the appeal decision by reducing either the severity or length of the sanction.

(v) If the Administrator determines the proposed adverse action is not severe enough, the Administrator may deny the appeal and seek further sanctions through a formal administrative Complaint filed by OGC.

8. When an accredited certifying agent is responsible for procedural errors in relation to the adverse action that is the basis for the appeal, the appeal may be **dismissed**. As a result of this action, the Agency may direct an accredited certifying agent agent to rescind the adverse action, reinstate the proposed adverse action, and provide the operation with a new opportunity to file an appeal; or continue certification of the operation on the basis of the procedural error and advise the accredited certifying agent that it may issue a new proposed adverse action notification when appropriate.

9. A clearance document is prepared for the appeal draft decision noting the precedent which the decision will establish. The appeal draft decision, comprised of the findings of fact, conclusion, decision, and exhibits, is circulated for review, comment and signature to the Director, Compliance, Safety and Security Division; NOP Deputy Administrator, OGC; and the AMS Administrator.

10. Following the receipt of comments from the Compliance and Analysis office, NOP, and OGC, the AMS Administrator independently reviews the appeal and decides whether to sustain or deny the appeal

11. When the appeal decision has passed all clearance stages, the decision is finalized. The NOP Appeals Team sends a copy of the decision and transmittal letter to the appellant, accredited

certifying agent, and NOP, sent by a delivery service which provides dated return receipts.

12. An appeal which has been denied is referred to the NOP and OGC to file a formal administrative Complaint to formally deny, suspend or revoke.

13. An appeal regarding denial of certification, when sustained, is transmitted to the certifying agent with directions to issue certification to the operation.

14. The records of each appeal, the final decision, and any follow-up action taken are maintained by the Compliance and Analysis office in accordance with published retention schedules.

15. Appeal decisions that sustain the appeal terminate the adverse action proceedings and are final actions of the Agency and subject to the Freedom of Information Act.

16. Appeal files are part of the Agency's Privacy Act system of records and are maintained and released in accordance with these regulations.

*The procedures outlined in this document are subject to change.

Document Control and Retention
All documents related to this process are retained in AMS Compliance for 10 years.
Appeal letters and accompanying documentation
Acknowledgement of receipt of appeal
Procedural review
Transmittal letters
Decision document/exhibits
Clearance document
Related correspondence
Litigation referral packet
Formal complaint

California Department of Food and Agriculture
State Organic Program

APPEALS STATUS REPORT

As of March 31, 2010

Report Categories	Number
Total Appeals Logged	13
Active Appeals	4
Appeals Resolved	7
Appeals Withdrawn	2
Active Appeals Over 120 Days	2*

* These appeals have been forwarded to the California Attorney General's Office and are scheduled for hearing.

California Department of Food and Agriculture

State Organic Program

Complaint Report
Report Period through 04/01/10

Attachment F

Complaint Log ID	Date Received by SOP	Complaint Source	Allegations / Summary	Referred To	Status of Complaint	Resolution Date	Resolution	Days to Resolution
93-10	4/1/2010	Competitor	Use of prohibited substances for the production of organic fertilizers.		Complaint under review by SOP.			
92-10	4/1/2010	Competitor	Company is manufacturing fertilizers claiming organic status which contain prohibited synthetic substances.	CDFA - Feed & Fert.	Under investigation.			
91-10	3/23/2010	CAC	A producer is advertising and selling as organic at a farmers' market without registration or certification.	CAC	Under investigation.			
90-10	3/12/2010	CAC	A representative of a CSA alleges that a company is selling apples through a CSA as certified organic without registration or certification.	CAC	Under investigation.			
89-10	3/2/2010	Competitor	Distribution, sales, and repacking of organic shell eggs without certification or registration.	SOP to CAC	Under investigation.			
88-10	2/19/2010	Public	Misuse of the organic label, by uncertified, unregistered operation.	SOP	Under investigation.			
87-10	2/16/2010	Public	Organic miticide killed pet birds.	NOP	Under investigation by NOP.			

Complaint Log ID	Date Received by SOP	Complaint Source	Allegations / Summary	Referred To	Status of Complaint	Resolution Date	Resolution	Days to Resolution
86-10	2/1/2010	Public	Anonymous allegation that operation is making organic claims, advertising and selling various agricultural commodities as organic without proper certification or registration. Company and other websites making unclear, loose organic claims.	CAC	Closed.	2/4/2010	Operation corrected all issues, removed website and farm stand advertisements as to organic claims. Will consider registration.	3
85-10	2/1/2010	Public	Cattle handler sold animals as organically produced without proper certification or registration with SOP. Two lots of dairy cattle sold, one to a California dairy and one to a Texas dairy. The number of animals involved was not specified.	ACAs and SOP	Under investigation. Original case modified to include other parties involved.			
84-10	1/26/2010	Public	Illegal use of USDA Organic Seal and sales of non-certified, unregistered organic commodities at a certified farmers' market.	CAC	Under investigation.			
83-09	1/4/2010	ACA	Illegal use and misrepresentation of ACA's logo and advertising of alleged organic almonds and almond products.	CAC	Under investigation.			

Complaint Log ID	Date Received by SOP	Complaint Source	Allegations / Summary	Referred To	Status of Complaint	Resolution Date	Resolution	Days to Resolution
82-09	12/17/2009	Competitor	Illegal use of another companies label and trademark to sell alleged organic eggs at a Super A Food Stores in Monrovia, CA.	CAC	Closed.	3/12/2010	Operation has chosen to cease handling or sales of organic eggs, operation is being monitored for compliance. Civil Penalty under consideration.	85
81-09	12/17/2009	Consumer	Advertising and sale of 100% organic processed flax seed snacks which contain a prohibited substance, Bragg liquid Aminos.	CDPH and ACA	Under investigation. On 03/15/10, corrective actions being taken by operation, certifier will follow up, verify, and report to SOP when completed.			
80-09	11/24/2009	ACA	Misbranding of apples and strawberries.	ACA	Noncompliance issued by ACA on 12/07/09. Closed.	2/23/2010	All markings and labeling corrected and verified by ACA and CAC.	91
79-09	11/18/2009	SOP	Operation certified but not registered with SOP, in non-compliance for past 15 months.	ACA	Closed.	12/28/2009	Organic registration reviewed and approved.	40
78-09	11/17/2009	Consumer	Products advertised as organic, but lack clear signage or labeling as to organic certification. No clear distinction between organic and conventional displayed products.	CAC	Closed.	12/29/2009	Operation removed all references to organic claims and package markings, verified by CAC.	31

Complaint Log ID	Date Received by SOP	Complaint Source	Allegations / Summary	Referred To	Status of Complaint	Resolution Date	Resolution	Days to Resolution
76-09	10/27/2009	Consumer	Misrepresenting conventional produce as organic at a certified farmers' market.	CAC	Under investigation.			
73-09	9/23/2009	CAC	Advertisements for organic beef, operation not registered or certified	CAC	Under investigation. Will continue to monitor surrounding counties for activity.			
72-09	9/23/2009	Competitor	Misrepresentation of wine as organic through advertising.	CAC and CDPH	Closed.	1/6/2010	The vineyards, walnut orchards, and winery have been certified and registered.	105
71-09	9/23/2009	CAC	Farmers' market vendor misrepresenting produce as organic while not registered.	CAC	Closed.	12/28/2009	Operation registered.	96
68-09	9/3/2009	Competitor	Alleged sales of non organic produce as organic at certified farmers' markets.	CAC	Closed.	2/22/2010	Operation removed organic claims from all fresh produce sold. CAC will monitor for compliance.	172
67-09	8/20/2009	CAC	Organic sales without required organic certification. Estimated annual sales exceed $5,000.00 .	CAC	Under investigation. Operation has agreed to seek organic certification. Closed.	12/30/2009	Operation ceased all organic claims and sales, will be monitored by CAC.	132
64-09	8/11/2009	CAC	Sale of organic products while not certified or registered with SOP.	CAC	Closed.	12/29/2009	Operation registered.	100

Complaint Log ID	Date Received by SOP	Complaint Source	Allegations / Summary	Referred To	Status of Complaint	Resolution Date	Resolution	Days to Resolution
63-09	8/3/2009	SOP	No valid registration or certification. Applied for organic cost share reimbursement.	SOP	Under investigation. Operation is in process of registration (4/01/10)			
61-09	7/21/2009	ACA	Sale of uncertified, unregistered, livestock.	SOP	Complaint closed.	1/11/2010	Noncompliance issued. Violation corrected, verified by CAC. No adverse action taken.	174
56-09	7/6/2009	Consumer	Dying castor bean plants, suspects pesticide spray.	CAC	Under investigation. Final draft of NONC and PAA submitted to SOP for review on 3/15/10.		Open.	
49-09	5/29/2009	CAC	Sale of unregistered organic nursery stock plants at farmers' market	CAC	Closed.	12/21/2009	Amended registration approved to include greenhouse grown nursery stock.	232
48-09	5/18/2009	Consumer	Organic operation spraying weed killer, events occurred on or about 4/19/09.	CAC	Under investigation. Final draft of NONC and PAA submitted to SOP for review on 3/15/10.		Open.	

ORGANIC PROGRAM BUDGET

Page 1 of 1	2008/2009 ACTUAL	2009/2010 APPROVED BUDGET	2009/2010 PROJECTED	20010/2011 PROPOSED
SALARIES	$ 199,120	$ 339,500	$ 233,040	$ 344,852
BENEFITS	$ 90,099	$ 137,701	$ 118,579	$ 144,000
TOTAL PERSONNEL SERVICES	**$ 289,219**	**$ 477,201**	**$ 351,619**	**$ 488,852**
OPERATING EXPENSES				
GENERAL EXPENSES (Supplies)	$ 2,769	$ 23,266	$ 1,166	$ 23,266
PRINTING	$ 65	$ 2,598	$ -	$ 3,000
COMMUNICATION (Cell/Telephone)	$ 1,071	$ 1,289	$ 1,186	$ 2,402
POSTAGE	$ 7,589	$ 7,285	$ 19,895	$ 16,800
TRAVEL IN-STATE & OUT-OF-STATE	$ 11,867	$ 29,061	$ 14,838	$ 42,095
TRAINING	$ 1,935	$ 2,550	$ 1,575	$ 3,870
FACILITIES OPERATION (Rent/DGS)	$ 261	$ 10,465	$ 188	$ 10,465
INFORMATION TECHNOLOGY	$ 1,125	$ 105,000	$ 129	$ 284,683
PAYMENT TO COUNTIES	$ 58,956	$ 249,900	$ 51,370	$ 249,900
CDFA LAB	$ 60,000	$ 60,000	$ 60,000	$ 60,000
CONSULTATION & LEGAL (int/ext)	$ 62,846	$ 200,000	$ 130,703	$ 200,000
DIRECT CHARGES	$ 182,199		$ 213,680	$ 185,000
TOTAL OPERATING EXPENSES	**$ 390,683**	**$ 691,414**	**$ 494,731**	**$ 1,081,481**
OVERHEAD COST				
STATE PRO-RATA	$ 29,398	$ 36,976	$ 19,502	$ 36,000
INDIRECT DEPARTMENT	$ 27,833	$ 58,036	$ 50,974	$ 42,672
INDIRECT DIVISION	$ 29,937	$ 34,149	$ 43,065	$ 30,000
INDIRECT LEGAL				
TOTAL OVERHEAD	**$ 87,168**	**$ 129,161**	**$ 113,540**	**$ 108,672**
UNALLOCATED (BUDGET ADJUSTMENTS)				
TOTAL OPERATING COSTS	**$ 477,851**	**$ 820,575**	**$ 608,271**	**$ 1,190,153**
TOTAL PROGRAM COSTS	**$ 767,070**	**$ 1,297,776**	**$ 959,890**	**$ 1,679,005**

ATTACHMENT D

ORGANIC PROGRAM
2009 - 2010 FUND CONDITION

	Actual								
	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	TOTAL
BEGINNING BALANCE	2,007,495.31	2,322,552.53	2,348,175.99	2,341,500.55	2,295,576.71	2,282,539.71	2,317,177.44	2,380,299.41	2,384,143.25
REVENUE:									
PY REVENUE	7,729.01	826.50	25.00	0.00	0.00	0.00	0.00	0.00	8,580.51
ORGANIC PROD REG FEES	52,297.63	46,226.00	44,273.25	48,819.00	36,631.51	75,390.52	79,301.96	61,262.14	444,202.01
ORG HANDLERS REG FEES	12,125.00	25,700.00	18,275.00	10,331.00	11,275.00	14,225.00	35,675.00	19,727.56	147,333.56
ORG PROCESSORS REG FEES	4,537.62	4,100.00	1,800.00	2,825.00	3,825.00	3,600.00	2,550.00	10,992.86	34,230.48
REG/CERT FEES - NOT CLAS	0.00	0.00	0.00	0.00	1,025.00	2,050.00	550.00	300.00	3,925.00
DELINQUENT FEES	3,828.42	3,111.52	826.71	1,310.37	902.69	1,153.93	1,482.77	1,494.58	14,110.99
INC FROM SURP $ INV	0.00	0.00	0.00	3,608.72	0.00	0.00	2,719.49	0.00	6,328.21
UNCLEARED REVENUE	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
MISC.	0.00	100.00	0.00	0.00	86.68	52.18	0.00	0.00	238.86
TOTAL REVENUE	80,517.68	80,064.02	65,199.96	66,894.09	53,745.88	96,471.63	122,279.22	93,777.14	658,949.62
TOTAL EXPENDITURES	-234,539.54	54,440.56	71,875.40	112,817.93	66,782.88	61,833.90	59,157.25	89,933.30	282,301.68
ENDING CASH BALANCE	2,322,552.53	2,348,175.99	2,341,500.55	2,295,576.71	2,282,539.71	2,317,177.44	2,380,299.41	2,384,143.25	2,384,143.25

ATTACHMENT C

2010 CDFA New Registrations

	Farm	Dairy and Livestock	Poultry	Wholesale	Retail Store	Commission Merchant	Custom Contract	Total New Registrations	2009 Total Reg. by Month
Chart for tracking of new registrations									
January	13	0	0	0	0	0	0	13	21
February	8	0	0	3	0	0	0	11	25
March	14	0	0	2	0	0	0	16	34
April	0	0	0	0	0	0	0	0	
May	0	0	0	0	0	0	0	0	
June	0	0	0	0	0	0	0	0	
July	0	0	0	0	0	0	0	0	
August	0	0	0	0	0	0	0	0	
September	0	0	0	0	0	0	0	0	
October	0	0	0	0	0	0	0	0	
November	0	0	0	0	0	0	0	0	
December	0	0	0	0	0	0	0	0	
Grand Total	35	0	0	5	0	0	0	40	
2009 Total	320	0	0	18	1	1	0	340	

2008 Total	357
2007 Total	442
2006 Total	380
2005 Total	306
2004 Total	266

2010 Registrations by month.

ATTACHMENT B

CDFA Organic Program Revenue from Registrations by Month and Year

Fiscal Year	July	August	Sep	Oct	Nov	Dec	Jan	Feb	Mar	April	May	June	Total	Projected	Current Trend
2011/12															
2010/11															
2009/10	72,788	79,512	67,855	63,285	55,128	96,997	119,559	93,642					648,766	1,047,779	$970,000.00
2008/09	72,875	73,911	63,563	64,835	71,398	102,695	127,727	94,913	78,774	78,316	83,492	79,279	991,778		
2007/08	51,985	65,914	61,989	54,560	59,894	91,955	121,776	89,574	71,088	92,462	72,107	83,241	916,544		
2006/07	46,461	57,168	57,897	47,474	61,087	59,966	103,670	86,253	81,104	76,115	75,212	61,989	814,397		
2005/06	32,852	39,343	42,662	37,768	47,815	71,678	93,852	72,458	63,557	58,160	43,641	50,775	654,558		
2004/05	34,576	35,788	28,366	43,254	48,329	77,550	77,306	65,274	54,583	56,563	36,227	47,334	605,150		
2003/04	33,043	42,659	36,098	34,441	42,785	64,011	57,045	51,563	47,807	46,945	41,934	41,569	539,900		
2002/03	36,765	29,122	35,448	31,206	30,289	49,412	71,462	62,472	31,798	36,968	34,566	35,508	485,016		
2001/02	30,143	28,672	19,912	24,087	37,670	44,729	76,118	40,109	36,732	29,573	41,208	24,760	433,714		
2000/01	27,060	29,889	28,742	21,563	43,640	49,804	63,351	44,783	45,720	26,429	27,672	38,250	446,905		
1999/00	22,526	23,869	16,693	20,547	34,509	59,557	50,269	30,234	41,024	29,894	45,974	25,110	400,205		
1998/99	16,525	18,709	14,539	14,809	22,533	35,884	76,993	33,772	26,290	23,267	23,546	32,196	339,064		
1997/98	13,894	16,251	17,843	16,827	15,180	39,324	65,617	30,022	24,268	19,793	11,592	28,919	299,530		
1996/97	14,656	11,809	7,628	11,390	13,714	37,654	52,142	22,680	20,561	13,555	11,209	21,007	238,003		
1995/96	7,001	15,117	8,568	9,152	17,263	33,826	59,630	29,776	17,357	11,750	8,413	6,412	224,265		
1994/95	13,286	9,643	6,882	7,608	18,913	45,430	49,026	20,402	14,903	7,616	10,067	10,891	214,667		
1993/94	9,834	9,613	3,979	6,758	12,703	33,361	42,882	22,364	15,471	5,548	9,931	11,577	184,021		
1992/93	3,174	3,863	2,897	2,859	2,053	14,533	54,253	25,498	11,401	6,775	4,136	12,298	143,739		
1991/92				938	6,438	11,338	47,478	89,611	23,702	6,300	2,055	5,592	193,451		

ATTACHMENT B

Attachment A

CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE (COPAC)
Meeting Minutes
Asilomar Conference Grounds, 800 Asilomar Blvd., Pacific Grove, CA
January 21, 2010

MEMBERS PRESENT
Blake Alexandre
Garff Hathcock
David Will
Dave Martinelli
Larry Hirahara
John Foster
Melody Meyer
Steve Demuri
John Ashby
Sean Swezey
Karen Klonsky
Julie Spandow
Sandra Schmaier
(in place of Aaron Turner)
Thomas Chapman
Martin Guerena

MEMBERS ABSENT
Lauree Bradley
Ann King Filmer
Aaron Turner
Patrick Kennelly
Stacy Carlsen

INTERESTED PARTIES
Kim Dietz, Smuckers
Stephanie Alexandre, Alexandre Dairy
Claudia Reid, CCOF
Bill Wolf, Wolf, DiMatteo and Associates
Miles McEvoy, NOP
Doug Graham, OFAC
Allison Clark
Ellen Coleman
Jake Evans, True Organic Products
Soo Kim, NOP
Ruihong Guo, NOP
Jake Lewin, CCOF
Drew Lehman, Recology
Shawn Graham, Smuckers
Robert Roach
Ray Green
Thomas Quick, OFAC
Steve Beckley, OFAC
Libby Oallette, OFAC
Troy Aykan, Hain Celestial Group, Inc.

CDFA
Rick Jensen
Maria Hicks
David Carlson
Paul Collins
Steve Patton
Brian Cote

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ITEM 1: INTRODUCTIONS

The meeting was called to order by Mr. John Ashby at 1:00 p.m. A quorum was established and introductions were made.

ITEM 2: REVIEW AND APPROVAL OF NOVEMBER 17, 2009 MEETING MINUTES

Mr. Ashby proposed the following corrections for the November 17, 2009 meeting minutes: correcting the spelling for irradiation, correcting Dr. Karen Klonsky's title, correcting the spelling for Mr. Patrick Kennelly's name, including the word database when referencing database development, and utilizing the word pesticide instead of herbicide. Mr. Blake Alexandre moved to approve the minutes as corrected. Ms. Melody Meyer seconded. The motion passed unanimously.

ITEM 3: STATE ORGANIC PROGRAM UPDATES

Mr. David Carlson provided the California Organic Products Advisory Committee (COPAC) with an overview of the State Organic Program's (SOP's) registration, revenue, and expenditure reports. Mr. Carlson explained that there was a slight decrease in revenue for 2009 due to a decrease in organic registrations.

Mr. Paul Collins provided an overview of the updated complaint report. Mr. Collins stated that he included a header on the complaint report as requested at the previous COPAC meeting.

Mr. Thomas Chapman inquired whether the California Department of Food and Agriculture (CDFA) keeps a complaint open once it has been referred to the California Department of Public Health (CDPH). Mr. Collins stated that all complaints are kept open until the SOP receives notification of closure by the investigating agent or entity.

Mr. Larry Hirahara inquired in regard to the subsequent action taken after a notice of noncompliance is issued. Mr. Collins explained that a notice of noncompliance provides an opportunity for corrective action. Mr. Rick Jensen stated that if a noncompliance is not correctable, a proposed action would be issued as well. Mr. Hirahara inquired in regard to the timeframe for handling complaints. The California Organic Products Act of 2003 (COPA) mandates that CDFA shall commence a complaint investigation within three working days after receiving a complaint regarding fresh food and within seven working days for other products.

Dr. Sean Swezey inquired in regard to the protocol for referring a complaint to an accredited certifying agent. Mr. Carlson stated that the protocol for referring complaints is established in the Quality Systems Manual (QSM). When handling complaints regarding certified operations, the SOP refers the complaint to the accredited certifying agent under specified circumstances.

Mr. Carlson reported that nine appeals have been submitted to the SOP. There is currently one outstanding appeal which has been referred to the California Attorney General; the other eight have been resolved.

Discussion ensued regarding labeling of organic cosmetic products. Mr. Carlson stated that organic cosmetics must be at least 70 percent organic. Mr. Miles McEvoy, Deputy Administrator, United States Department of Agriculture (USDA), National Organic Program (NOP), stated that there are several questions regarding NOP's authority over personal care products. Mr. McEvoy stated that the NOP has authority over the use of the USDA seal and the use of the term "organic" on agricultural products. Mr. McEvoy stated that the NOP is evaluating its authority over personal care products and there are still several questions that cannot be answered at this time.

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ITEM 4: REVIEW OF DRAFT REGULATIONS

Mr. Brian Cote provided a PowerPoint presentation on the proposed regulations. The proposed regulations are designed to further improve SOP's business functions and enforce the legislative mandates. The proposed regulations would make specific procedures for enforcement of spot inspections and sampling as authorized by the COPA and NOP regulations. The proposed regulations will also incorporate NOP regulations by reference.

Mr. Cote informed the committee that the SOP will conduct three public listening sessions for interested parties to provide input on the proposed regulations. The dates, times, and locations are:

- February 9, 2010, California Department of Food and Agriculture (CDFA), 1220 N Street, Sacramento, CA 95814, Main Auditorium, 9:00 a.m. to 12:00 p.m.

- February 17, 2010, Monterey Agricultural Commissioner's Office, 1428 Abbott Street, Agricultural Center Conference Room, Salinas, CA 93901, 9:00 a.m. to 12:00 p.m.

- March 3, 2010, Los Angeles Agricultural Commissioner's Office, 11012 So. Garfield Avenue, South Gate, CA 90280, 9:00 a.m. to 12:00 p.m.

Ms. Meyer inquired in regard to the intent of the organic listening sessions. Mr. Steve Patton explained that the listening sessions do not formally start the rulemaking process. The listening sessions are designed to solicit public and industry input in regard to the Department's proposed regulations. Once the Department initiates the formal rulemaking process, there will be a 45-day comment period before the proposed regulations are promulgated.

Ms. Claudia Reid, California Certified Organic Farmers (CCOF), questioned when the 45-day waiting period for the proposed regulations will commence. Mr. Jensen stated that the 45-day waiting period will begin when the regulations are filed with the Office of Administrative Law. CDFA will provide formal written notice when the rulemaking process has commenced. Discussion ensued in regard to the proposed regulations.

Mr. Jake Lewin, CCOF, asked what would happen if an agricultural commissioner failed to follow-up on a complaint. Mr. Patton stated that mechanisms are in place ensure that agricultural commissioners properly follow-up on organic complaints. Mr. Lewin asked if the proposed regulations would also apply to registered processors. Mr. Carlson stated that he would ask CDFA's Legal Counsel to make a determination in regard to this matter.

Mr. John Foster highlighted proposed regulation §1391.4(a) which states, "All samples for laboratory testing shall be collected by the state, county agricultural commissioner, or accredited certifying agent authorized to collect samples for the purpose of testing

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under this article." Mr. Foster inquired in regard to what entity would authorize samples to be collected and whether this is a blanket authorization for the specific purpose of an investigation. Mr. Carlson responded that accredited certifying agents are authorized under NOP regulations to collect samples and CDFA and county agricultural commissioners are authorized under the COPA to collect samples.

Mr. Foster discussed proposed regulation §1391.7 related to appeals and stated that even though this regulation is already in effect, his emerging concern is ensuring that appeals are conducted in a timely fashion.

Mr. Dave Martinelli inquired in regard to proposed regulation §1391.5(d), which specifies the conditions under which the SOP may refer cases to the NOP. Mr. Martinelli asked in the event that a case is referred to the NOP, whose appeals and mediation process governs, the SOP's or NOP's? Mr. Carlson stated that in the event that it is determined that an operation is out of the state's jurisdiction, the case would be forwarded to the NOP for investigation. If the operation is within the state's jurisdiction, SOP processes will govern. Mr. Jensen stated the NOP rules clearly state that when there is a SOP, the SOP shall provide appeal reviews.

Mr. Ashby highlighted proposed regulation §1391.3(d)(1), which states "The Department and county agricultural commissioners shall have the right to inspect…organic systems plan(s), if applicable..." and asked when an Organic System Plan (OSP) would not be applicable? Mr. Carlson explained that the SOP would not inspect an OSP for exempt operations since they are not required to maintain an OSP.

Mr. Ashby stated the mediation section is confusing since an operation is required to voluntarily agree to mediation. Mr. Ashby also iterated that when an agreement settlement is reached and submitted to the CDFA Secretary for settlement, the CDFA Secretary has the authority to change the settlement agreement.

Mr. Chapman highlighted proposed regulation §1391.3(a) which states, "All agricultural products that are to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)" shall be made accessible by production or handling operations for examination by the Department, county agricultural commissioner, or the operation's accredited certifying agent." Mr. Chapman questioned whether the SOP has the authority to enforce aquaculture claims under the proposed regulations. Mr. Carlson stated that the SOP can enforce an aquaculture claim that is organic under the proposed regulations.

MOTION: Ms. Meyer moved for the Department to notify all accredited certifying agents operating in the state of the listening session times, locations, and dates, and establish an email address to receive public comments. Dr. Swezey seconded. The motion passed unanimously.

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ITEM 5: PUBLIC COMMENTS

Mr. Steve Beckley, Organic Fertilizer Association of California, stated that its reception has been moved to January 22, 2010 from 4:00 p.m. to 5:30 p.m.

Ms. Kim Dietz, Smuckers, stated that the California Organic Agriculture Working Group, which is part of the National Organic Coalition, met this morning to discuss developing a California organic policy platform and action plan.

ITEM 6: NEW ITEMS

Mr. Foster stated that he has an emerging concern about the timeliness of closing organic appeals. Mr. Foster explained that consumer confidence may be hurt when certifiers want to suspend or revoke certification while operators continue to sell products while exhausting due process.

Mr. Martinelli stated that he would like review the timelines for the appeal process contained within the QSM. Mr. Collins stated that the documents regarding the appeal process were presented at a previous meeting. Mr. Chapman stated he would like to receive an appeal and mediation report at the next COPAC meeting.

Mr. Ray Green stated he has read the appeals posted on USDA's website and applauds creative solutions to resolving appeals without going through an administrative law judge. Mr. Green questioned whether it is feasible for the SOP to develop mechanisms where it can have an appeal process with possible outcomes that are similar to the NOP in order to limit costs. Mr. Jensen stated that SOP's appeals process is consistent with NOP regulations and the CDFA Secretary has the authority to reach an agreement with the complainant.

Mr. Garff Hathcock discussed Asian Citrus Psyllid's (ACP's) impact on organics. Mr. Hathcock inquired whether it is possible to receive detailed reports on citrus, almonds, vegetables, the number of registrants, and their gross sales by acreage. Ms. Reid, CCOF, requested information on how many organic registrants operate in ACP quarantined areas. Mr. Jensen stated that CDFA's database currently has the capability to identify all organic registrants that list citrus as part of their operation and where the business is located. Mr. Ashby stated that Mr. Carlson, Dr. Swezey, and Dr. Klonsky will discuss what is required to generate a detailed organic report by commodity and present this information at the April 2010 COPAC meeting.

Mr. Chapman suggested that COPAC should consider establishing a spring meeting in 2011 to coincide with Expo West in Anaheim, CA.

Mr. Foster stated that he was extremely disappointed that the governor vetoed Assembly Bill (AB) 537, which would have added an accredited certifying agent member seat to COPAC. Mr. Foster stated that there were solid and legitimate arguments for enacting AB 537 and that he was not aware of any opposing arguments. Mr. Foster stated that he has a very negative opinion of the veto. Mr. Foster asked whether

COPAC would be interested in writing a letter to the Governor expressing their disproval of the veto. Mr. Chapman stated that he was also disappointed with the veto of AB 537. Mr. Ashby stated he went on record via email that he was very disappointed as well. Discussion ensued regarding the veto of AB 537.

Mr. Alexandre stated that the dairy industry is currently waiting for the NOP to release organic pasture regulations. Mr. Alexandre stated that while certifiers are waiting, he is curious as to what the state's response tactics are going to be. Mr. Alexandre stated that he anticipates the proposed regulations to be release in approximately 30 to 60 days.

MOTION: Ms. Meyer moved to send a SOP representative to the Moses Conference in Wisconsin at the end of February 2010. Mr. Alexandre seconded. The motion passed unanimously.

MOTION: Dr. Swezey moved for Mr. Ashby, as chair of COPAC, to write a letter expressing the board's disappointment of the Governor's decision to veto AB 537. Mr. Alexandre seconded. The motion passed unanimously.

ITEM 7: NEXT MEETING/AGENDA ITEMS

The next meeting will be held on April 30, 2010 from 9:00 a.m. to 4:00 p.m. at: 560 J Street, Room 395, Sacramento, CA 95814.

Mr. Foster requested an agenda item in regard to the importance of establishing appropriate timelines for appeal resolution at the next meeting.

Mr. Ashby requested that the COPAC have a standing appeals and mediation report on subsequent meetings.

Mr. Ashby requested the SOP to provide copies of timelines and procedures for complaint investigations, appeals, and mediation at the next meeting.

Dr. Swezey would like to discuss rearranging the budget to allow for database management funds in order for the SOP to accurately provide detailed reports by commodity. Dr. Swezey, Dr. Karen Klonsky, and Mr. Carlson will meet prior to the April COPAC meeting to put together a report.

Ms. Reid, CCOF, stated she would like the SOP to provide COPAC with the outcome of the NOP audit of the SOP and an update on the issue of contaminants in compost.

Mr. Alexandre requested that the meeting minutes list absent members.

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ITEM 8: ADJOURNMENT

The meeting was adjourned at 3:43 p.m.

Respectfully submitted by:

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David Carlson, Senior Special Investigator
California State Organic Program
Inspection and Compliance Branch
Inspection Services

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