CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)
CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE (COPAC)
Meeting Minutes
1220 N Street, Main Auditorium, Sacramento, CA 95814
April 30, 2010

MEMBERS PRESENT
Blake Alexandre
Garff Hathcock
David Will
Dave Martinelli
Larry Hirahara
John Foster
Melody Meyer
John Ashby
Lauree Bradley
Ann King Filmer
Sean Swezey
Karen Klonsky
Thomas Chapman (in place of Steve DeMuri)
Julie Spandow
Aaron Turner
Patrick Kennelly
Stacy Carlsen
Ione Conlan
Sandra Schmaier
Brian McElroy

MEMBERS ABSENT
Steve DeMuri

INTERESTED PARTIES
Claudia Reid, CCOF
Jaclyn Bowen, QAI
Peggy Miars, CCOF
Patricia Matteson, CDPR
Bill Wolf, Wolf, DiMatteo, and Associates
Ray Green
Richard H. Mathews, NOP Solutions, Inc.
Jenny Lester Moffitt, Dixon Ridge Farms
Robin Allan, CCOF
Katherine Borchard, ASCO
Gerry Willey, ASCO
Kristen Willey, ASCO
Jennifer Green, Albert's Organics
Jody Biergiel, CCOF
Jake Lewin, CCOF

CDFA
Maria Hicks
Rick Jensen
Brian Cote
Christina Burnie
Scott Renteria
Paul Collins
David Carlson
Steve Patton

ITEM 1: INTRODUCTIONS

The committee was called to order at 9:00 a.m. by Mr. John Ashby. A quorum was established and introductions were made. Mr. Chapman was a voting alternate at this meeting in place of Mr. Steve Demuri.

MOTION: Mr. Dave Martinelli moved to rearrange the agenda to allow the committee to discuss item five first. Mr. John Foster seconded. The motion passed unanimously.

ITEM 2: REVIEW AND APPROVAL OF JANUARY 21, 2010 MEETING MINUTES

Ms. Melody Meyer stated that on page four of the January 21, 2010 meeting minutes, there was a motion for the State Organic Program (SOP) to inform all Accredited

Certifying Agents (ACAs) of the listening sessions dates and times. It was confirmed that all ACAs were notified of the listening sessions via U.S. mail and email.

Mr. Ashby stated that on page six of the January 21, 2010 meeting minutes, a motion was made for the California Organic Products Advisory Committee (COPAC) to write a letter to Governor Arnold Schwarzenegger stating that COPAC was dissatisfied with the decision to veto Assembly Bill (AB) 557 (Caballero) (2009). Mr. Ashby stated that COPAC is tasked, under statute, with advising the Secretary of the California Department of Food and Agriculture (CDFA) with respect to his or her responsibilities under the California Organic Products Act of 2003. Consequently, Mr. Ashby may write a personal letter to Governor Schwarzenegger iterating his disapproval with the veto or a letter to the CDFA Secretary outlining COPAC's disapproval of the veto. Mr. Ashby stated he prepared a draft letter iterating COPAC's disapproval of the veto of AB 557 to Secretary A.G. Kawamura.

Dr. Sean Swezey stated in item six of the January 21, 2010 meeting minutes, the database committee did not meet. Dr. Swezey stated he has spoken with Mr. Foster via email about continuing the database discussion. Mr. Dave Carlson stated he spoke with Dr. Karen Klonsky about what information the committee wanted to capture in the database. Dr. Swezey encouraged the committee to make modest goals in regard to the database project. It is the committee's goal to have the database sorted by program, the public section of the database sorted by total acres and crop, and have it posted online. Mr. Paul Collins stated he would like to be provided with a report that details what information the committee wants to capture for the new database. Dr. Swezey stated if discussion ensues, it would be helpful if he and Mr. Stacy Carlsen were copied. Mr. Garff Hathcock stated it would be helpful to have the database sorted by county, by crop, and by acreage. Ms. Meyer recommended putting together an action plan with definable goals and realistic timelines that the committee can evaluate.

MOTION: Mr. Blake Alexandre moved to approve the January 21, 2010 meeting minutes as submitted. Ms. Meyer seconded. The motion passed unanimously.

ITEM 3: STATE ORGANIC PROGRAM UPDATE

1. Revenue from Registrations

Mr. Carlson provided the committee with an overview of revenue from registrations and registration renewals for fiscal year (FY) 2009/10. Mr. Carlson explained that registration revenue is down approximately $23,150, compared with the same point in the last FY. Current projections suggest that revenue from registrations will reach approximately $970,000 for FY 2009/10.

2. New Registrations

Mr. Carlson provided COPAC with an overview of new registrations for FY 2009/10 stating that currently through March 2010 there were forty new registrants.

Mr. Larry Hirahara inquired if it is possible to show why people did not renew. Dr. Klonsky explained that according to her previous survey, a significant number of registrants that left the SOP went out of business completely. The survey was conducted prior to water restrictions.

3. SOP 2009/10 Fund Condition

Mr. Carlson provided COPAC with an overview of total expenditures versus total revenue, highlighting that the SOP had a balance of approximately $2 million in July 2009; in February 2010 it was $2.38 million. A significant portion of the balance will be used for funding the organic database and increased enforcement. Discussion ensued regarding the fund condition.

4. Organic Program Budget

Mr. Hirahara inquired if the organic database is part of a bigger database. Mr. Jensen stated the database is specific for the SOP; other programs are developing their own databases.

Mr. Thomas Chapman questioned how the laboratory costs are calculated. Mr. Jensen stated that the SOP has a contract with the Department's Center for Analytical Chemistry and they charge a flat fee of $5,000 monthly. Discussion ensued regarding the SOP budget.

MOTION: Ms. Meyer moved to recommend approval for the FY 2010/11 proposed budget as submitted. Dr. Sean Swezey seconded. The motion passed unanimously.

* The committee took a five minute break from 10:35 a.m. to 10:40 a.m.

5. Complaint Report

Mr. Paul Collins provided COPAC with an overview of enforcement activity for FY 2009/10 through April 1, 2010, stating that there has been a total of 28 complaints; 16 complaints are currently open and five complaints have been open over 180 days. Discussion ensued regarding the complaint report.

6. Appeals Report

Mr. Collins provided an update on organic appeals. Mr. Collins explained that the appeals report follows the report format that the National Organic Program (NOP) has published; it is a brief report that gives the activity of the appeals.

7. Appeals Procedure

Mr. Collins provided an outline of the appeals procedures as requested at the January 21, 2010 COPAC meeting. Mr. Collins presentation included excerpts from the SOP's Quality Systems Manual and an appeals timeline/flowchart for illustration purposes. Ms. Lauree Bradley inquired when the appeal process would be utilized. Mr. Collins iterated that the appeals procedure has been in operation for several months.

Mr. Aaron Turner inquired how counties are notified of the appeal process. Mr. Collins stated that when an operation receives a notice of proposed action, the appeal process is detailed. Counties have also received the SOP's Quality Systems Manual, which details the appeals procedures.

8. Mediation Procedures

Mr. Collins stated that the mediation procedure is a reiteration of the California Code of Regulations; there are two time frames involved. The first is the same thirty days as the appeal. Once the mediation process has concluded, there is a thirty day period to write a formal statement that the issue has been resolved. Mr. Collins stated in reviewing the regulation, there is no set time limit for resolving the disputes; the objective is to achieve an acceptable solution for all parties involved in a timely manner.

Ms. Bradley inquired when the mediation procedure documents were drafted. Mr. Brian Cote stated the initial publication of the Quality Systems Manual (QSM) was on November 30, 2009 and the documents were updated on December 17, 2009.

Mr. Turner asked if these will be controlled documents. Mr. Collins stated that the Quality Systems Manual is a controlled document.

9. Memorandum of Understanding

Mr. Rick Jensen announced that CDFA and the California Department of Public Health (CDPH) recently signed a memorandum of understanding (MOU). The MOU establishes that appeals will be filed, handled, and reviewed by CDFA regardless of whether the operator is a processor, producer, or retailer. Mr. Kennelly stated that the CDPH and CDFA decided some of the activities would best fit under CDFA, such as appeals. CDPH will reimburse CDFA for any costs associated with appeals filed in accordance with the NOP regulations.

ITEM 4: CALIFORNIA DEPARTMENT OF PUBLIC HEALTH UPDATE – PATRICK KENNELLY

Mr. Patrick Kennelly provided COPAC with an overview of the organic processed product registration program report from CDPH's Food and Drug Branch, including a list of registrants by county; there were 1,609 registrants with CDPH.

Mr. Kennelly provided COPAC with an overview of the complaint log stating that all complaints for 2009 have been closed. Mr. Kennelly stated that CDPH operates a toll

free complaint line and emails can be sent from the CDPH website into the Food and Drug Branch. Mr. Kennelly explained that CDPH's complaints have to be completed within 90 days; most complaints are closed in the 45-60 day range.

Ms. Meyer asked if there are outstanding or unresolved complaints not listed. Mr. Kennelly stated that there are no outstanding complaints. CDPH has not received any complaints for 2010.

Mr. Chapman asked if COPAC can receive a report of CDPH's complaint procedures. Mr. Kennelly stated CDPH's complaint procedures should be available online within the next few weeks.

ITEM 5: OFFICE OF INSPECTOR GENERAL REPORT – MILES MCEVOY AND MARK BRADLEY

Mr. Mark Bradley provided COPAC with an overview of NOP's findings from the audit of the State Organic Program (SOP). Mr. Bradley stated that the review went well, and the NOP was pleased with what was found. The audit was conducted in December 2009. The NOP's regulations require that the SOP be notified of their decision within six months. A report was issued on February 5, 2010. Additional information was provided by the SOP on March 3, 2010, April 1, 2010 and April 22, 2010. Mr. Bradley stated there were eight findings of the audit and changes have been required. Many of the changes were administrative; all changes have been adequately addressed. There were four recommendations made as well; all recommendations have been addressed to the NOP's satisfaction. Mr. Bradley stated that the final report has not yet been issued. The USDA, Office of Inspector General wanted all issues to be addressed prior to issuing the final report.

Mr. Miles McEvoy, Deputy Administrator, National Organic Program stated that significant improvements to the SOP have been made, and the additional requirements will be formalized. Mr. Foster inquired if there is a timeframe for the NOP to follow-up with the SOP regarding the audit. Mr. Bradley stated that it will be within this calendar year. Ms. Meyer thanked Mr. McEvoy and Mr. Bradley for attending the COPAC meeting and encouraged them to attend future meetings. Discussion ensued regarding the audit of the SOP.

ITEM 6: NATIONAL ORGANIC STANDARDS BOARD UPDATE – STEVE DEMURI AND JOHN FOSTER

Mr. Foster provided an overview of issues discussed at the National Organic Standards Board (NOSB) meeting including: accessory nutrients, corn steep liquor, wine, nanotechnology, and definitions of synthetic and non-synthetic. There were many other presenters about different issues including non-profits. The second day the NOSB consisted of presentations of recommendations, crops, and handling livestock. Many issues will be voted on within the next few months and other issues will be voted on in November 2010.

Ms. Meyer thanked Mr. Foster and encouraged him to continue his efforts on the NOSB.

* The committee took a 45 minute lunch break from 12:15 p.m. to 1:00 p.m.

ITEM 7: APPROVAL OF SOP REGULATORY PACKAGE

Mr. Brian Cote provided the COPAC with an overview of the responses from the listening sessions. The SOP conducted three public listening sessions in regard to 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.

Mr. Stacy Carlsen commented that during the listening sessions, he spoke about his opposition to the proposed regulations that would prohibit counties that conduct certifying activities from conducting inspections or investigations of operations that are certified by another ACA. Mr. Carlsen stated that only three counties are ACAs; they took an oath of office and they file a statement of economic interest annually. Mr. Carlsen stated that the proposed regulations would not allow him to investigate an organic producer in his county if it is certified by another ACA. Mr. Carlsen encouraged the COPAC to take a strong look at proposed regulation §1391.3 and remove it from the proposed regulation package. Mr. Carlsen stated that this is contrary to any regulation he has ever seen written in his career. Mr. Carlsen stated that he has never had a conflict of interest and has never been unfair or unethical.

Mr. Jake Lewin, CCOF, stated that he has a lot of respect for Marin County's certification program; however, providing certification activities and enforcement activities puts counties in a difficult position. To some extent, it is a position of the county's own making since the county decided to go into business in competition with a non-governmental agency. It is not appropriate for ACAs to investigate each other. Mr. Lewin iterated that the NOP has determined that a potential for a conflict of interest

exists for county agricultural commissioners that are accredited certifying agents under NOP regulations.

Mr. Jensen stated it is a very difficult and unfortunate situation; the meeting attendees and CDFA have a deep respect for Mr. Carlsen as a commissioner and the work he and all agricultural commissioners' do. CDFA has received notification from the NOP regarding the conflict of interest as described.

MOTION: Mr. Martinelli moved to approve the SOP's regulatory package as submitted. Dr. Ann King Filmer seconded. The motion passed with six abstentions.

ITEM 8: ASSEMBLY BILL 2612

Ms. Reid, CCOF stated the AB 2612 was introduced in response to the California Organic Products Technical Planning Committee's efforts to streamline the registration process. The registration process can only be streamlined through a legislative change since the registration requirements are in the Food and Agricultural Code.

Ms. Reid encouraged the COPAC to write letters as individuals to send a message to Governor Schwarzenegger that we support AB 2612. Ms. Meyer urged the committee to send letters to Ms. Reid in support of AB 2612.

Mr. Cote provided an overview of AB 2612 as amended on April 7, 2010. AB 2612, as amended on April 7, 2010, would:

- Clarify alternates to the COPAC are representatives of the same category as the board member. 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 environmental representatives, two members and their alternates shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science, and one member and his or her alternate shall be retail representatives.

- Update references to the State Public Health Officer from the State Director of Health Services.

- Establish that an "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.

- Establish that an "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.

- Make minor non-substantive changes to references related to registration fees.

- Establish that the CDFA 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 the Food and Agricultural Code.

- Establish that the CDFA Secretary may require any producer, handler, processor, or other organic registrant to submit gross sales by commodity and gross sales by acreage.

- Establish that the CDFA Secretary may adopt regulations to the extent reasonably necessary to provide an online system of registration for those required to register with the SOP.

Mr. Jensen stated that COPAC has the ability to make a resolution or a motion to inform the Secretary of its support of AB 2612. Discussion ensued regarding AB 2612.

MOTION: Ms. Meyer moved for this body, as COPAC, to write a letter to the Secretary strongly supporting AB 2612. Mr. Martinelli seconded. The motion passed unanimously.

ITEM 9: PUBLIC COMMENTS

Mr. Brian McElroy stated that he feels that the SOP as implemented is a deterrent to the expansion of California organic industry. According to Mr. McElroy, organic producers pay two sets of fees and complete two sets of documentation which take up a lot of time and paperwork. Mr. McElroy stated that the growers would not mind paying the fees if they did not have to make several trips to the county agricultural commissioner's office. Mr. McElroy stated that there is a perceived risk of double jeopardy; growers feel like they are subject to two regulatory programs. Mr. McElroy asked if it is the intent of the NOP that a SOP would offer the same information as an accredited certifier in order to conduct the SOP activities. Mr. McElroy stated that he is asking the panel to advise CDFA's SOP to cease the registration program as it is being administered.

Mr. Turner explained that the Organic Products Technical Planning Committee discussed the issue of duplicate forms having to be completed. The California Food and Agricultural Code mandates specific information be collected on registration forms. Mr. Patton stated that changes to the registration process would require legislative changes.

Mr. Lewin, CCOF, announced that he is seeking support from COPAC for his candidacy on the NOSB as a certifier. Mr. Lewin stated that CCOF will be nominating him to that seat. Mr. Lewin iterated that he feels the certifier seat is a critical seat on the NOSB and the decisions affect organic operations and consumers. Mr. Lewin stated that he is driven and understands the issues; this will be the best venue for clarifying issues and for making a big difference. Mr. Lewin stated he needs a letter of recommendation from

COPAC by July 1, 2010. Currently Joe Smiley, based out of Vermont, is in this certifier seat and will be terming out.

Mr. Ashby inquired if COPAC can write a letter to Secretary A.G. Kawamura and copy Mr. Lewin on the letter. Mr. Ashby asked for further clarification on this issue. Mr. Steve Patton explained that COPAC is tasked with providing the CDFA Secretary with advice and recommendations related to the California Organic Products Act of 2003 and this action likely falls outside the purview of the committee. Mr. Patton stated the COPAC members can write individual letters in support of Mr. Lewin's candidacy if they desire.

Mr. Jensen stated that the COPAC can make a motion and then the program would go on record to reflect in the minutes what the consultation is and the program would work to resolve it. If it is determined that the motion exceeds the committees statutory authority, it will not happen.

MOTION: Mr. Alexandre moved that COPAC write a letter in support of Mr. Lewin's candidacy for the certifier seat on the NOSB. Mr. Foster seconded. The motion passed unanimously.

Ms. Peggy Miars, CCOF, thanked the SOP for inviting the NOP to today's meeting and for giving their presentation. Ms. Miars stated that she had a few housekeeping ideas for future COPAC meetings which include: program staff having microphones, giving timeframes on agenda items, and to print the agenda and attachments double-sided. Ms. Miars stated she appreciates the work everyone is doing.

Ms. Reid passed out a CCOF magazine article about the process that CCOF has been using to encourage the SOP to continue making positive changes.

ITEM 10: NEW ITEMS

No new items.

ITEM 11: NEXT MEETING/AGENDA ITEMS

Mr. Ashby stated that he would like to have the spring COPAC meeting at Natural Products Expo West on Thursday, March 10, 2011. Mr. Patton reminded the committee that they currently have a standing commitment to hold a meeting at the Asilomar Conference Grounds in Pacific Grove in January. Mr. Patton stated that having an additional meeting in March may be problematic.

Mr. Ashby requested a new standing agenda item to be in place after introductions are made. The agenda item would inform COPAC which alternates will be voting members in place of the absent members.

Ms. Meyer stated she would like to follow up on the listing of the agricultural inputs, discuss new members of COPAC, nominations, and have an orientation for new members before they come to their first meeting. Ms. Meyer stated she would like the committee to look at notes from the last nomination process to review individuals that had submitted applications. Ms. Meyer and Mr. Ashby will confer about nominations prior to the next COPAC meeting.

The committee requested that public comments be moved to the beginning of the agenda.

Mr. Alexandre requested that all items be labeled either a discussion item or an action item on future agendas. Ms. Meyer stated that Mr. Turner will be keeping track of all action items.

Ms. Reid announced that she has asked to be appointed to the fertilizer inspection stakeholder list for AB 856 implementation on behalf of several experts in her company. Ms. Reid stated that she has an appointment with Dr. Asif Maan to discuss list issues and will email Mr. Jensen or Mr. Ashby for specifics before meeting with Dr. Maan to ensure she has captured the correct information.

Ms. Reid requested a description of the nomination process.

The next meeting will be in August 2010.

ITEM 12: ADJOURNMENT

The meeting was adjourned at 3:03 p.m. by Mr. Ashby, Chairperson.

Respectfully submitted by:

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

DC/mh