



**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 Spadow
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

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.

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

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.

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 disapproval 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.

ITEM 8: ADJOURNMENT

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

Respectfully submitted by:

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