

**California Agricultural Commissioners and Sealers Association (CACASA)
Legislative Platform Opposing CCOF Proposal to Eliminate the
State Organic Program (SOP)**

California Organic Products Act (COPA) of 2003¹

The California Department of Food and Agriculture secretary (CDFA) and County Agricultural Commissioners (CAC) under the supervision and direction of the secretary shall enforce this act, and regulations adopted by the National Organic Program (NOP) (Section 6517 of the federal Organic Foods Production Act of 1990, (7 U.S.C. Sec. 6501 et seq.) The NOP delegated CDFA state organic program (SOP) status in recognition of the sound state/county enforcement capability.

These statutes protect consumers, producers, handlers, processors and retailers by establishment of standards under which fresh agricultural products and processed foods may be labeled and/or sold as “organic”. A recent State Supreme Court ruling (S21630)² held that a California putative consumer class can assert state law claims arising from the purportedly false “organic” labeling of produce. In so doing, the court reversed a decision stating that such claims are preempted by federal law addressing the use of “organic” on product labels. This court decision highlights the necessity to strengthen administrative and regulatory activities performed by CDFA State Organic Program (SOP) and County Agricultural Commissioners (CAC) in lieu of clogging the courts to address asserted law claims from consumers, farmers, processors, handlers and certifiers.

The SOP through existing statutory authority is delegated responsibility by California Legislation and USDA NOP to maintain a meaningful regulatory framework that supports the integrity of organic production (>4,000 producers) in California’s \$2.5 billion in organic products. There were more than \$9 billion in sales of raw and processed organic product in 2015. Process products are co-regulated by CDFA and California Department of Public Health (CDPH).

The CDFA SOP has the authority to regulate an organic claim at any point in the supply chain, administer civil penalties and has the authority to immediately remove products from sale as organic. Fee based private accredited certification agencies (ACA) i.e. California Organic Certified Farmers (CCOF) does not have this broad regulatory authority. They do not regulate small exempt operations (28%) that produce less than \$5000 or the twenty-nine (29) other accredited certifier farm operations nor handlers, processors, or retailers. They lack authority to issue civil penalties even upon their own clients or regulate other participants in the organic food chain. CCOF is hired to privately certify and shield their clients from adversity, adversely recognizing SOP authority to enforce California Organic Production Act or to address consumer complaints.

Today every person engaged in the state of California in the production or handling of raw agricultural products sold as organic, and retailers that are engaged in the production, processing and sales of products sold as organic, shall register with the State Organic Program.

¹ <https://www.cdfa.ca.gov/is/docs/COPA2003.pdf>

² <http://www.courts.ca.gov/opinions/documents/S216305.PDF>

An Integrated Approach to Organic Enforcement

In California, the NOP, SOP, CACs, and accredited certifying agencies are complementary pieces of an integrated enforcement model designed to ensure the integrity of agriculturally-produced organic products. The following outlines the primary activities and responsibilities of each entity.

National Organic Program (NOP)

- Administers the regulatory framework governing agriculturally produced organic products.
- Responsible for overseeing the SOP and accredited certifying agencies.
- Outside of California, investigates complaints alleging violations of USDA organic regulations.
- Sets standards for organically-produced agricultural products.
- Collaborates with other USDA agencies and governments to establish and maintain organic equivalency arrangements with other countries.

California State Organic Program (SOP)

- Under cooperative agreement between CDFA, CDPH, and CACs, the SOP oversees all organic operations in California; certified and noncertified.
- Conducts spot inspections at various points in the supply chain, including growing sites, certified farmers' markets, retail locations, and storage facilities.
- Administers a Residue Sampling Program, which is an integral part of surveillance designed to ensure the integrity of California organic products.
- Handles appeals, works with counties on mediation, and handles settlement agreements for all enforcement actions originating in California.
- Administers the Cost Share Program in California for the NOP.
- Maintains the California Organic Products Advisory Committee (COPAC) to advise the CDFA Secretary on all organic matters

Accredited Certifying Agencies (ACA)

- Accredited and overseen by the NOP, partners with NOP and SOP for enforcement activities.
- Authorized to certify organic operations, in compliance with USDA organic standards.
- May revoke or suspend certifications of clients that they certify.
- Cannot take actions against non-certified operations or operations certified by another accredited certifying agent.

California Organic Products Advisory Committee (COPAC) is established for the purpose of advising the CDFA secretary with respect to his or her responsibilities under the California Organic Products Act. COPAC plays an integral role in shaping the policies and programs adopted by the SOP. Recently COPAC passed a motion directed to CDFA Secretary Ross which unanimously supports the continued existence of the SOP and *opposes* any proposal to eliminate the SOP program or fee based regulatory program. The Advisory Committee (15 members) is

comprised of producers, processors, academia, consumer protection, environmental, retail, and wholesale representatives.

A Review of the California State Organic Program³ (SOP) prepared by California Certified Organic Farmers (CCOF)

A Review of the California State Organic Program insularly prepared by an Accredited Certifying Agency – the California Certified Organic Farmers (CCOF) was released (October 2015). That report targets the elimination of the SOP by stripping registration fees from the existing COPA. CCOF offered no formal interaction and has not collaborated with CACASA, farming associations, consumer groups, or other ACA's; did not consult with COPAC, CDFR, or CDPH prior to releasing their report. The proposed title of the impending legislation is ironically called the "Fair Organic Farming Act".

CCOF proposes to introduce this legislation that ends SOP registration requirements and fee based enforcement activities performed by the CDFR (SOP) and County Agricultural Commissioner's (CAC), including elimination of the CDFR Secretary's state organic watchdog committee- the California Organic Products Advisory Committee (COPAC).

CCOF claims they want to eliminate the SOP/CAC/COPAC for the following reasons:

- SOP registration and reporting requirements duplicate those required by the National Organic Program (NOP).
- The SOP imposes unfair, duplicative fees on California's certified organic producers.
- SOP fee-based enforcement activities are not justified under today's robust organic regulatory framework.

CCOF's executive summary to the report stated the *goal* and reasoning to shuttle the (SOP), the existing enforcement program in California, is so they "CCOF" can "ensure an equitable, meaningful regulatory framework that supports the integrity of organic production in California." CCOF's goal could be better defined as a "putsch" on CDFR/CAC/CDPH regulatory framework. CCOF Board of Directors and Policy Staff without any meaningful dialogue with regulatory agencies or broad base of industry stakeholders released their "Report" to close the doors on the SOP- relying on misleading, inaccurate, and misrepresented assertions.

CCOF's claims lack clarity prompting basic fact checking:

1. California is the only State in the nation with an SOP designation duplicating NOP enforcement!
 - Fact Check – Yes and proud of the designation. The CDFR SOP was authorized by the NOP in 2003 to enforce Federal laws and regulations, and allow state registration and fees, to maintain statewide uniform enforcement capability, a requirement necessary to assume NOP authority in California. The NOP highly regards the SOP wishing all states

³ https://www.ccof.org/sites/default/files/review_of_sop_draft_nov_2015.pdf

operated in the same capacity. CDFA and CAC oversees organic claims and enforcement of 4043 farms in California (20% of all USA farms) producing nearly \$2.5 Billion (40% of all US farms) in organic farm production. CCOF does not have enforcement authority to regulate organic claims throughout California.

2. Farmers are paying the State outrageous registration fees!

Fact Check - CDFA fee schedule ranges from \$25-\$3000/ year. These fees, authorized by 1990 legislation (AB 2012) have remained unchanged in over 25 years- no COLA's, no adjustments, and no legislative amendments. During the 2014 calendar year, approximately 34 percent of all CDFA SOP registrants paid fees of \$25 to \$50; 19 percent paid fees of \$75 to \$100; 21 percent paid fees of \$175 to \$300; 13 percent paid fees of \$450 to \$750; 9 percent paid fees of \$1,000 to \$1,500; and 4 percent paid fees of \$2,000 to \$3,000. The largest percentage of all SOP registrants (approximately 28%), have gross sales under \$5,000, so they only pay an annual registration fee of \$25.

3. Farmers paying duplicate fees to USDA NOP!

Fact Check - Farmers do not pay any fees to USDA NOP program. USDA does not have a boots on the ground enforcement program in California. The Fee CCOF is referring to is their application and certification fees paid by their clients for certification authorized by the NOP. This fee covers their cost to perform services for their clients. A CCOF fee for certification cap is \$40,500 per year based on Organic Production Value (OPV).

4. SOP registration process and fees are a hardship on farms!

Fact Check – Of 600 organic registered farms surveyed by CDFA greater than 94% found the process useful and effective. Also Certified Farmer can receive a fungible 75% certification fee reimbursement capped at \$750 from Farm Bill Cost Share Program administered by CDFA SOP, offsetting all or major cost associated with registering with SOP

5. CCOF must pay a registration fee to CDFA!

Fact Check - Yes all 29 ACA's in California pay CDFA \$250 a year for recording their accreditation credentials so the state and federal agencies can be informed of whom certifies who in the state

6. CCOF sought advice from California county agricultural commissioners and staff in preparing the "Report on the California Organic Program"!

Fact Check - No they did not, CCOF did not seek advice from CACASA committees or their Board of Directors about the "Report on the State Organic Program". One commissioner (Santa Cruz) was given a curtesy call and interviewed about general county activities unknowingly of the purpose. An unannounced presentation was made by CCOF Policy Advisor at a CACASA meeting in November 2015, after the "Report"

was completed and released. That presentation briefly describes to members how and why the State program was to be eliminated. CACASA formally opposed that report content, presentation, and any legislative proposal to eliminate the SOP.

7. Agricultural Commissioner and CDFA are unnecessary and duplicative enforcement agencies!

Fact Check - CACASA and CDFA has enforced with integrity the California Organic Production Act and the National Act for 25 years creating enforcement guidelines, spot inspections, investigation procedures, pesticide residue testing and civil penalty authority that established market place integrity throughout California.

CACASA believes the SOP currently meets and exceeds the societal expectation to maintain basic food safety and integrity in the organic marketplace. CCOF is reticent to collaborate with the collective “organic team” They not responsible for the food safety or uniform organic enforcement in California. The SOP on the other hand is responsible for both safety and enforcement valued by producers, certifiers, and processors while not imposing undue regulatory hardship, fees, or document burden on California registrants. CDFA and County Agricultural Commissioner’s offer a consistent, uniform, efficient, transparent, cost effective, and consumer valued enforcement programs.

CCOF claims hardship from SOP registration, reporting, verification, and document requirements which duplicate NOP requirements.

CCOF, one of twenty-nine (29) Accredited Certifying Agency (ACA) in California is comprised of three governing boards⁴ including CCOF, Inc. Board of Directors, the CCOF Certification Services, LLC Management Committee, and the CCOF Foundation Trustees. These governing Boards are comprised of 22 farm representatives and three academic remembers. There is no consumer, environmental, or public members. There is no publically oriented advisory committee similar to the CDFA COPAC. CCOF’s board of directors and committee meetings limit discussion to staff and members of the board, limiting public comments. CCOF does not release enforcement or financial document to the public covering their members.

The CCOF Certification Services LLC compiles ownership, farm system and crop plans to comply with the NOP/SOP, production value, and pesticide data from producer who volunteer to be certified. When documents are completed the producers deliver them to the corporation. The producer documents a farm system plan which the corporation reviews and collects application fees and additionally calculates certification cost based on organic production values (OPV) i.e. farm gross production value (Appendix A). Once fees are paid- CCOF issues their client an “organic certificate”. This business bond generates a basic conflict of interest as CCOF is beholden only to those they certify.

⁴ [CCOF, Inc. Board of Directors](#), [CCOF Certification Services, LLC Management Committee](#), and the [CCOF Foundation Trustees](#),

CCOF claim on-line registration of primary data to the SOP creates hardship and suffering on their members.

In the formative years organic registration was accomplished by farms filing hardcopy forms with CAC's. In 2002, the California State Legislature enacted Assembly Bill (AB) 2823 (Strom-Martin) (Chapter 533, Statutes of 2002), also known as the California Organic Products Act of 2003, which was intended to provide clear and consistent standards for production and labeling of organically grown foods in California. Specifically, this measure established necessary controls to ensure enforcement of federal and state standards, accountability of producers and handlers, market stability, and was intended to be interpreted and applied in conjunction with NOP standards and regulations. Also, in 2002, the NOP fully implemented organic regulations under the OFPA. The results also lead to the NOP delegation of authority and establishment of the SOP, the first State in the nation to obtain this designation. CDFA also initiated an on-line registration process which took a few years to budget and implement.

In 2006 through 2008 CDFA organic program procedures and protocols were completely revised resulting in a Quality Systems Manual (QSM). This work proceeded under the watchful eye of CCOF Policy Advisors and management. The COPAC and other organic industry stakeholders worked tirelessly for nearly two years including upwards of two dozen all day meetings on this major "bureaucratic" overhaul. The product was a completely revamped SOP program. Revisions included aligning activities to be consistent with NOP guidelines, streamlining registration, simplifying regulatory due process and implementing an on-line registration system.

In 2013, an evaluation of organic registration and certification duplicity concerns was again raised by CCOF Policy Advisors. Not satisfied with their prior efforts, CCOF requested Fourth District Assembly Member Mariko Yamada to review concerns. The outcome from members of CCOF, CAC, DPR and CDFA was to continue to streamline procedure reducing duplicity when possible between the SOP and NOP requirements. The SOP responded to the call for streamlining documentation making enhancements to on-line registration process. For the past several years farms have registered with the SOP through an on-line program. Nearly two-thirds of all registrants (72%) use this simple and effective procedure. Recent CDFA SOP survey of 500 producers (farms) found the on-line registration effective (93%), whereas only 4 % were dissatisfied. Clearly users of the on-line registration process have a conflicting opinion of the process in stark opposition to CCOF's assessment.

Farms claim hardship and suffering to register with CDFA- what is the real problem?

CCOF through their Certification Services LLC requires additional time commitments to educate and keep farmers up to date on SOP standards and assist as necessary with on-line registration. CCOF is notified by CDFA when their clients are delinquent registering on-line with CDFA. CDFA, following the QSM notifies the registrant the necessity to register if making claims of organic production. CCOF cannot certify farms if registration is not completed. Registrants and

Certifiers must communicate and assist one another which require collaboration and coordination. The actual on-line process of registration with the SOP represents a minor producer cost but more of a demand on the ACA time. CCOF uses the member hardship cost in spite of the fact that on-line registration is found efficient by producers. CCOF would prefer to completely eliminate the SOP registration process so to back out all cost associated working with their clients. Basically CCOF is not willing to absorb cost for assisting their members requesting support to educate or navigate the on-line registration process.

The cost of coordination is a hardship. Likely it is the cost of escalating certification charges to coordinate the process that exasperates the producer not an on-line SOP registration. CCOF focus registrants to bureaucracy for their client's frustrations. The elimination of SOP registration is a corporation cost reduction not a producer hardship reducer. CCOF "Report" does not document producer registration/assistance cost to substantiate their claim of hardship.

Registration and Certification information required for separate and distinct reasons.

CCOF collects data to establish voluntary member certification fees and assist with marketing and compliance with NOP audit standards.

The SOP uses data for establishing a registration fee and to identify and confirm who in the state is making organic food claims in the marketplace. Farm statistics are important so to better track commodities and organic claims. This data also is used to prepare and publish agricultural statistics by the University of California.

The data also allows a check and balance between private and public right to know laws. The public has a right to know about producers, wholesalers, retailers, and handlers in the organic food supply chain. CCOF does not want SOP oversight. CCOF claims they maintain adequate data on farms they oversee and there is no need for CDFA involvement.

2015 Supreme Court Decision

In a recent California Supreme Court decision : *Quesada v. Herb Thyme Farms, Inc.*⁵, a unanimous California Supreme Court held that a California putative consumer class can assert state law claims arising from the purportedly false "organic" labeling of produce. In so doing, the court reversed a decision stating that such claims are preempted by federal law addressing the use of "organic" on product labels.

The question before the Court – was whether such a state law claim is viable, or whether the federal regulatory regime for certifying organic growers preempts a state claim that a certified grower is intentionally mislabeling conventionally grown produce and selling it as organic. The Court held a state law claim that produce is being intentionally mislabeled as organic is not preempted.

The court ruled that making false organic label claims is a fundamental assault on consumer protection and the public can sue for false claims made concerning organic product. The Federal Organic Shield "USDA ORGANIC" granted to certified producers by USDA vis-à-vis ACA no longer guarantees legal protection when organic integrity is compromised for financial gain. SOP has no financial interest in certification or program enforcement and can support all players in the organic market place including certifiers.

⁵ <http://www.courts.ca.gov/opinions/documents/S216305.PDF>

The value organic producers receive from a SOP paperwork trail could preclude or prevent enforcement action beyond the SOP program and even protect ACA's. It makes sense to retain a robust State administrative enforcement program. Oversight by the SOP- a third party government agency maintains public confidence, organic integrity, without conflicts of interest.

CCOF claims the SOP imposes unfair, duplicative fees on California's certified organic producers.

The 2014 USDA Agricultural Census- National Organic Survey⁶ identified California Organic Farms leads the nation in number of farms, acres farmed, and production values. There are (2800) California farms (20%), farming 678,000 acres (20%) producing greater than \$2.23 billion in crops and livestock gross values (40%). The USA total organic value is \$5.45 billion.

California with the largest organic program in the nation with 4043 registrants is coordinated by CDFA State Organic Program (SOP). California Agricultural Commissioners and Sealers Association (CACASA) receive no fiscal support from the USDA National Organic Program (NOP). The County Agricultural Commissioner's (CAC) contract with CDFA and are responsible for local organic program enforcement. County contracted activities include: uniform statewide organic program administration (grower, handler, processor registration and public assistance), Organic Spot Inspections, Complaint Investigation, Pesticide Residue Sampling, Pesticide Use Report information, County biologist training, community education, initiation of criminal complaint investigation, and maintaining information resource and statistics on the California Organic Products Act and California's organic industry. County Agricultural Crop Reports include organic crop production statistics.

CDFA Registration Fee Fact Sheet

CDFA recently published an Organic Program Fact Sheet⁷ highlighting the benefits of the SOP and summarizing where do organic registration fees go!? Some noted activities carried out by the SOP and CAC included: performing 2194 inspections of organic operations including production sites, handling facilities, farmers' markets, retail stores and roadside stands; collecting 200-300 samples (400 lbs.) for pesticide residue analysis; processed appeals and provide due process; and facilitated the sale of organic products. During the 2014/2015 fiscal year, the SOP received and reviewed 94 complaints. The majority of the complaints were handled by the SOP; which consists of CDFA Organic Program staff, the counties, and CDPH. The remaining complaints were handled by ACAs, CDFA Organic Input Materials Program (OIM), and the NOP. The following is breakdown of the number of complaints handled by each type of agency: 37-counties; 20-CDFA Organic Program staff; 17-ACAs; 16-CDPH; 2-OIM; 2-NOP. It appears all complaints were monitored by CDFA SOP and outcomes reported publically. Without CDFA/CAC how these complaints would be handled? Clog the courts? Go without findings? Leave complainants in limbo? Ignore complaints altogether? The current SOP is preferred over inactions and much more efficient than referring complaints to Washington DC.

⁶ http://www.agcensus.usda.gov/Publications/2012/Online_Resources/Organics/

⁷ https://www.cdfa.ca.gov/is/i_&_c/pdfs/CalOrganicPrgrmFactSheet.pdf

A recent CDFA (2015) survey of 600 certified and non-certified California organic registrants; when ask their opinion of various SOP enforcement activities, found the overwhelming majority (75-85%) of those surveyed found program activities extremely, very, and moderately important. Only 7-10% found aspects of the SOP not important. The survey of 500 producers (farms) found the on-line registration effective (93%), whereas only 4 % where dissatisfied. There are other agricultural production systems in California that pay registration or other types of fees to CDFA to maintain fairness and equity in the market place such as Direct Marketing-Certified Producer Certificates. These programs have experienced fee increase to support their goals.

SOP Flat Registration Fees

The fees paid by SOP registrants support a uniform statewide enforcement program. For the year 2015 SOP registrant fee revenue totaled \$1,375,000. CAC portion of the total revenue for enforcement is \$380,000.

The registration fee schedule (appendix A) supported by CCOF at the time the 1990 Organic Products Act was chaptered has remained unchanged- no COLA's, no fee amendments over the past 25 years. SOP revenues are based on the numbers of registrants in the SOP hence increase are related to growth in participation not fee increases.

What has changed over the past quarter century is the enormous growth (20%/year) in this farming sector. The organic industry shows potential for growth in production as approximately 5,300 organic producers (39 percent) report that they intend to increase organic production in the United States over the next five years. The CDFA and Agricultural Commissioner programs have kept pace with the rapid growth by building an efficient enforcement program.

State Organic Registration Fee Summary

A thirteen step state registration fee schedule ranging from \$25 to \$3000 is based on gross farm sales ranging from \$1 to \$5000 (\$25) to greater than \$25,000,000 (\$3,000). The maximum registration fee does not exceed \$3,000. The 4043 organic registrants in the state paid an average annual fee less than \$320. Seventy-five percent (75%) of all registrants pay less than \$300, greater than 50% pay less than \$100.

The largest percentage of all SOP registrants (approximately 28%), have gross sales under \$5,000, so they pay an annual registration fee of \$25. Since they are not obligated to become certified the SOP tracks their activities and performs various inspection as necessary to determine if they are in compliance with NOP and SOP standards. Without registration there would be no way to know if claims made by small producers of organic are correct. More importantly without an SOP the public would not have a local or state government agency available to manage complaints or investigate fraudulent claims made by the public.

This small business sector is not monitored by certifiers as they are not required to pay for their services.

The SOP has identified and regulates a numbers of local food sheds, "Buy Local" campaigns that are supportive of small farms and welcome their products into cottage industries, Farmers Markets, local restaurants, and CSA's. Certified Farmers Markets (CFM) offer 375 organic operations (mostly small exempt farms <\$5000) selling at 26,000 market events each year creating over 9 million selling opportunities. ACA's do not have involvement in these activities.

Federal Organic Cost Share Program indirectly reduces organic registration cost

The process of becoming organically certified can be expensive⁸, but it is an essential step for farmers wanting to meet the growing demand for certified organic food in the U.S.

CCOF certification fees top out at \$40,500 not including application fees. SOP registration fees top out at \$3,000, no application fees.

Organic Cost Share Funding is made available through the USDA Farm Bill. Organic certification cost share assistance helps small and mid-sized organic farm businesses afford annual certification costs. This program is a noncompetitive financial assistance programs that help defray the costs of organic certification for organic operators. These organic cost share programs provide reimbursements of up to 75 percent of annual certification costs, up to a maximum payment of \$750 per year per farm. To receive certification cost share funds, a USDA-accredited certifying agent must certify the farmer or handler. Each year, farmers and handlers can apply through their State Departments of Agriculture (CDFA SOP)⁹ for certification cost share funds, regardless of whether the person is new to organic farming or has been farming organically for years.

For 2015, USDA made available nearly \$12 million for producers and processors in participating states. During FY 13/14 CDFA distributed \$1.4 million to California organic operations. This funding goes to the farm producer to offset overall cost. It does not prescribe that those dollars be used for a directed offset of certification but all and all the public funds reduce farm expenditures.

Cost Share dollars are fungible

For example CCOF producers making \$200,000/ year or less could receive the maximum Cost Share reimbursement of \$750 offsetting their entire certification cost (Appendix B). In contrast SOP registration fees for producers making up to \$1,000,000 is \$750 and if these cost share dollars were applied to SOP registration, cost for registration would be reduced to zero. The dollars are fungible either used for certification or registration. The public funds the reimbursement but it does not prescribe how it is applied. The fund is designed to support and incentivize organic producers to maintain organic status.

CCOF claim of enforcement duplicity by CDFA and CAC

CCOF states that fees paid the state are not needed for state and local enforcement as the NOP offers adequate enforcement oversight and CCOF can self-police their certified client's activities. The NOP performs audits of ACA once in two to five years primarily evaluating documents, procedures, and enforcement activities. If there are no enforcement activities between the ACA and producer there would be no record for the NOP to review.

Currently CDFA performs surveillance and monitoring of production, Farmers Markets, retail establishments, and small operation not regulated by NOP or CCOF.

⁸ <http://sustainableagriculture.net/publications/grassrootsguide/organic-production/organic-certification-cost-share/>

⁹ <https://organic.cdfa.ca.gov/costshare/>

In 2015, of the 4043 organic registrants approved by CDFA SOP/CAC in fiscal year (FY 14/15)- they performed 353 farm Spot Inspection, 348 Certified Farmers Markets Inspection covering 921 operations for a total of 1274 completed inspections.

Under the authority of the California Code of Regulations, the SOP collects 200-300 samples for residue testing a year, which are an integral part of surveillance and investigation activities designed to ensure the integrity of California's organic products. In 2014/15, 223 samples were analyzed for pesticide residue, of which, 23 samples tested positive for residue and 11 samples tested in excess of the allowed tolerance. The COPAC reviews the test findings and recommends enforcement activities to the Secretary of CDFA.

There were also 94 complaints filed with the CDFA for which nearly half were investigated by CAC staff. Complaint investigations included misbranding/ mislabeling, commingling product, illegal pesticides; excessive or prohibited substances. These complaints are tracked, investigated and resolved and available for public review. CDFA's ability to resolve complaints quickly is a hallmark of the program. The average time to close all complaints (procedural up to serious pesticide residue cases) including notifying the complainant and posting the findings for public review was less than 65 days.

Over the past twenty years it was producers and processors that supported development of Administrative Civil Penalty Guidelines, spot inspections, pesticide residue testing and complaint investigations developed by CDFA and CACASA, all aspects being transparent to the public and creating a fair playing field.

Contrasting Enforcement Models

In 2013, CCOF issued nearly two thousand certificates to members in California- revoking one (1) certificate and suspending one (1) certificate. During the same period 46 CCOF members withdrew their certification. It is uncertain if this large exodus was due to a mutual understanding, certification cost, documented or reported violations, or for other reasons. Additionally, there is no public record of routine/ daily ACA's internal complaints investigation, no obligation to notify other Accredited Certifiers or State agencies of violations or prohibited activities, no requirements to neither follow the Bagley-Keene Act nor comply with State Public Record Act law covering the farms they certify. Complaint investigation activities are not generally made public.

Federal Enforcement Guidelines official in 2015

The NOP recently acknowledged taking greater than twenty-five years to issue meaningful enforcement guidelines for USA accredited certifiers agents (NOP Penalty Matrix 4002 effective 2015)¹⁰. To implement the penalty matrix also open the opportunity for respondents to initiate a complex Adverse Action Appeal Process.¹¹

Without enforcement guidelines and appeals procedures for a quarter century CCOF avoided possible pain staking and difficult enforcement action against those they certify. This resulted in gaining little if any experience in performing enforcement and due process. For 25 years CCOF has relied on CDFA and County Commissioners to handle any serious violations of the law through Complaint Investigations, spot inspections, pesticide residue testing, and Administrative

¹⁰ <http://www.ams.usda.gov/sites/default/files/media/4002.pdf>

¹¹ <http://www.ams.usda.gov/sites/default/files/media/4011.pdf>

Civil Penalties. The integrity, public confidence, and understanding of “organic” are a direct result of enforcement and education programs implemented by CDFA and CAC. ACA’s maximized their agency growth and reputation largely on the work of public agents. Without County or state enforcement - CCOF can internally determine what complaint to investigate, or the need to notify the NOP, based in Washington, DC. CCOF realizing without a State program and no Federal boots on the ground in California paves their way to distance themselves from any meaningful enforcement activities, avoiding the Penalty Matrix and potential burdensome appeals. CCOF would determine what does or does not constitute a violation. CCOF presents a financial interest conundrum.

Having no Federal agents, no SOP to monitor the program would give CCOF autonomy from any independent regulatory oversight. The proverbial “*fox guarding the henhouse*”.

The SOP, unlike CCOF has no monetary interest in the outcome of illegal activities and has immunity to take reasonable enforcement actions to protect public health and safety. What CCOF wants to officially offer members is a casual approach to producer member violations: allowing corrective measures in an unspecified time period, ample time to prepare a farm correction plan, allows farm rebuttal, mediation, and appeals for major violation¹². CCOF could allow a producer with a serious violation record to retain certification. It is only at a fifth tier of enforcement/appeals, and possibly years later, that the USDA NOP orders civil penalties for serious or repeated violations. At this point USDA takes control of the enforcement activities from the accredited certifier.

The California State Organic Program (SOP) and County Agricultural Commissioner’s accept complaints via phone, email, fax, or mail. All complaints are responded to by officials. State and County staff determines the appropriate entity to resolve the complaint. The complaints are publically noticed and outcomes are tracked and complainants are notified of enforcement process and outcome in a timely manner. The SOP, CAC, and COPAC have no financial interest in the advising or regulating the organic industry or outcome of organic law violations.

The COPAC unanimously opposes the plan by CCOF to defund and eliminate the SOP. The Committee passed a motion to CDFA secretary of their opposition. Lastly, the COPAC¹³ evaluates the outcomes and recommends to the secretary approaches to improve transparency and to build consumer confidence. This committee meets quarterly and complies with all laws associated with open public meetings.

CACASA Recommended Action:

- Oppose legislation that would end the SOP registration requirements and fee based activities performed by the CDFA SOP and County Agricultural Commissioners.
- Oppose legislation that would eliminate the California Organic Products Advisory Committee (COPAC).
- Oppose legislation that would end statewide enforcement of the SOP by CDFA and County Agricultural Commissioners.

¹² <http://www.ams.usda.gov/sites/default/files/media/4011.pdf>

¹³ https://www.cdfa.ca.gov/is/docs/Organic_Board_List_for_Web.pdf

CCOF Organic Certification Services Fee Schedule (all amounts in US dollars)

Organic Production Value (OPV)		Fee	
At Least	Not More Than	Crop/Livestock	Handler/Processor
\$0	\$10,000	\$230	\$700
10,000	20,000	325	700
20,001	50,000	400	700
50,001	100,000	600	700
100,001	200,000	700	775
200,001	300,000	825	825
300,001	400,000	1,000	1,000
400,001	500,000	1,250	1,250
500,001	600,000	1,725	1,725
600,001	700,000	1,950	1,950
700,001	1,000,000	2,500	2,500
1,000,001	1,500,000	3,675	3,675
1,500,001	2,000,000	4,300	4,300
2,000,001	2,500,000	4,900	4,900
2,500,001	3,000,000	5,450	5,450
3,000,001	3,500,000	6,050	6,050
3,500,001	4,000,000	6,825	6,825
4,000,001	5,500,000	8,150	8,150
5,500,001	10,000,000	11,550	11,550
10,000,001	25,000,000	18,750	18,750
25,000,001	50,000,000	22,500	22,500
50,000,001	75,000,000	26,250	26,250
75,000,001	100,000,000	30,000	30,000
100,000,001	125,000,000	33,750	33,750
125,000,001	150,000,000	37,500	37,500
Greater than 150,000,000		40,500	40,500
\$400	Minimum fee for mixed organic and non-organic (all types, all crops).		
\$600	Minimum fee for livestock operations with greater than 10 mammals or 200 poultry.		
\$775	Minimum fee for clients outside of the 50 United States.		
\$40,500	Maximum fee		

(Appendix A).

(Appendix B)

**California State Organic Program
Organic Registration Fee Distribution**

REGISTRATION FEE BREAKDOWN/DISTRIBUTION
Calendar Year 2014

NUMBER OF OPERATIONS BY GROSS SALES TYPE						Percent of All Operations Total by Fee Rate	Registration Fee as a Percentage of Gross Sales
GROSS SALES	FEE	PRODUCER	HANDLER	PROCESSOR	TOTAL OPERATIONS		
	RATES						
\$4,999.00	\$25.00	622	210	12	844	27.64	2.1%
\$10,000.00	\$50.00	176	18	4	198	6.48	0.70%
\$25,000.00	\$75.00	248	10	3	261	8.55	0.42%
\$50,000.00	\$100.00	289	15	2	306	10.02	0.27%
\$100,000.00	\$175.00	252	24	2	278	9.10	0.23%
\$250,000.00	\$300.00	339	28	6	373	12.21	0.18%
\$500,000.00	\$450.00	190	24	5	219	7.17	0.13%
\$1,000,000.00	\$750.00	164	23	4	191	6.25	0.10%
\$2,500,000.00	\$1,000.00	156	31	7	194	6.35	0.06%
\$5,000,000.00	\$1,500.00	58	21	2	81	2.65	0.04%
\$15,000,000.00	\$2,000.00	37	28	7	72	2.36	0.03%
\$25,000,000.00	\$2,500.00	4	7	1	12	0.39	0.01%
\$25,000,001.00	\$3,000.00	9	8	8	25	0.82	0.01%
		2544	447	63	3054		

Melody Meyer's Talking Points

Meeting of California State Board food and Agriculture 2.2.16

California has the largest number of specialty crops in the country. The state accounts for approximately 20 percent of all organic production in the U.S., and California led the nation with \$2.2 billion in organic sales.* We want to make sure that modifying the SOP would not negatively impact California's large and diversified organic industry.

IMPORTANT FUNCTIONS OF THE SOP AND IMPACTS OF ELIMINATION OR DIMINISHED ACTIVITIES

1. **Enforcement** – The SOP has the authority to regulate an organic claim at any point in the supply chain, and has the authority to immediately remove products from sale as organic. There are currently 6737 registered operations. 900 are non-certified operations. The SOP has the authority to conduct enforcement activities for both certified and non-certified operations.

Impact: While it is possible for the certifiers to conduct enforcement activities on their own certified operations, they do not have the authority to oversee non-certified operations, or operations certified by another certifier. Additionally, certifiers do not have the authority to issue civil penalties. The NOP would be responsible for conducting enforcement activities on these non-certified operations. The lack of local state and agency enforcement personnel would lead to a reduction in local investigations and other enforcement activities.

2. **Pesticide residue sampling** – Under authority of Title 3, California Code of Regulations §1391.1, the SOP collects 200-300 samples for residue testing a year; which are an integral part of surveillance and investigation activities. Future GMO testing also falls under this category. Samples are collected at but not limited to, production and handler sites; certified farmers' markets; retail locations; and roadside stands. Department of Pesticide Regulation also provides the SOP with their test results on organic products. The SOP then investigates as needed.

Impact: A very limited number of residue samples would be collected by the certifiers, and only for their own certified operations; which will limit enforcement of pesticide violations. The National Organic Program (NOP) only requires certifiers to annually conduct sampling on 5% of their certified operations worldwide. This means they may not even conduct sampling in California, if they certify operations in other parts of the world. If the agency certifies less than 30 operations, they only need to test one operation annually. The NOP does not conduct residue sampling for the organic program. The NOP would also need to work out an agreement with CDPR for investigating CDPR's test results.

3. **Spot Inspections** – CDFA and county staff conducts spot inspections (not part of an investigation) at various points in the supply chain, including growing sites, farmer’s markets, retail locations, and storage facilities.

Impact: NOP doesn’t currently conduct spot inspections in any states. They would need to provide staff develop procedures to conduct spot inspections of both certified and non-certified operations. While the NOP could have the certifiers conduct spot inspections on their own certified operations, certifiers would not conduct spot inspections on non-certified operations. This would require additional resources/costs to the certifiers, and they may not conduct them on a regular basis.

Certifiers only have the authority to inspect retail locations that they certify. If a certifier noticed a violation at a retailer they did not certify, they would no longer be able to report it to the SOP. NOP would have to develop protocols for reporting these violations. However, since the majority of retail locations are not certified, many retail operations would not be inspected. While the majority of retail operations do not require registration, they are still subject to the SOP’s enforcement activities.

4. **Complaint handling** – During the 2014/2015 fiscal year, the SOP received and reviewed **94** complaints. The majority of the complaints were handled by the SOP; which consists of CDFA Organic Program staff, the counties, and CDPH. The remaining complaints were handled by ACAs, CDFA Organic Input Materials Program (OIM), and the NOP. The following is breakdown of the number of complaints handled by each type of agency: **37**-counties; **20**-CDFA Organic Program staff; **17**-ACAs; **16**-CDPH; **2**-OIM; **2**-NOP.

Impact: All complaints would have to be submitted to the NOP. NOP would have to administer and track all complaints. The NOP would have to hire staff to handle complaints from non-certified operations, and/or they would have to set up agreements with the counties to conduct enforcement activities. The NOP would have to assign and monitor complaint investigations to the certifiers. Response to complaints may take longer, since the NOP must respond to complaints from all states. Certifiers would have to investigate the complaints and would only be able to investigate their own operations. This could be problematic for cases that involve more than one certifier. Certifiers would also be handling a larger number of complaints, which may result in delays in response time.

- a. **Non-Food Complaints** Currently the NOP has published that they will not pursue complaints over products in which they have no regulatory authority like cosmetics. COPA specifically has authority for cosmetic products using “organic” or “made with organic” label claims. This is an industry that is highly prone to marketing “organic” and has resulted in increased consumer protection from false “organic” claims.

Impact: California consumers would have no protection from false and misleading claims on cosmetics using organic and made with organic label claims. The “organic” cosmetic industry is growing at 20% a year and represents a significant area of growth for organic producers, however without enforcement there is no point in the cosmetic companies using anything more than a small hint of a single organic ingredient.

- b. **ACA vs Applicant Issues** Currently the NOP does not mediate between the Certifiers and the Applicants or between Certifiers, while the SOP does in a timely manner. In the event that there is a disagreement for an applicant operation or they have special knowledge that may not be understood by the ACA, the SOP provides a valuable resource for expedient and informal mediation. Historically they have been quick to respond to both applicants who are being directed to do things by the certifier with which they disagree and to ACAs that may disagree with other ACAs. Because of the complexity of State of California laws, this is a valuable resource.

Impact: Both ACAs operating in California and California Program Applicants will have no regulatory support in a timely manner. Applicants will be forced to comply with occasionally capricious directions and ACAs will have no ready path to resolve questions of interpretation of the regulations and the Guidance Documents.

5. **Appeals/Mediation – SOP handles appeals, works with the counties on mediation, and handles settlement agreements**

Impact: USDA or NOP staff would have to handle appeals and related activities. Some local county offices may be able to perform these activities.

6. **Registration** – All organic operations in California are required to register with the SOP. Operations seeking organic certification must also be registered prior to certification. Through the registration process, the SOP screens organic applicants and informs them of the requirements for registration and also for certification. The SOP also collects a variety of data such as sales, commodities, and acreage, which is used to generate reports. The data collected encompasses all organic registrants. The data collected in these reports is also disseminated to the COPAC, which represents the California organic industry; including consumers.

Impact: The NOP doesn’t currently register organic operations. NOP would need to develop procedures to register non-certified operations, and NOP would have to collect information for non-certified operations. Certifiers would not benefit from the SOP “pre-screening” organic applicants and instructing them as to whether they need to be

certified. The NOP and certifiers would be responsible for collecting data and providing reports.

7. **Training** - The SOP currently provides ongoing training to county agricultural staff, and regularly advises county staff on organic issues.

Impact: The NOP would be responsible for providing training to county agricultural staff at the local level, and would need to provide advisement to county staff.

8. **Presentations/Outreach** – The SOP conducts several presentations each year to international trade groups as part of an itinerary that includes other government programs and agencies. The SOP also attends various agricultural conferences/meetings, and has begun performing outreach to educate the industry on the Organic Program.

Impact: CDFA would have to make arrangements with the NOP or private entities such as certifiers to conduct presentations to trade groups. The NOP would have to attend local agricultural meetings.

9. **COPAC** – COPAC advises and provides recommendations to the SOP. The Committee represents the California Organic Industry, and includes a diverse group of individuals from the private sector, academia, and public agencies.

Impact: COPAC’s responsibilities would need to be assumed by the National Organic Standards Board (NOSB) or some other federal body. There would no longer be advisement or representation at the local or state level.

10. **Cost Share** – The SOP administers the federal cost share program and does not collect full reimbursement of expenses.

Impact: Another agency or department would have to administer the Cost Share program, most likely at a higher cost than the SOP.

OBSERVATIONS

1. The SOP provides extraordinary value to the California organic community.
2. There is additional enforcement in CA that the NOP doesn’t conduct and the robust organic community in CA deserves and expects this service.
3. If complaints in CA were handled by NOP it would weaken enforcement in the rest of the US and in CA.
4. We must maintain authority language so that CDFA can continue to conduct spot inspections and residue testing.
5. The GMO pilot testing program must continue in order to provide future guidance to the NOP.

6. The registration process seems to be the most onerous – not the fees- lets revise the fees and modify the registration process.
7. We should conduct more listening sessions to assure that all stakeholders have input in this process.

OPPORTUNITIES FOR CHANGE AT SOP

1. Develop an online clearinghouse for grower technical support.
2. Develop programs that facilitate and advance transition to organic.
3. Conduct activities that affect organic research and policy priorities.
4. Expand COPAC and broaden their advisory role.
5. Publish an online newsletter highlighting the activities of the SOP
6. Retool the registration process so it is aligned with what certifiers are collecting.
7. Reform fees structure enabling a more robust SOP.



February 1, 2016

Dear members of the California State Board of Food and Agriculture,

I am unable to attend the discussion of California's state organic program (SOP) on Tuesday, February 2, 2016 in Sacramento but I hope you can include my views and experience with that program via this letter.

Coke Farm has been growing produce organically since 1981. We were part of CCOF when it was a volunteer organization. We helped the process to define organic and get legislation to create the State Organic Program. At that time the California legislature was not aware or supportive of the concept of organic. The legislation defining organic needed funding and enforcement. The State Organic Program (SOP) assessed and collected fees from organic producers because the legislature thought of organic as a fringe movement. The populace had yet to embrace the concept of organic.

Fast forward, a few years: now the evolution of the National Organic Program has made the state organic program redundant. When organic switched from being defined by state law to being federal law, certain constituents of the organic community were distrusting of federal control and thought enforcement would be needed by the state. An agreement was brokered that allowed the SOP to continue to collect fees from organic producers ostensibly for organic enforcement activities during the transition from State to Federal law.

Across the nation organic compliance to federal law is accomplished primarily through ACA (Accredited Certifying Agencies) however, in California organic producers are still required to register with the state organic program and pay fees to the state based on the value of their production. This is redundant because certified organic producers in California are required to pay fees to their certifying agents based on their organic production to participate in the National Organic Program. The information collected by the SOP from organic farmers is available through ACAs as well as the County Agricultural Commissioner's offices from Pesticide Use Permits and the annual crop production reports that are collected from all growers.

Our experience with the SOP, since the federal law made it redundant, has been very disappointing. Dealing with the employees of the State Organic Program has been the worst bureaucratic experience imaginable. We have dutifully registered, completed forms and paid fees to the state organic program over the years. A few years ago we sent in our state organic paperwork and money in May. In September, as we were selling our produce at the Palo Alto farmers market, we were routinely checked by the Santa Clara Agricultural Commissioner's representative on a Saturday morning. The County agent was spot checking on compliance at certified farmers' markets. Their job is to confirm that farmers are certified producers as defined by the state and they also confirm that

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farmers selling as organic are registered with the state. The reef of papers that he was looking through had everything except our state registration for that year. We always try to keep copies of the required paperwork at our farmers markets but somehow we missed the fact that we had never received the registration back from the State that year. I called the Sacramento number for the state organic program- no answer, and no way to leave a message. Eventually a few days later after several phone call attempts, I was able to talk to someone at the State Organic Program. I explained our predicament and he investigated and eventually got back to us. I was informed that since our acreage numbers from the prior year were not the same as the acreage numbers this year that they had decided that we had not completed our registration. He could not explain why we had not been notified of this 'problem'. I tried to explain to him that our acreage varies year-to-year depending on the crop mix we are growing, the market and various other conditions. He would not accept that! If the acreage numbers listed for each field didn't agree each year, he said we weren't filling the form out correctly. After a few minutes of me trying to explain to him that the information would not be accurate, I gave up and told him that I would fill out the form to show that the acreage was the same. We got our State registration but the crop acreage information provided was certainly not accurate. All of our interactions with representatives of the SOP have been disappointed in the lack of training and competence of employees at the State Organic program.

I believe that the State Organic Program should be eliminated. The fees and forms required of organic producers penalize organic growers. These are the very growers we, as a society concerned with environmental contamination, should be encouraging to proliferate. There is no reason to collect special data from organic producers or force them to pay for what should be part of the routine information collected by California Dept of Food and Ag or Department of Pesticide Regulation. California is one of the only states that has a State Organic Program and it is unclear what benefit it provides. Organic farmers in California must pay extra fees and incur additional audits and inspections beyond those required by the National Organic Program. It is time to regulate California's organic farmers in the same manner as other organic farmers in the United States.

Sincerely,

Dale Coke

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