

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE (CDFA)  
FERTILIZER INSPECTION ADVISORY BOARD (FIAB)  
AB 856 Subcommittee Meeting  
Sacramento, California  
September 15, 2010  
MINUTES**

**MEMBERS**

Matthew Cotton  
Neil Edgar  
Robert Horowitz  
Claudia Reid  
Michael Brautovich  
Bill Wolf  
Jake Evans  
Katherine Borchard  
Doug Graham  
Sandy Simon  
John Peterson

**CDFA**

Asif Maan  
Amadou Ba  
Avnee Jivabhai  
Dale Rice  
Luz Roa  
Nick Young  
Mike Gingles  
Pierre Labossiere

**INTERESTED PARTIES**

Tim Stemwedel  
Lindsay Fernandes-  
Salvador  
Ray Green  
Steve Beckley  
Deborah Stemwedel  
Vicky Duke  
Peggy Myers  
Martin Beagle  
Johnny Beck  
Ralph Vilet  
Bob Myers  
Richard Nutter  
Renee Pinel  
Jay Yost

**CALL TO ORDER**

Acting Chairman Jay Yost called the meeting to order at 9:00 a.m. A quorum was established. Mr. John Salmonson and Ms. Rachel Oster were unable to attend.

**INTRODUCTIONS AND ANNOUNCEMENTS**

Chairman Yost welcomed everyone to the meeting. Self-introductions were made. Mr. Yost asked if anyone had any public comments. There were no responses.

**MINUTES OF THE LAST BOARD MEETING**

Mr. Yost asked the Fertilizer Inspection Advisory Board AB 856 Subcommittee members to review the minutes of the August 3, 2010 meeting. Dr. Amadou Ba noted that Mr. Robert Horowitz was not part of the Checklist Working Group.

**MOTION:** A motion was made by Mr. Doug Graham to accept the minutes with the change as discussed. Mr. Sandy Simon seconded the motion. The motion passed unanimously.

Mr. Bill Wolf questioned if the Custom Blend recommendations were passed in a motion. Dr. Asif Maan pointed out the motion in the previous meeting minutes.

## **CHECKLIST WORKING GROUP RECOMMENDATIONS**

Mr. Nick Young presented the Checklist Working Group Recommendations. He noted that the group went over the protocol for inspections as well as the inspection audit checklist. There have been several changes since the last meeting, the main difference is the change from check boxes to “Yes”, “No”, and “Not Applicable” for each question. He reviewed the categories covered within the checklist. It was determined that the final section of the checklist is a “Best Management Practices” that will be an optional checklist for firms. At the end there will be an exit interview to be signed by the firm, and a copy will remain with the firm. The CDFA Inspector will then complete a final report and submit to CDFA and provide the firm with a copy within 30 days. Mr. Young clarified that this is not a pass/fail document.

Mr. Yost informed the group that this document will be reviewed and edited by CDFA and will be reintroduced to the Subcommittee at the next meeting for approval. This will be a working document. Mr. Tim Stemwedel questioned if the public will have an opportunity to provide input. Dr. Maan noted that public comment periods are during open AB 856 Subcommittee meetings, documents will be open for the public upon approval of the Subcommittee. Mr. Yost clarified that the public group is too vast for review and the point of these subcommittees is to represent the public. Mr. Stemwedel requested a copy of the checklist. Mr. Yost requested that anyone who would like a copy, send an email to CDFA to request one. Mr. Bill Wolf noted that the process being used is rather thorough and the resulting checklist has already gone through three drafts because of the working group input. Mr. Stemwedel questioned if the checklist and inspection would be pass or fail. Mr. John Peterson noted that there is no scoring or weight on this checklist; it is merely a way for the inspector to send information to staff for follow-up. There is no significant impact to a firm. Mr. Robert Horowitz questioned if local enforcement agency checklists can be used as part of the inspection. Dr. Maan noted that once the checklist is made public, the intent will be clearer and the focus of the checklist and the intent of the inspection will become transparent. It is an all encompassing checklist. Discussion ensued about the specifics of who will be inspected and how frequently.

## **DRAFT REGULATIONS**

Dr. Amadou Ba presented the draft regulations including civil penalty matrix, label registration and on-site inspection guidelines. He noted that these may be changed by legal and office of administrative law based on public comments and legal requirements. This is the second draft of these regulations. He explained how violations are classified by “serious,” “moderate,” and “minor” and explained the breakdown of each classification. Discussion ensued about civil penalties and the classifications. Dr. Ba then presented the violations matrix outlining the description of violations as well as the penalty associated with each. Mr. Peterson suggested a consistency of penalty amounts for FAC § 14601 and FAC § 14631. Mr. Jake Evans suggested making FAC § 14601 a serious violation. Ms. Renee Pinel recommended being considerate of not moving too many penalties into the serious category because it is harder to move it back down to a lower level than to

move it up. Mr. Matthew Cotton noted that is important for the program to maintain discretion because there are often situations where mistakes are accidental rather than intentional.

Mr. Steve Beckley suggested separating the Civil Penalty Matrix to its own regulation because it involves conventional fertilizers as well. Dr. Maan reviewed the verbiage of the laws and regulations. Discussion ensued about FAC § 14601 and it was suggested the number of infractions determines the severity of the violation. For example, the first violation would categorize it as a minor violation, for two or three it would be a moderate violation and four or more would be considered a serious violation. Mr. Ray Green noted that the current matrix provides the program with the tools to determine the severity based on an inclining scale as mentioned before. Discussion ensued about how to provide the most discretion for the program.

The group reviewed the matrix line by line and made suggestions to be incorporated. It was suggested to amend section 2322. (a) to read "For the purposes of this section, violation classes are designated as "Serious", "Moderate", and "Minor" to establish maximum penalty amounts. Repeat violations may result in an escalation of violation class. Serious and moderate violations will be downgraded based upon the evidence, the factual circumstances, mitigating factors and the cooperation of the violator." The exact verbiage for the various included items was discussed.

The program will determine if 2324 (c) needs to be included in the regulations since it is a reiteration of the law.

### **CUSTOM BLEND REVIEW**

Dr. Maan reviewed the following key points for custom blends:

- Blenders shall provide the custom blend label to the secretary within 24 hours of blending.
  - The custom blend label shall comply with the labeling requirements as specified in Section 2303 of the CCR.
  - Notification of custom blends must be made on application designated by the department and shall include a copy of the registered label for each fertilizing material in the blend.
  - Dr. Maan will suggest that the custom blend processing fee be waived for the first year to the FIAB at their next meeting.
- Discussion ensued about what qualifies as a blend and at what point a blend becomes a product label that requires registration.

### **REVIEW OF REMAINING AB 856 ENFORCEMENT ISSUES**

Dr. Maan informed the group that of the seven initial points identified, two are completed, two are in progress and only three remain. The seven points are as follows:

- compost nutrient guarantees (Completed)

- OIM label review and registration (Completed)
- site/facility/ ingredient inspections (In Progress)
- out of state inspections (Remaining)
- clarify scope of OIM w/ no claims (Remaining)
- civil penalty matrix (In Progress)
- review label registration fee (Remaining)

### **ORGANIC TRADE ASSOCIATION RECOMMENDATIONS FOR IMPLEMENTATION OF AB 856**

Mr. Wolf noted that he would like to cover five areas: purpose, scope, inspection, priority and avoiding duplication. The Organic Trade Association (OTA) is focused on protecting the integrity of the Organic Input Materials. OTA supports the intent of AB 856 and is committed to assisting CDFA in developing regulations that will result in enforcement, inspections and the ability to stop and to punish manufacturers of fraudulent inputs. Mr. Wolf noted that they would like to create a higher level of trust in the marketplace through oversight of suppliers and to assure that legitimate input products are available to organic farmers. He noted that a similar program took nearly 12 years to become fully functional because it was a new law that required inspections and regulations over an industry that had never been reviewed before. He asked that the subcommittee work with CDFA to get the program up and running within one year because if not handled correctly, the agriculture industry will suffer. OTA requests that the focus of the OIM program be on intentional violations because the focus will better assure success.

Mr. Wolf noted that CDFA jurisdiction will require registration by manufacturer or marketer of OIM. If there is no intent, no jurisdiction should be attempted. Inspection should focus on the requirements of AB 856 and the National Organic Program (NOP). He noted that the focus should be on inspection, review and enforcement on highest risk products, where intentional fraud or misbranding is most likely. He then provided examples of high and low risk inputs. OTA seeks to help develop an OIM program that has a mechanism for cooperation with other review programs and avoids duplication or conflicting material review decisions and avoid adding additional expense for material reviews already being performed by another party.

### **SCOPE OF ORGANIC INPUT MATERIALS**

Dr. Maan requested that the group discuss the scope of OIM in AB 856. Discussion ensued. Dr. Maan recommended creating a working group to identify the scope and submit recommendations to the Subcommittee for consideration at the next meeting.

**MOTION:** A motion was made by Ms. Claudia Reid to develop a working group to discuss the scope of work. Mr. Doug Graham seconded the motion. The motion passed unanimously.

The scope working group will consist of Ms. Claudia Reid, Mr. Jake Evans, Mr. Michael Brautovich, Mr. Bill Wolf, and Mr. Doug Graham in lieu of Ms. Rachel Oster if unable to attend. Dr. Amadou Ba will represent CDFA in the scope working group.

### **OUT-OF-STATE INSPECTIONS**

Dr. Maan noted that AB 856 allows CDFA to accept NOP recognized third party inspections as long as they follow CDFA guidelines and checklists and they will be required to submit all documents to CDFA. These outside entities will be trained by CDFA to conduct inspections. They can also be trained by Association of American Plant Food Control Officials and possibly NOP. CDFA will develop a timeline and some procedures for how a third party will be identified. The cost of out-of-state inspections will have to be determined with the firm and the third party.

### **LABEL REGISTRATION FEE**

The label registration fee has already been determined by the Fertilizer Inspection Advisory Board and has been included in the regulation. The fee has been set at \$500 and can be reviewed and adjusted yearly for appropriate adjustments. Mr. Peterson noted that the fee is similar to the mill assessment; it can be lowered if excess revenue is being collected but cannot exceed \$500.

### **ADDITIONAL ITEMS / NEXT MEETING**

Dr. Asif Maan presented the implementation timeline for AB 856. He noted that staff is being hired as permitted, procedures and regulations are in their final drafts, a licensing and label registration workshop is scheduled for October 27, OIM label review and registration will begin January 1, 2011, OIM labels must be submitted by April 30, 2011 and OIM label registration will be effective January 1, 2012. This timeline will allow CDFA to offset the license renewals and label registration renewals so that both do not fall within the same year.

Ms. Peggy Myers wanted to publicly acknowledge that Organic Materials Review Institution (OMRI) is willing to offer assistance with AB 856. She thanked CDFA for allowing OMRI the opportunity to participate. This is a critical issue and they want to remain involved since they have 13 years experience. They are non-profit but are willing to help in whatever ways feasible and possible. Dr. Maan thanked OMRI on behalf of CDFA for their participation and input at these meeting. Mr. Peterson thanked all the involved entities for their participation and for maintaining a level of dignity in order to come together to regulate organic input materials.

The next Subcommittee meeting is scheduled for October 21, 2010 in Sacramento at 9:00 a.m.

**MOTION:** A motion was made by Mr. Jake Evans to adjourn the meeting. Mr. Sandy Simon seconded the motion. The motion passed unanimously. The meeting was adjourned at 4:44 p.m.

Respectfully submitted by:



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Asif A Maan, Ph.D., Branch Chief  
Feed, Fertilizer, Livestock Drugs and Egg Regulatory Services  
Inspection Services

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Date