



February 7, 2024

Dr. Jennifer Tucker
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue SW
Mail Stop 0268, Room 2648-S
Washington DC 20250-0268

Re: Amended Legal complaint and request for action regarding clear conflict of interest exhibited by California Certified Organic Farmers.

Dear Dr. Tucker,

We wish to amend our **Legal complaint and request for action regarding clear conflict of interest exhibited by California Certified Organic Farmers, Inc.**, dated November 30, 2023, to include information referencing regulations under **7 USC 6515: Requirements of certifying agents**, as well as those previously referenced under **7CFR 205: 205.501: General requirements for accreditation**.

Please also see additional facts found, below, based on research performed by our staff subsequent to the original filing.

The additional regulation we are citing applies to accredited certifying agents, of which CCOF is one, and any employee, inspector, contractor, or other personnel of that certifying agent.

The pertinent sections of the additional regulation are reproduced here:

7 USC 6515: Requirements of certifying agents includes the following points regarding conflicts of interest:

Any certifying agent shall not:

(1) carry out any inspections of any operation in which such certifying agent, or employee of such certifying agent has, or has had, a commercial interest, including the provision of consultancy services;

(2) **accept payment, gifts, or favors of any kind from the business inspected other than prescribed fees; [emphasis added]** or

(3) provide advice concerning organic practices or techniques for a fee, other than fees established under such program.

We contend that CCOF, across their three separate corporate entities, is acting as a

single operation while attempting to show independence through the creation of separate nonprofit businesses each filing annual IRS Form 990s required of all tax-exempt organizations.

As a result, CCOF Certification Services LLC appears to be in clear violation of the requirements for accreditation of certifying agents because of its intimate working relationship with California Certified Organic Farmers, Inc. and CCOF Foundation.

1. Separated only on paper, CCOF is acting as single operation:¹

- CCOF Inc.'s governing body, its Board of Directors, is elected by certified members of CCOF for three-year terms. CCOF, Inc., a 501(c)(5) nonprofit, is a member-directed, politically active entity chartered as a trade association.
- CCOF Certification Services LLC's governing body, its Management Committee, is appointed by the CCOF, Inc. Board of Directors for three-year terms. CCOF Certification Services, LLC, a 501(c)(5) nonprofit, is a **wholly owned subsidiary of CCOF, Inc.**
- CCOF Foundation's governing body, its Board of Trustees, is appointed by the CCOF, Inc. Board of Directors for three-year terms. CCOF Foundation, is a 501(c)(3) tax-exempt nonprofit.

2. CCOF Inc. filed for and received a registration² for an image that is used both as a trademark (as seen in the upper left corner of the organization's website (<http://www.ccof.org>) and as a certification mark which is licensed to CCOF Certification Services LLC to be used to indicate labeled products are certified organic.

3. CCOF Inc., CCOF Certification Services LLC, and CCOF Foundation all have the same chief executive:

- CCOF Inc. CEO: Kelly Damewood
- CCOF Certification Services LLC, Management Committee Chair: Kelly Damewood: the CCOF Inc. CEO and Board of Directors have complete control of the Certification Services Management Committee
- CCOF Foundation Board of Trustees Chair: Kelly Damewood

4. CCOF Inc. uses the possessive *our* (denoting ownership) when describing the functions of the organization; for example, "CCOF, Inc. provides cost-effective infrastructure for **our certification, advocacy, and Foundation programs...**"³ [emphasis added]

¹ <https://www.ccof.org/page/board-committees>

² Serial number: 77818393, owned by California Certified Organic Farmers Inc., US Patent and Trademark Office

³ <https://www.ccof.org/page/how-we-do-our-work>

5. CCOF, Inc. has a defined arrangement with CCOF Certification Services LLC to receive a certain percentage of its gross revenue. This constitutes a direct business relationship.

6. The CCOF website (<http://www.ccof.org>) is owned and managed by CCOF Inc.⁴ and is shared among the three organizations. CCOF Certification Services, LLC and CCOF Foundation do not have their own separate organizational websites. CCOF certification is offered for sale and online payment is accepted on the navigation tab labeled Certification Services at the top of the CCOF website home page.

7. CCOF Inc. owns and/or controls management of all three business groups, all profits from CCOF Certification Services LLC flow to CCOF Inc., and the three groups intermingle funds through transfers to and from each other as grants, reimbursements, and cash payments, therefore we contend they are acting as a single business entity.

Most importantly, as delineated below, given the abundant evidence that these organizations are interrelated, the massive amounts of payments, other than certification fees, by CCOF clients, undermine the independence of accredited certifiers mandated by federal law.

Thank you for considering these additional facts emanating from research by our staff subsequent to the filing of our initial complaint.

Please keep us informed of the status of this request.

Sincerely,



Mark Kastel
Executive Director

OrganicEye
PO Box 8
La Farge, WI 54639

⁴ CCOF.org domain was registered 08-17-1995 (Source: <https://lookup.icann.org/en/lookup>)



November 30, 2023

Dr. Jennifer Tucker
Agricultural Marketing Service
United States Department of Agriculture
1400 Independence Avenue SW
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Washington DC 20250-0268

RE: Legal complaint and request for action regarding clear conflict of interest exhibited by California Certified Organic Farmers, Inc.

Dear Dr. Tucker,

In 2002, with final implementation of the federal organic certification standards under the National Organic Program (NOP), the USDA determined that accredited certification agencies must be free from conflict of interest.

Certification structures, systems, and processes were meant to be independent and objective, not influenced by membership, member revenues or acreage, size of certification fees, or other close connections.

As a result, CCOF was forced to restructure or face losing accreditation by the USDA. Three organizations resulted from that restructuring:

- **CCOF, Inc.**, a 501(c)(5) nonprofit, is a member-directed, politically active entity chartered as a trade association.
- **CCOF Certification Services, LLC**, a 501(c)(5) nonprofit, is a wholly owned subsidiary of CCOF, Inc.
- **CCOF Foundation**, a 501(c)(3) is tax-exempt nonprofit.

Strong documentary evidence suggests that these organizations are separate on paper only, filing separate IRS Form 990s. There is extensive overlap in the management, at the board/trustee levels, intermingling of staff, and donations by large agribusinesses certified by CCOF to the Foundation, and “grants and other assistance” provided to the Certification Services LLC and the Foundation⁵.

⁵ See CCOF Inc. IRS Form 990 2021: Schedule J – Part II, Grants and Other Assistance to Domestic Organizations -

<https://projects.propublica.org/nonprofits/organizations/770070930/202213189349306196/full>

We respectfully request that your office thoroughly investigate and take appropriate enforcement action to address clear violations of the NOP requirements for accreditation of CCOF Certification Services LLC because of its intimate working relationship with California Certified Organic Farmers, Inc. and CCOF Foundation.

Alleged Violations of the NOP Requirements for Accreditation to Avoid Conflicts of Interest

The § 205.501 General requirements for accreditation,⁶ (a)(11) seeks to prevent conflicts of interest by separating any relationship between the operation seeking organic certification and anyone connected with the accredited certifier who might have had a business or consulting relationship with the application operations in the last 12 months, however we believe additional and numerous conflicts of interest lie within and between the three closely related groups consisting of CCOF Inc., CCOF Certification Services LLC, and CCOF Foundation.

Leadership: Board of Directors, Board of Trustees, and Management Committee

Currently Kelly Damewood serves as the Chief Executive Officer, CCOF, Inc., the Chair of the CCOF Foundation Board of Trustees for the CCOF Foundation, and the Management Committee Chair for CCOF Certification Services.

The fact that Ms. Damewood is both the CEO of CCOF, Inc., and the Management Committee Chair for CCOF Certification Services LLC, is a clear example of the non-existent boundaries that should exist between these entities.

Leadership of both CCOF Inc. and the CCOF Foundation is dominated by large growers, consumer packaged goods (CPG) marketers, and corporate agribusiness. For example, all but one of the fourteen members and officers of the CCOF Inc. Board of Directors are growers and agribusinesses certified by CCOF Certification Services.

The Certification Services Management Committee is made up of 5 members: Ms. Damewood (chair), a current employee of a privately owned, \$3.6 billion ag input company, two retired small family farmers, and a retired past CCOF Director of Certification.

And the CCOF Foundation Board of Trustees comprises five members, all certified by CCOF Certification Services, two of whom are employees of multi-billion-dollar agribusinesses.

Shared Staffing

The CCOF Foundation, in its 2021 IRS Form 990, reported zero individuals employed in

⁶ See Code of Federal Regulation, <https://www.ecfr.gov/current/title-7/part-205/subpart-F>

calendar year 2021 - in two places on the form. Yet according to LinkedIn and the CCOF website, the current CCOF Foundation staff count is six.

At the same time, the Foundation was awarded two cash grants totally \$403,600 from CCOF Inc. (per the CCOF Inc. 2021 IRS Form 990). For 2021, the Foundation reported total compensation expenses of \$552,652, all the while reporting zero employees. (Compensation expenses include salaries, pension plan contributions, and other benefits.) This strongly suggests that they are using staff, on a contractual basis, from CCOF, Inc. and/or CCOF Certification Services.

Large Donors, Sponsors and Advertisers

Funding for CCOF in its various corporate structures comes from multiple sources: direct donations, a percent taken from certification fees, state and federal funding, programming and education, advertising and promotion in publications and at event sponsorships, and other sources such as rents and internal cross-organization charges and payments. It is not always clear from the CCOF website, annual reports, and press releases to *which* entity funds are being donated.

Since they all operate in concert, our contention is that not really critical in evaluating the merits of this complaint as to which corporate entity the funds are funneled through (since the separation, again, of the revenue streams are blurred and appear, like staffing and management to be reflected on paper only.

Top contributors, including many others that are and are not certified by CCOF include (these figures are over and above large certification fees based on the scale of some of these corporate entities:

Organization	Est. Donations (2019-2023)	Est. Ad Value (2018-2022)	Total	Certifier
Cal-Organic/Grimmway Farms	\$125,000	\$8,580	\$133,580	CCOF
Driscoll's	\$125,000	\$5,795	\$130,795	CCOF
Organic Valley	\$100,000	\$1,330	\$101,330	OTCO
Patagonia Provisions	\$95,000	\$665	\$95,665	SCS
Organic Produce Network (OPN)	\$60,000	\$8,370	\$68,370	N/A
Farm Credit	\$35,000	\$19,450	\$54,450	N/A
Sunview Vineyards	\$50,000	\$2,825	\$52,825	CCOF
True Organic Products (fertilizer supplier)*	\$30,000	\$22,060	\$52,060	N/A
Anheuser-Busch	\$50,000	\$1,330	\$51,330	OTCO
Bank of the West	\$50,000	--	\$50,000	N/A

* No Certification Required although marketing products utilized by CCOF-certified operations and subject to review by CCOF Certification Services.

Shared Physical Address and Contact Information

As indicated at the foot of the website at www.ccof.org, CCOF Certification Services, LLC; CCOF, Inc., CCOF Foundation share the following address and contact information:

2155 Delaware Avenue, Suite 150, Santa Cruz, CA 95060

T: (831) 423-2263

F: (831) 423-4528

Email: ccof@ccof.org

Corporate email addresses do not indicate the specific organization with which the staff member is on staff, potentially confusing correspondents as to which organization they are in contacting. All three corporate entities use the CCOF.org domain in their email addresses.

The Organic Foods Production Act gives the NOP the authority to take such action:

Code of Federal Regulations, Title 7 (Agriculture), Subtitle B (Regulations for the Department of Agriculture), Chapter 1 (Agricultural Marketing Service)

§ 205.501 General requirements for accreditation.⁷

(a)(11) Prevent conflicts of interest by:

(i) Not certifying a production or handling operation if the certifying agent or a responsibly connected party of such certifying agent has or has held a commercial interest in the production or handling operation, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(ii) Excluding any person, including contractors, with conflicts of interest from work, discussions, and decisions in all stages of the certification process and the monitoring of certified production or handling operations for all entities in which such person has or has held a commercial interest, including an immediate family interest or the provision of consulting services, within the 12-month period prior to the application for certification;

(iii) Not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected: *Except*, That, a certifying agent that is a not-for-profit organization with an Internal Revenue Code tax exemption or, in the case of a foreign certifying agent, a comparable recognition of not-for-profit status from its government, may accept voluntary labor from certified operations;

(iv) Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification;

⁷ See Code of Federal Regulation, <https://www.ecfr.gov/current/title-7/part-205/subpart-F>

(v) Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report; and

(vi) Ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection.

Conclusion

CCOF, now with upwards of \$27 million a year in aggregate revenue, has grown from a family farmer-led nonprofit into a multimillion-dollar business enterprise certifying multibillion-dollar corporate agribusinesses. Leadership and funding of CCOF is dominated by large growers, consumer packaged goods (CPG) marketers, and corporate agribusiness.

Clearly there is no true independence for its certification operation, no separation between, what are on paper only, three separate organizations. Yes, each is separately incorporated in the state of California and files a separate IRS Form 990 required of non-profit entities, while at the same time sharing a single leader (CEO, CCOF Inc./Chairman of the Board, CCOF Foundation /Management Committee Chair, CCOF Certification Services LLC).

Although not common, it isn't unheard of for a chief executive of a nonprofit to serve on the Board of Directors. Some foundations frown on this since one of the primary responsibilities of an independent board is the oversight of management. However, OrganicEye is not aware of any other instance where a chief executive has also served as chairman of the board before.

These entities all reside at the same business address (including suite number), all correspond with the same corporate phone number and email domain, and share funds across business units. Donations, advertising revenue, and volunteer hours funnel value through CCOF, Inc. to CCOF Certification Services and the CCOF Foundation in the form of grants to each functional unit, including \$135,000 to Certification Services and \$403,600 to the Foundation in 2021.

OrganicEye requests that the NOP's Compliance and Enforcement Branch make a timely, full, and good faith effort in their investigation of these allegations, and bring the alleged conflict of interest among CCOF Inc., CCOF Certified Services LLC, and CCOF Foundation to an end.

It should be noted that nothing in this formal complaint shall be interpreted as a waiver of our right to appeal under the Adverse Action Appeals Process.

Sincerely,

Mark Kastel
Executive Director

OrganicEye
PO Box 8
La Farge, WI 54639