



**U.S. Department of Agriculture**

**Office of Inspector General**

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# **Oversight of the National Organic Program**

**Audit Report 01601-03-Hy  
March 2010**

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U.S. Department of Agriculture  
Office of Inspector General  
Washington, D.C. 20250



DATE: March 9, 2010

REPLY TO  
ATTN OF: 01601-03-Hy

TO: Rayne Pegg  
Administrator  
Agricultural Marketing Service

ATTN: Kevin L. Richardson  
Director  
Planning and Accountability Staff  
Compliance and Analysis Program

FROM: Gil H. Harden /s/  
Acting Assistant Inspector General  
for Audit

SUBJECT: Oversight of the National Organic Program

This report presents the results of our audit of the National Organic Program. Your response to the official draft report, dated February 25, 2010, is included as exhibit B. Excerpts of your response and the Office of Inspector General's (OIG) position are incorporated into the Findings and Recommendations section of the report. Based on your response, we have reached management decisions on all of the report's 14 recommendations, and no further response to us is necessary. Please follow your agency's internal procedures in forwarding documentation for final action to the Office of the Chief Financial Officer.

We appreciate the courtesies and cooperation extended to us by members of your staff during this audit.

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# ***Oversight of the National Organic Program***

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## **Executive Summary**

### **Results in Brief**

We conducted this audit to assess the effectiveness of the Agricultural Marketing Service's (AMS) corrective actions implemented in response to our prior audit<sup>1</sup> of the National Organic Program (NOP). We also conducted this audit because of the size and growth of the organic industry as well as the public's increased interest in purchasing organic products. In 2008, the organic industry had sales of \$24.6 billion and had grown between 14 and 21 percent annually over the past decade. The NOP, created in October 2002, has the responsibility to assure consumers that organic products meet uniform standards and that they are appropriately labeled. NOP regulations require that agricultural products labeled as organic originate from farms or handling operations certified by a State or private entity that has been accredited by the U.S. Department of Agriculture (USDA).

In our prior audit, we reported that AMS had not (1) established protocols for working with the National Organic Standards Board<sup>2</sup> (Board) or resolving conflicts with them, or (2) fully developed internal operating procedures, particularly for resolving complaints and investigations and for providing guidance to certifying agents and their organic operators to ensure consistency in implementing program requirements. We found that AMS officials made improvements to the program since our prior audit, and implemented corrective actions for 8 of the 10 recommendations issued in our prior audit report (see Exhibit A). Members of the Board stated that AMS' implementation of the protocol for resolving conflicts with the Board had improved the relationship between the Board and AMS. In addition, during our audit, NOP officials completed restructuring their complaint handling process and established procedures for receiving, tracking, and processing complaints. These officials stated they secured additional funding which, in part, enabled them to implement the structural and operational changes to improve the program.

However, we believe that NOP officials need to further improve program administration and strengthen their management controls to ensure more effective enforcement of program requirements when serious violations, including operations that market product as organic while under suspension, are found. In addition, they need to strengthen their oversight of certifying agents and organic operations to ensure that organic products are consistently and uniformly meeting NOP standards.

We found that NOP officials need to improve their enforcement of program regulations and their resolution of complaints, as noted in our prior report. NOP officials did not have adequate procedures or a system for tracking the receipt, review, and disposition of complaints and any subsequent enforcement actions. We identified the following:

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<sup>1</sup> Report 01001-02-Hy, *Agricultural Marketing Service's National Organic Program*, dated July 2005.

<sup>2</sup> The Board assists in developing standards for substances to be used in organic production, and advises the Secretary on any other aspects of the implementation of the NOP laws and regulations.

- Between January 2006 and February 2008, AMS' Compliance and Analysis Program provided the results of its investigations of five certified organic operations to NOP. Although AMS recommended that NOP officials take enforcement actions against these operations, we found that NOP did not respond to these in a timely or effective manner. In addition, in those cases where enforcement actions were issued, NOP did not monitor the organic operations to ensure compliance with those actions. As a result, NOP never issued the recommended enforcement action against one of the five organic operations, one that improperly marketed nonorganic mint under USDA's organic label for 2 years; in the other four cases, the enforcement actions took between 7 and 32 months to issue. During this time the operations continued to improperly market their products as certified organic. One of these four, even after signing a compliance agreement<sup>3</sup> that it would not apply for and receive organic certification for a period of 5 years, continued to market its product as organic without AMS' knowledge.
- NOP officials did not resolve 19 of 41 program complaints<sup>4</sup> within a reasonable timeframe for cases opened since 2004. These 19 complaints went unresolved for an average of about 3 years. In January 2009 we brought this condition to the attention of management officials. They stated they were unaware of the status of the unresolved complaints. At this time they began to take action on the unresolved complaints. As of June 2009, we found that NOP had resolved 13 of the 19 complaints.

We also noted that NOP officials need to address ongoing issues with California's State Organic Program (SOP). The Act allows any State to apply to the Secretary to implement a program for regulating organic products produced and handled within that State. The State must have compliance, mediation, and appeal procedures that meet NOP regulations to become an SOP. When officials of the California Department of Food and Agriculture applied to have an approved SOP, they did not have the required compliance and enforcement procedures in place. NOP officials approved California's program because they wanted to allow California the opportunity to operate and develop procedures as they progressed. California has the most organic acreage in the country, with over 2,000 certified organic operations and organic product sales of over \$1.8 billion in 2007. Although NOP officials believed that the State would address these issues following its initial approval, they discovered in a 2005 review that the California SOP continued to lack these required procedures. NOP officials have continued to work with California officials to comply with program requirements; however, as of November 2009, the procedures have yet to be finalized. As a result, the California SOP is not equipped to properly enforce the requirements of the NOP.

Although the Organic Foods Production Act<sup>5</sup> of 1990 requires certifying agents to conduct periodic residue testing<sup>6</sup> of organic products, we found that NOP officials did not incorporate these provisions into NOP regulations. None of the four certifying agents we visited conducted periodic residue testing of the approximately 5,000 certified operations for which they were responsible, and there is no assurance that certifying agents performed regular periodic testing at any of the approximately 28,000 certified organic operations worldwide. Without such testing,

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<sup>3</sup> A compliance agreement is an enforcement action accepted by all parties that brings an operation into compliance with NOP regulations.

<sup>4</sup> NOP-related complaints can result in enforcement actions against certifying agents and/or organic operations.

<sup>5</sup> Section 2107(a) (6).

<sup>6</sup> This testing determines whether agricultural products contain any residues of pesticides, or of nonorganic or natural toxicants.

the potential exists that an operation's products may contain substances that are prohibited for use in organic products.

The former NOP director<sup>7</sup> stated that the decision not to require regular residue testing was based on officials' concerns about the cost of testing, and their position that the NOP regulations are process-based rather than a zero tolerance standard. The former director also stated that certifying agents did not want to pay for the cost of residue testing and that residue testing raises complex issues that must be addressed on an operation-by-operation basis. The former director also stated that the Office of the General Counsel (OGC) cleared the regulations before issuance. We discussed this issue with an OGC official who agreed that a legal review was performed before the regulations were issued. However, OGC could not provide a written opinion. We believe that AMS officials should seek a written legal opinion from OGC on whether the agency needs to require its certifying agents to perform periodic residue testing of all certified organic operations.

We found that NOP officials did not assemble a peer review panel to annually evaluate their accreditation procedures. NOP regulations require the AMS Administrator to establish a peer review panel pursuant to the Federal Advisory Committee Act<sup>8</sup> (FACA) to complete this evaluation. NOP officials attributed this inaction to budget constraints and the difficulties in forming a panel each year. NOP officials did not request a waiver from the Administrator or additional funding to form a panel.

Our review of 4 certifying agents and 20 organic operations found that NOP officials need to more effectively improve their oversight of program operations. We found that NOP reviewers did not make required onsite assessments and did not identify inconsistencies in the implementation of the NOP regulations, reducing assurance that products labeled as organic are meeting a uniform standard. We noted that:

- NOP officials did not ensure consistent oversight of organic operations by certifying agents. For example, the four certifying agents we visited had different criteria for determining whether noncompliances were major or minor and not all had them clearly defined. One of the certifying agents we visited developed outdoor access dimension requirements for poultry based on organic industry standards while the other three did not. We also found that three certifying agents did not ensure that six split operations<sup>9</sup> adequately described procedures to prevent the commingling of organic products with nonorganic substances. These inconsistencies occurred because the review guide that AMS used to evaluate certifying agents' compliance with the NOP regulations was not sufficiently focused to identify the types of problems we noted. In addition, NOP staff did not summarize the problems that they did find to identify trends or notify upper management of actions needed to correct the problems. Finally, NOP did not always provide adequate guidance to certifying agents, and at times the certifying agents were not aware of guidance that was issued. All of these factors reduce NOP's assurance that products labeled as organic meet a uniform standard.

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<sup>7</sup> On October 1, 2009, AMS appointed a new Deputy Administrator to lead NOP.

<sup>8</sup> FACA requires that a panel be established through a formal process, including filing a charter prior to convening.

<sup>9</sup> Split operations produce or handle both organic and nonorganic products.

- We found that NOP did not timely complete onsite reviews<sup>10</sup> involving 5 of the 44 foreign certifying agents. This occurred because NOP did not establish specific timeframes for performing onsite reviews. In addition, they did not have a policy describing how to handle agents located in countries where travel may be hazardous. As a result, NOP cannot assure that the nearly 1,500 operations certified by these 5 agents are in compliance with NOP regulations.

## **Recommendation Summary**

We are issuing 14 recommendations to NOP officials to improve program administration and internal controls. We recommend that NOP strengthen its enforcement procedures to determine what actions should be imposed on program violators, including civil penalties, and to timely issue the appropriate actions. We also recommend that officials timely resolve and track complaints from receipt through disposition. In addition, we recommend that NOP implement a plan for achieving compliance from California's SOP, obtain an OGC opinion on residue testing, and establish a mechanism for conducting annual evaluations of its accreditation process as required. Finally, we recommend that oversight of certifying agents and operations be strengthened to ensure that all onsite reviews of foreign certifying agents are performed, internal reviews are conducted more effectively, and guidance is provided as necessary to improve overall program operations.

## **Agency Response**

AMS agreed with the report's 14 recommendations. We have incorporated AMS' response in the Findings and Recommendations section of the report, along with OIG's position. AMS' response to the report is incorporated as Exhibit B.

## **OIG Position**

Based on AMS' responses, we have reached management decisions on each of the report's 14 recommendations.

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<sup>10</sup> NOP relies upon AMS' Audit, Review, and Compliance (ARC) division to conduct the onsite reviews of accredited certifying agents. Following completion of its review, ARC submits a report to NOP, which then issues the AMS Administrator's accreditation decisions.



## **Background & Objectives**

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### **Background**

In 1990, the Organic Foods Production Act (Act) established national standards for the production and handling of organic products and required the Secretary of Agriculture (Secretary) to issue regulations to implement the legislation. The Secretary delegated the functions of the Act to the Agricultural Marketing Service (AMS), and through regulations effective in October 2002, the National Organic Program (NOP) was created to administer these standards and to require mandatory certification of organic production. The Act also required the Secretary to establish the National Organic Standards Board (Board) to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the Act.

The Act also allows States to apply to the Secretary to implement a program for regulating organic products produced and handled within that State. The State must have noncompliance, mediation, and appeal procedures that meet NOP regulations to become a State Organic Program (SOP). If approved, the SOP is responsible for the enforcement of NOP regulations within the State. SOPs may also contain more restrictive requirements because of environmental conditions or the necessity for specific production or handling practices particular to that State. Currently, California and Utah are the only two approved SOPs.

NOP currently is led by an AMS Deputy Administrator and is organized into three branches.<sup>11</sup> The Standards Development and Review Branch is responsible for NOP's rulemaking functions; the Accreditation, Auditing, and Training Branch manages the accreditation of certifying agents; and the Compliance and Enforcement Branch ensures continued compliance with the regulations. Two other AMS program areas assist NOP. AMS' Compliance and Analysis Program (AMS Compliance) manages all NOP-related appeals and also conducts investigations of alleged willful violations of the regulations.<sup>12</sup> Finally, AMS' Audit, Review, and Compliance (ARC) conducts audits of potential and current certifying agents.

NOP requires organic products to originate from farms or handling<sup>13</sup> operations certified by State or private entities referred to as "certifying agents." Agents must be accredited by the U.S. Department of Agriculture (USDA) and may be State, private, or foreign organizations that grant organic certification upon determining that an operation's procedures comply with the Act and NOP regulations. NOP relies on these agents to ensure that certified organic operations continue to comply with the Act and NOP regulations. As of July 2009, there were 98 accredited certifying agents (54 domestic, 44 foreign) that certify approximately 28,000 certified organic operations.

To become accredited, agents must first submit an application with supporting documentation to NOP. ARC conducts a review of these documents to evaluate the agent's compliance with NOP regulations and provides a report to NOP. NOP forms an accreditation committee to review

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<sup>11</sup> Prior to October 2009, NOP was part of AMS' Transportation and Marketing Programs and was led by a program director.

<sup>12</sup> Prior to October 2008, AMS Compliance also handled program complaints, with the exception of those that needed to be forwarded to NOP for a policy interpretation. NOP's Compliance and Enforcement Branch now manages the entire complaint process.

<sup>13</sup> A handling operation is any operation that receives, processes, packages, or stores organic products.

ARC's report and to provide a recommendation of conditional approval or denial to the AMS Administrator. If approved by the AMS Administrator, the agent can begin certifying operations, although the accreditation process is not complete until the successful completion of an onsite review which further ensures that certifying agents are following NOP regulations. ARC is charged with scheduling and completing the onsite evaluations of all agents, foreign and domestic, within a reasonable amount of time following initial accreditation. In addition, every 5 years following the initial accreditation date, agents must reapply for the program and have another document review and site evaluation completed.

An operation that wishes to become certified can apply for certification to any of the 98 certifying agents located anywhere in the world. Organic operations must maintain an organic system plan (OSP) that has been agreed to by the certifying agent. This plan must include descriptions of how the operation will meet NOP regulations, including descriptions of monitoring practices, materials to be used in organic production or handling, and procedures to prevent the commingling or contamination of products in a split operation.<sup>14</sup> The agent reviews the OSP and other application materials to determine whether the operation complies with the Act. If so, the agent will perform an onsite inspection to verify that the documents submitted with the application reflect the actual practices being used. Following successful completion of an onsite inspection, the operation is issued an organic certificate by its certifying agent.<sup>15</sup>

USDA products may be labeled as organic only if the product has been produced and handled in accordance with NOP regulations. Organic products must be labeled based on their percentage of organic composition. For instance, the USDA organic seal can be displayed only on products at least 95 percent organic. Products with 70 to 95 percent organic ingredients can have this reflected on their labels, but they cannot display the organic seal.

In the last decade, the organic industry has grown between 14 and 21 percent annually. The U.S. had organic sales of \$24.6 billion in 2008, up from \$3.6 billion in 1997.

In July 2005, we reported on our first review of NOP.<sup>16</sup> Overall, we concluded that AMS needed to strengthen its management controls for administering NOP. For example, AMS did not establish procedures for receiving, reviewing, or implementing Board recommendations for adding materials to the National List of Allowed and Prohibited Substances. We also found that AMS needed to develop and implement protocols for evaluating and resolving complaints. Finally, we found that AMS did not have procedures for creating and issuing guidance to agents when clarification of program regulations was needed. Certifying agents stated during our prior review that there might be inconsistencies among agents regarding their certifications of organic operations due to the lack of uniformity in AMS' program guidance.

## Objectives

The objective of our audit was to determine whether products marketed as organic met the requirements of NOP. In addition, the audit evaluated the adequacy and consistency of the

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<sup>14</sup> Split operations produce or handle both organic and nonorganic products.

<sup>15</sup> Once certified, an organic certificate is valid until surrendered by the organic operation, or suspended or revoked by the certifying agent, SOP, or NOP.

<sup>16</sup> Report 01001-02-Hy, *Agricultural Marketing Service's National Organic Program*, dated July 2005.

oversight provided by AMS personnel and certifying agents to ensure that NOP met its objectives. Finally, this audit followed up on the effectiveness of corrective actions implemented in response to our prior OIG audit report.

To accomplish these objectives, we performed fieldwork at AMS Headquarters, the California Department of Food and Agriculture's (CDFA) SOP, and four USDA-accredited certifying agents. We also conducted site visits to 20 organic operations, 5 from each of the 4 agents we visited. Our audit focused on enforcement actions, accreditation of foreign certifying agents, and certification activities of the agents and operations since implementation of the NOP in 2002. In addition, we focused on corrective actions implemented for the 10 audit recommendations from our prior NOP audit in 2005.

## **Section 1: Administration of the National Organic Program**

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### **Finding 1: NOP Needs to Improve Its Enforcement of Organic Operations That Violate Regulations**

Between January 2006 and February 2008, AMS Compliance provided its results from five investigations of certified organic operations to NOP. Although they recommended that NOP officials take enforcement actions against these operations, we found that NOP did not respond to these in a timely or effective manner. In addition, in those cases where enforcement actions were issued, NOP did not monitor the organic operations to ensure compliance with those actions. This occurred because NOP officials had not developed written procedures to determine what enforcement actions should be imposed, to ensure their timely issuance, or to perform subsequent monitoring to ensure that enforcement actions are complied with. As a result, NOP never issued the recommended enforcement action against one of the five organic operations, which had marketed nonorganic mint under USDA's organic label for 2 years; in the other four cases, the enforcement actions took between 7 and 32 months to issue. During this time the operations continued to improperly market their products as certified organic. One of these four, even after signing a compliance agreement that it would not apply for and receive certification as an organic handler or producer for a period of 5 years, continued marketing its product as organic without AMS' knowledge.

NOP is responsible for enforcing standards of production, handling, and labeling for farming and handling operations that are certified to market their products under USDA's organic label.<sup>17</sup> Some actions, up to and including the revocation of an operation's certified organic status, may be taken by the accredited certifying agent without direct involvement by NOP. However, through its enforcement actions, NOP plays a central role in maintaining the validity of the program and ensuring public trust in USDA's certified organic labels. These enforcement actions can include compliance agreements<sup>18</sup> to correct the problems that led to the need for enforcement, as well as stronger actions such as proposed suspensions and revocations of an operation's organic certification, and civil penalties up to \$11,000 per violation. For actions where legal sufficiency is an issue, NOP may consult with the Office of the General Counsel (OGC).

#### **Process for Imposing Enforcement Actions**

AMS Compliance conducted eight investigations of certified organic operations and provided its reports to NOP between January 2006 and June 2008. For five of these investigations, AMS Compliance recommended that NOP officials take enforcement actions. However, we found that NOP never issued the recommended enforcement actions against one of the five operations, while the enforcement actions for the other four operations were delayed for significant periods of time.

The AMS Compliance investigation found that one operation knowingly marketed nonorganic mint as organic on 22 separate occasions and used a prohibited pesticide.<sup>19</sup> The certifying agent

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<sup>17</sup> NOP Procedure 4002, Complaint Handling Standard Operating Procedures, dated January 9, 2009.

<sup>18</sup> A compliance agreement is an enforcement action accepted by all parties that brings an operation into compliance with NOP regulations.

<sup>19</sup> The prohibited pesticide was paraquat. Paraquat is a highly toxic compound used to inhibit the growth of weeds.

revoked the operation's organic certification in November 2005. However, at the completion of its investigation in February 2008, AMS Compliance also recommended that NOP issue additional enforcement actions, such as civil penalties, against this operation for willfully violating the regulations. NOP regulations<sup>20</sup> state that in addition to suspension or revocation, any certified operation that knowingly sells or labels a product as organic shall be subject to a civil penalty of not more than \$11,000 per violation.

However, we found that NOP had not implemented a formal process for determining whether civil penalties – which may require concurrence from OGC - can be assessed based on investigative results. In this instance, an NOP official stated that they did not assess civil penalties because OGC did not believe there was sufficient evidence to do so. However, OGC was unable to corroborate this; and NOP officials could not provide documentation, including contacts with OGC, of how they made their determination not to pursue further enforcement actions.

In addition, OGC officials stated that the regulations do not clarify the authority of the program director for issuing civil penalties or provide directions for how civil penalties should be assessed. Finally, NOP did not have controls for properly maintaining documentation related to its decisions.

We found that NOP officials did issue enforcement actions to the other four organic operations, three of which had knowingly marketed nonorganic product as certified organic and one that marketed its product as certified organic while its AMS certification was suspended. However, it took NOP an average of 15 months to issue these actions, including one action that took over 2 ½ years to issue. These enforcement actions included compliance agreements with two of the operations and revocations of the operations' certified organic status in two other cases.<sup>21</sup>

Although the former NOP director attributed the agency's inability to effectively act on investigations and issue enforcement actions to a lack of resources, we determined that several other factors contributed to this deficiency. We noted, for instance, that NOP lacked procedures for receiving, reviewing, and maintaining reports of investigations from AMS Compliance. In addition, NOP did not establish a specific written process, including timeframes, for determining which enforcement actions are appropriate and for initiating and completing such actions in a timely manner. Although enforcement actions may need input and concurrence from OGC, NOP did not have procedures in place to guide officials on when and how such referrals should take place. In addition, we could not evaluate NOP officials' decisions because NOP did not implement protocols for properly maintaining documentation related to these enforcement actions, including contacts made with OGC and decision documents supporting the issued enforcement actions.

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<sup>20</sup> Title 7 Code of Federal Regulations (C.F.R.) §3.91 (b)(1)(xxxvii), January 1, 2008.

<sup>21</sup> These two operations appealed their proposed revocations. While their appeals are being processed, these two operations maintain valid certification under NOP and can continue to market their products as organic.

## **Process for Monitoring Compliance**

During our review, we also found that one of the two operations entered into a compliance agreement but continued to operate in violation of the regulations.<sup>22</sup> This operation agreed not to apply for and receive certification as an organic handler or producer for a period of 5 years, from August 2006 to August 2011. However, on July 2, 2009, we found that this operation was selling its fruits and vegetables on the internet and still claiming to be a certified organic operation. On July 3, 2009, we notified NOP of our findings and, as a result, AMS Compliance initiated a new investigation into this operation. NOP officials were unaware of this operation's questionable activities because agency officials had not implemented any procedures for monitoring operations after the issuance of enforcement actions to ensure compliance.

When we began our audit work, NOP officials acknowledged that they did not have a system in place for processing and issuing enforcement actions related to investigations. However, based on our discussions during the audit, officials began taking significant steps to improve NOP's handling of investigations conducted by AMS Compliance. In January 2009, to address some of our concerns, NOP issued procedures for receiving, tracking, and issuing enforcement actions from investigations completed by AMS Compliance. However, AMS needs to further strengthen its procedures to ensure that recommendations for enforcement actions are acted upon in a timely and consistent manner, and that all determinations related to such actions are adequately documented. In addition, NOP officials also need to implement procedures to ensure that organic operations abide by the terms of compliance agreements or other enforcement actions once they are issued.

### **Recommendation 1**

For the operation on which NOP did not issue an enforcement action, consult with OGC to determine whether the violations AMS Compliance reported warrant the issuance of civil penalties. Pursue enforcement actions based on OGC's determination.

### **Agency Response**

AMS officials concurred with this recommendation. In December 2009, NOP consulted with OGC on the identified operation and decided to pursue enforcement actions based on their recommendation. NOP has requested that OGC file an administrative complaint and assess civil penalties against the operation for willful violations of organic standards. NOP will collaborate with OGC to pursue enforcement actions with the goal of issuing an administrative complaint by April 2010.

### **OIG Position**

We accept AMS' management decision.

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<sup>22</sup> While this operation violated the NOP regulations by operating as a handler without certification, technically the operation did not violate its compliance agreement.

## **Recommendation 2**

Once AMS Compliance completes its followup investigation of the operation that potentially breached its agreement with NOP, review and determine whether any of the violations reported warrant the issuance of civil penalties. NOP's determination should include a properly supported decision document for the actions to be implemented.

### **Agency Response**

AMS officials concurred with this recommendation. AMS Compliance completed its followup investigation in December 2009 and determined that the agreement had not been breached. However, violations of the NOP regulations were identified and NOP has requested that OGC file an administrative complaint and assess civil penalties against the operation. NOP will collaborate with OGC to pursue enforcement actions with the goal of issuing an administrative complaint by April 2010.

### **OIG Position**

We accept AMS' management decision.

## **Recommendation 3**

Amend NOP regulations to clarify the authority of the NOP director for issuing civil penalties.

### **Agency Response**

AMS officials agreed that clarifying NOP's authority for issuing civil penalties is critical to administering the Program, and stated that NOP is developing policies for administrative sanctions to identify factors that should be considered in determining what type or combination of sanction(s) is warranted. NOP will consult with OGC to clarify the authority of the NOP Deputy Administrator for issuing civil penalties. AMS will ensure that these policies comply with the NOP regulations or, if necessary, amend the regulations. NOP will implement an administrative sanctions policy by September 2010. Amendments to the NOP regulations will be initiated by December 2010, if amendments to the NOP regulations are needed to clarify the NOP's authority to levy civil penalties.

### **OIG Position**

We accept AMS' management decision.

## **Recommendation 4**

Implement a formal process for determining when civil penalties or other enforcement actions should be imposed in response to AMS Compliance investigations. This process should, at a minimum, ensure that actions are taken in a timely manner and that the basis of all determinations are adequately documented, including advice and opinions received from OGC.

## **Agency Response**

AMS officials concurred with this recommendation. The NOP Compliance and Enforcement Division is developing an administrative sanctions policy that will specify when civil penalties or other enforcement actions are warranted in response to violations of the NOP regulations. The policy will include performance measures for ensuring that NOP takes action in a timely manner, as well as procedures for documenting enforcement actions, including advice and opinions received from OGC. The policy will be implemented by September 2010.

## **OIG Position**

We accept AMS' management decision.

## **Recommendation 5**

Develop and implement procedures for monitoring organic operations' compliance with enforcement actions once these are issued.

## **Agency Response**

AMS officials concurred with this recommendation. The NOP Compliance and Enforcement Division is developing procedures for monitoring organic operations' compliance with enforcement actions, to be implemented by September 2010.

## **OIG Position**

We accept AMS' management decision.

## **Finding 2: Processing of Program Complaints Needed More Timely Action**

NOP officials did not resolve 19 of 41 program complaints<sup>23</sup> within a reasonable timeframe for cases opened since 2004. This occurred because NOP officials were not aware of the status of outstanding complaints and did not have controls to track them. As a result, the 19 complaints went unresolved for an average of 3 years. During the audit, when we brought this condition to the attention of management officials, they issued a new complaint procedure and resolved all but 6 of the 19 complaints.

In our prior audit report, we identified complaints against certifying agents and organic operations that were not resolved because NOP did not have procedures for processing them. In response to our recommendation, NOP agreed to implement a protocol to alleviate this weakness. When we began this audit, AMS officials were in the process of restructuring their operations and revising their 2007 operating procedures for managing complaints. AMS Compliance managed each complaint, assigned a case number, and conducted a preliminary review. AMS Compliance received complaints by telephone hotline, fax, electronic mailbox,

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<sup>23</sup> NOP-related complaints can result in enforcement actions against certifying agents and/or organic operations.



postal address, in person, or by AMS compliance officers doing retailer monitoring of stores. Under the revised procedures, AMS reassigned the responsibility for managing the complaint process from AMS Compliance to NOP's Compliance and Enforcement Branch in October 2008. Once an initial review is made, the Compliance and Enforcement Branch refers the complaint to an SOP, a certifying agent in a State where there is no approved SOP, or a Compliance Specialist.<sup>24</sup>

During this audit, we found that since 2004, NOP received 41 complaints from AMS Compliance. We reviewed documentation related to these complaints to determine whether NOP personnel adequately implemented corrective actions in response to our prior audit. We found that 19 complaints were unresolved and that the average age of the 19 unresolved complaints was 3 years. The average time to close the other 22 complaints averaged 10 months.

Of the 19 unresolved complaints, we learned that NOP referred 3 complaints to OGC for assistance, while the other 16 complaints were assigned to multiple NOP personnel without delegating responsibility to anyone for resolution. We found that although NOP implemented a procedure for processing complaints in response to our previous audit, these procedures did not include instructions for handling complaints when referred to NOP. For example, the NOP procedures did not establish timeframes for resolving complaints or implement a system for receiving, tracking, and monitoring these complaints, including instances when AMS Compliance and OGC are involved. However, the revised January 2009 procedures corrected these weaknesses.

During this audit, we brought to the attention of NOP officials the 19 complaints that were still unresolved. We discussed this condition with NOP officials who acknowledged that a process was not in place for tracking and processing complaints, and stated that they were unaware of the unresolved backlog. They also stated that they received increased funding and were now able to hire additional staff. From January 2009 to June 2009, NOP provided documentation supporting the resolution of 13 of the 19 complaints. As a result of this effort to improve their operations, NOP personnel reduced the number of unresolved complaints to six.

Besides revising the complaint handling process and reassigning the responsibility of processing all complaints to NOP's Compliance and Enforcement Branch, NOP also requires staff to enter and track all relevant information in the NOP Complaint Database. This will help track complaints from receipt to disposition. We also believe that NOP needs to periodically obtain standard reports on the status of outstanding complaints for monitoring purposes.

### **Recommendation 6**

Take action to timely resolve program complaints, including the six unresolved complaints noted in the finding. Obtain standard reports periodically on the status of outstanding complaints from the Complaint Database to monitor resolution, including cases awaiting OGC assistance.

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<sup>24</sup> Compliance specialists receive complaints that involve an SOP or a certifying agent, or those where a certifying agent cannot be located.

## Agency Response

AMS officials concurred with this recommendation. NOP has taken a number of steps to improve the timeliness of resolving compliance and enforcement cases by increasing the size of the staffs involved, establishing standard operating procedures, increasing accountability, and enhancing the use of tracking and monitoring systems. NOP has established standard operating procedures to timely resolve complaints, has established a complaint database, and regularly reviews the status of outstanding complaints. Of the six unresolved cases cited by OIG, two have since been closed. One involved a minor labeling issue regarding font size and the other involved a dispute between an operator and a certified agent where no violations of NOP regulations were found. NOP has established March 1, 2010 as the target deadline to resolve the remaining four complaints.

## OIG Position

We accept AMS' management decision.

### ***Finding 3: NOP Did Not Properly Approve and Manage the California State Organic Program***

NOP approved the California SOP and allowed it to operate without required compliance and enforcement procedures since 2004. Although NOP officials believed that the State would address these issues following its initial approval, the agency discovered in 2005 that the SOP continued to lack these required procedures. NOP officials have continued to work with California officials to obtain compliance with program requirements; however, no timelines for completion were established, and as of November 2009, the procedures have yet to be finalized. As a result, the California SOP is not equipped to properly enforce the requirements of the NOP. Although California has the most organic acreage in the country with over 2,000 certified organic operations, and organic product sales of over \$1.8 billion in 2007, the SOP's identified deficiencies likewise resulted in reduced assurance that the State's certified organic operations and their products meet regulatory requirements.

According to NOP procedures,<sup>25</sup> SOPs must have noncompliance, mediation, and appeal procedures that meet NOP regulations before being approved.

In March 2003, the CDFA applied to become an SOP. Despite not having the required compliance and enforcement procedures in place, NOP officials approved California's program in February 2004. An NOP official stated that they made this decision because they wanted to allow California the opportunity to operate and develop procedures as they progressed. In addition, the officials planned to conduct an onsite review to ensure that the SOP came into compliance.<sup>26</sup>

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<sup>25</sup> State Organic Program Approval Procedures, dated March 11, 2002.

<sup>26</sup> In our prior audit, we identified that NOP approved the California SOP without compliance and enforcement procedures. However, because NOP was allowing the State an opportunity to develop and implement these procedures as they began operating, we did not report on this issue in 2005 and planned to examine this area as part of the current audit.

In 2005, an NOP official conducted an onsite review and found that CDFA had still not established enforcement and compliance procedures related to (1) receiving and processing program complaints, (2) handling complaint investigations, (3) conducting compliance surveillance, (4) issuing noncompliances, and (5) referring disputes regarding adverse action to mediation and appeal proceedings. According to its procedures, after an onsite review, NOP is to issue a report to the State detailing the review's findings and identifying actions to be taken by the State to maintain approval.<sup>27</sup> Although these findings were documented in a report and provided to the NOP director at the time, the report was never issued to CDFA and the State was not required to initiate corrective action. The former NOP director stated that at the time, other priorities (including a significant lawsuit against NOP) took precedence over requiring California's SOP to meet program requirements.

We visited the CDFA in 2009 to evaluate the State's oversight of organic products, and found that the California SOP still did not have the required procedures identified in NOP's 2005 review. As part of our review, we attempted to determine the total number of organic-related complaints the SOP had received since it was approved in 2004. However, we were unable to determine this because CDFA had not implemented an adequate system to track these complaints. This problem, which NOP had been aware of since the 2005 review, makes it impossible for either us or NOP to evaluate how CDFA is tracking and resolving complaints – a key component in evaluating the overall effectiveness of the SOP.

CDFA, with NOP involvement, has been in the process of improving its SOP since November 2008 by developing enforcement-related procedures. Initially, CDFA established a target date of April 2009 for having these new procedures implemented. However, as of November 2009, the procedures have yet to be finalized.

The California SOP has been operating without enforcement and compliance procedures, an NOP requirement, since 2004. This reduces NOP's assurance that California – which had over 2,000 organic operations whose sales exceeded \$1.8 billion in 2007 - was producing organically labeled products that met NOP regulatory requirements. Therefore, we believe that NOP officials need to promptly reassess California's SOP to ensure that it meets requirements and to initiate appropriate enforcement actions as needed.

### **Recommendation 7**

Implement a time-phased action plan for the California SOP to fully comply with NOP regulations. If the program does not improve within established timeframes, initiate appropriate enforcement actions against the California SOP.

### **Agency Response**

AMS officials concurred with this recommendation. NOP conducted an assessment of the California SOP in December 2009. The assessment noted that while significant improvements had been made by the State, including establishing compliance and enforcement procedures, there were also areas that remained to be addressed in order for the

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<sup>27</sup> State Organic Program Approval Procedures, dated March 11, 2002.

California SOP to fully comply with the NOP regulations. Officials stated that NOP will notify the California SOP that corrective actions to fully comply with the NOP regulations need to be fully implemented by June 2010. NOP will initiate appropriate enforcement actions if the California SOP does not fully comply with SOP requirements by June 2010.

### **OIG Position**

We accept AMS' management decision.

## **Finding 4: AMS Needs to Determine Whether NOP Regulations Should Require Periodic Residue Testing**

Although the Organic Foods Production Act of 1990 (Act) requires certifying agents to conduct periodic residue testing of organic products,<sup>28</sup> we found that NOP did not incorporate these provisions into its regulations. The former NOP director stated that the decision not to require regular residue testing was based on officials' concerns about the cost of testing, and on their position that the NOP regulations are process-based rather than a zero tolerance standard. The former director also stated that certifying agents did not want to pay for the cost of residue testing and that residue testing raises complex issues that must be addressed on an operation-by-operation basis. None of the four certifying agents we visited conducted periodic residue testing of the approximately 5,000 certified operations for which they were responsible, and there was no assurance that certifying agents performed regular periodic testing at any of the approximately 28,000 certified organic operations worldwide. Without such testing, the potential exists that an operation's products may contain substances that are prohibited for use in organic products.

The Act contains several requirements for residue testing of agricultural products to be performed by NOP officials and certifying agents. For example, section 2107 requires that each certifying agent perform periodic residue testing for pesticides or other nonorganic toxic substances in products produced or handled by their certified operations. In addition, these agents are required to report residue testing violations related to food safety to the appropriate health officials. Section 2112 sets forth residue testing provisions to assist certifying agents, as well as NOP, in the enforcement of the Act. If any of these officials suspect that an operation is harboring contaminants in the soil or crops, this section provides them with the authority to perform residue testing, conduct investigations to determine if the operation has any liability and prohibit the use of the organic label.

Although NOP regulations<sup>29</sup> do implement the provisions of section 2112, which require residue testing when the certifying agent has reason to suspect a problem, they do not fully implement the requirement of section 2107 requiring certifying agents to perform periodic residue testing of products from organic operations. Instead, the regulations state only that the AMS Administrator or certifying agents may require residue testing of agricultural materials<sup>30</sup> or products for

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<sup>28</sup> Section 2107(a)(6).

<sup>29</sup> Title 7 C.F.R. §205.670, January 1, 2009.

<sup>30</sup> For purposes in this report, "materials" refers to anything used in the production or handling of organic agricultural products, including substances appearing on the National List.

prohibited substances. We question whether the regulatory text is consistent with the wording of the Act.

According to the former NOP director, it was the consensus of all participants in the process -including NOP officials, certifying agents, representatives of the organic industry, and OGC -not to incorporate periodic residue testing in the regulations. The former director stated that one concern raised by the certifying agents involved the costs of testing that they would incur. The former director also stated that the NOP is not a “zero tolerance program,” and stated that since trace residues may be present in the ground due to past agricultural practices, residue testing raises complex issues that must be addressed on an operation-by-operation basis. However, the Act is clear in its requirement for periodic residue testing. In addition, the preamble<sup>31</sup> to the NOP regulations explains that residue testing is part of the cost of doing business and that certifying agents should make provisions in their certification fees for this cost.

OIG’s Office of Counsel reviewed both the Act and the NOP regulations, and expressed the opinion that the current regulations are not in compliance with the requirements of the Act. The former NOP director stated that OGC had cleared the regulations before they were finalized in 2002 and determined that they fully implemented section 2107 of the Act. NOP was unable to provide any written evidence that OGC had specifically reviewed this particular provision and concurred with its interpretation of the Act’s wording. In a meeting on October 22, 2009, an OGC official stated that, at the time the regulations were finalized, OGC did in fact state that the wording of the regulations complied with the Act. However, neither OGC nor NOP officials could provide a written legal opinion explaining the legal justification for this conclusion.

In our visits to four certifying agents as part of our audit, we confirmed that none of them were conducting regular periodic residue testing of the more than 5,000 certified organic operations for which they were responsible. Each of the certifying agents stated that this was not required by agency regulations. These agents explained that their residue testing was based on other factors, such as complaints. We have no information on residue testing that may be performed by other certifying agents worldwide on approximately 28,000 organic operations for which they are responsible. However, without a clear regulatory requirement or agency policy to require this, there is no assurance that any of the certified organic products being marketed worldwide are being tested on a periodic basis as called for in the Act.

Currently, residue testing of organic products is generally limited to instances where certifying agents have specific cause to suspect product contamination. Without the periodic testing that OIG believes is required by the Act, the potential exists that prohibited substances could appear in organic products.

OIG concurs that OGC has the final authority to make legal interpretations in matters involving USDA programs. However, given the apparent discrepancies between the Act and the NOP regulations, we believe that AMS officials should seek a written legal opinion from OGC on whether the agency needs to require its certifying agents to perform periodic residue testing of all certified organic operations.

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<sup>31</sup> Residue Testing Preamble.

## **Recommendation 8**

Obtain a written legal opinion from OGC on whether NOP regulations, as currently written, comply with the requirement of the Act for periodic residue testing of organic operations by certifying agents. If OGC determines that the regulations are not in compliance, develop a time-phased plan to amend the regulations and implement the required testing provisions.

### **Agency Response**

AMS officials concurred with this recommendation. Residue testing is an important tool to monitor compliance with the NOP regulations. NOP is planning to implement periodic residue testing of agricultural products by accredited certifying agents by September 2010. NOP has requested a written legal opinion from OGC on whether the current NOP regulations comply with the pesticide residue testing requirements within the Act. If OGC determines that the regulations are not consistent with the Act, NOP will develop a plan to amend the regulations. NOP plans to receive a written legal opinion by March 2010 and, if necessary, initiate rule making in December 2010.

### **OIG Position**

We accept AMS' management decision.

## **Finding 5: Evaluations of NOP's Accreditation Process Were Not Performed Annually**

Although NOP regulations require that NOP assemble a peer review panel to annually evaluate its adherence to accreditation procedures, we found that this has not been done since the creation of the program in 2002. NOP officials attributed this to budget constraints and the associated difficulties in forming a panel each year. However, NOP did not request either a waiver from the Administrator, or additional funding to form a panel. As a result, there is reduced assurance that the overall integrity of the program is being maintained and that products certified as organic by accredited certifying agents are meeting NOP standards.

NOP regulations require the AMS Administrator to establish a peer review panel pursuant to the Federal Advisory Committee Act (FACA).<sup>32</sup> The panel, which is to be composed of not less than three members, is required to annually evaluate both the NOP's accreditation decisions and its adherence to the accreditation procedures within the regulations. The peer review panel is to report its findings in writing to the NOP director.<sup>33</sup>

Since the implementation of the program in 2002, NOP has not established a peer review panel to annually evaluate its accreditation decisions and adherence to regulations. In 2004, NOP contracted with the American National Standards Institute (ANSI) to assess its accreditation process to address the peer review panel requirement. Overall, ANSI determined that NOP lacked documented policies and procedures for managing the accreditation of certifying agents.

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<sup>32</sup> FACA requires that a panel be established through a formal process, including filing a charter prior to convening.

<sup>33</sup> Title 7 C.F.R. §205.509, January 1, 2009.

However, we determined that the ANSI review was not a substitute for the required peer review panel because the review was not performed annually by a panel pursuant to FACA.

Since 2005, the Board – which assists in developing standards for substances to be used in organic production and advises the Secretary on any other aspects of the implementation of the organic laws and regulations – has expressed concerns with NOP’s accreditation of certifying agents and the accreditation process not being reviewed at 5 of the last 10 NOSB meetings. NOP officials stated that insufficient funding prevented them from establishing a FACA panel but instead have requested the Department of Commerce’s National Institute of Standards and Technology (NIST) to annually review NOP’s accreditation procedures and decisions. According to the information provided by NOP, NIST will conduct onsite visits to observe NOP’s accreditation process and, if recognition is granted, further assure that NOP’s accreditation process is effective. During the Board’s May 2009 meeting, several public comments encouraged the use of NIST for evaluating NOP.

Although the NIST review has merit as a viable option to evaluate NOP’s accreditation procedures and decisions, we concluded that these reviews will not comply with the regulations because NIST is not a panel pursuant to FACA. NOP needs either to revise its regulations to conform to its proposed action or establish a panel in accordance with NOP regulations.

### **Recommendation 9**

Beginning in fiscal year 2010, conduct annual evaluations of NOP’s accreditation process using a peer review panel pursuant to FACA, which will report its findings to the NOP director. If this is not feasible, determine whether the NOP regulations should be amended to allow the use of equivalent third-party evaluations in place of the peer review panel.

### **Agency Response**

AMS officials stated that under the Act, the Secretary may establish a peer review panel to evaluate the NOP accreditation program, and that the regulations specify that the Peer Review Panel will be established as per FACA and report its findings to the NOP Deputy Administrator.

In its May 2009 Business Meeting, the Board, the FACA Advisory Board to NOP, recommended that NOP develop a quality management system that complies with the criteria set forth in NIST’s National Voluntary Conformity Assessment Evaluation Program (NVCASE) as well as the requirement of ISO/IEC 17011:2004. The NOSB stated that the NIST NVCASE program evaluation is a viable and effective alternative to establishing a separate FACA-compliant Peer Review Panel that still meets the intent of the Act.

The first NVCASE evaluation of the NOP accreditation process is expected to be completed by September 2010. Due to higher priorities such as rule making to implement the NOSB recommendations on the Origin of Livestock, Apiculture, Aquaculture and Mushrooms, NOP estimates a FY 2012 timeframe for initiating an amendment to the NOP regulations to remove the FACA requirement.

## **OIG Position**

We accept AMS' management decision.



## **Section 2: AMS Oversight of Certifying Agents**

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### **Finding 6: AMS Needs to More Effectively Identify Inconsistent Operating Practices and Clarify Program Requirements**

AMS did not ensure consistent oversight of organic operations by its certifying agents. We visited 4 agents and 20 of their certified organic operations and found that all 4 agents were enforcing different requirements on their organic operations. This occurred because the guide that AMS used to evaluate a certifying agent's compliance with the NOP regulations was not sufficiently focused to identify the types of problems we found. In addition, NOP staff did not summarize the problems that they did find to identify trends or notify upper management of actions needed to correct the problems. Finally, NOP did not always provide adequate guidance to the certifying agents, and certifying agents were not always aware of guidance that had been issued. As a result, NOP has reduced assurance that the organic operations which these certifying agents oversee are producing organic products that uniformly meet regulatory requirements.

NOP was enacted to facilitate the domestic and international marketing of organic products and to assure consumers that such products meet consistent, uniform standards.<sup>34</sup> To become accredited, an agent must submit an application with supporting documentation to NOP. AMS' Audit, Review, and Compliance (ARC) Branch staff reviews these documents to evaluate the agent's compliance with NOP regulations and provides a report to NOP. ARC reviewers conduct onsite reviews within a reasonable time of accreditation and every 5 years thereafter for accreditation renewal purposes. In addition, in 2008, ARC began conducting periodic reviews of certifying agents every 2 ½ years. Organic operations must maintain an organic system plan (OSP) that has been agreed to by the agent. This plan must include descriptions of how the operation will meet NOP regulations, including descriptions of monitoring practices, materials to be used in organic production or handling, and procedures to prevent the commingling or contamination of products in a split operation.<sup>35</sup>

We visited 4 agents and 20 organic operations. The conditions we noted are described in the following paragraphs.

- Procedures to Prevent Commingling of Conventional and Organic Products on Split Operations

NOP regulations require that an OSP contain a description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation.<sup>36</sup> This requirement establishes protective practices to prevent organic products from contacting prohibited substances that could compromise the integrity of the organic products. Neither the regulations nor NOP guidance required a specific section in the OSP for this item.

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<sup>34</sup> NOP Final Rule as of January 1, 2009.

<sup>35</sup> Split operations produce or handle both organic and nonorganic products.

<sup>36</sup> Title 7 C.F.R. §205.201(a)(5), January 1, 2009.

We found that 6 of the 16 split operations that were certified by 3 of the agents we reviewed did not have adequate descriptions of these practices in their OSPs. These operations produced organic beef, poultry, flour, tea, and tofu. One of these agents agreed that the split operations did not have a specific section in their OSP to describe the management practices and physical barriers required, although the agent believed that several sections in the OSP addressed management practices and physical barriers. Although we did not see any evidence that commingling occurred during our visits to organic operations, these three agents did not ensure that split operations had plans that described the measures in place to prevent organic products from coming into contact with prohibited substances.

- Outdoor Access for Livestock

For organic operations that handle live animals, NOP regulations require access to the outdoors, shade, shelter, exercise areas, fresh air, and direct sunlight suitable to each species, its stage of production, the climate, and the environment.<sup>37</sup> The regulations did not specifically state how long access should be provided and how much area should be accessible to the animals. Two of the four agents we visited believed that more guidance is needed in this area.

For example, one of the agents we visited had developed dimension requirements for poultry while the other three agents did not. This agent based the dimension requirements on organic industry standards that were consistent with animal welfare standards. One poultry facility we visited had considerably less outdoor access compared to the other two poultry facilities we visited. This facility had a total of 300 square feet of outdoor access for approximately 15,000 chickens. Two other poultry facilities we visited had large pastures for the birds to access and had significantly fewer birds at their facilities. In addition, none of the four agents required specific dimensions for pasture access for cattle. AMS officials explained that the subject of outdoor access for livestock is a topic of discussion in the organic community and agreed that additional guidance would be beneficial.

- Noncompliance Procedures

NOP regulations require an agent to notify an operation when a noncompliance occurs, including a notification of the date by which the certified operation must rebut or correct each noncompliance.<sup>38</sup> However, the regulations and NOP guidance did not describe criteria for major and minor noncompliances, or the consequences for each. In addition, there are no clear timeframes established by NOP for correcting noncompliances.

The four agents we visited had different criteria for determining whether non-compliances were major or minor and not all had them clearly defined. For example, three agents defined a major noncompliance in their procedures while another agent allowed its staff to decide if a major noncompliance existed. We also found that agents

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<sup>37</sup> Title 7 C.F.R. §205.239(a)(1), January 1, 2009.

<sup>38</sup> Title 7 C.F.R. §205.662(a)(3), January 1, 2009.

were not consistent in the corrective actions they required. For some noncompliances that agents considered more important they required that operations respond within a certain time period; for others, they simply instructed operations to correct the noncompliances before the next annual review. The agents also allowed different amounts of time for operations to correct noncompliances. For example, one agent allowed 90 days for an operation to correct a minor noncompliance, while the other three agents gave their operations until the following year's inspection to address them.

To ensure consistent treatment of noncompliances, we believe that NOP officials should develop guidance for agents to use in categorizing noncompliances based on their severity and their impact on the organic status of the product.<sup>39</sup>

- Changes in Ownership of Operations

NOP requirements state that an operation must immediately notify the agent concerning any change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations.<sup>40</sup>

We found that two of the four agents we visited did not require new certifications when there was a change in ownership of a certified operation. For example, we visited an operation associated with one of these agents and confirmed that the certifying agent did not perform a new certification after this operation was purchased by a corporation in 2008. The agent stated that NOP requirements are unclear in this area and believed that more guidance is needed.

- OSPs

OSPs are written plans provided by certified organic operations to their respective certifying agent, describing in detail how an operation will achieve, document, and sustain compliance with NOP regulations. An organic operation must develop an OSP that is agreed to by a certifying agent and that meets organic production and handling requirements.<sup>41</sup> In addition, to continue to be certified, an operation must annually submit an updated OSP to its agent.<sup>42</sup>

We found that 7 of the 20 sampled organic operations did not have their OSPs available during our site visits. Although we obtained these OSPs from the certifying agents, we question how well these operations can follow their OSPs to ensure the integrity of the organic products they produce without having an OSP onsite. We also found that none of the 20 operations we visited submitted updated OSPs to their agents on an annual basis as required. This occurred because the 4 agents that certified these 20 operations only required an annual summary of changes to an operation's OSP, which they felt met the requirement.

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<sup>39</sup> AMS' Meat Grading and Certification Branch has already done this for meat products based on a prior OIG audit.

<sup>40</sup> Title 7 C.F.R. §205.400(f)(2), January 1, 2009.

<sup>41</sup> Title 7 C.F.R. §205.201, January 1, 2009.

<sup>42</sup> Title 7 C.F.R. §205.406, January 1, 2009.

We also found that 2 of the 20 operations did not list the substances they used in organic production on their OSPs and therefore, did not obtain the required approval to use them. In addition, we witnessed an operation producing meatless burgers as organic even though it did not list this product on its OSP. Consequently, this product was labeled as certified organic even though the operation did not obtain prior approval from its certifying agent.

- Inadequate Records

NOP regulations require operations to maintain records that fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited.<sup>43</sup> However, the regulations did not specifically state the types of records that are needed to support an operation's compliance with organic requirements, and NOP had not specified this in its written guidance to the certifying agents.

We found that 7 of the 20 organic operations visited did not implement an adequate recordkeeping system or have the required records available for our review. For example, five livestock operations had inadequate records to document that animals had access to the outdoors, had received appropriate health care using approved practices and substances, and had been fed only organic feed. We also found that two handling operations did not maintain records to support how organic product was prevented from commingling with nonorganic product and how organic product was prevented from contacting prohibited substances.

- Organic Certificates

We found that all four agents were inconsistent in their requirements for updating organic certificates. For example, one agent did not immediately require an update to the organic certificate when an operation changed the products it produced, while the other three agents required immediate updates.

We also found that organic certificates did not contain the same information. For example, only one agent required its certified operations to display the specific products the operation produced on its certificate. The other three agents only required their operations to list the general type of product, such as crops or livestock.

Finally, we noted that although all of the organic certificates we reviewed listed the initial effective date of certification, many of the certificates did not display expiration dates or renewal dates as a way of knowing whether an operation is currently certified. In October 2006, the Board identified the lack of expiration dates on organic certificates as an issue of concern and recommended that NOP amend the regulations to require expiration dates on organic certificates. However, NOP has not formally responded to the Board's recommendation. The Board felt that the absence of expiration dates on certificates prevents inspectors, certifying agents, and regulatory enforcement officials from determining if suppliers are still certified at the time of sale of organic products.

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<sup>43</sup> Title 7 C.F.R. §205.103(b)(2), January 1, 2009.

As part of AMS' oversight responsibilities, ARC staff conducts reviews of agents every 2 ½ years. Over the past 3 calendar years, the staff conducted an average of 42 reviews a year. At the completion of each review, the ARC staff provides a report to the NOP's Accreditation, Auditing, and Training Branch. We determined that while staff from this Branch reviewed individual reports and required corrective actions on problems cited, they did not conduct an overall analysis to determine if systemic problems existed in the program.

We reviewed 18 ARC reports and found that the reviewers identified major deficiencies at agents, such as failure to identify noncompliances. These included mislabeled product and the use of uncertified organic feed at certified organic operations, as well as the application of antibiotics to young calves on the farm. However, the agency's corrective actions were limited to the specific deficiencies noted in the reports, and did not include any determination of whether these indicated larger, systemic problems such as those we identified in our reviews of several ARC reports. NOP officials need to summarize this information and analyze the results to identify systemic weaknesses.

We also reviewed the guide that ARC reviewers used to conduct the onsite assessments. We found that the review steps were general in nature and were not focused sufficiently to detect important program issues. For example, the review guide was not specific enough to identify the certifying agents' lack of outdoor access dimension requirements for livestock at the four agents we visited. Three of the agents did not have any dimension requirements, while one had only defined these requirements for poultry. In this case, the agent used industry standards that were consistent with animal welfare standards. We also noted that some of the review guides used by the agents during their certification reviews were more specific than AMS' review guide. AMS needs to use its review guide to identify ways to improve program operations. This could entail additional training, guidance, or an information memorandum to all agents and operations alerting them to the problems noted during ARC reviews.

In our prior audit report, issued in July 2005, we found that NOP did not have a standardized, written method for providing program information to agents and did not use a consistent strategy to notify the agents of program updates. However, in this audit, we found that NOP did not adequately implement our prior recommendation. According to an NOP official, insufficient resources hindered NOP from implementing these procedures. NOP also did not establish a centralized location, such as a single website location or a published listing of issuances, where agents or other interested parties could readily access any guidance that NOP had issued to clarify its program regulations. All of the agents we visited expressed concerns that program guidance was not always clear or timely and noted that there was no centralized location for them to access the guidance that does exist.

NOP needs to ensure that all agents are applying uniform standards in their certifications to ensure the purpose of the program is met. To accomplish this, NOP needs to develop a more effective review program<sup>44</sup> and analyze the results to identify areas where the program can be improved. NOP needs to provide clear, standardized guidance that is readily available in one location for certifying agents to easily access and review.

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<sup>44</sup> NOP issued informal guidance via email to ARC in 2008 and 2009 to look at some of the areas we found; however, they still need to formally incorporate these areas in the ARC review guide.

## **Recommendation 10**

Revise the review guide to incorporate the areas we identified as problems to make the reviews more effective. Develop a procedure requiring the Accreditation, Auditing, and Training Branch to summarize, at least annually, the results of onsite reviews to identify problem areas involving the program and make recommendations to upper management for program improvement.

### **Agency Response**

AMS officials concurred with this recommendation. NOP will revise the review guide to include specific criteria for outdoor access for livestock, organic certificates, procedures to prevent commingling, noncompliance procedures, changes in ownership, Organic System Plans, and inadequate records. The revision of the review guide provided to ARC reviewers will be completed by September 2010. NOP will annually evaluate accreditation audits and make recommendations for improvement of the accreditation program. The first annual evaluation of accreditation audit will be completed by September 2010.

### **OIG Position**

We accept AMS' management decision.

## **Recommendation 11**

Develop and issue guidance regarding outdoor access for livestock, categorizing of noncompliances, reporting changes in an operation's ownership, the updating of certificates and OSPs, and records maintenance.

### **Agency Response**

AMS officials concurred with this recommendation. They stated that the NOSB has worked on recommendations for animal welfare and outdoor access for livestock for many years, and in November 2009 passed a final animal welfare recommendation that included recommendations for outdoor access. On February 17, 2010, NOP published a final rule that specifies pasture requirements for organic ruminant livestock. They also stated that NOP will publish a Program Manual by September 2010 for accredited certifying agents (ACAs) and certified operations to provide guidance on the regulations. The NOP Program Manual will include guidance on outdoor access for livestock, categorizing of noncompliances, reporting changes in an operation's ownership, updating of certificates, updates to OSPs, and records maintenance. The NOP Program manual will be distributed to ACAs and be available on the NOP website. NOP will continue to work with the NOSB in developing guidance on the NOP regulations and incorporating the NOSB recommendations into the NOP Program Manual.

### **OIG Position**

We accept AMS' management decision.

## **Recommendation 12**

Formally respond to the Board's recommendation to amend the NOP regulations to require expiration dates on organic certificates.

### **Agency Response**

AMS officials responded that under the Act and the NOP regulations, certifications do not expire but instead remain valid until surrendered, suspended, or revoked. However, they stated that the NOSB has recommended standardized language on certificates. They also state that NOP concurs that such language, including language referencing current inspection dates or renewal dates, is needed. NOP will provide guidance to ACAs on this NOSB recommendation within the NOP Program Manual that will be published in June 2010. NOP will respond to the NOSB recommendation regarding expiration dates on certificates at the April 2010 NOSB meeting.

### **OIG Position**

We accept AMS' management decision.

## **Recommendation 13**

Develop and implement a process to issue and disseminate guidance in a standardized method to assist agents in applying uniform processes for certifying organic operations.

### **Agency Response**

AMS officials concurred with this recommendation. NOP will implement a document control policy and procedure that will include a distribution policy on how guidance is disseminated to ACAs, SOPs, and foreign governments that have recognition or equivalency agreements in accordance with the Office of Management and Budget's Final Bulletin for Good Guidance Practices. The document control policy and distribution policy will be completed by September 2010. The NOP website is being revised to improve clarity and consistency. The revisions to the website are scheduled to be completed by September 2010 and will include a complete list of guidance documents in an easily accessible format and will properly archive guidance and policy statements as they are superseded or rescinded.

### **OIG Position**

We accept AMS' management decision.

## Finding 7: NOP Oversight of Foreign Certifying Agents Needs Significant Improvement

NOP did not complete required onsite reviews<sup>45</sup> at 5 of 44 foreign certifying agents. This occurred, in part, because NOP officials underestimated the number of applications they would receive when the program began in 2002 and had not made adequate provisions to perform the necessary onsite reviews within reasonable timeframes. In addition, NOP officials did not develop a policy for handling applicants located in countries where conditions may make travel hazardous. As a result, there is reduced assurance that these certifying agents followed NOP regulations, policies, and procedures when certifying organic operations for program participation. Likewise, NOP has reduced assurance that the approximately 1,500 organic operations certified by these 5 agents were marketing product that complied with the regulatory standards for certified organic products.

NOP regulations require an initial site evaluation be performed when an applicant receives a notification of accreditation<sup>46</sup> from NOP. To become accredited, potential certifying agents submit documentation to NOP that shows their compliance with program regulations. If NOP determines that the documentation is adequate, the agent is conditionally accredited and can begin certifying organic operations. However, in order to evaluate the agent's actual certification process and to assure that all regulatory and other requirements are being met, NOP must complete an onsite review at the certifying agent within a reasonable timeframe after initial accreditation has taken place. However, NOP procedures do not provide specific timeframes for these reviews to be performed, or address situations where onsite reviews are hazardous to perform.

Our review of a judgmental sample of 14 of the 44 foreign certifying agents illustrates the importance of performing onsite reviews once a new certifying agent has begun certifying organic operations for program participation. Of these 14 agents, 10 had received initial onsite reviews while the other 4 did not.<sup>47</sup> NOP identified major noncompliances during the initial onsite reviews of 7 of these 10 agents. Some of the major noncompliances included:

- Failure to identify noncompliances, such as mislabeled product and the use of uncertified organic feed, at its certified operations (NOP regulations require certifying agents to have adequate expertise to ensure its certified operations are complying with the regulations<sup>48</sup>);
- Failure to maintain complete certification files as part of the initial accreditation process. (NOP regulations require certifying agents to maintain all records related to their certification activities<sup>49</sup>);
- Onsite inspections and certification decisions being made by the same person. (NOP regulations require agents to ensure that the decision to certify an operation is made by a person different from the person who conducted the onsite review<sup>50</sup>); and

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<sup>45</sup> NOP charges AMS' ARC division to conduct the onsite reviews of accredited certifying agents. Following completion of its review, ARC submits a report to NOP, which then issues the AMS Administrator's accreditation decisions.

<sup>46</sup> Title 7 C.F.R. §205.508(b), January 1, 2009.

<sup>47</sup> These were four of the five agents discussed earlier in the finding.

<sup>48</sup> Title 7 C.F.R. §205.501(a)(4), January 1, 2009.

<sup>49</sup> Title 7 C.F.R. §205.510(b), January 1, 2009.

<sup>50</sup> Title 7 C.F.R. §205.501(a)(11)(VI), January 1, 2009.



- Failure to maintain conflict of interest disclosures for all certifying agent employees (NOP regulations require certifying agents to prevent conflicts of interest and complete annual disclosure reports<sup>51</sup>).

Issues such as those described above can only be identified after the certifying agent has actually begun issuing certifications to operations applying for certified organic status. However, as described below, we found that the necessary reviews were not always being performed.

### **Onsite Reviews Not Performed At 5 Foreign Certifying Agents**

We found that 5 of the 44 foreign accredited certifying agents had not received onsite reviews from NOP personnel since they were conditionally accredited. In three of the five cases, NOP officials stated that it had not been possible to perform visits because these agents were located in countries with travel warnings issued by the U.S. Department of State. NOP officials stated that they had difficulties scheduling the onsite reviews at the two remaining agents. NOP allowed these 5 agents, who had been participating in the program for up to 7 years as of November 2009, to remain accredited despite the lack of onsite reviews. This occurred because there was no policy in place for determining when or if an agent's continued program participation should be called into question or allowed for these reasons.

Three foreign certifying agents, who had been accredited for periods of between 6 to 7 years, did not receive onsite reviews because of travel warnings issued by the U.S. Department of State after the agents were conditionally accredited. These warnings, which had not been known to NOP officials at the time of initial accreditation, alerted travelers to dangerous conditions occurring in these countries even though they did not officially prohibit travel.<sup>52</sup> These three agents, located in Israel, Bolivia, and Turkey, have collectively certified over 1,400 organic operations since they began participating in the program. The organic operations they certified produce various types of fruits and vegetables as well as organic beef and poultry products.

NOP consulted with OGC in April 2008 to determine if they could revoke accreditation for these three certifying agents because they could not conduct onsite reviews. NOP officials stated that at an informal discussion with OGC in December 2008, OGC determined that it would be difficult to justify a suspension or revocation because American tourists traveled safely to all three countries. OGC therefore encouraged NOP to consider traveling to these areas to conduct onsite reviews. However, NOP officials noted that onsite reviews may require travel to more rural and potentially dangerous areas of these countries, rather than to populated areas where tourists usually travel. Therefore, NOP did not conduct these onsite reviews due to safety concerns for its audit staff. However, NOP did not implement policies or procedures for handling these cases, and instead allowed them to continue participating for an indefinite period.

It should be noted that NOP does not issue preliminary accreditations in cases where officials are aware that such travel restrictions exist. In January 2009, NOP denied accreditation to an applicant in Colombia based on U.S. State Department warnings about travel to that country

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<sup>51</sup> Title 7 C.F.R. §205.501(a)(11), January 1, 2009.

<sup>52</sup> We could only obtain the 2003 warning for Turkey, the 2008 warning for Bolivia, and the 2009 warning for Israel.

because of reported violence in some rural areas as well as large cities. These warnings did not prohibit travel, but encouraged tourists to register with the U.S. embassy in that country.

We also noted two other cases where NOP did not conduct onsite reviews due to scheduling issues. These foreign agents were located in Australia and Canada and have been accredited without onsite reviews for periods of approximately 2 and 5 years, respectively. Officials cited difficulties including the timing of growing seasons and auditor availability. Collectively, these two agents certified 38 organic operations. These operations produced organic fruits, vegetables, beef, and poultry products.

### **Timeframes for Performing Onsite Reviews**

We noted that the reviews performed at 24 of the 44 foreign agents did not occur until over 2 years after being conditionally accredited. According to NOP officials, a number of factors contributed to delays in scheduling these onsite reviews, including growing seasons, language barriers, and issues involving international travel.

Currently, NOP procedures do not include specific timeframes for completing onsite reviews, beyond stating that these need to be performed within a reasonable period of time. An NOP official stated that this occurred because NOP underestimated the number of accreditation applicants that would require onsite reviews at the time the program began in 2002. For example, in April 2002, 36 domestic and foreign certifying agents were granted conditional accreditation, creating an immediate backlog of agents needing onsite reviews. NOP implemented a goal in 2008 to conduct onsite reviews within 15 months of the accreditation date.

The five agents we identified that have not had an onsite review have operated in the program for up to 7 years during which time major noncompliances could potentially have existed. This, in turn, reduces NOP's assurance that either the certifying agents or the 1,500 organic operations they certified were operating in accordance with NOP regulations. NOP needs to develop and implement controls to ensure that all applicants have onsite reviews completed within clearly-defined timeframes following accreditation. In those cases where visits cannot be performed due to factors beyond NOP's control – such as travel restrictions issued by the U.S. State Department – NOP also needs to develop procedures for revoking accreditations if an onsite review cannot be completed within the timeframes NOP establishes.

### **Recommendation 14**

Develop and implement written policies and procedures requiring that all certifying agent applicants, as well as the five certifying agents that have not yet been visited, have onsite reviews completed within clearly-defined timeframes. The policy should require revoking accreditations if onsite reviews cannot be timely completed because of government-issued travel restrictions and other factors beyond the agency's control.

### **Agency Response**

AMS officials concurred with this recommendation. They stated that onsite audits have been completed for four out of the five foreign certifying agents identified in the report, while the final onsite audit is scheduled for spring 2010. The NOP is developing a Quality Manual to

comply with international accreditation norms such as ISO 17011. Policies and procedures within the NOP Quality Manual will specify clearly-defined timeframes and processes for accreditation. The NOP will be adopting policies that require on-site reviews prior to accreditation and will develop policies on revoking accreditation if travel restrictions beyond the agency's control prevent onsite reviews from being conducted. The Quality Manual will be complete by September 2010.

**OIG Position**

We accept AMS' management decision.

## ***Scope and Methodology***

We performed our review at AMS Headquarters in Washington, D.C., the California SOP, 4 accredited certifying agents, and 20 certified organic operations between December 2008 and August 2009. To accomplish our objectives, we evaluated NOP's implementation of its policies and procedures between October 2003 and July 2009.

### AMS Headquarters

To evaluate the oversight of NOP, we held discussions with officials at NOP, AMS Compliance, ARC, and OGC in Washington, D.C. We also reviewed accreditation records at ARC in Fredericksburg, Virginia to evaluate its reviews of foreign certifying agents. In addition, we reviewed program investigations and complaints, directives and guidance to certifying agents, and policies and procedures related to program oversight and administration.

We also held a discussion with the Board to obtain an understanding of its current role with respect to NOP.

### State Organic Program

We visited CDFA in Sacramento, California to evaluate its compliance and enforcement activities for organic products produced in California.

### Accredited Certifying Agents

We conducted site visits to four accredited certifying agents. We selected these four agents because they certified all four types of organic operations; crop, wild crop, livestock, and handling. We also selected these agents because they collectively certified approximately 30 percent of the organic operations certified by domestic agents.

- Organic Crop Improvement Association, Lincoln, Nebraska;
- Pennsylvania Certified Organic, Spring Mills, Pennsylvania;
- Quality Assurance International, San Diego, California; and
- Quality Certification Services, Gainesville, Florida.

We evaluated the consistency of these agents' oversight activities and their implementation of NOP regulations. To accomplish this objective, we interviewed certifying agent personnel and reviewed policies and procedures related to each agent's certification and oversight of operations. This included reviewing documents related to agents' prevention of conflict of interest, processing of complaints, corrective actions from NOP audits, communication with NOP officials, and certifications of organic operations.

### Certified Organic Operations

We visited a total of 20 organic operations certified by the 4 certifying agents we selected. Our selection included six crop, five livestock, and nine handling operations that produced, handled,

and sold large quantities of organic and nonorganic products. Collectively, these operations sold over \$85 million of organic products in 2008.

We reviewed OSPs and other documentation to evaluate whether these operations complied with NOP regulations. In addition, we toured each of the operations to validate their written procedures.

Our audit was conducted in accordance with *Government Auditing Standards*. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions. In addition, AMS provided to OIG NOP complaint system data and data related to certified organic operations. We make no representations regarding the accuracy or reliability of this data as it was not assessed and information system controls were not part of our audit objective.

## **Abbreviations**

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Act.....	Organic Foods Production Act of 1990
AMS.....	Agricultural Marketing Service
AMS Compliance.....	AMS Compliance and Analysis
ANSI.....	American National Standards Institute
ARC.....	Audit, Review, and Compliance
Board.....	National Organic Standards Board
CDFA.....	California Department of Food and Agriculture
C.F.R.....	Code of Federal Regulations
FACA.....	Federal Advisory Committee Act
NOP.....	National Organic Program
OIG.....	Office of Inspector General
OGC.....	Office of General Counsel
OMB.....	Office of Management and Budget
OSP.....	Organic System Plan
Secretary.....	Secretary of Agriculture
SOP.....	State Organic Program
USDA.....	United States Department of Agriculture

## ***Exhibit A: Prior Recommendations***

<b>Agricultural Marketing Service's National Organic Program, Report Number 01001-02-Hy (July 2005)</b>		
<b>Recommendation Number</b>	<b>Recommendation</b>	<b>Recommendation Implemented (Yes or No)</b>
1	Develop and implement a protocol for working with the Board as an advisory committee. Ensure that the protocol defines the scope of the Board's responsibility and explains their role under FACA.	Yes
2	Develop and implement a protocol for resolving conflicts between the Board and NOP staff.	Yes
3	Develop and implement procedures for receiving, reviewing, and implementing recommendations from the Board on revisions to the National List.	Yes
4	Develop and implement procedures for reviewing and validating ARC recommendations on the accreditation of certifying agents.	Yes
5	Develop and implement procedures for creating and issuing clarifications to program regulations. These procedures should standardize the method that will be used to provide guidance to certifying agents and other interested bodies.	No
6	Develop and implement procedures for reviewing and adjudicating appeals of noncompliance decisions.	Yes
7	Develop and implement a protocol for evaluating and resolving complaints, including circumstances when a NOP policy interpretation is required. This should include procedures for informing affected parties of the status of their complaints.	No
8	Resolve the eight complaints from FY 2003 that require an interpretation of NOP regulations.	Yes
9	Develop and implement procedures for maintaining and controlling cost-share programs.	Yes
10	Develop and implement procedures for making equivalency determinations.	Yes

Exhibit A presents the ten recommendations from our prior audit report; Agricultural Marketing Service's National Organic Program, Report Number 01001-02-Hy, released July 2005. There are three columns in this exhibit. The first column lists the recommendation number. The second column describes what we recommended. The third column indicates whether or not each recommendation was implemented.



**USDA'S**

**AGRICULTURAL MARKETING SERVICE'S**

**RESPONSE TO AUDIT REPORT**



1400 Independence Avenue, SW.  
Room 3071-S, STOP 0201  
Washington, DC 20250-0201

DATE: February 25, 2010

TO: Rod DeSmet  
Acting Assistant Inspector General for Audit  
Office of Inspector General

FROM: Rayne Pegg /s/  
Administrator

SUBJECT: AMS' Response to OIG Audit #01601-03-Hy: Oversight of the National Organic Program

We have reviewed the subject audit report and agree in principle with the findings and recommendations. Our detailed response, including actions already taken and actions to be taken to address the recommendations, is attached.

If you have any questions or need further information, please contact Frank Woods, Internal Controls and Audits Branch Chief, at 202-720-8836.

Attachment

**Agricultural Marketing Service – Response  
to OIG Audit Recommendations  
OIG Audit Report No. 01601-03-Hy**

**Overview**

The Inspector General's review of the National Organic Program (NOP) provides valuable information and feedback that we plan to use to make continuing improvements to ensure the integrity of organic agricultural products. As the OIG notes, the U.S. organic industry has grown significantly since the NOP was implemented. Sales reached nearly \$25 billion in 2008, growing at double digits annually. In 2009 the NOP budget increased to \$3.87 million and staff increased to 16 positions. A \$3.1 million dollar budget increase in 2010 will enable the program to grow to 31 staff members by the end of the year. These budget and staff increases have enabled significant strides in program improvement, which the OIG has noted in its audit and serve as a foundation to advance further improvements during 2010 and beyond. As a result of these significant increases in resources at our disposal, NOP anticipates addressing all of the recommendations made by the Inspector General in FY 2010.

**Finding 1: NOP Needs to Improve Its Enforcement of Organic Operations That Violate Regulations**

***Recommendation 1***

For the operation on which NOP did not issue an enforcement action, consult with OGC to determine whether the violations AMS Compliance reported warrant the issuance of civil penalties. Pursue enforcement actions based on OGC's determination.

Agency response –

AMS concurs with this recommendation. In December, 2009, the NOP consulted with OGC on the identified operation and decided to pursue enforcement actions based on their recommendation. The NOP has requested that OGC file an administrative complaint and assess civil penalties against the operation for willful violations of organic standards. The NOP will collaborate with OGC to pursue enforcement actions with the goal of issuing an administrative complaint by April 2010.

***Recommendation 2***

Once AMS Compliance completes its followup investigation of the operation that potentially breached its agreement with NOP, review and determine whether any of the violations reported warrant the issuance of civil penalties. NOP's determination should include a properly supported decision document for the actions to be implemented.

Agency response –

AMS concurs with this recommendation. AMS Compliance completed its follow-up investigation in December 2009 and determined that the agreement had not been breached. However, violations of the NOP regulations were identified and the NOP has requested that OGC file an administrative complaint and assess civil penalties against the operation. The NOP will collaborate with OGC to pursue enforcement actions with the goal of issuing an administrative complaint by April 2010.

***Recommendation 3***

Amend NOP regulations to clarify the authority of the NOP director for issuing civil penalties.

Agency response –

AMS agrees that clarifying the NOP's authority for issuing civil penalties is critical to administering the Program. The NOP is developing policies for administrative sanctions to identify factors that should be considered in determining what type or combination of sanction(s) is warranted. The NOP will consult with OGC to clarify the authority of the NOP Deputy Administrator for issuing civil penalties. Administrative policies will be developed to ensure these policies comply with the NOP regulations or if necessary, amend the regulations. The NOP will implement an administrative sanctions policy by September 2010. Amendments to the NOP regulations will be initiated by December 2010, if amendments to the NOP regulations are needed to clarify the NOP's authority to levy civil penalties.

***Recommendation 4***

Implement a formal process for determining when civil penalties or other enforcement actions should be imposed in response to AMS Compliance investigations. This process should, at a minimum, ensure that actions are taken in a timely manner and that the basis of all determinations are adequately documented, including advice and opinions received from OGC.

Agency response –

AMS concurs with this recommendation. The NOP Compliance and Enforcement Division is developing an administrative sanctions policy that will specify when civil penalties or other enforcement actions are warranted in response to violations of the NOP regulations. The policy will include performance measures for ensuring that NOP takes action in a timely manner, as well as, procedures for documenting enforcement actions, including advice and opinions received from OGC. The policy will be implemented by September 2010.

***Recommendation 5***

Develop and establish procedures for monitoring organic operations' compliance with enforcement actions once these are issued.

Agency response –

AMS concurs with this recommendation. The NOP Compliance and Enforcement Division is developing procedures for monitoring organic operations' compliance with enforcement actions, to be implemented by September 2010.

**Finding 2: Processing of Program Complaints Needed More Timely Action**

***Recommendation 6***

Take action to timely resolve program complaints, including the six unresolved complaints noted in the finding. Obtain standard reports periodically on the status of outstanding complaints from the Complaint Database to monitor resolution, including cases awaiting OGC assistance.

Agency response –

AMS concurs with this recommendation. The NOP has taken a number of steps to improve the timeliness of resolving compliance and enforcement cases by increasing the size of the staffs involved, establishing standard operating procedures, increasing accountability, and enhancing the use of tracking and monitoring systems. The NOP has established standard operating procedures to timely resolve complaints, has established a complaint database, and regularly reviews the status of outstanding complaints. Of the six unresolved cases cited by OIG, two have since been closed. One involved a minor labeling issue regarding font size and the other involved a dispute between an operator and a certified agent where no violations of NOP regulations were found. The NOP has established March 1, 2010 as the target deadline to resolve the remaining four complaints.

**Finding 3: NOP Did Not Properly Approve and Manage the California State Organic Program**

***Recommendation 7***

Implement a time-phased action plan for the California SOP to fully comply with NOP regulations. If the program does not improve within established timeframes, initiate appropriate enforcement actions against the California SOP.

Agency response –

AMS concurs with this recommendation. The NOP conducted an assessment of the California State Organic Program in December 2009. The assessment noted that while significant improvements had been made by the State, including establishing compliance and enforcement procedures, there were also areas that remained to be addressed in order for the California SOP to fully comply with the NOP regulations. The NOP will notify the California SOP that corrective actions to fully comply with the NOP regulations need to be fully implemented by June 2010. The NOP will initiate appropriate enforcement

actions if the California SOP does not fully comply with State Organic Program requirements by June 2010.

#### **Finding 4: AMS Needs to Determine Whether NOP Regulations Should Require Periodic Residue Testing**

##### ***Recommendation 8***

Obtain a written legal opinion from OGC on whether NOP regulations, as currently written, comply with the requirement of the Act for periodic residue testing of organic operations by certifying agents. If OGC determines that the regulations are not in compliance, develop a time-phased plan to amend the regulations and implement the required testing provisions.

##### **Agency response –**

AMS concurs with this recommendation. Residue testing is an important tool to monitor compliance with the NOP regulations. The NOP is planning to implement periodic residue testing of agricultural products by accredited certifying agents by September 2010. The NOP has requested a written legal opinion from OGC on whether the current NOP regulations comply with the pesticide residue testing requirement within the Act. If OGC determines that the regulations are not consistent with OFPA, the NOP will develop a plan to amend the regulations. The NOP plans to receive a written legal opinion by March 2010 and, if necessary, initiate rule making in December 2010.

#### **Finding 5: Evaluations of NOP's Accreditation Process Were Not Performed Annually**

##### ***Recommendation 9***

Beginning in fiscal year 2010, conduct annual evaluations of the NOP's accreditation process using a peer review panel pursuant to FACA to begin, which will report its findings to the NOP director. If this is not feasible, determine whether the NOP regulations should be amended to allow the use of equivalent third-party evaluations in place of the peer review panel.

##### **Agency response –**

The OFPA states that the Secretary may establish a peer review panel to evaluate the accreditation program of the NOP. The NOP regulations specify that the Peer Review Panel will be established as per FACA and report its findings to the NOP Deputy Administrator.

In its May 2009 Business Meeting, the National Organic Standards Board (NOSB), the FACA Advisory Board to the NOP, recommended that the NOP develop a quality management system that complies with the criteria set forth in the National Institute of Standards and Technology (NIST) National Voluntary Conformity Assessment Evaluation Program (NVCASE) as well as the requirement of ISO/IEC 17011:2004. The NOSB stated that the NIST NVCASE program evaluation is a viable and effective

alternative to establishing a separate FACA-compliant Peer Review Panel that still meets the intent of OFPA.

The first NVCASE evaluation of the NOP accreditation process is expected to be completed by September 2010. Due to higher priorities such as rule making to implement the NOSB recommendations on the Origin of Livestock, Apiculture, Aquaculture and Mushrooms, NOP estimates a FY 2012 timeframe for initiating an amendment to the NOP regulations to remove the FACA requirement.

## **Finding 6: AMS Needs to More Effectively Identify Inconsistent Operating Practices and Clarify Program Requirements**

### ***Recommendation 10***

Revise the review guide to incorporate the areas we identified as problems to make the reviews more effective. Develop a procedure requiring the Accreditation, Auditing, and Training Branch to summarize, at least annually, the results of onsite reviews to identify problem areas involving the program and make recommendations to upper management for program improvement.

#### Agency response –

AMS concurs with this recommendation. The NOP will revise the review guide to include specific criteria for outdoor access for livestock, organic certificates, procedures to prevent commingling, noncompliance procedures, changes in ownership, Organic System Plans, and inadequate records. The revision of the review guide provided to ARC reviewers will be completed by September 2010. The NOP will annually evaluate accreditation audits and make recommendations for improvement of the accreditation program. The first annual evaluation of accreditation audit will be completed by September 2010.

### ***Recommendation 11***

Develop and issue guidance regarding outdoor access for livestock, categorizing of noncompliances, reporting changes in an operation's ownership, the updating of certificates and OSPs, and records maintenance.

#### Agency response –

AMS concurs with this recommendation. The NOP will publish a Program Manual by September 2010 for accredited certifying agents (ACAs) and certified operations to provide guidance on the regulations. The NOP Program Manual will include guidance on outdoor access for livestock, categorizing of noncompliances, reporting changes in an operation's ownership, updating of certificates, updates to OSPs, and records maintenance. The NOP Program Manual will be distributed to ACAs and be available on the NOP website.

The NOP notes that the NOSB has worked on recommendations for animal welfare and outdoor access for livestock for many years. In November 2009 the board passed a final recommendation on animal welfare that included recommendations for outdoor access. On February 17, 2010 the NOP published the Access to Pasture final rule that specifies pasture requirements for organic ruminant livestock. The NOP will continue to work with the NOSB in developing guidance on the NOP regulations and incorporating the NOSB recommendations into the NOP Program Manual.

### ***Recommendation 12***

Formally respond to the Board's recommendation to amend the NOP regulations to require expiration dates on organic certificates.

#### Agency response –

Under the OFPA and the NOP regulations, certification does not expire. Certification remains valid until surrendered, suspended, or revoked. However, the NOSB has recommended standardized language on certificates and the NOP concurs that such language, including language referencing current inspection dates or renewal dates, is needed. NOP will provide guidance to ACAs on this NOSB recommendation within the NOP Program Manual that will be published in June 2010. The NOP will respond to the NOSB recommendation expiration dates on certificates at the April 2010 NOSB meeting.

### ***Recommendation 13***

Develop and implement a process to issue and disseminate guidance in a standardized method to assist agents in applying uniform processes for certifying organic operations.

#### Agency response –

AMS concurs with this recommendation. The NOP will implement a document control policy and procedure that will include a distribution policy on how guidance is disseminated to ACAs, state organic programs, and foreign governments that have recognition or equivalency agreements in accordance with the Office of Management and Budget's Final Bulletin for Good Guidance Practices. The document control policy and distribution policy will be completed by September 2010. The NOP website is being revised to improve clarity and consistency. The revisions of the website are scheduled to be completed by September 2010 and will include a complete list of guidance documents in an easily accessible format and will properly archive guidance and policy statements as they are superseded or rescinded.

## **Finding 7: NOP Oversight of Foreign Certifying Agents Needs Significant Improvement**

### ***Recommendation 14***

Develop and implement written policies and procedures requiring that all certifying agent Applicants, as well as the five certifying agents that have not yet been visited, have onsite reviews completed within clearly-defined timeframes. The policy should require revoking accreditations if onsite



reviews cannot be timely completed because of government-issued travel restrictions and other factors beyond the agency's control.

Agency response –

AMS concurs with this recommendation. Onsite audits have been completed for four out of the five foreign certifying agents identified in the report. The final onsite audit is scheduled for Spring 2010. The NOP is developing a Quality Manual to comply with international accreditation norms such as ISO 17011. Policies and procedures within the NOP Quality Manual will specify clearly-defined timeframes and processes for accreditation. The NOP will be adopting policies that require on-site reviews prior to accreditation and will develop policies on revoking accreditation if travel restrictions beyond the agency's control prevent onsite reviews from being conducted. The Quality Manual will be complete by September 2010.