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Office of Inspector General
Northeast Region

Audit Report

Agricultural Marketing Service's National Organic Program

Report No. 01001-02-Hy
July 2005



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington D.C. 20250



July 14, 2005

REPLY TO

ATTN OF: 01001-02-Hy

TO: Kenneth J. Clayton
Acting Administrator
Agricultural Marketing Service

ATTN: David Lewis
Deputy Administrator
Compliance and Analysis Programs

FROM: Robert W. Young /S/
Assistant Inspector General
for Audit

SUBJECT: National Organic Program (01001-02-HY)

This report presents the results of our audit of the Agricultural Marketing Service's National Organic Program. Your response to the official draft, dated June 24, 2005, is included as exhibit A. Excerpts of your response and the Office of Inspector General's position are incorporated into the Findings and Recommendations section of the report. Based on your response, we were able to reach management decision on all of the report's 10 recommendations. 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.

Executive Summary

Agricultural Marketing Service's National Organic Program (Audit Report No. 01001-02-Hy)

Results in Brief

This report presents the results of the Office of Inspector General's (OIG) survey of the Agricultural Marketing Service's (AMS) National Organic Program (NOP). To accomplish our work, we evaluated current operations at AMS Headquarters. In addition, in the States of California and New York, we visited certifying agents, organic producers, and organic handlers.

AMS has the responsibility to enhance the marketing and distribution of agricultural products. Through the NOP, AMS is required to assure that organically produced products meet uniform standards and that they are appropriately labeled. Standards for the NOP do not address food safety or nutrition. Because the NOP regulations were implemented in October 2002, our audit work focused on evaluating AMS' controls for the program. Overall, we concluded that AMS needed to strengthen the controls for administering the NOP.

We found that AMS has not established protocols for working with the National Organic Standards Board (Board) or resolving conflicts with them. Implementation of the NOP and resolution of program-related concerns took precedence over establishing a strong working relationship with the Board. According to the Organic Foods Production Act of 1990 (Act), the Board is to advise the Secretary of Agriculture (Secretary) on the implementation of the Act. AMS did not involve the Board when it issued clarifications to program regulations in April 2004. The Board's involvement was not necessary because, according to AMS officials, these clarifications were merely stating what is enforceable under existing regulations. The guidance issued involved pesticide use, livestock health, livestock feed, and the scope of the NOP. However, these clarifications were seen as revisions to the regulations by the organic industry and members of the U.S. Congress. As a result, on May 26, 2004, the Secretary rescinded the guidance and directed AMS to work with the Board to correct the issues identified. We also found that AMS has not acted on 26 recommendations from the Board for materials to be approved for or prohibited from use in organic production.

AMS also needs to improve management controls for administering the NOP, because internal operating procedures have not been adequately developed and implemented. For example, in fiscal year (FY) 2003, the eight complaints referred to the NOP for a decision have not been resolved, one of which involved a possible prohibited substance being added to an organic product. These eight complaints require an interpretation of NOP regulations. AMS currently does not have a method for making an interpretation of NOP regulations. As a result, AMS has reduced assurance that the NOP is

achieving its intended objectives that organic products meet consistent standards.

We discussed these concerns with AMS officials who agreed that controls for administering the NOP should be strengthened.

As part of our review, we visited nine organic operations. Nothing came to our attention that caused us to question whether these operations were properly certified by United States Department of Agriculture-accredited certifying agents and followed the regulations for the production, handling, and processing of organically grown agricultural products. However, the certifying agents we visited expressed concern that there might be a lack of consistency among agents and their certification of organic operations. They attributed this to AMS not having a uniform method for issuing program guidance to agents. During FY 2005, we plan to further evaluate if agricultural products marketed as organic meet the requirements of the NOP.

Recommendations In Brief

AMS needs to implement protocols for working with the Board to include defining the scope of the Board's responsibility. In addition, AMS should direct the NOP to establish procedures for receiving, reviewing, and implementing recommendations from the Board. AMS also needs to develop and implement internal operating procedures for such things as the resolution of complaints to govern program operations. Finally, AMS needs to resolve the eight complaints made in FY 2003 that require an interpretation of NOP regulations.

Agency Response

AMS agreed with the report's recommendations. We have incorporated excerpts from AMS' response in the Findings and Recommendations section of this report along with the OIG position. AMS' response is included as Exhibit A.

OIG Position

Based on AMS' response, we were able to reach management decision on each of the report's 10 recommendations.

Abbreviations Used in This Report

Act	Organic Foods Production Act of 1990
AMS Compliance	AMS Compliance and Analysis
AMS	Agricultural Marketing Service
ANSI	American National Standards Institute
ARC	Audit, Review, and Compliance
Board	National Organic Standards Board
C.F.R.	Code of Federal Regulations
CCOF	California Certified Organic Farmers
FACA	Federal Advisory Committee Act
FY	Fiscal Year
National List	The National List of Allowed and Prohibited Substances
NOFA-NY	Northeast Organic Farming Association of New York
NOP	National Organic Program
OCFO	Office of the Chief Financial Officer
OGC	Office of the General Counsel
OIG	Office of Inspector General
Secretary	Secretary of Agriculture
TAP	Technical Advisory Panels
USDA	U.S. Department of Agriculture
USTR	U.S. Trade Representative

Table of Contents

Executive Summary	i
Abbreviations Used in This Report	iii
Background and Objectives	1
Findings and Recommendations.....	5
Section 1. The Board.....	5
Finding 1 AMS Needs to Establish Protocols for Working with the Board.....	5
Recommendation 1	7
Recommendation 2	7
Finding 2 AMS Needs Established Procedures for Processing the Board Recommendations to the National List of Allowed and Prohibited Substances (National List)	8
Recommendation 3	9
Section 2. AMS' Management of the NOP	10
Finding 3 AMS' Procedures and Controls to Administer the NOP Need Improvement.....	10
Recommendation 4	13
Recommendation 5	13
Recommendation 6	14
Recommendation 7	14
Recommendation 8	15
Recommendation 9	15
Recommendation 10	16
Scope and Methodology.....	17
Exhibit A – Agency Response	19

Background and Objectives

Background

The Agricultural Marketing Service (AMS) was established by the Secretary of Agriculture (Secretary) on April 2, 1972, under the authority of Reorganization Plan No. 2 of 1953 (5 U.S.C. App.). Its primary mission is to enhance the marketing and distribution of agricultural products from the Nation's farms. This is achieved through the collection and dissemination of market news information, the establishment of grading standards, inspection and grading services, market orders, and various marketing development programs.

Organic production has been practiced in the United States since the late 1940's. From that time, the industry has grown from experimental garden plots to farms with surplus products to sell under a special "organic" label. Food manufacturers have developed organic processed products and many retail-marketing chains specialize in the sale of organic products. This growth stimulated a need for verification that products are produced according to certain standards. Thus, the organic certification industry also evolved. By the late 1980's, after an attempt to develop a consensus of production and certification standards, the organic industry petitioned Congress to draft the Organic Foods Production Act of 1990 (Act).

In the last decade, the organic industry has been growing between 20 and 25 percent annually. United States retail sales of organic foods reached approximately \$7.8 billion in 2000, with global sales topping \$17.5 billion. While organic food represents a small sliver of overall United States grocery sales, industry analysts expect that sales will grow to \$20 billion by 2005.

The Act 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 purposes of the Act are to: (1) establish national standards governing the marketing of certain agricultural products as organically produced products, (2) assure consumers that organically produced products meet a consistent standard, and (3) facilitate interstate commerce in fresh and processed food that is organically produced.

The Act required the Secretary to issue regulations for the legislation, which included establishing national standards for organic production. The Secretary delegated¹ the functions with respect to the Act to the U.S. Department of Agriculture's (USDA) AMS Administrator. Under the direction of AMS, the National Organic Program (NOP) was established, which administers the national standards for the production and handling of

¹ Title 7, Code of Federal Regulations (C.F.R.) § 2.79(a)(8)(liii), January 2004.

organically produced products. Organizationally, the NOP is part of AMS' Transportation and Marketing Programs.

AMS administers the NOP primarily through staff assigned to the program. Two other AMS program areas assist the NOP staff. AMS Compliance and Analysis (AMS Compliance) is responsible for all NOP-related complaints received except those that need to be forwarded to the NOP for a policy decision. In April 2004, AMS Compliance was also delegated the responsibility to manage all NOP appeals. AMS' Audit, Review, and Compliance (ARC) Branch completes the reviews of certifying agents and then provides accreditation recommendations to the NOP.

The NOP, through regulations effective in October 2002, facilitates the domestic and international marketing of fresh and processed food that is organically produced and assures consumers that such products meet consistent, uniform standards. The NOP also requires 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 USDA. Neither the Act nor the NOP regulations address food safety or nutrition.

Production and handling operations seeking to receive or maintain organic certification must be certified by a USDA-accredited certifying agent. Agents may be State, private, or foreign organizations, which grant organic certification upon determining that an operation's procedures are in compliance with the Act and the NOP regulations. Certifying agents also conduct annual reviews of certified operations to verify that they continue to comply with the Act and regulations. As of January 2005, there were 97 (56 domestic, 41 foreign) USDA-accredited certifying agents.

The AMS Administrator established a peer review panel to evaluate the NOP's procedures for the accreditation of certifying agents. AMS contracted with the American National Standards Institute (ANSI) to conduct this evaluation. Overall, ANSI, in its report², determined that AMS was lacking documented policies and procedures for its accreditation of certifying agents. ANSI also commended ARC's highly professional and complete on-site review of certifying agents.

Agricultural products may be labeled as organic only if the product has been produced and handled in accordance with the regulations. Organic agricultural products must be labeled based on their percentage of organic composition. For instance, the USDA organic seal tells consumers that a product is at least 95 percent organic. Products with 70 to 95 percent organic ingredients can say so on the label but they cannot display the seal.

² ANSI Peer Evaluation Report, "USDA-Agricultural Marketing Service Accreditation of Certifying Agents under the National Organic Program," issued December 8, 2004.

The Act provides that a State may apply to the Secretary to implement an organic program for agricultural products that have been produced and handled within that State. If the Secretary approves the State Organic Program, the State is responsible for administering a compliance program for enforcement of the NOP and any more restrictive requirements contained in the State Organic Program. The Secretary must approve all State programs. California and Utah are currently the only States with approved State Organic Programs.

AMS has allocated funds to provide certification cost-share assistance to producers and handlers of organic agricultural products. There are two separate cost-share programs in place differentiated by the way each program is funded. One is the 2002 National Organic Certification Cost-Share Program, which was a one-time issuance, until exhausted, of \$5 million appropriated from the Farm Security and Rural Investment Act of 2002 for the entire United States to organic producers and handlers. The other is the Agricultural Management Assistance Program, which is a \$1 million annual appropriation that is allocated among 15 States³ to organic producers only. Both programs provide payments limited to 75 percent of certification costs, up to a maximum of \$500.

The NOP sets forth three options for permitting imported agricultural products to be sold, labeled, or represented as organic in the United States. One way is to have USDA-accredited certifying agents certify foreign products to the NOP. Another way is to have the USDA recognize a foreign government to accredit agents to certify production and handling operations to The United States standard. Finally, the U.S. Government may negotiate an equivalency agreement with a foreign government that would allow products to be marketed as organic in the United States.

Objectives

The objective of our review was to identify and evaluate AMS' controls over the NOP. Specifically, we assessed whether: (1) AMS had developed and applied guidelines, with adequate assistance of the Board, to be used by certifying agents for monitoring and certifying organic producers and handlers that produce organic agricultural products for the purpose of selling to the public, (2) the producers using the "USDA Organic" label were certified by a State or private agency accredited by AMS, and (3) the producers and handlers were following the guidelines and regulations set by the NOP, as well as the national standards for the production, handling, and processing of organically grown agricultural products.

To accomplish the objective, we performed fieldwork at AMS Headquarters, two State Departments of Agriculture, and two certifying agents accredited by the USDA. We also visited a total of nine organic operations certified by

³ The 15 States include: Connecticut, Delaware, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, West Virginia, and Wyoming.

either of the two certifying agents. Our audit work primarily covered NOP policies, procedures, and activities related to fiscal years (FYs) 2003 and 2004. The NOP regulations became effective in October 2002. (See Scope and Methodology for details.)

Findings and Recommendations

Section 1. The Board

AMS, through the NOP, is responsible for facilitating the domestic and international marketing of fresh and processed food that is organically produced and assuring consumers that such products meet consistent, uniform standards. The Board is to assist in the development of standards for substances to be used in organic production and to advise on any other aspects of the implementation of the Act.

We found that AMS has not established protocols for working with the Board. Implementation of the NOP and resolution of program-related concerns took precedence over establishing a strong working relationship with the Board. For example, AMS officials did not involve the Board prior to issuing guidance statements to certifying agents. In May 2004, the Secretary rescinded a directive and three guidance documents released by AMS and directed the agency to work with the Board on those issues.

We also learned that AMS does not have procedures for handling the Board recommendations for substances to be used in organic production.

Finding 1

AMS Needs to Establish Protocols for Working with the Board

AMS is not effectively administering the NOP, because the agency has not established protocols for working with the Board or for resolving conflicts with them. According to AMS officials, conflicts over the scope of the Board's authority stem from the Act, which states that the Board may provide advice on "any other aspects of the implementation of this title." In May 2004, the Secretary withdrew AMS' attempts to clarify program regulations without first receiving the Board's input. The Secretary also directed AMS to work with the Board to correct the issues identified as needing clarification.

The Act allows the Board to advise on "any other aspects of the implementation of this title," and requires the Board to comply with the Federal Advisory Committee Act (FACA). According to AMS officials, they met with representatives of the Office of the General Counsel (OGC) in July 2004, to seek counsel on the role of the Board in the administration of the NOP. AMS officials have not been able to provide us with documentation that outlines the specific advice the agency sought from OGC. According to AMS officials, OGC informed them that seeking the Board's input on any aspect related to the organic regulation must be done in a public meeting in order to comply with FACA.

In April 2004, AMS issued the following directive and three guidance statements concerning pesticide use, livestock health, livestock feed, and the scope of the NOP.

- Pesticides Containing Inert Ingredients. The directive issued by AMS attempted to clarify how certifying agents are to enforce the prohibition on using pesticides that contain certain inert ingredients, e.g., manure, paraffin wax. Specifically, the directive stated that if after reasonable efforts, certifying agents are unable to ascertain whether inert ingredients in a pesticide are allowed by NOP regulations, the certifying agents would approve the producer's organic system plan.
- Use of Drugs in Dairy Animals. AMS issued a guidance statement on a livestock health care practice. The guidance permitted the use of drugs such as antibiotics for the treatment of illness in organic dairy animals as long as there is a 12-month gap between the use of the drug and the marketing of the milk.
- Livestock Feed. AMS issued a guidance statement that allowed the use of fishmeal as a protein supplement for livestock feed as long as it complied with the Federal Food, Drug, and Cosmetic Act.
- Scope of the NOP. AMS issued a guidance statement that the Act does not extend to products over which USDA has no regulatory authority; therefore, such products are not eligible for NOP certification. These products included fish and seafood, cosmetics, body care products, and dietary supplements.

According to AMS officials, these documents were merely stating what is enforceable under the existing regulations. Because AMS viewed the guidance statements as clarifications, the agency did not seek input from the Board prior to releasing the documents. However, representatives from the organic industry and members of the U.S. Congress expressed concerns that these clarifications revised the program regulations. As a result, on May 26, 2004, the Secretary rescinded the guidance and directed AMS to work with the Board to correct the issues identified. The rescission by the Secretary also demonstrated that AMS needed to establish a protocol for resolving conflicts between the Board and NOP staff.

AMS has not defined the scope of the Board's responsibilities or the method for resolving conflicts with the Board. Accordingly, the agency has reduced assurance that the NOP is being effectively administered.

Recommendation 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.

Agency Response.

AMS concurs with this recommendation. NOP will develop a more rigorous FACA training session, including written materials, to be distributed at the next Board meeting at which new members will be seated (early Spring 2006). At this next meeting, NOP will also make FACA training mandatory for all Board members, to ensure that they understand both their responsibilities and limits of authority under FACA. NOP will develop procedures to accompany the FACA training, to be completed by, December 31, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide the Office of the Chief Financial Officer (OCFO) with the material used to train Board members on their roles and responsibilities.

Recommendation 2

Develop and implement a protocol for resolving conflicts between the Board and NOP staff.

Agency Response.

AMS agrees that resolving conflicts between the Board and NOP staff is a priority, and is taking steps to accomplish this objective. An Executive Director for the Board will be hired by September 30, 2005; this individual, while a federal employee, will work closely with the Board to assist them in preparing their recommendations on materials and other issues related to the NOP regulations. NOP also has begun to work more closely with the Board to help them develop procedures to answer questions or address issues posed by NOP that may be somewhat controversial in nature. These issues (and the procedures) may involve taking public comment at public meetings in accordance with FACA and drafting recommendations to request that NOP publish guidance on various regulatory issues. The Board expects to vote on these new procedures at its upcoming August 2005 meeting. Thus, AMS expects to complete these initiatives to address this recommendation by September 30, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with the procedures documenting the protocol for resolving conflicts between the Board and NOP staff.

Finding 2

AMS Needs Established Procedures for Processing the Board Recommendations to the National List of Allowed and Prohibited Substances (National List)

AMS is not adequately amending the regulation that codifies the National List. Amendments to the National List are based on recommendations from the Board. We identified that AMS does not have procedures for receiving, reviewing, and implementing recommendations from the Board. Consequently, AMS has not acted on 26 recommendations submitted by the Board since May 2002, for potential substances to be used in organic production.

The Act requires the Secretary to establish the Board to assist in the development of standards for substances to be used in organic production. The allowed and prohibited substances on the National List are codified at Title 7, C.F.R. §205.601 through §205.606.

The National List identifies specific substances, which may or may not be used in organic production and handling operations. The National List is based upon recommendations provided by the Board to add or remove substances from the National List. The Board makes its recommendations to AMS and the agency amends the National List through formal revisions to the program regulation.

In October and November 2003, AMS issued final rules to add 14 substances to the National List. These substances had been included in recommendations from the Board to AMS from June 2000 to October 2002. According to an AMS official, the Board did not submit a formal document to the agency stating the recommendations. AMS staff accepted these recommendations verbally and worked with the Board to record them. In April 2004, AMS and the Board agreed to start documenting the Board's recommendations; however, the procedures for doing this have not been developed and implemented.

Although AMS acted on the recommendations for the 14 substances, we found other recommendations that have not been addressed and are still outstanding. Since May 2002, the Board has submitted a total of 26 recommendations for substances to be added to the National List, which AMS has not acted on. These substances include such things as gelatin,

activated carbon, and hydrogen chloride. However, we concluded that the National List has not been adequately amended because AMS does not have procedures for receiving, reviewing, and implementing recommendations from the Board.

Recommendation 3

Develop and implement procedures for receiving, reviewing, and implementing recommendations from the Board on revisions to the National List.

Agency Response.

AMS concurs with this recommendation. Since the review, NOP has worked diligently to develop a new statement of work for Technical Advisory Panels (TAP) to perform scientific analyses on materials submitted to the Board for review and approval. NOP also has increased the submission requirements for petitioners submitting materials for TAP reviews to NOP. NOP also worked with the Board to develop more documented procedures for the Board to submit to NOP to explain their recommendations based on the scientific evidence provided from TAP reviews, in order to facilitate the rulemaking process. These procedures should increase the efficiency of processing future Board recommendations regarding materials to be added to the National List. Final procedures will be completed by September 30, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Finding 3

AMS' Procedures and Controls to Administer the NOP Need Improvement

AMS personnel have not adequately developed and implemented internal operating procedures, such as the accreditation of certifying agents and appeals of noncompliance decisions, to govern program operations. According to AMS personnel, initiation of the program took precedence over the development and implementation of procedures. As a result, AMS has reduced assurance that the NOP is achieving its intended objectives to ensure that organic products meet consistent, uniform standards.

The Office of Management and Budget Circular No. A-123, Management Accountability and Control, dated June 1995, states that agency managers shall incorporate management controls in the strategies, plans, guidance, and procedures that govern their programs and operations. Agencies and individual Federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls for results-oriented management.

In April 2005, we met with the AMS Deputy Administrator for Transportation and Marketing for an update on the agency's efforts to finalize NOP procedures. She provided the current drafts of the procedures and explained that a team has been assembled to finalize them.

Accreditation of Certifying Agents

AMS has not fully developed, documented, or implemented its process for managing the accreditation of certifying agents. AMS' ARC Branch assists the NOP in the accreditation of certifying agents. ARC evaluates the material included in a certifying agent's application through a detailed examination of the documentation and an on-site review of the agent's operation. ARC then recommends to the NOP whether the certifying agent should be accredited. The NOP approves the recommendation to the AMS Administrator for the final accreditation decision.

As of January 2005, AMS had accredited 56 domestic certifying agents that had certified over 10,000 operations as organic. We found that NOP staff does not validate the recommendation from ARC on whether to accredit the certifying agent even though the NOP staff is ultimately responsible for the accreditation process. The recommendation provided by ARC is merely forwarded to the AMS Administrator for approval. In our discussions of this

weakness with NOP staff, they agreed that they should be more involved in evaluating ARC's recommendation to accredit certifying agents.

The AMS Administrator contracted with ANSI to evaluate the accreditation activities of the NOP. In its 2004 report,⁴ ANSI commended ARC's highly professional and complete on-site review of certifying agents. ANSI also found that AMS was without a number of documented policies and procedures in place for its accreditation of certifying agents. In response to this finding, AMS agreed to document these policies and procedures.

Program Guidance

AMS does not have a standardized, written method for providing program information to certifying agents, and AMS has not used a consistent strategy to notify the agents of program updates. For example, various methods have been used including policy statements, letters, and a question and answer section on the NOP website. We also found that these resources are unorganized, making it difficult to locate information. Certifying agents we visited also expressed concern about AMS' issuance of program guidance. Because there is no uniform method, they explained there might be a lack of consistency among agents and their certification of organic operations. During FY 2005, we plan to further evaluate if agricultural products marketed as organic meet the requirements of the NOP.

Appeals of Noncompliance Decisions

AMS has not developed and implemented procedures for reviewing and adjudicating appeals of noncompliance decisions. The Act provides affected persons the right to appeal any adverse actions taken against their organic certification or accreditation.

For example, in March 2003, an operation in California appealed the certifying agent's decision to deny certification. A certifying agent determined that a prohibited substance was applied to this operation, deeming it ineligible for certified organic status. NOP officials stated that this appeal was resolved in August 2004 (17 months after the appeal was filed). In addition, an operation in New York appealed a decision that took over 14 months to resolve. According to NOP officials, this appeal required resolution before an administrative law judge.

According to NOP officials, the oversight of appeals was moved to AMS Compliance in April 2004. AMS Compliance has been directed to develop standard operating procedures for reviewing and adjudicating appeals.

⁴ ANSI Peer Evaluation Report, "USDA-Agricultural Marketing Service Accreditation of Certifying Agents under the National Organic Program," issued December 8, 2004.

Management of Complaints

AMS officials currently do not have a documented protocol established for evaluating and resolving complaints received regarding the NOP. Depending on the nature of the complaint, it is handled by either AMS Compliance or the NOP staff.

According to AMS Compliance, they first review a complaint to determine if it requires an interpretation of NOP regulation. If not, AMS Compliance resolves the complaints without NOP assistance. However, AMS Compliance does not have a documented method for resolving complaints. In FY 2003, AMS Compliance received 114 NOP-related complaints and resolved 106 of them.

If an interpretation of the NOP regulations is necessary to resolve a complaint, AMS Compliance forwards them to the NOP staff for a decision. For 8 of the 114 NOP-related complaints in FY 2003, an interpretation of NOP regulations was needed. The NOP staff has not issued a decision on any of these eight complaints because analyses of the complaints have not been completed and the NOP does not have a method for making an interpretation of NOP regulations. One of these complaints involved a certifying agent allegedly permitting an organic operation to apply malic acid, a prohibited substance, to an organic product.

In April 2005, we confirmed with AMS that the eight FY 2003 complaints had yet to be resolved.

In February 2005, AMS published for comment in the Federal Register the agency's procedures for the development, issuance, and use of NOP guidance documents. According to AMS officials, complaints that involve an interpretation of NOP regulations should be addressed and resolved in a more timely fashion when this guidance is finalized. AMS still needs to finalize procedures to inform affected parties of the status of their complaints.

Other Areas Without Finalized Operating Procedures

- Cost-Share Programs. AMS has not documented its procedures for maintaining and controlling cost-share programs. These programs provide payments to producers or handlers of organic agricultural products limited to 75 percent of their certification costs, up to a maximum of \$500. AMS officials are not maintaining records for the cost-share programs. The activity reports used for recordkeeping were primarily blank. The missing information included such key items as funds disbursed and unused for the programs. Accordingly, there was no evidence that AMS was monitoring the use of program funds.

- Equivalency Determinations. AMS does not have internal operating procedures finalized for making equivalency determinations. The Act provides that imported agricultural products may be sold or labeled as organically produced if the Secretary determines that such products have been produced and handled under an organic certification program equivalent to the Act. According to the NOP regulations, the U.S. Government may negotiate an equivalency agreement with a foreign country that would allow products to be marketed as organic in the United States. As of August 2004, only Japan has negotiated an equivalency agreement with the United States. This is a unilateral agreement only allowing NOP certified organic products to be exported to Japan. There are currently no equivalency agreements permitting imported organic products into the United States, although initial discussions have been held with representatives of the European Union.

AMS needs to develop and implement internal operating procedures to assure that the NOP is achieving its intended objectives to ensure that organic products meet consistent, uniform standards.

Recommendation 4

Develop and implement procedures for reviewing and validating ARC recommendations on the accreditation of certifying agents.

Agency Response.

AMS concurs with this recommendation. Since the review, NOP staff have met with ARC staff to develop a formalized process for review and validation of ARC recommendations on accreditation of certifying agents. Final procedures will be completed by September 30, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Recommendation 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 parties.

Agency Response.

AMS concurs with this recommendation. In January 2005, AMS issued a Federal Register notice to all interested parties explaining how guidance would be issued to clarify program regulations. Such guidance will use the Federal Register and NOP web site, and will include regular annual updates. AMS also has developed and begun to disseminate procedures to its certifying agents for communicating about administrative processes under the NOP regulation, including all applicable regulations under subpart G of 7 C.F.R. 205. Final procedures will be established by September 30, 2005. In addition, AMS is reconstructing the NOP website to bring it into conformance with USDA's new website design, which will facilitate use by all outside parties.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Recommendation 6

Develop and implement procedures for reviewing and adjudicating appeals of noncompliance decisions.

Agency Response.

AMS concurs with this recommendation. Since the review, NOP staff have worked with Compliance staff and the OGC to develop procedures for review and adjudication of all adverse action decisions. Procedures will be finalized by September 30, 2005

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Recommendation 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.

Agency Response.

AMS concurs with this recommendation. NOP has begun working with Compliance staff to develop procedures for evaluating complaints, including determination of complaints that may need policy interpretation from NOP, and procedures for informing affected parties of the status of their complaints. Final procedures will be developed no later than September 30, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Recommendation 8

Resolve the eight complaints from FY 2003 that require an interpretation of NOP regulations.

Agency Response.

AMS concurs that the eight complaints requiring an interpretation of NOP regulations should be resolved, and will strive to do so no later than September 30, 2005.

OIG Position.

We accept AMS' management decision; however we encourage AMS to resolve these complaints as soon as it is practicable because the complaints are almost 3 years old. For final action, AMS needs to provide OCFO with documentation that the eight cases have been resolved.

Recommendation 9

Develop and implement procedures for maintaining and controlling cost-share programs.

Agency Response.

AMS concurs with this recommendation. Since the review, procedures have been implemented for maintaining and controlling cost-share programs under the two separate programs. Cost-share procedures will be annually reviewed and updated as appropriate by the close of each FY (September 30, 2005).

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Recommendation 10

Develop and implement procedures for making equivalency determinations.

Agency Response.

The Office of the U.S. Trade Representative (USTR) has sole authority to engage foreign nations in discussions of trade matters. When such discussions involve the NOP regulation, AMS serves as the technical advisor to USTR. AMS has had draft operating procedures for making equivalency determinations since March 2004 and has been holding them in draft form pending on-going negotiations to determine whether changes were needed. AMS will publish the draft procedures for public comment by December 31, 2005.

OIG Position.

We accept AMS' management decision. For final action, AMS needs to provide OCFO with a copy of the procedures implemented to address this recommendation.

Scope and Methodology

Our audit work primarily covered the NOP policies, procedures, and activities related to FY's 2003 and 2004. The NOP regulations became effective in October 2002. We conducted fieldwork from January 2004 through July 2004 at AMS Headquarters, two State Departments of Agriculture, and two certifying agents accredited by the USDA. We also visited a total of nine certified organic operations. In April 2005, we met with AMS officials to update our understanding of NOP policies, procedures, and activities. Our audit was conducted in accordance with generally accepted government auditing standards.

AMS Headquarters

To identify and evaluate AMS' controls over the NOP, we held discussions with various AMS officials. At AMS Headquarters, we interviewed personnel at the NOP, AMS Compliance, and ARC. We also reviewed directives and guidance to certifying agents, policies and procedures related to program oversight and administration, and records maintained for certified organic operations.

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

State Departments of Agriculture

State offices do not have any NOP responsibility unless the State has an approved State Organic Program, which gives the State enforcement and compliance responsibility for the program.

In February 2004, California became the first State to have their State Organic Program approved. Because of the recent approval, we visited the California Department of Food and Agriculture to identify how the State would carry out enforcement activities.

We also held a discussion with the New York State Department of Agriculture and Markets. New York does not have an approved State Organic Program. We chose to visit this State because it has received the most funds from the NOP annual cost-share program.

Accredited Certifying Agents

We selected two accredited certifying agents for review to obtain an understanding of their responsibilities regarding the NOP. We selected the California Certified Organic Farmers (CCOF) for review because it was the

largest certifying agent, in terms of producers certified, in the United States. We selected the Northeastern Organic Farming Association of New York (NOFA-NY) for review because it was one of the largest certifying agents, in terms of producers certified, in the Northeastern United States. We interviewed office staff and reviewed procedures related to management controls, oversight of certified operations, the process for certifying organic producers and handlers, and the measures used to prevent conflicts of interest with the agent's certified operations.

Certified Organic Operations

We visited a total of nine organic operations certified by either the CCOF or NOFA-NY. We conducted a tour and held discussions with their staff to obtain an understanding of the product being produced and validate the agent's process for certifying the operations.

Exhibit A – Agency Response

Exhibit A – Page 1 of 5



United States
Department of
Agriculture

Agricultural
Marketing
Service

STOP 0201 – Room 3071-S
1400 Independence Avenue, SW.
Washington, D.C. 20250-0201

TO: Robert W. Young
Assistant Inspector General for Audit
Office of Inspector General

FROM: Kenneth C. Clayton
Acting Administrator

JUN 24 2005

SUBJECT: National Organic Program Audit – Report No. 01001-02-Hy

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 Neil Blevins, our Management Control Officer, at 202-720-6766.

Attachment

**Agricultural Marketing Service Responses
to OIG Audit Recommendations
Audit Report No. 01001-02-Hy**

Overview

AMS appreciates the Inspector General's review of the National Organic Program and its findings and recommendations. The National Organic Program (NOP) is a unique marketing program within the agency and the Marketing and Regulatory Programs mission area of USDA. In its background section, the OIG report briefly touches on the history of this unique industry. But the character of this industry is essential to understanding the findings by the OIG related to the Board, insofar as the Board typifies much of the character of this unique industry throughout the past two decades as it has developed.

Initiated by grassroots organizations comprised of small farmers, consumers, and environmental advocates, what began as an organic "movement" has become a multi-billion dollar global industry. The core groups that initiated the legislative authority and influenced the development of the regulatory standards remain very active and vocal, even as the industry matures. As such, there remains a steady tension of philosophy and grassroots activism with business practicalities, played out within the regulatory climate.

USDA strives to be inclusive with all of the participants in the diverse organic community, recognizing that the organic program is a voluntary truth-in-labeling claim, process-based program, and not a health or safety program. However, the regulatory arena is uncharted territory and unfamiliar for many in the organic industry, and frustration with government processes and procedures is a familiar refrain, often voiced through the Board. While the Board is appointed by the Secretary and is subject to FACA, many members of the Board feel a strong duty to represent the stakeholders in the organic community. Over the past several months, NOP staff and the Board have worked very hard to develop better communication procedures in order to reduce conflicts, and to ensure that the organic community is being heard by NOP.

As the OIG has pointed out, improved procedures internally will help ensure efficient and effective administration of the NOP. All of the recommendations for procedures identified by the OIG are expected to be completed by September 30, 2005 or published by the end of the calendar year.

Recommendation 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.

Agency Response: AMS concurs with this recommendation. NOP will develop a more rigorous FACA training session, including written materials, to be distributed at the next Board meeting at which new members will be seated (early Spring 2006). At this next

meeting, NOP will also make FACA training mandatory for all Board members, to ensure that they understand both their responsibilities and limits of authority under FACA. NOP will develop procedures to accompany the FACA training, to be completed by December 31, 2005.

Recommendation 2. Develop and implement a protocol for resolving conflicts between the Board and NOP staff.

Agency Response: AMS agrees that resolving conflicts between the Board and NOP staff is a priority, and is taking steps to accomplish this objective. An Executive Director for the Board will be hired by September 30, 2005; this individual, while a federal employee, will work closely with the Board to assist them in preparing their recommendations on materials and other issues related to the NOP regulations. NOP also has begun to work more closely with the Board to help them develop procedures to answer questions or address issues posed by NOP that may be somewhat controversial in nature. These issues (and the procedures) may involve taking public comment at public meetings in accordance with FACA, and drafting recommendations to request that NOP publish guidance on various regulatory issues. The Board expects to vote on these new procedures at its upcoming August 2005 meeting. Thus, AMS expects to complete these initiatives to address this recommendation by September 30, 2005.

Recommendation 3. Develop and implement procedures for receiving, reviewing, and implementing recommendations from the Board on revisions to the National List.

Agency Response: AMS concurs with this recommendation. Since the review, NOP has worked diligently to develop a new statement of work for Technical Advisory Panels to perform scientific analyses on materials submitted to the Board for review and approval. NOP also has increased the submission requirements for petitioners submitting materials for TAP reviews to NOP. NOP also worked with the Board to develop more documented procedures for the Board to submit to NOP to explain their recommendations based on the scientific evidence provided from TAP reviews, in order to facilitate the rulemaking process. These procedures should increase the efficiency of processing future Board recommendations regarding materials to be added to the National List. Final procedures will be completed by September 30, 2005.

Recommendation 4. Develop and implement procedures for reviewing and validating ARC recommendations on the accreditation of certifying agents.

Agency Response: AMS concurs with this recommendation. Since the review, NOP staff have met with ARC staff to develop a formalized process for review and validation of ARC recommendations on accreditation of certifying agents. Final procedures will be completed by September 30, 2005.

Recommendation 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 parties.

Agency Response: AMS concurs with this recommendation. In January 2005, AMS issued a Federal Register notice to all interested parties explaining how guidance would be issued to clarify program regulations. Such guidance will use the Federal Register and NOP web site, and will include regular annual updates. AMS also has developed and begun to disseminate procedures to its certifying agents for communicating about administrative processes under the NOP regulations, including all applicable regulations under subpart G of 7 CFR 205. Final procedures will be established by September 30, 2005. In addition, AMS is reconstructing the NOP website to bring it into conformance with USDA's new website design, which will facilitate use by all outside parties.

Recommendation 6. Develop and implement procedures for reviewing and adjudicating appeals of noncompliance decisions.

Agency Response: AMS concurs with this recommendation. Since the review, NOP staff have worked with Compliance staff and the Office of the General Counsel to develop procedures for review and adjudication of all adverse action decisions. Procedures will be finalized by September 30, 2005.

Recommendation 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.

Agency Response: AMS concurs with this recommendation. NOP has begun working with Compliance staff to develop procedures for evaluating complaints, including determination of complaints that may need policy interpretation from NOP, and procedures for informing affected parties of the status of their complaints. Final procedures will be developed no later than September 30, 2005.

Recommendation 8. Resolve the eight complaints from FY 2003 that require an interpretation of NOP regulations.

Agency Response: AMS concurs that the eight complaints requiring an interpretation of NOP regulations should be resolved, and will strive to do so no later than September 30, 2005.

Recommendation 9. Develop and implement procedures for maintaining and controlling cost-share programs.

Agency Response: AMS concurs with this recommendation. Since the review, procedures have been implemented for maintaining and controlling cost-share programs under the two separate programs. Cost-share procedures will be annually reviewed and updated as appropriate by the close of each fiscal year (September 30).

Recommendation 10. Develop and implement procedures for making equivalency determinations.

Agency Response: The Office of the U.S. Trade Representative (USTR) has sole authority to engage foreign nations in discussions of trade matters. When such discussions involve the NOP regulation, AMS serves as the technical advisor to USTR. AMS has had draft operating procedures for making equivalency determinations since March 2004, and has been holding them in draft form pending on-going negotiations to determine whether changes were needed. AMS will publish the draft procedures for public comment by December 31, 2005.