



U.S. Department of Agriculture

Office of Inspector General



# **Followup on the Agricultural Marketing Service's Purchases of Frozen Ground Beef**

Audit Report 01601-02-Hy  
April 2010



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



April 12, 2010

REPLY TO

ATTN OF: 01601-02-Hy

TO: Rayne Pegg  
Administrator  
Agricultural Marketing Service

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

FROM: Tracy LaPoint /s/  
Acting Assistant Inspector General  
for Audit

SUBJECT: Followup on the Agricultural Marketing Service's Purchases of Frozen  
Ground Beef

This report presents the results of our audit of AMS' program to purchase frozen ground beef for use in USDA's nutrition assistance programs. Your response to the official draft report, dated April 6, 2010, is included as exhibit C. 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 11 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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# Followup on the Agricultural Marketing Service's Purchases of Frozen Ground Beef 01601-02-Hy

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## Executive Summary

We evaluated the Agricultural Marketing Service's (AMS) oversight of its program to purchase frozen ground beef. AMS uses this program<sup>1</sup> to purchase frozen ground beef products for the Food and Nutrition Service's (FNS) Federal food and nutrition assistance programs, such as the National School Lunch Program (NSLP). To operate this program, AMS provides ground beef product requirements to all potential contractors through Announcement LS-120,<sup>2</sup> and the Technical Requirements Schedule (TRS).<sup>3</sup> We initiated the audit, in part, because of a record recall of raw and frozen ground beef in February 2008. We also followed up on recommendations we made in a prior report<sup>4</sup> on this program's operations to assess AMS' corrective actions. For the 2008 school year (July 1, 2007 to June 30, 2008), AMS awarded 332 contracts to 21 suppliers to purchase 137 million pounds of frozen ground beef at an approximate cost of \$207 million for use in Federal food and nutrition assistance programs.

AMS, in response to the recommendations from our previous audit (see exhibit A), had significantly improved its controls to ensure that contracted suppliers of ground beef for FNS' food and nutrition assistance programs complied with Federal purchasing requirements. Even though AMS implemented our prior recommendations, we found that in certain areas, these controls and procedures needed to be further strengthened. Specifically, we noted that agency officials had not performed a cost-benefit analysis to determine whether ground beef suppliers should be required to carry bonding or insurance to safeguard the U.S. Department of Agriculture (USDA) against monetary losses associated with product recalls. In addition, we identified weaknesses that affected AMS' ability to: (1) monitor supplier performance; (2) select product samples for laboratory testing; and (3) monitor laboratory performance and results. These conditions could reduce AMS' assurance that frozen ground beef products purchased for use in FNS food and nutrition assistance programs, such as the NSLP, consistently meet required product specifications.

The following summarizes the weaknesses we identified in AMS' controls over purchases of frozen ground beef.

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<sup>1</sup> Title 7, Code of Federal Regulation (C.F.R.) 36.2.

<sup>2</sup> Announcement LS-120 contains the requirements for each product, bidding and acceptance procedures, and contract provisions.

<sup>3</sup> The TRS contains written specifications and requirements that suppliers must follow, including specifications for product formulation, manufacturing, packaging, sampling and testing requirements, and quality assurance provisions.

<sup>4</sup> Agricultural Marketing Service Management Controls to Ensure Compliance with Purchase Specifications Requirements for Ground Beef, Audit Report No. 01099-31-Hy, September 2005.

## Supplier Liability

AMS officials did not require suppliers to obtain bonding<sup>5</sup> or insurance to cover costs related to recalls; they informally decided, several years earlier,<sup>6</sup> that the cost of a bond or insurance would exceed the benefit gained in the ground beef program. However, the agency did not conduct an analysis and could not provide documentation to support this determination. In 2008, AMS paid over \$13 million<sup>7</sup> to State and local governments to remove, dispose of, and replace over 20 million pounds of ground beef that a supplier recalled due to noncompliance with regulatory requirements. In addition, AMS billed this supplier over \$67 million for the recall of 50 million pounds of ground beef purchased between February 2006 and February 2008 for the FNS food and nutrition assistance programs; the supplier, who is out of business, is unlikely to pay this amount.

## Monitoring Supplier Performance

In a prior audit, we recommended that AMS implement a process to accumulate, summarize, review, and analyze repetitive non-conformances, program violations, commodity complaints, and positive test results for all participating suppliers. In response to this recommendation, AMS developed the Contractor Monitoring Program to analyze non-conformances issued to ground beef suppliers. However, weaknesses continued to exist that could potentially allow ineligible suppliers to provide product to the Federal food and nutrition assistance programs. For instance, AMS' procurement staff evaluated critical and major non-conformances separately, rather than in the aggregate, when determining a supplier's eligibility.<sup>8</sup> They agreed, however, that suppliers' aggregate non-conformances should be factored in when assessing eligibility. In addition, the procurement staff did not accurately identify and input supplier non-conformances in their tracking system<sup>9</sup> used to monitor suppliers' continued eligibility. This occurred because procurement staff did not have controls for accurately entering non-conformances in the tracking system for ground beef suppliers, and also did not establish policy for entering non-conformances related to boneless beef suppliers. As a result, AMS officials have reduced assurance that procurement staff is monitoring supplier compliance effectively. These weaknesses allowed at least 924,000 pounds of frozen ground beef products to enter the NSLP during school year 2008, from a supplier whose eligibility had not been properly evaluated by

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<sup>5</sup> A performance bond is a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a contractor. (Federal Acquisition Regulation, Part 28 103.2)

<sup>6</sup> AMS officials were unable to remember the dates when management decided that it was too costly to require suppliers to obtain bonding or insurance to cover recall expenses.

<sup>7</sup> AMS obtained approval from a former Secretary of Agriculture to use USDA funds to pay for the removal, disposal, and replacement of product, costs which are normally the responsibility of the supplier. The supporting decision memoranda explained that the Secretary had the authority to use the funds for these purposes.

<sup>8</sup> AMS' monitoring of suppliers includes (1) identifying discrepancies between the agency's approved production methods and field staff observations and (2) complaints received through FNS from recipients of the purchased ground beef. AMS named these differences and complaints "non-conformances." A non-conformance is AMS' determination that the supplier has deviated from program requirements, and requires corrective action on the part of the supplier. If a supplier has two critical or three major non-conformances (see exhibit B for definition) within 30 calendar days, the supplier is considered ineligible until AMS has verified the supplier's corrective actions.

<sup>9</sup> AMS uses three spreadsheets to ensure compliance with requirements. The first spreadsheet summarizes the reports prepared by the field staff on product quality and the results of compliance reviews of the suppliers. The second spreadsheet is a master listing of non-conformances issued against suppliers. The third spreadsheet lists the number of non-conformances by supplier for the last 30 calendar days.

AMS. This product was, however, subject to the agency's food safety and quality testing requirements and was found to be in compliance.

### **Laboratory Testing**

Two of the four suppliers we visited did not use proper procedures for selecting samples for beef microbial testing. One supplier did not ensure the entire day's production of AMS product was included in the sampling universe. This supplier had multiple production lines, of which only one line was tested for microbial contamination. The other supplier did not ensure that the TRS' requirements for sampling were being followed according to agency-approved laboratory protocols. These occurred because AMS officials at the first supplier did not include the provisions for sampling from multiple production lines<sup>10</sup> in the TRS, while AMS officials at the second relied on the supplier and onsite personnel to provide laboratory protocols to their staff and to AMS reviewers. As a result, some of the reviewers did not provide the degree of oversight required by the protocols.

### **Laboratory Monitoring**

We found that AMS officials used a laboratory with an expired accreditation<sup>11</sup> to conduct fat analyses, did not reject boneless beef product in 10 of 18 instances when testing found results exceeding critical limits that would have caused ground beef products to be rejected, and did not ensure that the database with the results of laboratory analyses contained consistent and accurate information. For example, one supplier entered 42 unique variations of its establishment number when submitting laboratory samples. As a result, AMS has reduced assurance that the laboratory met applicable standards or adequately used laboratory data to monitor program activity.

AMS officials stated that they had not been aware that laboratory accreditations had to be renewed. They agreed that the boneless beef testing requirements, if changed to be consistent with the ground beef requirements, would strengthen the overall program.

As part of our review, we assessed AMS' coordination with other USDA agencies involved in the commodity program. We found that AMS effectively coordinated with both the Food Safety and Inspection Service and FNS regarding the commodity program.

To strengthen its controls over the ground beef program, AMS awarded a contract to the National Academy of Sciences after our fieldwork to evaluate the current food safety requirements. The evaluation will consider all technical and purchase documents that provide requirements related to food safety in the process of manufacturing ground beef items and the testing of materials throughout the process from slaughter to delivery of product to the recipient.

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<sup>10</sup> The majority of participating suppliers operate a single production line.

<sup>11</sup> Accreditation is a formal recognition of competence that a laboratory can perform specific tests or calibrations. AMS-selected laboratories are accredited by the International Standards Organization, which specifies the general requirements a laboratory needs to meet in order to demonstrate its competence to carry out tests and/or calibrations. The requirements cover testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods. The requirements are applicable to all organizations that perform test and/or calibrations.

Upon completion of its evaluation, the National Academy of Sciences will provide recommendations to AMS on how to perform future periodic evaluations compared to industry and recognized best practices.

## **Recommendation Summary**

We recommended that AMS officials conduct an analysis of the costs and benefits of requiring suppliers to obtain bonding or insurance to protect USDA's interest in case a supplier fails to produce product according to program requirements. We also recommended that AMS strengthen controls to monitor supplier performance by revising eligibility procedures to include instructions on dealing with situations where combinations of critical and major non-conformances exist and by developing controls to ensure that data recorded are accurate. In addition, AMS should improve its controls over product sampling by amending the technical requirement<sup>12</sup> to specify that finished beef products that a supplier produces each day from a single source on multiple lines be subject to microbial testing, and that references to laboratory protocols be incorporated into the supplier's technical proposal through specific requirements in the TRS. Also, we recommend that AMS improve oversight of laboratory activities by ensuring the laboratories have valid accreditations, and ensuring the consistent and accurate entry of information in the database.

### **Agency Response**

AMS agreed with the report's 11 recommendations. We have incorporated AMS' response with the recommendations in this report, along with the OIG position. AMS' response to the draft report is included, in its entirety, in exhibit C.

### **OIG Position**

Based on AMS' response, we were able to reach management decision on the report's 11 recommendations.

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<sup>12</sup> The TRS is a document provided by AMS which provides instructions to potential suppliers on how to formulate, manufacture, pack, and ship ground beef products.

## **Background & Objectives**

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### **Background**

The Agricultural Marketing Service's (AMS) Commodity Procurement Branch purchases commodities for distribution to schools, child and adult care centers, and homeless shelters. AMS purchases the commodities for the National School Lunch Program (NSLP) and other food and nutrition assistance programs administered by the Food and Nutrition Service (FNS), which operate in over 101,000 public and non-profit private schools nationwide, as well as residential childcare institutions. The programs serve over 30 million children with nutritious lunches each day. During fiscal years 2007 and 2008, AMS purchased an average of 138 million pounds of frozen beef products costing approximately \$214 million each year.

Officials of AMS' Livestock and Seed Program are responsible for performing three major functions related to Federal food and nutrition assistance programs: (1) auditing and certification to ensure compliance with program requirements; (2) contracting activities to purchase meat and fish; and, (3) developing standards and purchasing specifications for meat and fish products. AMS operates ground beef procurement activities through four branches of the Livestock and Seed Program, as follows:

- Commodity Procurement Branch - develops and coordinates purchase plans in accordance with Federal Acquisition Regulations. They prepare bids, evaluate offers, and award contracts for commodities delivered to FNS-approved recipients;
- Meat Grading and Certification Branch - determines the quality and yield of carcasses and certifies livestock, meat, and meat products according to buyer specifications. In addition, the Meat Grading and Certification Branch provides oversight for microbial sampling of beef products;
- Audit, Review, and Compliance Branch - conducts onsite reviews to ensure that suppliers' application of USDA standards and specifications are within acceptable limits. In addition, this division also monitors the services and evaluates the effectiveness of the programs administered by the Meat Grading and Certification Branch; and
- Standard, Analysis, and Technical Branch - develops, promulgates, and revises standards and purchase specification for beef products.

Procurement officials provide AMS requirements to all potential suppliers through a series of documents, which include, but are not limited to, Announcement LS-120<sup>13</sup> and Technical Requirements Schedule (TRS) for Frozen Ground Beef. In these documents, AMS instructs potential suppliers on how to formulate, manufacture, pack, and ship ground beef products. Additionally, all potential suppliers must submit for AMS' approval a Technical Proposal explaining how they will comply with all these provisions.

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<sup>13</sup> Announcement LS-120, "Purchase of Frozen Beef Products for Distribution to Child Nutrition and Other Federal Food and Nutrition Programs."

To monitor supplier performance, the procurement staff's tracking system uses three spreadsheets to ensure compliance with requirements. The first spreadsheet summarizes the reports prepared by the field staff<sup>14</sup> on product quality and the results of compliance reviews of suppliers for the school year. Using information from field reports, the procurement staff consults with Standards, Analysis, and Technical Branch personnel to categorize each non-conformance as minor, major, or critical (see exhibit B). The second spreadsheet is a master listing of non-conformances issued against suppliers for the school year. The third spreadsheet lists the number of non-conformances, by supplier, for the last 30 calendar days. Under AMS guidelines, a contracting officer should determine a supplier to be ineligible when two critical or three major non-conformances occur in a 30-day period. However, the contracting officer may allow suppliers with these types of non-conformances to continue to participate if they take adequate corrective action or request a waiver.

Product sampling is conducted to provide assurance of processing sanitation and product safety. Therefore, AMS requires the supplier to take a sample of its beef product being produced for the Federal food and nutrition assistance programs for laboratory testing both before and after the grinding process. Supplier personnel are responsible for preparing the product sample for testing, but the AMS grader<sup>15</sup> provides oversight of the sample preparation process to ensure that sample integrity is maintained and the sample is selected, prepared, and shipped in accordance with agency requirements. In addition, the AMS grader is responsible for completing laboratory forms, printing sample labels, and assuring that samples are secured in tamper-proof sampling bags.

Samples are provided to an approved designated laboratory for microbial testing<sup>16</sup> and fat testing. The samples are analyzed and the results are recorded in a database maintained by the designated laboratory. AMS field and Headquarters staffs are responsible for analyzing and monitoring the test results.

In September 2005, we issued a report<sup>17</sup> that evaluated AMS' program to purchase frozen ground beef products and determined that AMS did not have adequate controls in place to ensure that ground beef purchased from qualified suppliers always met quality standards. As noted in exhibit A, we found that AMS implemented recommendations to ensure that rejected product is adequately separated from product being supplied to the Federal food and nutrition assistance programs and that sampling procedures are adequate to eliminate sampling bias. AMS also implemented our recommendation to continuously evaluate supplier eligibility and the overall performance of suppliers.

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<sup>14</sup> This refers to the Meat Grading and Certification Branch and the Audit, Review, and Compliance Branch. In this report, these employees are referred to as "field staff."

<sup>15</sup> The AMS graders are only present at the ground beef plants.

<sup>16</sup> Microbial testing is one of several activities AMS uses to verify that beef products accepted into AMS' programs are free of *Salmonella* and *E.coli* O157:H7, and do not exceed acceptable levels of bacteria such as *Coliform* and *E.coli*.

<sup>17</sup> Agricultural Marketing Service Management Controls to Ensure Compliance with Purchase Specification Requirements for Ground Beef, Audit Report No. 01099-31-Hy, September 2005.

To strengthen its controls over the ground beef program, AMS awarded a contract to the National Academy of Sciences to evaluate the current food safety requirements. The evaluation will consider all technical and purchase documents that provide requirements related to food safety in the process of manufacturing ground beef items and the testing of materials throughout the process from slaughter to delivery of product to the recipient. Upon completion of its evaluation, the National Academy of Sciences will provide recommendations to AMS on how to perform future periodic evaluations compared to industry and recognized best practices. his text is Body Text Indent 0. It will stay in this style until you select another.

## **Objectives**

Our objective was to evaluate the effectiveness of AMS' oversight of the purchase of frozen ground beef for use in the FNS food and nutrition assistance programs. Specifically, we evaluated AMS' management controls for: (1) overseeing suppliers' production processes; (2) monitoring the eligibility status of suppliers; (3) conducting microbial sampling of ground beef products; and (4) coordinating with respective Federal agencies involved in the commodity program. In addition, we also determined whether AMS took appropriate actions to implement the recommendations from our prior audit report.

## **Section 1: Supplier Liability**

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### **Finding 1: Analysis Needed to Support Nonuse of Bonding/Insurance**

AMS did not require contracted ground beef suppliers to obtain bonding<sup>18</sup> or insurance to cover costs related to recalls. The AMS program manager explained they did not use them because they had informally determined several years ago that it was not cost-effective. However, the agency could not provide documentation to support this determination. AMS paid over \$13 million<sup>19</sup> to State and local governments to remove, dispose of, and replace over 20 million pounds of ground beef that one supplier recalled due to noncompliance with regulatory requirements. In addition, although AMS officials billed the supplier over \$67 million for 50 million pounds of unacceptable ground beef that AMS had purchased for FNS' food and nutrition assistance programs, the supplier is out of business and is unlikely to pay this amount.

The Federal Acquisition Regulations state that agencies may require some suppliers with contracts that exceed \$100,000 to acquire bonding or insurance to protect the Government's interest. Agencies that use bonding or insurance can protect the Government's interest and defray costs if the supplier is not able to meet the terms of the contract. According to Announcement LS-120, the supplier is responsible for removal and replacement of recalled products.

On February 17, 2008, a supplier announced that it was voluntarily recalling approximately 143 million pounds of raw and frozen beef products. The Food Safety and Inspection Service (FSIS) designated this recall as Class II because there was a remote possibility that the beef products could cause adverse health effects if consumed.<sup>20</sup> On February 19, 2008, AMS terminated all existing contracts with this supplier because AMS determined that the supplier failed to meet requirements in accordance with all applicable FSIS regulations, directives, and notices. This represented the largest recall to date. As a result, AMS suspended, and later debarred, the supplier for 3 years.

AMS officials determined that the supplier was liable for costs to recall all products provided under all USDA contracts from February 2006 through February 2008, which totaled 50 million pounds of ground beef. As a result, they billed the supplier for over \$67 million in April 2008 for the recalled ineligible product. The supplier discontinued operations in February 2008 and has not paid any of these costs. In addition, AMS officials paid over \$13 million for the removal, destruction, and replacement of 20 million pounds of frozen ground beef remaining in inventory around the country.

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<sup>18</sup> A performance bond is a surety bond issued by an insurance company or a bank to guarantee satisfactory completion of a project by a supplier. (Federal Acquisition Regulation, Part 28 103.2)

<sup>19</sup> AMS obtained approval from the then Secretary of Agriculture to use USDA funds to pay for the removal, disposal, and replacement of product. The supporting decision memoranda explained that the Secretary had the authority to use the funds for these purposes.

<sup>20</sup> FSIS assesses the public health concern or hazard presented by a product being recalled. FSIS classifies the concern as one of the following: a Class I recall involves a health hazard situation where there is a reasonable probability that eating the food will cause health problems or death; a Class II recall involves a health hazard situation where there is a remote probability of adverse health consequences from the use of the product; and a Class III recall involves a situation where the use of the product will not cause adverse health consequences.

AMS officials stated that they do not require suppliers to obtain bonding or insurance to cover the costs of a product recall. They stated that agency reviewers assess a supplier's financial records to determine if the supplier has the financial resources to complete the work, rather than whether they are able to bear the cost of a product recall. An AMS official stated that they might need to consider performing periodic - as opposed to one-time - assessments of contactors' financial records. However, they also explained that they had determined in an informal review several years ago that using bonds or insurance was not beneficial and decided not to require them. The officials stated that they did not conduct a formal analysis, did not obtain cost information on bonding or insurance, and did not document their conclusion. According to these officials, 2008 was the first time that AMS actually incurred significant costs associated with a recall, and they believed it unlikely that such a large recall would take place again. AMS officials agreed to reconsider their earlier conclusion on bonding/insurance as well as the pre-award assessment policy.

In a separate audit,<sup>21</sup> we concluded that the events that necessitated the 2008 ground beef recall did not result from systemic problems. However, the potential for future situations that could force USDA to pay the cost of recalls is unknown. Therefore, we believe program officials need to review and evaluate whether their policies need to be changed to protect USDA's financial interests in the future.

### **Recommendation 1**

T Analyze the costs and benefits of requiring suppliers to obtain bonding or insurance at a reasonable cost and, if feasible, require them for future contracts. This assessment should be documented, performed periodically, and adjusted as necessary.

### **Agency Response**

AMS officials stated that they would develop and implement written internal procedures to periodically analyze and formally document the cost-effectiveness of requiring contractors to obtain a bond or insurance to protect the interests of the government. If an analysis indicates that requiring a bond or insurance is cost-effective and in the best interest of the government, the officials stated that appropriate contractual requirements would be implemented. They stated that the economic analysis would be completed, and an appropriate determination made, by June 2010. If determined appropriate based on this analysis, the requirement would be effective at the start of school year (SY) 2010-2011.

### **OIG Position**

We accept AMS' management decision.

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<sup>21</sup> Evaluation of FSIS Management Controls Over Pre-Slaughter Activities, Audit Report No. 24601-0007-KC, November 2008.

## **Recommendation 2**

Reevaluate agency policy regarding the need to conduct a financial analysis of suppliers, not only at initial entry into the program but also on a periodic basis thereafter.

### **Agency Response**

AMS officials stated that they will revise agency internal procedures to provide for the periodic financial analysis of contractors. Since this is an internal control action, they stated that it would be implemented by May 2010.

### **OIG Position**

We accept AMS' management decision.

## Section 2: Supplier Monitoring

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### Finding 2: Inadequate Criteria to Determine Bidder Eligibility

AMS' procurement staff determines supplier eligibility based on criteria that define deficiencies found during on-site monitoring reviews and user-complaints as critical, major, or minor non-conformances. The procurement staff determines a supplier to be ineligible when it has been issued either two critical or three major non-conformances within a period of 30 calendar days. In response to our prior audit, AMS made significant improvements in their controls and procedures for the ground beef program. However, we found that these changes did not address the situations involving combinations of critical and major non-conformances for ground beef suppliers. This occurred because AMS officials had not considered developing guidelines to address occurrences of this type, and instead evaluated each category of non-conformance separately. The lack of guidelines could potentially allow suppliers with combinations of major and critical non-conformances to remain eligible for program participation, while suppliers with lesser non-conformances within a single category could be determined ineligible.

According to agency procedures, the procurement staff's evaluation of a supplier's eligibility considers any non-conformances identified through FNS' complaint system or by AMS field staff.<sup>22</sup> The procurement staff categorizes each non-conformance as critical, major, or minor based on its impact on the quality, safety, or value of the product, (see exhibit B for definitions of major, minor and critical non-conformances). The accumulation of at least two critical or three major non-conformances within 30 days results in the supplier being determined ineligible to provide product under an existing contract or to bid on new contracts until AMS determines that the non-conformances have been satisfactorily addressed. Based on AMS' defined categories, a critical non-conformance is worse than a major non-conformance. We found, however, that procurement staff considered each category separately, even where a combination of critical and major non-conformances existed, because AMS has no guidelines in place for evaluating such situations. The chart<sup>23</sup> below illustrates the inconsistency in evaluation criteria.

<i>Total Non-Conformances issued to a Bidder<sup>24</sup> within 30 days</i>	<i>Bidder's status</i>
2 critical non-conformances	Ineligible
2 major non-conformances and 1 critical non-conformance	Eligible
3 major non-conformances	Ineligible

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<sup>22</sup> Either the Audit, Review, and Compliance Branch (reviewers) or the Meat Grading and Certification Branch (graders).

<sup>23</sup> The chart was created by OIG from AMS data.

<sup>24</sup> AMS awards contracts to suppliers based on the lowest bids for delivery of ground beef products to designated points. Until the supplier wins an award, the supplier is a bidder.

We discussed this condition with AMS officials, who stated that they treated the categories separately and did not consider that combinations should be factored into the determination of the supplier's eligibility. However, as shown above, this can result in inequitable situations where some suppliers may be determined ineligible, while others with more severe non-conformances are still considered eligible. AMS officials stated that they had not previously considered an aggregate analysis of the non-conformances and would consider revising their procedures based on our discussions.

### **Recommendation 3**

Revise eligibility procedures to analyze and address aggregate combinations of non-conformance categories, particularly those involving critical and major non-conformances.

### **Agency Response**

The requirements for contractor to remain eligible to participate in the ground beef purchase program are set forth in the Contractor Monitoring Program (CMP) which monitors a vendor's performance over time. In addition to declaring vendors ineligible for repeated nonconformance violations in a 30-day period, AMS officials agreed to revise the contractor eligibility requirements contained in the CMP to analyze and take action on aggregate combinations of critical, major and minor non-conformances. This new standard will be part of the AMS enhanced food safety purchase requirements for its beef suppliers for AMS supported food and nutrition assistance programs. Agency officials stated that since this action would be implemented by changes in contractual requirements, it would be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, they estimated a June 2010 completion date for implementation.

### **OIG Position**

We accept AMS' management decision.

### **Finding 3: Supplier Non-Conformances Excluded from Agency Oversight Procedures**

We reviewed 149 field staff reports prepared between June 2007 and May 2008, and found 21 instances where the procurement staff either did not include or did not accurately record non-conformances when determining suppliers' continued eligibility under the agency's Contractor Monitoring Program (CMP). We found that 10 of the 21 non-conformances, involving boneless beef suppliers, were not recorded in the tracking system at all because the procedure only required that non-conformances for ground beef suppliers be recorded. The remaining 11 non-conformances, involving ground beef products, were incorrectly identified in the spreadsheet due to a lack of controls to ensure data accuracy. As a result, AMS has reduced

assurance that supplier eligibility is being effectively monitored, or that cases are being identified where significant non-conformances may affect a contactor's eligibility. We noted one case in which an ineligible ground beef supplier was allowed to participate in the program.

AMS procedures require the procurement staff to identify all reports with non-conformances issued by field staff reviewers, as well as complaints received from FNS. The procurement staff then inputs the data into a spreadsheet, which functions as a tracking system for monitoring suppliers' continued eligibility as part of the CMP.

AMS field reviewers identified 21 non-conformances at 13 suppliers between July 1, 2007, and June 10, 2008. Of these, 1 was categorized as critical, 11 as major, and 9 as minor. The problems we found are described in the following paragraphs.

### Boneless Beef Suppliers

Boneless beef suppliers provide raw boneless products to the ground beef suppliers that grind and sell product to AMS for use in Federal food and nutrition assistance programs. We found that AMS officials excluded all non-conformances found at boneless beef suppliers from the CMP. For 7 of 21 boneless beef suppliers that provided product for school year 2008, we identified 10 non-conformances (1 major and 9 minor, none of which affected the suppliers' eligibility) in reviewer reports that were not included in the data file. Four of these were repeat non-conformances.

An official of AMS' contracting office stated that at the time they developed the agency procedures, they did not consider the need to track non-conformances from boneless beef suppliers. They attributed this to a misunderstanding that arose following the issuance of OIG's prior audit report, which addressed ground beef suppliers only.<sup>25</sup> However, the need to ensure that only quality products are used in the NSLP and other food and nutrition assistance programs applies to boneless beef as well. Thus, we believe that AMS needs to record non-conformances involving boneless beef marketed to the Federal food and nutrition assistance programs, and to take appropriate actions when these are found.

### Ground Beef Suppliers

For 6 of the 11 ground beef suppliers, we identified 11 non-conformances (1 critical and 10 major), in field staff reports, that were either inadvertently omitted or entered incorrectly in the CMP tracking system. According to the contracting officer, one person inputs these results from the reports and uses a manual system to check files off once they are entered. He stated that although he reviews the records from the results periodically, there are no procedures or controls in place such as second party review to ensure that data entered are accurate and complete.

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<sup>25</sup> Agricultural Marketing Service Management Controls to Ensure Compliance with Purchase Specifications Requirements for Ground Beef, Audit Report Number 01099-31-Hy, September 2005.

For instance, one of the six suppliers was issued a non-conformance by AMS field staff that was not included in the tracking system. Because of this, the contracting officer was unaware of the non-conformance – which involved microbial requirements for the presence of bacteria<sup>26</sup> – and did not ensure that corrective action was taken before awarding a new contract to this supplier. According to agency procedures,<sup>27</sup> an AMS reviewer must verify that the supplier ensures its manufacturing process can achieve acceptable microbial results on 20 lots within 60 calendar days. We found that AMS awarded this supplier a contract to provide 924,000 pounds of ground beef without confirming that the supplier had corrected the non-conformance. After the contract was awarded, the supplier began processing ground beef in September 2007; however, the non-conformance remained outstanding until a pre-award review<sup>28</sup> was conducted in November 2009.<sup>29</sup> A process for conducting second party reviews of the tracking system’s data entry could have disclosed the error in time for AMS to require corrective action before awarding the subsequent contract.

To ensure that only quality beef products are used in the NSLP and other programs for which AMS purchases ground and boneless beef, we believe that AMS needs to institute policy to record non-conformances for both ground and boneless beef products, and to strengthen its controls to ensure that all non-conformances are being recorded as required.

#### **Recommendation 4**

Revise CMP requirements to include non-conformances identified for boneless beef suppliers and ensure that non-conformances are correctly recorded and evaluated, and that appropriate action is taken.

#### **Agency Response**

As a part of the AMS enhanced food safety purchase requirements for its beef suppliers for AMS supported food and nutrition assistance programs, AMS officials agreed to revise the CMP to include non-conformances identified for subcontractors (i.e., boneless beef suppliers). The revised CMP would include procedures on how subcontractor non-conformances will be documented, recorded and evaluated, and the actions that will be taken to address individual and aggregate non-conformances. In addition to this requirement, AMS officials agreed to review vendor commercial performance as part of their eligibility for AMS supported nutrition programs. Since this action would be implemented by changes in contractual requirements, it would be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, officials estimated a June 2010 completion date for implementation.

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<sup>26</sup> This refers to the Standard Plate Count test for “indicator” bacteria.

<sup>27</sup> TRS Ground Beef 2007, Announcement Livestock and Seed 120, Purchase of Frozen Beef Products for Distribution to Child Nutrition Program, dated August 2007. These procedures require a supplier to prove the capability of their process to achieve acceptable microbial results within 60 days.

<sup>28</sup> Pre-award reviews are only performed at the time a prospective supplier bids for a contract, or makes changes to an existing technical proposal. For this particular supplier, this did not occur again until November 2009.

<sup>29</sup> This product was, however, subject to the agency’s food safety and quality testing requirements and was found to be in compliance.

**OIG Position**

We accept AMS' management decision.

**Recommendation 5**

Develop, document, and implement controls, such as second party reviews, to ensure that non-conformance data entered into the CMP records are both accurate and complete.

**Agency Response**

In order to ensure the accurate and complete recording non-conformance data entry, AMS officials agreed to revise internal agency procedures to provide for a second party review of non-conformance data and entries each month. Since this is an internal control action, they estimated that it would be implemented by May 2010.

**OIG Position**

We accept AMS' management decision.

## **Section 3: Laboratory Testing**

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### **Finding 4: Suppliers Not Sampling All Production Lines**

At one establishment, we found that the supplier did not select a microbial analysis sample from each production line of finished ground beef product produced on the day of our visit. The plant manager and the Audit, Review, and Compliance staff were not aware that the sampling method used was contrary to program requirements, which we attributed to AMS' lack of clear instructions for selecting samples. As a result, the samples used in the laboratory's analysis for microbial contamination represented only the products from a single production line on any given day, rather than the supplier's entire ground beef production from three different lines. The supplier at which we noted this condition was a ground beef operation with multiple production lines. On the day of our visit, supplier employees used three production lines<sup>30</sup> to produce coarse ground beef, fine ground beef, and ground beef patties,<sup>31</sup> all destined for Federal programs. The supplier assigned each of these three products a unique lot number. We observed that the supplier randomly selected the microbial sample from only the coarse ground beef production line, but did not sample the remaining two production lines.

We questioned the supplier about sampling only one production line, since it received product from various sources which might not always be represented in each line's production on a daily basis. The manager explained that the sample represented the day's production according to AMS' definition of a production lot. In the TRS, AMS officials define a "lot" as the amount of finished ground beef produced from "cleanup to cleanup," which could mean the entire finished product for the entire day. The TRS requires that each lot be tested for microbial contamination, and the entire lot could be suspect if a test yields a positive result.

By analyzing reports of the agency's monthly onsite reviews from June 2007 through July 2008, we verified that only one of the multiple production lines was sampled each day. In 9 of the 12 AMS reports<sup>32</sup> produced during this period, we found that the AMS reviewer observed that the plant sampled product from only one of the multiple production lines on the day of the review.

During our site visit, we discussed our observations with onsite AMS personnel who explained that they considered the sampling method used to be correct. Our review of AMS' written procedures disclosed no guidance on this subject. AMS officials stated that these procedures were long-standing accepted protocols. They also stated that if the analyses of the sampled lines were determined not to be in compliance with the TRS requirements for pathogens or indicator microbes, the production from all three lines would have been rejected.

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<sup>30</sup> The majority of the suppliers participating in the Federal food and nutrition assistance program operate a single production line.

<sup>31</sup> Suppliers can produce eight different ground beef product types. There are four different types of ground beef patties (regular, irradiated, soy protein added, and less than 10 percent fat content), three different types of fine ground beef (10-pound bulk chubs, 10-pound bulk chubs irradiated, and 1-pound chubs) as well as coarse ground beef.

<sup>32</sup> From the other three reports, the number of sample lines could not be determined from the data provided in the reports.

We discussed this procedure with the AMS program manager, who agreed that the sampling regimen could be strengthened by a composite sample from all production lines, not just the single line. They agreed to clarify TRS instructions to redefine the definition of a “lot” to include sampling from all production lines.

## **Recommendation 6**

Revise technical requirements for suppliers that operate multiple production lines, to specify that product from each production line must be sampled for microbial testing.

## **Agency Response**

As part of the AMS enhanced food safety purchase requirements, AMS officials agreed to revise the TRS for ground beef to require that microbial samples be randomly selected from all production lines in those facilities operating simultaneous multiple lines. Since this action would be implemented by changes in contractual requirements, it would be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, they estimated a June 2010 completion date for implementation.

## **OIG Position**

We accept AMS’ management decision.

## **Finding 5: Laboratory Protocol Requirements Need to Be Incorporated into the TRS**

We found that some AMS personnel, as well as employees from one of the four boneless beef suppliers we visited, were not always aware of laboratory-established protocols for sampling boneless beef products for microbiological testing. We attributed this to the fact that AMS did not require that these protocols be incorporated into the TRS, which all AMS and supplier employees could have accessed, and instead depended upon supplier personnel and AMS reviewers to disseminate protocols. As a result, we observed that an employee at one supplier did not use the specified method when obtaining a boneless beef sample for microbiological testing.

AMS has the authority<sup>33</sup> to develop, revise, suspend, or terminate standards as needed. AMS officials work with FNS officials, FSIS officials, and potential vendors to develop the specifications for product formulation, manufacturing, packaging, sampling, testing, and quality. AMS issues the specifications requirements in the TRS, and also approves each supplier’s Technical Proposal which explains how it will comply with all these provisions.

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<sup>33</sup> Title 7, Code of Federal Regulation (C.F.R.) 36.2.

The specifications provide written descriptions of ground beef commodities and specific requirements that suppliers must follow to meet USDA's contract for producing and delivering commodities. AMS periodically revises the specification requirements, which can change as new circumstances arise, such as emergence of different foodborne organisms.

At one supplier, we observed an employee taking samples of boneless beef from the top layer of the combo bin (a bin with about 2,000 pounds of boneless beef). According to a protocol letter issued on October 20, 2007, the laboratory instructed<sup>34</sup> suppliers to use a sterile sampling device or meat hook to remove the top layer of meat to access the secondary layer of meat in the combo. This supplier was not aware of the new instruction because laboratory protocols were not required by the TRS to be incorporated into the supplier's technical proposal. AMS Headquarters officials relied on the suppliers and AMS reviewers to obtain the new protocols from the laboratory.

The supplier's Quality Control Manager stated that he was unaware of this requirement, which was contained in a letter sent by the laboratory in 2007. He stated that he may have filed it but forgot about the requirement since AMS did not include it in the TRS. The AMS reviewer was also unaware of the specific requirement.

The Standards, Analysis, and Technical Branch Chief stated that each laboratory has sampling protocols, approved by AMS, and it would not be practical to include all of them in the TRS. The Branch Chief relies on the Audit, Review, and Compliance staff to check that the suppliers comply with approved operating procedures. The Branch Chief also stated that a requirement that each supplier include the laboratory protocols in every technical proposal could be included in the TRS.

AMS officials agreed that the method used by this supplier was incorrect and confirmed that the supplier employee we observed needed to remove the top layer as part of the sampling process. The officials have stated that they are in the process of clarifying the procedures because of the misunderstanding the plant officials had with the procedures.

## **Recommendation 7**

Include in the TRS a requirement that each supplier include the applicable sampling protocols in its technical proposal.

## **Agency Response**

As part of the AMS enhanced food safety purchase requirements, AMS officials agreed to revise the TRS to require each contractor and subcontractor to include the most current microbial sampling protocols for boneless beef and ground beef into their technical proposals. Since this action would be implemented by changes in contractual requirements, it would be effective for

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<sup>34</sup> Silliker Sampling Protocol Letter, dated October 20, 2007.

the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, officials estimated a June 2010 completion date for implementation.

**OIG Position**

We accept AMS' management decision.

## Section 4: Laboratory Monitoring

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### Finding 6: Controls Needed to Ensure Laboratory Accreditation

AMS used a laboratory with an expired accreditation<sup>35</sup> to conduct fat analyses on frozen ground beef products provided to the NSLP. This occurred because AMS officials did not have controls to ensure that the laboratories maintained their accreditation. As result, AMS has reduced assurance that this laboratory, which conducted regulatory fat testing of over 2 million pounds of product, met all applicable accreditation standards.

AMS contracts with private laboratories to analyze the product samples provided by contracted suppliers of ground beef or other meat products. The analyses performed by these laboratories include fat analysis and tests for specified microbial organisms, including Standard Plate Count,<sup>36</sup> *Coliforms*, *E.coli*, *E.coli* O157:H7, *Salmonella*, and *Staphylococci*. These laboratory analyses determine whether the product complies with microbial and fat quality specifications. The laboratories provide test results via e-mail to the suppliers, the grader, and the AMS Contracting Officer. To provide assurance of a laboratory's accuracy, AMS requires laboratories that conduct microbial and fat analyses to have an accreditation by the American Association for Laboratory Accreditation.<sup>37</sup> Accreditations expire after 2 years and laboratories must be re-accredited.

At the time of our audit, AMS officials were using two contract laboratories to perform the required laboratory tests. AMS officials contacted both laboratories to determine if their accreditations were current. Based on this information, we found that one of the laboratories' accreditation had expired in June 2008.<sup>38</sup> This laboratory performed fat tests on over 2 million pounds of frozen ground beef products provided to the FNS food and nutrition assistance programs from the date of expiration through July 2008. AMS officials stated that they did not track the status of accreditations, and instead relied on the contract laboratories to ensure that the necessary accreditations were maintained. As a result of the lack of accreditation, AMS terminated the laboratory's contract on July 31, 2008. AMS now contracts with the one remaining laboratory to perform all testing.

Laboratory accreditation is an important safeguard to ensure the testing accuracy of laboratories that perform microbiological and other analyses of ground beef products that are used in the NSLP and other Federal food and nutrition assistance programs. Therefore, we believe that AMS needs to establish controls to ensure that laboratories continue to maintain their accreditation as long as they hold AMS contracts.

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<sup>35</sup> Accreditation is a formal recognition of competence that a laboratory can perform specific tests or calibrations. AMS-selected laboratories are accredited by the International Standards Organization, which specifies the general requirements for a laboratory to demonstrate its competence to carry out tests and/or calibrations. The requirements cover testing and calibration performed using standard, non-standard, and laboratory-developed methods. The requirements are applicable to all organizations that perform tests and/or calibrations.

<sup>36</sup> Standard Plate Count is also referred as aerobic plate count, which indicates the bacteria levels found in ground beef.

<sup>37</sup> The American Association for Laboratory Accreditation is a non-profit, non-governmental, public service membership organization dedicated to operating a nationwide, broad spectrum laboratory accreditation system.

<sup>38</sup> The laboratory accreditation lapsed because the laboratory did not pass their audit conducted by the American Association for Laboratory. The laboratory did not receive their new certificates until December 3, 2008.

## Recommendation 8

Develop and implement controls to ensure that contract laboratories maintain current accreditations.

### Agency Response

AMS officials stated that all existing laboratory contracts have been reviewed to ensure they are current on accreditations. In addition by May 2010, they agreed to develop and implement written internal procedures to track the status of contract laboratories' required accreditations. The tracking would be subject to periodic reviews by a second party.

### OIG Position

We accept AMS' management decision.

## Finding 7: AMS Needs To Reject Boneless Beef Product When Critical Limits Are Exceeded

Of the more than 17,000 tests performed on ground and boneless beef for indicator bacteria<sup>39</sup> during the period January 2007 to June 2008,<sup>40</sup> only 18 exceeded AMS' critical limits. However, AMS officials did not identify and reject the lots of boneless beef product associated with 10 of these 18 tests.<sup>41</sup> This occurred because although the standards for ground beef required that product be rejected if test results met or exceeded any of the established critical limits for indicator bacteria, this requirement was not included in the standards for boneless beef. AMS officials agreed that the standards for both boneless and ground beef should be the same. As a result, over 218,000 pounds of boneless beef product entered FNS food and nutrition assistance programs despite having levels of indicator bacteria that would have caused ground beef products to be rejected.

According to the TRS, Appendices B and C, a quality control program must specifically address management of microbial data to comply with requirements. However, the two appendices contain differing standards. Appendix C, Ground Beef Products, states that production lots of ground beef will not be allowed for delivery to USDA when microbial test results meet or exceed any of the critical limits within the TRS requirements listed. This requirement is not contained in Appendix B, Boneless Beef Products, except for microbial testing for *Salmonella* and *E.coli* O157:H7, both of which have a zero tolerance. AMS officials attributed the difference in the standards to their intent to evaluate boneless beef suppliers on a larger systemic basis than

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<sup>39</sup> Indicator bacteria are groups of bacteria that are indicative of the possible presence of organisms of concern, such as pathogens. AMS considers Aerobic Plate Count, Total *Coliforms*, and generic *E.coli* as indicator bacteria for boneless beef. For ground beef, AMS considers these and *Staphylococci* as indicator bacteria. According to the Center for Disease Control, the presence of the bacteria indicated by these tests can cause such diseases as food poisoning, cholera, and gastroenteritis. AMS uses tests of indicator bacteria to assess the sanitary condition of the plant. In addition, this test is used for determining product eligibility.

<sup>40</sup> Although our audit scope covered the period of July 2007 to June 2008, the laboratory results provided by AMS also covered the earlier period of January through May 2007.

<sup>41</sup> Although 8 lots were rejected, this was because of previous sanitary issues in the plants rather than because of indicator bacteria results.

was the case for suppliers of finished ground beef products. Therefore, while a single test result for indicator bacteria that exceeds critical limits would cause a ground beef shipment to be rejected, a boneless beef shipment would not be rejected unless this occurred twice within 20 consecutive lots. We identified 10 instances in which AMS did not reject boneless beef products even though microbial tests exceeded AMS' critical limits. For one of these, the bacteria count was 25 million colonies of indicator bacteria per gram, or 50 times the critical limit that would have led to the product's rejection had it been ground beef rather than boneless.

AMS officials explained that, except for *Salmonella* and *E.coli* O157:H7, they determine eligibility by a meat establishment's operating status and the number of times a laboratory test exceeded the critical limits. They stated that beef product with indicator bacteria 50 times the established critical limit would be a questionable health risk. AMS officials also stated that a beef product with such a high level of indicator bacteria would have been rejected because of its smell alone. However, we noted that the cited product was not rejected and that under existing standards would be considered eligible since there were no other laboratory tests that exceeded the critical limit within a 20-day cycle. As a result, we questioned whether this product, totaling 218,000 pounds of boneless beef, should have been eligible for FNS' food and nutrition assistance programs. The AMS officials agreed that changing the requirements for boneless beef products to be the same as the more stringent requirements currently applied to ground beef products would strengthen the overall purchase program. To remain abreast with commercial requirements and to strengthen the ground beef program, AMS officials stated that the agency has contracted with the National Academy of Sciences to provide expert advice on ways to improve their current food safety requirements.

## **Recommendation 9**

Revise the critical limit requirements for indicator bacteria for boneless beef to be consistent with the requirements for ground beef purchases.

## **Agency Response**

As part of AMS enhanced food safety requirements, AMS officials agreed to tighten the upper specification and critical limits for indicator microbes in the TRS for both boneless beef and ground beef. The microbial critical limits established for boneless beef will equal or otherwise be consistent with the critical limits specified for finished product ground beef. Further, they stated that the TRS revisions will specify that all lots of boneless beef that exceed the established critical limits for indicator microbes will not be acceptable for AMS ground beef purchases. Since this action would be implemented by changes in contractual requirements, it would be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, they estimated a June 2010 completion date for implementation.

## **OIG Position**

We accept AMS' management decision.

## **Finding 8: Controls Over Laboratory Data Needed to Ensure Accuracy**

The database that AMS uses to capture the results of laboratory analyses did not contain accurate and complete information. AMS also had not established procedures on how data should be recorded, which resulted in some data fields being left blank while others contained inconsistent and/or inaccurate information. This occurred because AMS relied on supplier employees and onsite AMS personnel to input data with no spot-checking by AMS reviewers to ensure data accuracy and completeness. AMS Headquarters personnel did not monitor the database for accuracy. As a result, AMS or other outside reviewers could not effectively evaluate data accuracy and supplier compliance with program requirements.

In accordance with the TRS, AMS is responsible for monitoring suppliers' conformance with program requirements to ensure eligibility. AMS accomplishes this by reviewing the data captured by the AMS-designated laboratory, which maintains and analyzes the data captured. AMS has oversight responsibility for ensuring data integrity. AMS collects, organizes, and interprets test results from the AMS-designated laboratory data to assess sanitary conditions of the plants and product eligibility.

We analyzed the data recorded by the AMS-designated laboratory to determine its accuracy and completeness. Our analysis included the test results recorded for the 1,776 ground beef samples, 15,400 boneless beef samples, and 984 fat samples performed from January 2007 through June 2008. We noted the following conditions:

- The database did not have complete microbial test results<sup>42</sup> for 1 of 21 suppliers. For the *Salmonella* tests performed for 20 production days for this supplier, we identified 3 entries where the supplier did not record the product weight tested. The supplier stated its staff overlooked entering the weights tested, but asserted that they had conducted the tests for the production lots. The procurement and laboratory staffs did not identify this missing data because the agency and laboratory did not have internal control procedures for validating the completeness of information in the database.
- The database did not record the lot size for the ground beef being tested. For example, one supplier did not enter the actual product weight for 929 of 1,266 entries. Instead, this supplier recorded the amounts as 'N/A,' '65%,' '85%,' or left the field blank. Another supplier used 'N/A,' 'not given,' and other similar descriptions instead of the actual weights for 1,144 of 1,501 entries. AMS staff did not question these types of entries because they did not perform reviews to spot check the data.
- Suppliers did not use consistent establishment and lot identification numbers. This would assist the agency in product recall by identifying the lots in question. For example, one supplier entered 42 unique variations of its establishment numbers and another used 'composite' as the lot number in 281 of 455 entries.

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<sup>42</sup> For School Year 2008, this supplier provided 2,100,000 pounds of ground product to the AMS program.

- AMS also could not obtain information on the disposition of ineligible product in a timely manner. The database did not include disposition information and AMS relied on the ground beef supplier to maintain it. For example, our review identified in March 2008 that one lot of boneless beef product had a positive *Salmonella* test result. We requested AMS officials to provide information on the disposition of this product to ensure that it had not entered into FNS food and nutrition assistance programs. We requested the product disposition information on August 7, 2008; however 35 days had elapsed before AMS officials were able to provide the information on September 12, 2008. We made similar requests for information on the disposition of questionable product that officials could not answer or answered after several months had passed. AMS relies on the suppliers to retain disposition records. AMS should record the disposition of product determined ineligible due to laboratory testing in AMS' designated laboratory database.

In addition, we found that AMS managers were not being provided with any standard, periodic reports on key program activities, such as reports on microbial testing results. In addition, they were unable to use the database to verify that all laboratory tests were being performed as required, or to identify trends in test results that might require action on their part.

AMS officials agreed that important laboratory information is contained in their database and it needs to be accurate. They stated they produce, at yearend, a series of charts that show trends in *Salmonella* and *E.coli* O157:H7 positives. During our audit, AMS initiated some actions to enhance the reliability of the data recorded on laboratory test results. For example, AMS instructed the contract laboratory not to accept any sample request forms that are not complete and accurate. Suppliers are required to provide the numeric value of the pounds of product produced. AMS should implement detailed procedures for the types of data to record and institute validation procedures to ensure the data are accurate and complete.

### **Recommendation 10**

Develop and implement procedures to specify the types of laboratory data to record, such as the disposition of product determined ineligible based on laboratory tests.

### **Agency Response**

AMS officials agreed to develop and implement internal written procedures that set forth the data and information, including the lot number, weight of lot, and federal establishment number, that must be provided by contractors and subcontractors to the contract laboratory prior to the start of analyses. They stated that the information and data will be periodically audited by a second party to ensure entries are complete and accurate

Relative to the disposition of product determined to be ineligible for the ground beef purchase program, they stated that the TRS would be revised to require contractors and their subcontractors to report the final disposition of non-complying product in writing to the contracting officer. AMS would also maintain a database of non-complying products and the related dispositions. They stated that the agency would require, as part of monthly program

audits, that the disposition of ineligible products reported by contractors and subcontractors are accurate and substantiated by documentary records.

Since the preponderance of this action would be implemented by changes in contractual requirements, they stated that it would be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, officials estimated a June 2010 completion date for implementation.

### **OIG Position**

We accept AMS' management decision.

### **Recommendation 11**

Include controls to ensure data quality, such as the use of AMS reviewers to spot check data entry. As part of this, produce and distribute standard management reports to top managers on a periodic basis to monitor key program activities.

### **Agency Response**

AMS officials stated that, in addition to actions already mentioned in the audit to enhance the reliability of data recorded, data will also be subject to monthly audits to ensure accuracy. AMS officials agreed to develop and implement written internal procedures to ensure the completeness and accuracy of data used to monitor and evaluate contractor and subcontractor performance.

Relative to the agency's standard management reports, they stated that information on aggregate microbial, fat and overall contractual performance data for all contractors and subcontractors would be compiled and analyzed each month. A written protocol for standardized reports identifying actual levels and trends would be developed to provide this information to senior program managers. Since this is an internal control action, officials estimated that it would be implemented by May 2010.

### **OIG Position**

We accept AMS' management decision.

## ***Scope and Methodology***

We performed our audit at AMS Headquarters in Washington, D.C., two ground beef suppliers, two boneless beef suppliers and one cold storage facility from June 2008 to September 2009. To accomplish our objectives, we discussed operations related to the purchase of ground beef with AMS officials and reviewed supporting documentation. We focused our review on the four branches of AMS' Livestock and Seed Program: (1) Commodity Procurement Branch (2) Audit, Review and Compliance Branch (3) Meat Grading, and Certification Branch, and (4) Standards, Analysis, and Technology Branch. We also assessed the implementation of prior audit recommendations related to the scope of this audit.

AMS awarded 332 contracts to 21 suppliers that provided 137 million pounds of frozen ground beef worth \$207 million to Federal food and nutrition assistance programs for school year 2008.

We obtained the microbial results for 21 suppliers for the period of January 2007 to June 2008 to evaluate how AMS uses this information for program monitoring. This data included the test results recorded for 1,776 ground beef samples, 15,400 boneless beef samples, and 984 fat tests.

We visited two ground beef suppliers located in Amarillo, Texas and Chicago, Illinois, and two boneless beef suppliers located in Hereford, Texas and Gibbon, Nebraska. We selected these suppliers for review based on the volume of contracts AMS awarded and the number of positive *Salmonella* test results reported. At the suppliers, we observed sanitary procedures, sampling methods, and AMS review processes. We also analyzed documentation supporting a sample of product purchased by AMS to ensure the product met purchase specification requirements. The sample included the two largest contracts awarded to the suppliers in school year 2008. At the boneless suppliers, which slaughter cattle, we also observed whether suppliers handled livestock in a humane manner.

AMS conducts on-site reviews to ensure suppliers meet specification requirements. We reviewed and evaluated 131 reports issued during school year 2008, which covered 21 suppliers, to determine the thoroughness and timeliness of the reviews.

To assess the NSLP product complaint process, we contacted FNS officials to determine the number of complaints received from the ground beef recipients for school year 2008 (July 1, 2007 to June 30, 2008). FNS received 32 complaints<sup>43</sup> concerning problems with the ground beef provided for the NSLP.

During our audit, we evaluated AMS' coordination with FSIS by reviewing test results provided to the plants and with FNS by reviewing the complaint process used by the schools. We conducted our audit in accordance with Generally Accepted 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 conclusion based on our objectives.

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<sup>43</sup> The complaints involved foreign material in the ground beef, improper sealing, and the appearance and/or color of the product.

We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

## ***Abbreviations***

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AMS	Agricultural Marketing Service
CFR	Code of Federal Regulations
CO	Contracting Officer
FNS	Food and Nutrition Service
FSIS	Food Safety and Inspection Service
OIG	Office of Inspector General
SY	School Year
TRS	Technical Requirement Schedule
USDA	U.S. Department of Agriculture

***Exhibit A: Followup on OIG’s Prior Recommendations***

<b>Rec. No.</b>	<b>Report Recommendations Addressed by Audit Report 01099-31-Hy</b>	<b>Management Decision<sup>44</sup> Yes/No</b>	<b>Adequate Actions by AMS Yes/No</b>
1	Establish procedures requiring plants to maintain documentation to ensure that products not in conformance with specification requirements regarding contamination with <i>Salmonella</i> are adequately identified, segregated, and controlled, and not used in the production of commodities purchased by AMS for distribution to the National School Lunch Program and other Federal food and nutrition assistance programs.	Yes	Yes
2 <sup>45</sup>	Implement a process to accumulate, summarize, review, and analyze repetitive non-conformance violations, commodity complaints, and positive test results for each supplier.	Yes	Yes
3 <sup>46</sup>	Establish a process for measuring supplier performance to determine when corrective action should be initiated.	Yes	Yes
4 <sup>47</sup>	Institute management controls to ensure that contracts are not awarded to suppliers with outstanding non-conformances.	Yes	Yes
5	Require that plants accepted to supply beef to AMS establish adequate sampling procedures and methodologies to select boneless and ground beef samples for microbial, fat, and objectionable material testing.	Yes	Yes
6	Establish written procedures for the review of contractors’ technical proposals to ensure that accepted proposals include detailed procedures and documentation demonstrating that the contractor will apply an effective sampling process that is free of bias or manipulation. The procedures should ensure that samples are representative of the total universe of beef products purchased by AMS samples are selected from areas throughout the bins and samples for microbial contamination include surface testing.	Yes	Yes

<sup>44</sup> Management decision is an agreement between the agency and OIG on the corrective actions to address recommendations.

<sup>45</sup> AMS implemented a process to accumulate, summarize, review and analyze repetitive non-conformances for ground beef suppliers, but did not include boneless beef suppliers.

<sup>46</sup> AMS established the non-conformance’s criteria as critical, major or minor: with two critical or three major affecting the supplier’s ability to participate in the program. However, AMS did not include any combinations of different categories as affecting the supplier’s ability to participate.

<sup>47</sup> AMS established the evaluation process for ground beef suppliers, but did not include boneless beef suppliers.

Exhibit A presents the six recommendations from our prior audit report: Agricultural Marketing Service Management Controls to Ensure Compliance with Purchase Specifications Requirements for Ground Beef, report number 01099-31-Hy, released September 2005. There are four columns in this exhibit. The first column lists the recommendation number. The second column describes what we recommended. The third column indicates whether management decision was reached. The fourth column indicates whether or not each recommendation was implemented.

## ***Exhibit B: Contractor Monitoring Program***

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The following is included in the third amendment to AMS' Announcement LS-120, dated August 2007, which describes the categories used when issuing non-conformances.

“In addition, the contractor’s performance on contracts, awarded by USDA, will be evaluated on a 30 consecutive day (rolling) cycle. The evaluation will consist of any non-conformances that were identified by the ARC [Audit, Review and Compliance] Branch auditor or MGC [Meat Grading and Certification] Branch certification agent and customer complaints identified through the Food and Nutrition Service complaint system. The non-conformances will be categorized as critical, major, and minor based on their impact on the quality, safety, or value of the involved product. The accumulation of at least two critical or three major non-conformances within the cycle will result in the contractor being ruled as non-responsible [AMS will ignore any bids received from these contractors] by the Contracting Officer and will render the contractor ineligible to submit offers for consideration by AMS. To attain responsible status, the contractor must submit appropriate corrective and preventative measures to AMS for evaluation and the measures must be verified by AMS as effective. The contractor will be notified by the Contracting Officer when eligibility to submit offers has been reinstated. The microbial and fat content test results will continue to be separately analyzed under statistical process controls.

The criteria for the three categories of non-conformances are as follows:

### Critical

**Production non-conformances**--a complete breakdown of the production process has occurred. It is apparent that the company cannot produce product that complies with contract requirements.  
**Consumer complaints**--product that does not meet specification requirements and is not useable to the end recipient or is a food safety risk.

### Major

**Production non-conformances**--major deviation from the production process has occurred that significantly impacts the quality or performance of the product. It is questionable that the company can produce product that complies with contract requirements.  
**Consumer complaints**--product that does not meet the quality standards of the specifications and affects the use of the product by the end recipient. The product does not pose a food safety risk.

### Minor

**Production non-conformances**--minor deviation from the production process has occurred that minimally impacts the quality or performance of the product. It is likely that the company can produce a product that complies with contract requirements.  
**Consumer complaints**-- product that does meet the quality standards of the specifications and does not affect the use of the product by the end recipient. The product does not pose a food safety risk. Information is provided by the Food and Nutrition Service (FNS) as part of a trend analysis and no vendor response is required by FNS.”

**USDA'S**

**AGRICULTURAL MARKETING SERVICE**

**RESPONSE TO AUDIT REPORT**



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

DATE: April 7, 2010

TO: Gil H. Harden  
Acting Assistant Inspector General for Audit  
Office of Inspector General

FROM: Rayne Pegg /s/  
Administrator

SUBJECT: AMS' Response to OIG Audit #01601-02-Hy: Followup on the Agricultural Marketing Service's Purchases of Frozen Ground Beef

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**

**April 1, 2010**

This is the response of the Agricultural Marketing Service (AMS) to an audit of its ground beef purchase program controls by the Department of Agriculture's (USDA) Office of the Inspector General (OIG). The audit results, conclusions, findings and recommendations are set forth in Audit Report 01601-2-Hy. The field work for the audit was conducted by OIG officials from June 2008 to September 2009. The official draft report was submitted to AMS for a response on March 5, 2010.

### **BACKGROUND:**

Ground beef products have been purchased by USDA for donation to Federal food and nutrition assistance programs for over 60 years under requirements that are periodically changed to reflect advancements in food and microbiological testing and intervention technology, food safety, science and good manufacturing practices. AMS technical and contracting representatives constantly monitor ongoing program purchases, vendor performance, best industry practices, recipient agency feedback and published research findings, data and materials. Based upon these and other sources of information and data, changes are made each year to continuously improve the quality and safety of the purchased products and overall program controls.

OIG officials audited the AMS ground beef purchase program from June 2008 through September 2009, which primarily encompassed school year (SY) 2008-2009 (i.e., July 1, 2008-June 30, 2009). During this timeframe, AMS purchased and delivered to Federal food and nutrition assistance programs approximately 143.9 million pounds of ground beef at a cost of \$252.3 million with a minimal number of minor complaints from recipient agencies and not a single report of a food borne illness. This represents the delivery of over 700 million individual servings of safe, high quality ground beef products to end-user consumers without incident. To ensure that the products produced for the more than 300 contracts awarded during the course of the audit were in compliance with all contractual and specification requirements, ongoing AMS controls included, but were not limited to, monitoring and evaluating the results of over 40,000 microbiological and fat analyses, the direct daily performance of contractors as determined by in-plant meat acceptance specialists, and monthly audit reports of both contractors and subcontractors. Additionally, AMS monitors recipient agency complaints and the results of Food Safety and Inspection Service (FSIS) regulatory compliance actions.

### **OVERVIEW:**

As indicated by OIG, the audit was initiated, in part, due to a record recall of ground beef in February 2008, and to follow up on recommendations made in their 2005 audit report. Based upon their findings, OIG determined that in certain areas, "...controls and procedures needed to be further strengthened." Specifically, OIG noted that, "...agency officials had not performed a

cost-benefit analysis to determine whether ground beef suppliers should be required to carry bonding or insurance to safeguard ...against losses associated with product recalls.” OIG also identified, “...weaknesses that affected AMS’ ability to: (1) monitor supplier performance; (2) select product samples for laboratory testing; and, (3) monitor laboratory performance and results.” OIG reported that, “These conditions could reduce AMS’ assurance that frozen ground beef products...consistently meet required product specifications.”

In response to OIG’s findings, AMS believes that it currently exercises significant and substantial management controls over the ground beef purchase program, as evidenced by the continuing successful delivery of safe, high quality ground beef products to Federal food and nutrition assistance programs. That being said, AMS views the recommendations contained in the audit report as an additional opportunity to contribute to the Agency’s ability to continuously improve the safety and quality of ground beef products provided to recipient agencies.

Separate and apart from the OIG audit and recommendations, AMS has initiated two external reviews and a number of other actions to strengthen program controls and the safety and quality of ground beef products. First, AMS has entered into an agreement with the National Academy of Sciences (NAS) to evaluate the current food safety requirements of the ground beef purchase program. The designated NAS committee members will consider all current AMS purchase requirements related to food safety for the manufacture of ground beef items and the testing of materials (including laboratory accreditation and protocols for the selection, delivery, analysis and reporting of results) from harvest of the animals to delivery of product to the recipient agency. We have asked the NAS assessment to: (1) include a thorough evaluation of the scientific validity of current technical requirements and methods; (2) benchmark those processes and methods against recognized industry leading programs which supply product directly to consumers through retail sales or food service operations; and, (3) provide recommendations to AMS on how to perform future periodic evaluations against industry recognized best practices. We anticipate that the NAS findings and recommendations will be received in October 2010.

Second, in response to an AMS request, senior officials at FSIS and the Agricultural Research Service (ARS) with expertise in food safety, microbiology and good manufacturing practices independently reviewed the ground beef purchase requirements and provided recommendations in March 2010 for strengthening the safety and quality of the purchased ground beef products. AMS plans to implement changes recommended by FSIS and ARS for upcoming school year purchases (beginning in July 2010).

It is important to note that many of the changes to be implemented by AMS for the upcoming purchase cycle will go well beyond the recommendations provided by OIG. AMS will implement very prescriptive changes in areas such as sampling frequency, sample size and upper specification and critical limits for indicator microbes to strengthen the safety and quality of the ground beef products it purchases. All of the revisions planned by AMS will be compatible with or serve to enhance the OIG recommendations. Additionally, AMS and FSIS will be formally

sharing performance information on federally inspected facilities to improve upon our unified Departmental approach to food safety.

### **Finding 1: Analysis Needed to Support Nonuse of Bonding/Insurance**

#### **Recommendation 1**

Analyze the costs and benefits of requiring suppliers to obtain bonding or insurance at a reasonable cost and, if feasible, require them for future contracts. This assessment should be documented, performed periodically, and adjusted as necessary.

#### **Agency Response**

AMS will develop and implement written internal procedures to periodically analyze and formally document the cost-effectiveness of requiring contractors to obtain a bond or insurance to protect the interests of the government. If an analysis indicates that requiring a bond or insurance is cost-effective and in the best interest of the government, appropriate contractual requirements will be implemented.

Since requiring contractors to obtain a bond or insurance would need to be implemented by changes in contractual requirements, it would be effective at the start of the SY 2010-2011 purchase cycle in July 2010, if justified by the economic analysis. Accordingly, we estimate a June 2010, completion date for completing the economic analysis and implementing the recommendation, if appropriate.

#### **Recommendation 2**

Reevaluate agency policy regarding the need to conduct financial analysis of suppliers, not only at initial entry into the program but also on a periodic basis thereafter.

#### **Agency Response**

AMS will revise internal procedures to provide for the periodic financial analysis of contractors. This action is designed to protect the interests of the government. Since this is an internal control action, it will be implemented by May 2010.

## **Finding 2: Inadequate Criteria to Determine Bidder Eligibility**

### **Recommendation 3**

Revise eligibility procedures to analyze and address aggregate combinations of non-conformance categories, particularly those involving critical and major non-conformances.

### **Agency Response**

The requirements for contractors to remain eligible to participate in the ground beef purchase program are set forth in the Contractor Monitoring Program (CMP) that monitors a vendor's performance over time. In addition to declaring vendors ineligible for repeated nonconformance violations in a 30-day period, AMS will revise contractor eligibility requirements contained in the CMP to analyze and take action on aggregate combinations of critical, major and minor non-conformances (i.e., critical, major, minor and total non-conformances). This new standard will be part of the AMS enhanced food safety purchase requirements for its beef suppliers for AMS supported food and nutrition assistance programs.

Since this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

## **Finding 3: Supplier Non-Conformances Excluded from Agency Oversight Procedures**

### **Recommendation 4**

Revise CMP requirements to include non-conformances identified for boneless beef suppliers and ensure that non-conformances are correctly recorded and evaluated, and that appropriate action is taken.

### **Agency Response**

As a part of the AMS enhanced food safety purchase requirements for its beef suppliers for AMS food and nutrition assistance programs, AMS will revise the CMP to include non-conformances identified for subcontractors (i.e., boneless beef suppliers). The revised CMP will include procedures on how subcontractor non-conformances will be documented, recorded and evaluated, and the actions that will be taken to address individual and aggregate non-conformances. In addition to this requirement, AMS will be reviewing vendor commercial performance as part of their eligibility for AMS supported nutrition programs.

Since this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

#### **Recommendation 5**

Develop, document, and implement controls, such as second party reviews, to ensure that non-conformance data entered into CMP records is both accurate and complete.

#### **Agency Response**

In order to ensure the accurate and complete recording of non-conformance data entry, AMS will revise internal procedures to provide for a second party review of non-conformance data and entries each month. Since this is an internal control action, it will be implemented by May 2010.

#### **Finding 4: Suppliers Not Sampling All Production Lines**

#### **Recommendation 6**

Revise technical requirements for suppliers that operate multiple production lines, to specify that product from each production line must be sampled for microbial testing.

#### **Agency Response**

As part of the AMS enhanced food safety purchase requirements, AMS will revise the Technical Requirements Schedule (TRS) for ground beef to require that microbial samples be randomly selected from all production lines in those facilities operating simultaneous multiple lines.

Since this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

#### **Finding 5: Laboratory Protocol Requirements Need to Be Incorporated into the TRS**

#### **Recommendation 7**

Include in the TRS a requirement that each supplier include the applicable sampling protocols in their technical proposal.

## **Agency Response**

As part of the AMS enhanced food safety purchase requirements, AMS will revise the TRS to require each contractor and subcontractor to include the most current microbial sampling protocols for boneless beef and ground beef into their technical proposals.

Since this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

## **Finding 6: Controls Needed to Ensure Laboratory Accreditation**

### **Recommendation 8**

Develop and implement controls to ensure that contract laboratories maintain current accreditations.

## **Agency Response**

All existing laboratory contracts have been reviewed to ensure they are current on accreditations. By May 2010, AMS will develop and implement written internal procedures to track the status of contract laboratories' required accreditations. And the tracking will be subject to periodic reviews by a second party.

## **Finding 7: AMS Needs To Reject Boneless Beef Product When Critical Limits Are Exceeded**

### **Recommendation 9**

Revise the critical limit requirements for indicator bacteria for boneless beef to be consistent with the requirements for ground beef purchases.

## **Agency Response**

As part of the AMS enhanced food safety purchase requirements, AMS is tightening the upper specification and critical limits for indicator microbes in the TRS for both boneless beef and ground beef. The microbial critical limits established for boneless beef will equal or otherwise be consistent with the critical limits specified for finished product ground beef. Further, the TRS revisions will specify that all lots of boneless beef that exceed the established critical limits for indicator microbes will not be acceptable for AMS ground beef purchases.

Since this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

### **Finding 8: Controls Over Laboratory Data Needed to Ensure Accuracy**

#### **Recommendation 10**

Develop and implement procedures to specify the types of laboratory data to record, such as the disposition of product determined ineligible based on laboratory tests.

#### **Agency Response**

AMS will develop and implement internal written procedures that set forth the data and information, including the lot number, weight of lot, and federal establishment number, that must be provided by contractors and subcontractors to the contract laboratory prior to the start of analyses. Further, the information and data will be periodically audited by a second party to ensure entries are complete and accurate.

Relative to the disposition of product determined to be ineligible for the ground beef purchase program, the TRS will be revised to require contractors and their subcontractors to report the final disposition of non-complying product in writing to the contracting officer. Further, AMS will maintain a database of non-complying products and the related dispositions. AMS will also require, as part of monthly program audits, that the disposition of ineligible products reported by contractors and subcontractors are accurate and substantiated by documentary records.

Since the preponderance of this action will be implemented by changes in contractual requirements, it will be effective for the start of the SY 2010-2011 purchase cycle in July 2010. Accordingly, we estimate a June 2010, completion date for implementation.

#### **Recommendation 11**

Include controls to ensure data quality, such as the use of AMS reviewers to spot check data entry. As part of this, produce and distribute standard management reports to top managers on a periodic basis to monitor key program activities.

#### **Agency Response**

As mentioned in the audit, in addition to actions already taken to enhance the reliability of data recorded, data will be subject to monthly audits to ensure accuracy. AMS will develop and

implement written internal procedures to ensure the completeness and accuracy of data used to monitor and evaluate contractor and subcontractor performance.

Relative to standard management reports, aggregate microbial, fat and overall contractual performance data for all contractors and subcontractors will be compiled and analyzed each month. A written protocol for standardized reports identifying actual levels and trends will be developed to provide this information to senior program managers.

Since this is an internal control action, it will be implemented by May 2010.