



United States Department of Agriculture
Office of Inspector General





National Organic Program – Organic Milk Operations

Audit Report 01601-0002-32

What Were OIG's Objectives

Our audit objective was to evaluate organic milk operations' implementation of the access to pasture rule and to assess their compliance with USDA organic regulations.

What OIG Reviewed

We interviewed NOP personnel in Washington, D.C., as well as interviewed six NOP-accredited certifying agents. We also reviewed 25 organic milk operations in California, Minnesota, New York, Pennsylvania, and Wisconsin.

What OIG Recommends

We recommended that guidance for certifying agents be improved to ensure that all organic dairy producers are being treated consistently and ensure that all aspects of organic milk production are complying with USDA organic requirements.

OIG reviewed how the Agricultural Marketing Service, through the National Organic Program, implemented the access to pasture rule for organic dairy cattle.

What OIG Found

The Office of Inspector General (OIG) generally found that the Agricultural Marketing Service (AMS) successfully implemented the access to pasture rule as part of its National Organic Program (NOP), but we did identify several areas where the agency could make improvements.

For example, we noted that NOP officials had not clearly defined how producers should demarcate herds of organic milk-producing cattle, which meant that some certifying agents allowed producers to add cattle to organic herds (once a conventional dairy herd is converted (transitioned) to organic, all dairy animals added to the herd must have been born to an organically managed cow). We also noted that the NOP needs to include organic feed brokers within the NOP-certification process to ensure that organic feed is not commingled or contaminated. Also, certifying agents conducting yearly inspections of organic milk operations did not take consistent enforcement actions when their inspectors or reviewers identified possible noncompliance issues with U. S. Department of Agriculture (USDA) organic regulations. Finally, we found that smaller operations were often unaware of recordkeeping requirements of the access to pasture rule regarding livestock confinement, grazing, or the cattle's dry matter intake. AMS concurred with all of the recommendations.



United States Department of Agriculture
Office of Inspector General
Washington, D.C. 20250



DATE: July 15, 2013

AUDIT
NUMBER: 01601-0002-32

TO: Anne Alonzo
Administrator
Agricultural Marketing Service

ATTN: Frank Woods
Chief
Internal Audits Branch

FROM: Gil H. Harden
Assistant Inspector General for Audit

SUBJECT: National Organic Program – Organic Milk Operations

This report presents the results of the subject audit. Your written response to the official draft report, dated June 18, 2013, is included in its entirety at the end of this report, with excerpts and the Office of Inspector General's position incorporated into the applicable sections of the report.

Based on the written response, we have reached management decision on all of the report's recommendations. No further response by your agency to this office is required. Please follow your internal agency procedures in forwarding final action correspondence to the Office of the Chief Financial Officer. Also, please note that Departmental Regulation 1720-1 requires final action to be completed within 1 year of the date of management decision to preclude being listed in the Department's annual Agency Financial Report.

We appreciate the courtesies and cooperation extended to us by members of your staff during our audit fieldwork and subsequent discussions. This report contains publically available information and will be posted in its entirety to our website (<http://www.usda.gov/oig>) in the near future.

Table of Contents

Background and Objectives	1
Section 1: Certifying Agents’ Oversight of Compliance with NOP Standards	4
Finding 1: NOP Needs to Clarify Its Origin of Livestock Rule	4
Recommendation 1	5
Recommendation 2	6
Finding 2: NOP Should Ensure Feed Brokers Are Subject to Certifying Agents’ Oversight	7
Recommendation 3	7
Finding 3: NOP Needs to Provide Certifying Agents With Specific Guidance Concerning Enforcement Actions	9
Recommendation 4	11
Recommendation 5	11
Section 2: Organic Milk Operations’ Compliance with NOP Standards	13
Finding 4: NOP Should Evaluate Recordkeeping Requirements of the Access to Pasture Rule	13
Recommendation 6	14
Scope and Methodology	15
Abbreviations	17
Agency’s Response	19

Background and Objectives

Background

The Organic Foods Production Act, adopted as part of the 1990 Farm Bill, required the U.S. Department of Agriculture (USDA) to establish national standards for the production and handling of organic products to assure consumers that agricultural products marketed as organic meet consistent, uniform standards. The Act also required the establishment of an organic certification program, based on recommendations of a National Organic Standards Board (NOSB).¹ NOSB is appointed by the Secretary of Agriculture and includes: farmer/growers, handler/processors, retailers, consumer/public interests, environmentalists, scientists, and certifying agents. During implementation, the Secretary delegated the functions mandated by the Act to the Agricultural Marketing Service (AMS), the agency tasked with setting marketing standards.

Through regulations finalized in December 2000, USDA established the National Organic Program (NOP) as a marketing program within AMS.² NOP's mission is to develop, implement, and administer national standards that govern the marketing of agricultural products as organically produced, to facilitate commerce in fresh and processed food that is organically produced, and to assure consumers that such products meet consistent standards.

Based on NOSB recommendations, NOP developed national organic standards, established an organic certification program, and compiled a national list of allowed and prohibited substances in organic production and handling. To ensure that producers and handlers of organic products meet applicable requirements for products that are intended to be sold, labeled, or represented as organic, NOP accredits both U.S. and foreign third-party organizations, including State, nonprofit, and commercial entities, as certifying agents. Certifying agents verify that production and handling practices meet established standards.

An operation seeking organic certification can apply with any certifying agent.³ Organic operations must maintain an organic system plan⁴ agreed to by the operation and the certifying agent. Certifying agents conduct onsite inspections of the operation to verify that the documents submitted reflect the actual practices the operation follows. Based on the results of the onsite inspection, the certifying agent issues an organic certification.⁵

¹ As amended by Public Law 109-97, sections 2102 and 2104, November 10, 2005.

² *Federal Register*, "National Organic Program," volume 65, page 80548, December 21, 2000.

³ A certifying agent is defined as any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation.

⁴ An organic system plan is defined as a plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that describes in detail how the operation will achieve, document, and sustain compliance with USDA organic regulations.

⁵ A certification is defined as a determination made by a certifying agent that a production or handling operation is in compliance with USDA organic regulations, which is documented by a certificate of organic operation.

Once certified, the organic operation is responsible for notifying the certifying agent of any changes to the organic system plan. The certifying agent conducts annual onsite inspections of the organic operation and issues updated organic certificates. The organic certification continues in effect until it is surrendered by the organic operation or is suspended or revoked by the certifying agent, the State organic program's governing State official, or the AMS Administrator.

USDA organic regulations include an origin of livestock requirement, which provides instruction as to how dairy producers can obtain organic certification for their dairy herds. The origin of livestock requirement provides that conventional dairy cattle can be converted (transitioned) to organic dairy cattle by continually managing them organically for 12 months prior to the production of milk that is to be sold, labeled, or represented as organic. The origin of livestock requirement states that once an entire, distinct herd has been converted (transitioned) to organic production, all dairy animals shall be under organic management from the last third of gestation.

In February 2010, a final rule was published amending livestock and related provisions of the USDA organic regulations,⁶ commonly referred to as the "access to pasture" rule. This action was taken after AMS determined that existing regulations regarding access to pasture and the contribution of grazing to the diet of organically raised livestock lacked the necessary specificity and clarity to enable AMS to efficiently administer the program. The provisions in the regulations regarding access to pasture and conditions warranting temporary confinement were too general, which resulted in significant variations in practice. This action was also intended to satisfy consumer expectations that livestock graze on pastures and that pastures are managed to support grazing throughout the grazing season. Under the new rule, producers are now required to provide livestock with year-round access to the outdoors, recognize pasture as a crop, establish a management plan for pasture, incorporate the pasture management plan into their organic system plan, provide livestock with pasture throughout the grazing season for their geographical location (but no less than 120 days), and ensure livestock derive no less than 30 percent of their dry matter intake⁷ requirement from pasture grazed over the course of the grazing season. This rule became effective June 17, 2010, and was to be fully implemented by June 17, 2011.

Organic dairy sales have been one of the fastest growing segments of the U.S. organic industry in recent years. Sales of organic dairy products in 2011 were approximately \$4.3 billion, up 9.6 percent from 2010 sales of approximately \$3.9 billion. From 1999 to 2008, organic dairy sales grew at a compound annual growth rate of 23 percent.⁸

Like most organic products, organic milk is sold at a premium over nonorganic milk. According to AMS reports on average milk retail prices for 2012, nonorganic whole milk averaged \$4.44 per gallon, while organic whole milk averaged \$7.00 per gallon.⁹

⁶ *Federal Register*, "National Organic Program; Access to Pasture (Livestock)," volume 75, page 7154, February 17, 2010.

⁷ Dry matter is defined as the amount of feedstuff remaining after all the free moisture is evaporated out. Dry matter intake is defined as the total pounds of all feed, devoid of all moisture, consumed by a class of animals over a given period of time.

⁸ Organic Trade Association, "The Organic Trade Association's 2012 Organic Industry Survey," April 2012. The Organic Trade Association's 2013 survey of 2012 sales has not yet been published.

⁹ USDA AMS "Dairy Market Statistics – 2012 Annual Summary."

In February 2012, we reported that NOP can take steps to better ensure that consumers who choose to pay a premium for organic milk are receiving the high-quality product they wish to purchase. Specifically, NOP needs to develop guidance for certifying agents regarding detection of genetically modified material, provide greater transparency in its yearly list of USDA-certified organic operations, ensure certifying agents are adequately addressing milk transporter responsibilities in organic system plans, and develop guidance for certifying agents on conducting unannounced inspections.¹⁰

AMS has implemented corrective actions on six of the eight OIG audit recommendations. In 2012, NOP issued guidance to certifying agents regarding conducting unannounced inspections and for submitting their annual list of certified operations. In February 2013, NOP published two reports, titled *Biotech Test Methods and Protocols for Use in Organic Compliance*, addressing detection of genetically modified materials in organic feed, and *Modernized Certified Organic Operations Database Needs Assessment and Business Requirements*, providing guidance related to updating the list of certified operations database. AMS is working on corrective actions for the remaining two recommendations from OIG's 2012 report and has stated that training is planned for inspectors and certifying agents in anticipation of soon to be released guidance. Corrective actions for these two recommendations will be completed by the end of fiscal year 2013.

Objective

Our audit objective was to evaluate organic milk operations' implementation of the access to pasture rule and to assess their compliance with USDA organic regulations.

¹⁰ *Agricultural Marketing Service National Organic Program—Organic Milk* (Audit Report 01601-0001-Te, February 2012).

Section 1: Certifying Agents' Oversight of Compliance with NOP Standards

Finding 1: NOP Needs to Clarify Its Origin of Livestock Rule

As part of administering NOP, officials must clearly define what makes a dairy cow capable of producing organic milk, as well as how producers should demarcate the herds of milk-producing cattle. We found that certifying agents were interpreting USDA organic regulations differently. Some allowed organic herds to continue to be transitioned and producers to add cattle to organic herds. This occurred because the regulations are not clear in defining herds of organic cattle and need to be made more specific. As a result, consumer confidence in the organic milk certification process could be at risk.

While USDA organic regulations state that organic milk must be from animals that have been under continuous organic management,¹¹ beginning no later than 1 year prior to the production of organic milk, the regulations allowed an exception.¹² If an entire distinct herd of cattle was converted to organic production, the producer could, for the first 9 months of the year, provide dairy livestock a minimum of 80 percent organic feed and then provide 100 percent organic feed for the final 3 months.¹³ This provision became known as “the 80/20 exemption.” This exemption expired in June 2007.

Another related provision of the regulations states that once an entire, distinct herd has been converted to organic production, all dairy animals shall be under continuous organic management, as of the last one-third of the gestation period.¹⁴ In other words, no other cows can be converted into a herd that was originally converted using the 80/20 exemption.

Due to the lack of clarity in the current organic regulations, different certifiers interpret the requirements for transitioning cattle differently. USDA organic regulations do not define what constitutes an entire, distinct herd. Consequently, an entire, distinct herd can be interpreted as several hundred head of cattle or a few head of cattle. In October 2006, NOP published guidelines meant to clarify the existing origin of livestock rule.¹⁵ The guidelines allowed organic milk operations that were certified organic prior to October 21, 2002, or that transitioned their cattle by feeding them 100 percent organic feed during conversion, to acquire additional conventional cattle and transition them to an organic status. The guidelines prohibited organic milk operations that transitioned their cattle using the 80/20 exemption from transitioning additional cattle. This guidance document was archived¹⁶ by NOP on January 31, 2011, in anticipation of rulemaking to clarify the origin of livestock rule.

¹¹ Organic management is the care and maintenance of a dairy cow in accordance with USDA organic regulations, covering such things as feed, grazing, healthcare, living conditions, access to the outdoors, and confinement.

¹² Title 7, *Code of Federal Regulations* (CFR), section 205.236(a)(2).

¹³ 7 CFR 205.236(a)(2)(ii).

¹⁴ 7 CFR 205.236(a)(2)(iii).

¹⁵ NOP 5003 Guidance, “Dairy Animal Acquisition under the NOP Regulations,” October 3, 2006.

¹⁶ When a guidance, instruction, or policy memo is no longer needed or applicable for the conduct of day-to-day activities, the document is archived by NOP.

The origin of livestock rule allows organic milk operations to transition conventional dairy animals and, thus, save on organic feed costs during the time period associated with raising a dairy cow from birth until 12 months prior to the production of organic milk or milk products. This practice allows an increase of the dairy herd (and the organic milk market share) by purchasing conventional cattle and transitioning them into an organic herd. This may lead to dairy producers shopping for certifying agents who allow this process.

For example, our interviews with six certifying agents disclosed that three of the six allowed organic herds to continue to be transitioned and producers to add cattle to organic herds while the remaining three do not allow the additional conversion of conventional cattle to organic status. In addition, we identified one instance of a large dairy producer asking its certifying agent to allow them to purchase conventional cattle and transition these cows into an organic herd or be forced to switch certifying agents in order to gain approval for continual transitioning.

Over the last year, NOP has been actively drafting a proposed rule to clarify the conditions under which operations can transition dairy cows into organic production. NOP officials stated that rule making is a complicated, significant process, and program managers have been working with a number of stakeholders, from advocacy groups to dairy farmers, over the last 4 months to build awareness and support for the upcoming rule. NOP officials indicate that the proposed rule is nearing completion; NOP is working on the cost-benefit analysis associated with the rule. Once completed, the rule must work its way through the required review process that must be completed prior to publication.

Recommendation 1

Publish the proposed rule to clarify the origin of livestock requirements and definitions and to include language to strengthen controls to ensure that all certifying agents are applying the origin of livestock rule correctly and consistently.

Agency Response

NOP is currently completing its proposed rule related to the origin of livestock, which will clarify areas raised by OIG. The proposed rule will define the parameters around the allowance to transition dairy animals into organic production. AMS plans to submit a draft proposed rule into Departmental clearance by August 2013. AMS anticipates that a proposed rule could be published for public comment by March 2014. AMS proposes that this recommendation be considered closed once a regulatory workplan for the proposed rule has been approved by the Office of Management and Budget.

OIG Position

We accept AMS' management decision on this recommendation.

Recommendation 2

Issue instructions that will ensure that all certifying agents are applying the newly issued origin of livestock proposed rule correctly and consistently.

Agency Response

As noted in Recommendation 1, NOP is working on the origin of livestock proposed rule, which, depending on the length of the clearance process, could be published for public comment by March 2014. Certifier instructions would not be appropriate until a final rule is published, which will not be until later in 2014. AMS concurs with the need for certifier outreach and education, and as such, proposes that in response to this recommendation, the program provide a public webinar by June 2014 to certifying agents on the current origin of livestock requirements to ensure the current rule is applied correctly and consistently.

OIG Position

We accept AMS' management decision on this recommendation.

Finding 2: NOP Should Ensure Feed Brokers Are Subject to Certifying Agents' Oversight

Organic milk operations may utilize the services of organic feed brokers who are not NOP-certified when purchasing organic feed for consumption by their organic milk herd. This has occurred because NOP has not required that feed brokers undergo oversight by certifying agents. Consequently, brokers' controls to ensure noncommingling and noncontamination of organic feed are not being validated. As a result, NOP lacks assurance that a critical part of the organic milk production process remains organic, as consumers expect.

USDA organic regulations define a "handling operation" as an operation that receives or otherwise acquires agricultural products and processes, packages, or stores such products.¹⁷ In addition, they exclude a handling operation from certification if the operation only sells agricultural products that are packaged or enclosed in a container prior to being received and remain in the same package or container and are not processed while in the control of the handling operation.¹⁸ These regulations do not specifically address feed brokers. Under the current system, feed brokers decide for themselves, based on their activities, whether they are classified as handling operations that meet the exclusion criteria.

OIG maintains, however, that if feed brokers are not subject to NOP certification, there could be a gap in the audit trail as certified organic feed moves through commerce, and feed brokers could commingle or contaminate organic feed. In response to our prior recommendation that NOP develop and implement controls to ensure oversight of organic milk transporters,¹⁹ NOP issued draft guidance in February 2012.²⁰ This draft guidance proposed that uncertified feed brokers either be NOP-certified or be specifically included by direct reference in the organic system plan of the NOP-certified buyer. NOP officials stated that final guidance has been drafted and is in the review process prior to final publication.

Recommendation 3

Develop and implement validation controls to require feed brokers supplying feed to NOP-certified organic milk operations to be either NOP-certified or included in an organic milk producer's organic system plan, so that the risk of commingling and contamination of organic feed is mitigated.

¹⁷ 7 CFR 205.2.

¹⁸ 7 CFR 205.101(b)(1)(i-ii).

¹⁹ *Agricultural Marketing Service National Organic Program – Organic Milk* (Audit Report 01601-0001-Te, February 2012).

²⁰ *Federal Register*, "National Organic Program: Notice of Draft Guidance for Accredited Certifying Agents, Certified Operations, and Non-Certified Handlers of Certified Organic Products," volume 77, page 5415, February 3, 2012.

Agency Response

AMS is currently finalizing its “Final Guidance on Certification Requirements for Handling Unpackaged Products,” which will address this recommendation. This final guidance is under review by the Office of the General Counsel. AMS anticipates the final guidance will be released by September 2013.

OIG Position

We accept AMS’ management decision on this recommendation.

Finding 3: NOP Needs to Provide Certifying Agents With Specific Guidance Concerning Enforcement Actions

Certifying agents conducting yearly inspections of organic milk operations did not take consistent enforcement actions when their inspectors or reviewers identified possible noncompliance issues with USDA organic regulations. This occurred because NOP enforcement guidance is not clear and specific as to what actions certifying agents must take when a noncompliance is classified as minor. As a result, certifying agents were not consistent regarding which issues merit issuance of an official notice of noncompliance. This can lead to organic milk operations shopping for agents who are lax in their classification of issues identified in the yearly inspection process or who do not take the appropriate enforcement actions.

USDA organic regulations state that when an inspection of a certified operation reveals any noncompliance, a written notification will be sent to the certified operation with a description of the noncompliance, the facts, and the date by which the certified operation must rebut or correct the noncompliance and submit supporting documentation of the corrections made. If a certifying agent believes that the noncompliance was a willful²¹ violation of USDA organic regulations, the certifying agent shall send the certified operation a notice of proposed suspension or revocation of its certification. In addition to suspension or revocation, certified operations may be subject to civil monetary penalties.²² The regulations also allow for certifying agents to issue minor noncompliances for issues that can be corrected within a specified period of time as a condition of continued certification.²³

As part of NOP's implementation of the access to pasture rule, NOP officials issued a notice to certifying agents instructing them to issue official notices of noncompliance or other adverse actions after June 17, 2011, for violations related to the new pasture requirements that are identified during the certification process.²⁴

NOP issued an enforcement document to establish appropriate and consistent sanction guidelines for instances where evidence confirms noncompliance with NOP standards.²⁵ This instruction document recognizes that violations have various degrees of severity, incur different consequences, and are treated differently. This document identifies three types of noncompliance: minor, major, and willful. In it, NOP outlines the different types of enforcement actions to take under different circumstances and defines a minor noncompliance as a violation that is correctable, does not affect the integrity of the organic system or the organic product, and does not preclude the certification of an otherwise qualified organic producer. The instruction document, however, lacks specificity and clarity on what enforcement actions certifying agents should take when a noncompliance is classified as minor.

²¹ A willful violation is defined as an intentional violation of the Act or plain indifference to its requirements.

²² 7 CFR 205.662.

²³ 7 CFR 205.404.

²⁴ NOP Notice 10-1, "Implementation of Access to Pasture Rule," October 4, 2010.

²⁵ NOP 4002 Instruction, "National Organic Program Enforcement," July 22, 2011.

Specifically, our review identified 88 possible noncompliance issues found by the inspectors or certifying agents during the yearly inspection process on 22 of the 25 organic milk operations in our sample. Of the 88 possible noncompliance issues identified, 5 were resolved during or after the inspection, 43 were resolved by reminders of action to be taken before the next inspection, and 17 were to be resolved with followup actions taken after the inspection. We were not provided with documentation supporting the certifying agents' actions on the remaining 22 issues identified.

Of the 22 certified organic milk operations with possible noncompliance issues identified, only 1 operation was issued an official notice of noncompliance after inspection. Further, two operations were issued reminders; four operations were issued reminders to correct possible noncompliance issues before the next yearly inspection; and eight operations were issued a combination of reminders and followup notices to correct noncompliance issues. We were not provided with documentation supporting the certifying agent actions on the remaining seven operations. It is likely that some of the reminders and followup notices were requirements for the correction of minor noncompliances as a condition of continued certification, which is provided for under USDA organic regulations. However, in the absence of adequate guidance for responding to issues identified, certifying agents used their own judgment to determine the appropriate enforcement action.

Half of the certifying agents in our sample stated they issue an official notice of noncompliance only if the noncompliance affects the organic integrity of the product or if the noncompliance is classified as a major or a willful violation. For example, one organic milk operation was issued an official notice of noncompliance for selling previously transitioned, conventional dairy cows as organic. In addition, we found that, of four instances involving missing or incomplete lists that identify all cattle in the dairy herd by ear tag number or name, which are required in order to certify all livestock on the list as organic, three operations were issued reminders to correct this deficiency before the next yearly inspection, and one operation was issued a notice to provide the needed updates within 20 days. Of 11 instances in which organic milk operations were using products without prior approval from their certifying agent, 6 operations were issued reminders to correct the deficiency before the next yearly inspection, and 5 operations were issued a notice to correct this deficiency within a specified date. Of nine instances in which logs, product tags, or product labels listing the product ingredients or statements that the products were nongenetically modified organisms²⁶ were missing, six operations were issued reminders, and three operations were issued a notice to correct the deficiency within a specified date.

In September 2012, NOP, after consulting with NOSB, issued new instruction documents for certifying agents on classifying minor, major, and willful violations of USDA organic regulations.²⁷ These new instructions also included a penalty matrix and guidance on the penalty actions that should be taken by the certifying agent in each instance.²⁸ NOP officials conducted

²⁶ The term "genetically modified organism" is used to denote a living organism that has been genetically modified by inserting a gene from an unrelated species. Genetically modified organisms are not allowed to be present in organic products.

²⁷ NOP 2612 Instruction, "Recommended Penalties for Violations of Specific Regulatory Requirements," September 12, 2012.

²⁸ NOP 2612-1 Penalty Matrix, "Penalty Matrix by Category of Violation," September 12, 2012.

training for certifying agents to assist them in implementing these two instructions in January 2013. Our interviews with certifying agents and our visits to the organic milk operations took place prior to the issuance of these two new instruction documents and we, therefore, were not able to assess their implementation or effectiveness as part of our audit. After feedback from certifying agents and others that the new penalty matrix focused on paperwork violations, rather than practice violations that could impact the integrity of the organic product, NOP archived²⁹ the use of both the instruction document and its associated penalty matrix on March 29, 2013. NOP officials plan to incorporate the feedback received from certifying agents and organic milk producers and update the procedures and penalty matrix later this year.

Recommendation 4

Issue clear instructions for certifying agents on the proper classification and associated enforcement actions to address both minor issues and noncompliances identified during inspections of certified organic operations.

Agency Response

The NOP withdrew its penalty matrix in March 2013 after receiving feedback from certifiers that it focused on paperwork more than practices. The revised penalty matrix will list criteria that certifying agents will be encouraged to apply in determining what level of adverse action is appropriate when noncompliances are observed. The new penalty matrix will be incorporated within the NOP's enforcement instruction which is currently being updated. AMS plans to publish this updated instruction by December 2013.

OIG Position

We accept AMS' management decision on this recommendation.

Recommendation 5

After issuance of new instructions, conduct training of certifying agents on proper classification and enforcement actions.

Agency Response

Once the updated enforcement instruction is published, with the revised penalty matrix, the NOP will conduct training with its certifiers. This training will be conducted via webinar, or during the NOP's annual face-to-face training with certifiers in January 2014, depending on the timing of the instruction's release.

²⁹ When a guidance, instruction, or policy memo is no longer needed or applicable for the conduct of day-to-day activities, the document is archived by the NOP.

OIG Position

We accept AMS' management decision on this recommendation.

Section 2: Organic Milk Operations' Compliance with NOP Standards

Finding 4: NOP Should Evaluate Recordkeeping Requirements of the Access to Pasture Rule

In our review of the organic milk operations included in our sample, we found that some of the small- or medium-sized organic milk operations did not comply with recordkeeping requirements of the access to pasture rule. These smaller operations were often unaware of the documentation needed to demonstrate adherence to the access to pasture rule. As a result, 9 of the 21 small- and medium-scale organic milk operations reviewed did not maintain adequate documentation for livestock confinement, grazing, or dry matter intake that validated compliance with the access to pasture rule.

The access to pasture (livestock) rule requires producers to provide year-round access to all animals to the outdoors, recognize pasture as a crop, establish a functioning management plan for pasture, incorporate the management plan for pasture into their organic system plan, provide ruminants with pasture throughout the grazing season for their geographical location, and ensure ruminants derive not less than an average of 30 percent of their dry matter intake from pasture grazed over the course of the grazing season.³⁰ USDA organic regulations require certified operations to maintain records that are sufficient to demonstrate compliance for a period of 5 years.³¹ In October 2010, NOP published an instruction document that outlined recordkeeping requirements and provided examples of the types of records that should be maintained.³²

During our farm visits, we observed that larger organic dairy operations had the means and resources to automate their recordkeeping to facilitate compliance, while small and medium organic dairy operations often relied on a manual records system. For example, small- and medium-sized organic milk operations utilized wall calendars and pocket notebooks to track the start and end of the grazing season and dates of inclement weather, instead of maintaining grazing and confinement logs. Feed ration data are often kept manually, using calendars, notebooks, and writing tablets. These manual records are used by certifying agent inspectors to calculate dry matter intake percentages and validate compliance with access to pasture, grazing, and dry matter intake percentage calculations for all classes of livestock.

The access to pasture rule created additional recordkeeping requirements with which some small- and medium-scale organic dairy operations did not comprehend or comply. Our interviews with certifying agents indicated that they believed some organic operations were not fully aware of the additional recordkeeping requirements, such as maintaining confinement, grazing, and dry

³⁰ *Federal Register*, "National Organic Program; Access to Pasture (Livestock)," volume 75, page 7154, February 17, 2010.

³¹ 7 CFR 205.103.

³² NOP 2602 Rev. 01 Instruction, "NOP 2602 Recordkeeping," July 22, 2011.

matter intake logs, and they should begin to fully comply once they become more familiar with the new requirements of the access to pasture rule.

AMS, through NOP, acknowledges that dairy operations of different sizes may need to use different forms of recordkeeping to document compliance with USDA organic regulations. Small- and medium-sized dairy operations that keep livestock on pasture the majority of the year will have recordkeeping strategies that will differ from large dairy operations. NOP relies on both its internal auditors and certifying agents to determine if recordkeeping at individual dairy operations is sufficient to ensure the integrity of organic milk. NOP officials stated that they expect that small- and medium-sized organic dairy operations will keep adequate records as they gain knowledge and experience on the types of recordkeeping required under the new rule.

Recommendation 6

Review the recordkeeping requirements, assess the impact on smaller operations of the access to pasture rule, and determine if further actions are warranted to ensure clarity and specificity for the types of records required to demonstrate compliance with recordkeeping requirements of the access to pasture rule.

Agency Response

NOP is currently reviewing and updating its records and recordkeeping instruction to provide clearer examples of adequate, inadequate, and excessive recordkeeping requirements. The updated instruction will include examples that will support certifier and operation compliance with recordkeeping requirements related to the access to pasture rule, along with other practice areas covered by the USDA organic regulations. AMS anticipates that this updated instruction will be published by December 2013.

OIG Position

We accept AMS' management decision on this recommendation.

Scope and Methodology

In addition to our discussions with AMS' NOP personnel in Washington, D.C., we interviewed 6 NOP-accredited certifying agents and reviewed 25 organic milk operations in California, Minnesota, New York, Pennsylvania, and Wisconsin. Our review took place from September 2011 through February 2013.

To accomplish our objectives, we focused our organic milk operations review on the NOP final rule, effective June 17, 2010, requiring organic milk producers to provide livestock with year-round access to the outdoors, recognize pasture as a crop, establish a functioning management plan for pasture, incorporate the pasture management plan into their organic system plan, provide livestock with pasture throughout the grazing season (no less than 120 days), and ensure that livestock derive no less than an average of 30 percent of their dry matter intake requirement from pasture grazed over the course of the grazing season.³³ The audit also assessed organic milk operations' compliance with USDA organic regulations.

AMS Headquarters

To evaluate the implementation of the access to pasture rule, we held discussions with AMS' NOP officials in Washington, D.C. AMS' Information Technology department provided us with NOP's 2010 List of Certified Operations. The list was not relied upon to obtain sufficient, appropriate evidence to support the findings presented in the report. We transferred the data in the list to our Audit Command Language (ACL) system for further analysis and selection of our audit sample of organic milk operations to review.

States Selected

In order to select the States to include in our sample, we identified which States had the most certified organic milk operations. Using ACL, we produced a list of the total number of domestic certified organic milk operations by State from NOP's 2010 List of Certified Operations. Using this list, we identified the top 10 States with the most certified organic dairy operations. In an effort to reduce travel expenses, we determined that we could make better use of our available funds by selecting from the top 10 States those that adjoined each other. We judgmentally selected Minnesota, New York, Pennsylvania, and Wisconsin, based on the number of certified organic milk operations in the State and the States' proximity to each other. After consulting with AMS' NOP officials, we also included California in our audit sample, due to the number of large organic milk operations in that State and the number of complaints received by NOP officials.

³³ *Federal Register*, "National Organic Program; Access to Pasture (Livestock)," volume 75, page 7154, February 17, 2010.

Accredited Certifying Agents

In order to select the accredited certifying agents to include in our sample, we identified which certifying agents certified the most organic milk operations in the U.S. Using ACL, we produced a list of the total number of domestic certified organic milk operations by certifying agent from NOP's 2010 List of Certified Operations. Using this list, we identified the top 10 certifying agents. Using the ACL-generated list of domestic certified dairy operations, we judgmentally selected the top certifying agents in each of the 5 selected States for our sample and ensured that they were among the top 10 certifying agents in the U.S. We interviewed officials at each of the selected accredited certifying agents and reviewed their policies, procedures, guidelines, organic system plan forms, inspection report forms, and producer records in order to evaluate their oversight activities regarding the implementation of the access to pasture rule and producer compliance with USDA organic regulations.

Certified Organic Milk Operations

We obtained from the accredited certifying agents selected in our sample a list of their certified dairy operations, including dairy herd size, for the States included in our sample. Using these certifying agent-provided lists, we manually plotted the geographical locations of the organic milk operations on a map for each of the selected States, in order to ensure that we judgmentally selected organic milk operations located in various parts of the State that would allow us to compare grazing seasons and crop management practices. In order to maximize our travel funds, we planned our visits such that we could cover 10 organic dairy operations in 2 contiguous States (New York/Pennsylvania and Minnesota/Wisconsin) within a 2-week travel period and 5 organic operations within a 1-week period in California.

To evaluate the relationship between operation size and operation management practices, organic milk operations were divided into groups by total dairy herd size (milking cows, dry cows, heifers, and calves). The size groups were defined as small (1 to 100 herd size), medium (101 to 500 herd size), and large (over 500 herd size). Based on certifying agent, geographical location, and size group, we judgmentally selected a total of 25 organic milk operations to visit and inspect (9 small, 12 medium, and 4 large). Prior to visiting each organic milk operation, we reviewed its NOP certificates, organic system plans, yearly inspection reports, and unannounced inspection reports (if any), which we obtained from the certifying agent, in order to familiarize ourselves with the operation and evaluate compliance with USDA organic regulations. We then visited 24 of the 25 organic milk operations, interviewed dairy officials, reviewed their records, and assessed whether their dairy operations were as stated on the organic system plan. We were not able to visit 1 of the 25 selected dairies, due to health issues that prevented the dairy official from meeting with us on the scheduled day of inspection.

Our audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Abbreviations

ACL	Audit Command Language
AMS	Agricultural Marketing Service
CFR	<i>Code of Federal Regulations</i>
NOP	National Organic Program
NOSB	National Organic Standards Board
OIG	Office of Inspector General
USDA	U.S. Department of Agriculture

**USDA'S
AGRICULTURAL MARKETING SERVICE'S
RESPONSE TO AUDIT REPORT**



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

DATE: June 18, 2013

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

FROM: Anne Alonzo /s/
Administrator

SUBJECT: AMS' Response to OIG Audit #01601-0002-32: "National Organic Program – Organic Milk Operations"

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

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

Attachment

**AMS Response to Office of Inspector General (OIG) Audit:
“Organic Milk Operations” AUDIT REPORT 01601-0002-32**

Finding 1: NOP Needs to Clarify Its Origin of Livestock Rules

Recommendation 1

Publish the proposed rule to clarify the origin of livestock requirements and definitions and to include language to strengthen controls to ensure that all certifying agents are applying the origin of livestock rule correctly and consistently.

Agency response: AMS concurs with this recommendation. The National Organic Program (NOP) is currently completing its Proposed Rule related to the Origin of Livestock, which will clarify areas raised by OIG. The proposed rule will define the parameters around the allowance to transition dairy animals into organic production. AMS plans to submit a draft Proposed Rule into Departmental clearance by August 2013. We anticipate that a Proposed Rule could be published for public comment by March 2014. We propose that this recommendation be considered closed once a regulatory workplan for the proposed rule has been approved by Office of Management and Budget.

Recommendation 2

Issue instructions that will ensure that all certifying agents are applying the newly issued origin of livestock proposed rule correctly and consistently.

Agency response: As noted for Recommendation 1, NOP is working on the Origin of Livestock Proposed Rule, which, depending on the length of the clearance process, could be published for public comment by March 2014. Certifier instructions would not be appropriate until a Final Rule is published, which will not be until later in 2014. AMS concurs with the need for certifier outreach and education, and as such, proposes that in response to this recommendation, the program provide a public webinar by June 2014 to certifying agents on the current origin of livestock requirements to ensure the current rule is applied correctly and consistently.

Finding 2: NOP Should Ensure Feed Brokers Are Subject to Certifying Agents’ Oversight

Recommendation 3

Develop and implement validation controls to require feed brokers supplying feed to NOP-certified organic milk operations to be either NOP-certified or included in an organic milk producer’s organic system plan, so that the risk of commingling and contamination of organic feed is mitigated.

Agency response: AMS concurs with this recommendation. AMS is currently finalizing its “Final Guidance on Certification Requirements for Handling Unpackaged Products,” which will address this recommendation. This guidance will also address a similar recommendation from the OIG Organic Dairy Audit Phase 1. This Final Guidance is under review by the Office of General Counsel; following the subsequent clearance process, we anticipate the Final Guidance will be released by September 2013.

Finding 3: NOP Needs to Provide Certifying Agents With Specific Guidance Concerning Enforcement Actions

Recommendation 4

Issue clear instructions for certifying agents on the proper classification and associated enforcement actions to address both minor issues and noncompliances identified during inspections of certified organic operations.

Agency response: AMS concurs with this recommendation. As the OIG noted, the NOP withdrew its Penalty Matrix in March 2013 after receiving feedback from certifiers that it focused on paperwork more than practices. The revised penalty matrix will list criteria that certifying agents will be encouraged to apply in determining what level of adverse action is appropriate when non-compliances are observed. This new Penalty Matrix will be incorporated within the NOP's Enforcement Instruction, which is currently being updated. AMS plans to publish this updated Instruction by December 2013.

Recommendation 5

After issuance of new instructions, conduct training of certifying agents on proper classification and enforcement actions.

Agency response: AMS concurs with this recommendation. Once the updated Enforcement Instruction is published, with the revised Penalty Matrix, the NOP will conduct training with its certifiers. This training will be conducted via webinar, or during the NOP's annual face-to-face training with certifiers in January 2014, depending on the timing of the Instruction's release.

Finding 4: NOP Should Evaluate Recordkeeping Requirements of the Access to Pasture Rules

Recommendation 6

Review the recordkeeping requirements, assess the impact on smaller operations of the access to pasture rules, and determine if further actions are warranted to ensure clarity and specificity for the types of records required to demonstrate compliance with recordkeeping requirements of the access to pasture rules.

Agency response: AMS concurs with this recommendation. The NOP is currently reviewing and updating its Records and Recordkeeping Instruction to provide clearer examples of adequate, inadequate, and excessive recordkeeping requirements. The updated Instruction will include examples that will support certifier and operation compliance with recordkeeping requirements related to the access to pasture rule, along with other practice areas covered by the USDA organic regulations. AMS anticipates that this updated Instruction will be published by December 2013.

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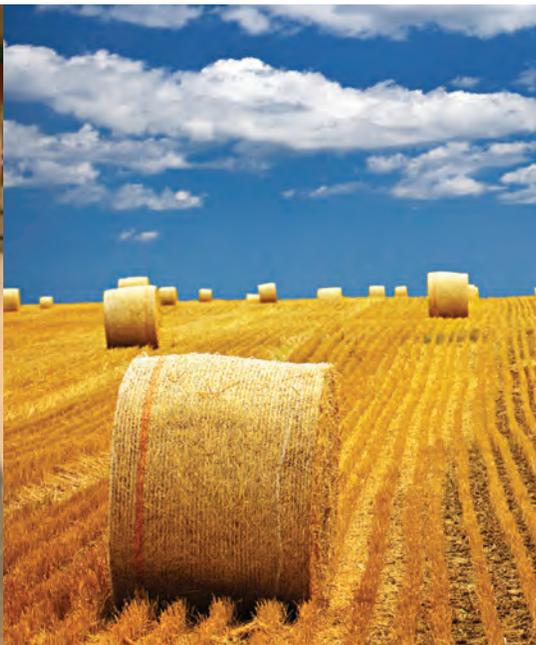
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