

**REPORT OF AMS REVIEW OF  
CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
STATE ORGANIC PROGRAM**

**1. INTRODUCTION**

1.1. On February 6, 2004 the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) approved the California Department of Food and Agriculture (CDFA) as a State Organic Program (SOP) under the USDA National Organic Program (NOP). Pursuant to the NOP regulations, representatives of the NOP initiated an onsite review of the CDFA SOP on December 14, 2009.

1.2. The review team was comprised of 3 representatives of the NOP:

Miles McEvoy, Deputy Administrator, NOP

Mark Bradley, Director, NOP Accreditation and International Activities Division

Ruihong Guo, Director, NOP Compliance and Enforcement Division

1.3. The State of California SOP supervises the organic certification activities of 22 certifying agents and approximately 3,116 organic operations.

**2. OBJECTIVES OF REVIEW**

The objective of the review was to evaluate the system capabilities and performance of the SOP in controlling the proper application and enforcement of the NOP technical standards for organic agricultural products produced, handled and certified in the State of California.

**3. LEGAL BASIS FOR THE REVIEW**

3.1. The review was conducted pursuant to an agreement between the Agricultural Marketing Service (AMS) and the State of California completed by the AMS Administrator on February 6, 2004. Approval of State Organic Programs is provided pursuant to NOP regulations at 7CFR 205.620-622. The regulations require the USDA to conduct onsite reviews of the SOP not less than once during each 5-year period.

3.2. The following statutes, regulations, and standards were considered in the review:

3.2.1. Organic Foods Production Act of 1990.

3.2.2. U.S. Code of Federal Regulations (CFR) Part 205, National Organic Program.

3.2.3. California Organic Products Act (COPA) of 2003.

**4. PROTOCOL**

- 4.1. The review was accomplished in two parts; a review of operations at CDFA headquarters office in Sacramento, California and a review of SOP activities conducted at County Agricultural Commissioners' offices in Monterey and Fresno counties.
- 4.2. In selecting sites to be reviewed, the review team considered the scale and diversity of compliance and enforcement activities conducted at the evaluated sites.
- 4.3. At the SOP headquarters office in Sacramento, the review team reviewed each phase of the compliance, enforcement and appeals system to determine if the SOP had the necessary controls in place to ensure compliance with the NOP regulations. The team interviewed persons with responsibilities related to each phase of the program with regards to compliance, enforcement and appeals.
- 4.4. In Fresno and Monterey counties, the NOP team reviewed processes used to ensure compliance with NOP regulations. The team reviewed procedures related to inspection and enforcement in order to determine how compliance with the NOP regulations was being carried out. The team also interviewed county agriculture commissioner's office personnel to determine their knowledge of the NOP regulations and their qualifications with respect to their duties and responsibilities.
- 4.5. The review team was accompanied by a representative of the SOP or the relevant county office throughout the review. Any issues of concern or suspected noncompliances were immediately brought to the attention of the accompanying SOP or county official.

## 5. OBSERVATIONS

- 5.1. County office activity. The California SOP uses a network of County Agriculture Commissioner offices to distribute work related to enforcement and complaint investigations. The field work in these offices is generally conducted by County Inspectors/Biologists trained and licensed to conduct inspections, investigations and tests for a variety of programs administered by the State and County offices. Inspectors are subject to review and testing as subject matter experts before being assigned to conduct activities related to the SOP. Counties sign annual contracts to perform approximately 19 different types of activities on behalf of the State, including residue testing, head lettuce inspection, and direct market certification. Of all the activities conducted by the County offices reviewed, organic compliance and enforcement is only a small portion of the workload for a single staff/year equivalent.
- 5.2. Improved process documentation. The SOP has recently initiated significant improvements in its documented procedures for conducting SOP activities. A complete procedures manual has been prepared which details the policies and procedures for conducting compliance, enforcement and

appeals under the Program. Some process improvements have yet to be installed at the county level, with one county still using report formats and instructions from 1999.

- 5.3. Accessibility of records. The review of the SOP procedures, records, and other documents revealed that they were well organized and readily available in the State office. The program documentation included a detailed document control master list of all documents relative to the operation of the SOP at the State level. Files observed as a part of this review were generally well maintained and complete in terms of reports, records and correspondence relevant to each investigation, registration or certification issue.
- 5.4. Complaint process. The complaint handling procedures were among the processes that were improved with the recent State program upgrades. The review revealed that complaints received were delegated to county offices or accredited certifying agents (ACA's) in a timely manner and investigations were conducted within reasonable timeframes. Investigations of complaints by counties must be approved by the State. Counties must provide complete reports and itemized invoices for payment. Allowances for enforcement by the county are very small. For example, in 2009, the entire maximum amount allowed under the 2008-2009 Monterey county organic program work plan was limited to \$12,195. Complaint investigations must be approved by the state with investigations and samples collected at actual cost.
- 5.5. Compliance activity. The new SOP procedures provide detailed instructions for conducting spot inspections for organic compliance. Spot inspections had been conducted in the past; however, changes to the organic inspection system proposed in August 2008 were subsequently withdrawn. This resulted in the discontinuance of all spot inspection activity pending clarification of regulatory authority to take on such activity. Organic compliance and enforcement activities are often coincidental with other activities conducted by the county, i.e. inspectors reviewing compliance with organic requirements while reviewing compliance of direct market program requirements.
- 5.6. Residue testing. Procedures have been developed for conducting residue testing of organic products under the new SOP procedures. While some county contracts already provided for limited residue testing for the organic compliance program, spot testing specifically for chemical residues on organic products was not being conducted.
- 5.7. Appeals. When adverse actions are proposed by the County, there is an appeals process in place to provide for a hearing. If the County issues an adverse action or fine, the county notice provides for an appeal to the State. The State has recently amended its regulations to include authority to handle appeals at the State level. To date, the State has processed or is currently

processing a total of 9 appeals. One case which has gone through the complete system was processed in as little as 7 months while records indicate 2 have remained unresolved since 2007.

5.8. Civil penalties. The SOP regulations provide for the assessment of civil penalties for violations of the SOP and NOP regulations. County Agriculture Commissioner Offices have successfully levied civil penalties against producers and handlers for violations of the State and NOP regulations. Records reviewed at the County and State level indicate that 12 entities had been assessed civil penalties in amounts ranging from \$100 to \$5,000.

5.9. Qualifications of personnel. The County staff generally has extensive knowledge, skills, and abilities in the area of plant-based agriculture. Inspector/biologists are trained and experienced in inspecting growing crops. There is very little call for animal agriculture certification or investigative activity in the county reviewed and inspectors have limited, if any, background in animal agriculture.

## 6. INTRODUCTION TO FINDINGS

6.1. Unless otherwise specified in the observations and findings of this report, processes and activities observed during this review were compliant with NOP regulations, policies, and procedures.

## 7. FINDINGS

7.1. Finding 1. The documents reviewed and interviews conducted indicated that the revised SOP program has not been implemented at the County level. The County offices have not received copies of the revised manual and have not received training with regard to its implementation. One County reviewed was using procedures dated 1999, while the other County reviewed was using a draft revision of the same checklist dated June 2004. The revised inspection report format with the new SOP revised procedures is dated January 2009. The current draft version does not provide adequate detail to clearly describe what was inspected and the nature of any noncompliances found.

7.2. Finding 2. The scope of the SOP program submitted by the State of California and previously approved by the NOP does not include the processing of agricultural products.

7.3. Finding 3. COPA and NOP regulations are not aligned under the SOP with regards to issuance of notices of noncompliance prior to proposing adverse actions. Review of records at CDFA revealed that operations were routinely issued notices of proposed adverse action for failure to renew their registration with the State or County prior to being issued a notice of noncompliance.

7.4. Finding 4. COPA requires that to sell organic products in the State of California, organic producers and handlers, regardless of size, must hold a valid registration with the State. However, the SOP procedures do not require organic certifying agents to include this additional

requirement in their review and approval of organic production and handling plans for California operations. As a result, certified operations could be revoked by the County or State for failure to register as an organic operation, but continue to produce and sell products outside the State.

7.5. Finding 5. Livestock qualifications. Review of one County office found that there were no persons qualified to inspect livestock operations on staff and available to conduct compliance and enforcement activities in the County.

7.6. Finding 6. The SOP procedures do not provide for proper administrative processes under the NOP. Review of one adverse action file selected during the County review found that while the proposed adverse action allowed 30 days to appeal before the adverse action was to take place, a final adverse action was initiated only 24 days later. In addition, there had been no notice of noncompliance issued prior to issuing the proposed revocation. Further review of 5 files at the State office indicated that while the failure to allow adequate time for appeal was an isolated incident, the SOP had consistently omitted the required notice of noncompliance when issuing proposed adverse actions for non-renewal of registration. A review of the SOP procedures revealed that the procedures do not clearly require a notice of noncompliance be issued prior to proposing adverse actions for other than uncorrectable or willful violations. In addition, while the revised procedures have numerous templates, there was no template for issuance of notices of noncompliance or proposed adverse actions.

7.7. Finding 7. Section 3.6.4 of the SOP procedures indicates that procedures for records management will be developed, but none exist at this time.

7.8. Finding 8. The NOP needs to inform certifiers operating in the State of California that they must comply with the requirements of COPA in compliance with the approved SOP. State and Counties need to coordinate/communicate with certifiers with regards to NOP and SOP requirements to ensure consistent application of the standards. A review of one file revealed that while the State officials worked with one producer with regards to a noncompliance, there is no documentation to indicate that the certifier was notified and took the required action.

## 8. CLOSING MEETING

8.1. The review team conducted a closing meeting with CDFA officials in Sacramento on December 17, 2009. At the meeting, the NOP review team provided a complete summary and discussion of all findings in this report.

## 9. CONCLUSIONS AND RECOMMENDATIONS

9.1. The documented processes presented to the NOP for review and approval as a SOP do not include the compliance of processed organic agricultural products. To remain approved as a SOP, the

State must submit documented processes to the NOP describing how the State conducts compliance and enforcement activities regarding processed agricultural products sold as organic in the State of California.

- 9.2. The SOP should request NOP approval of their registration requirements and fee structure as an additional requirement for certification under the NOP.
- 9.3. The SOP should review county offices to ensure that documented procedures are fully implemented, activities are being performed as required, and that personnel are trained and qualified to conduct activities required under the SOP.
- 9.4. The SOP should prepare formal responses and any proposed corrective actions with regards to the findings and recommendations of this report within 30 days of receipt of the final report.

END OF REPORT