

Maintaining Organic Integrity

2010 USDA Inspector General audit spurs improvements

By John Kepner

Because organic food production excludes the use of most synthetic materials and focuses on building nutrient-rich soil, organic food is better for the environment and the health of farmers, farmworkers and consumers, especially children. By choosing organic food whenever possible, we are helping to solve the serious public health and environmental threat posed by pesticides in our food, air and water. Ensuring that the food we buy is truly organic has rested on the shoulders of private accredited certification organizations (certifying agents), state agencies, and the U.S. Department of Agriculture (USDA) since the 2002 establishment of its National Organic Program (NOP) under of the *Organic Foods Production Act* (OFPA). Prior to this time, organic production was regulated under a patchwork of state and voluntary standards.

The National Organic Program, with rigorous standards and certification procedures unparalleled in chemical-intensive agriculture, has been criticized for straying from its legal requirements during the Bush Administration. Organic advocates criticized USDA's implementation of the federal organic law during this period which led to two USDA Inspector General (IG) investigations.

In March 2010, the IG completed its second audit of the NOP and issued its report, *Oversight of the National Organic Program* (01601-03-Hy). The purpose of the audit was to determine whether products marketed as organic met the requirements of NOP. While most organic labeled produce and processed agricultural products on store shelves probably complied with federal law, the IG found several serious problems with the implementation of the program between October 2003 and July 2009. These issues range from organic inspectors without the proper procedures in place to comply with NOP regulations, to a complete lack of required residue testing and instances where USDA knew companies were selling conventional products as organic without timely action taken.

In total, the IG made seven findings and 14 recommendations to the USDA Agricultural Marketing Service (AMS). In its response to the IG, AMS Administrator Rayne Pegg, appointed by the Obama Administration in 2009, said USDA agrees in principle with the findings and recommendations of the audit. Citing recent budget increases, which nearly double the NOP staff size from 16 to 31, Ms. Pegg said, "NOP anticipates addressing all of the recommendations made by the Inspector General in FY 2010." In general, AMS took a tone of agreement and cooperation in its audit response, and the IG accepted all AMS management decisions (see below).

Background

OFPA was passed in 1990 and establishes national organic standards. It required the Secretary of Agriculture to issue regulations to implement the legislation, in which the Secretary delegated responsibilities to USDA's AMS. In 2002, NOP was created under AMS to administer the organic standards and to require mandatory certification of organic production. OFPA also requires the Secretary to appoint the National Organic Standards Board (NOSB) to assist in the development of standards for substances to be used in organic production, as well as advise the Secretary.

All organic products are required to originate from farms or processors certified by NOP-accredited certifying agents, which may be state-run or private. NOP relies on these agents to ensure that certified organic operations continue to comply with federal organic regulations. Organic operations must maintain an approved farm plan of how it will meet NOP regulations and undergo a successful inspection by the certifier to label its products organic.

OFPA also allows states to apply to USDA to administer its own State Organic Program (SOP). If approved, the SOP is responsible for the enforcement of NOP regulations within the state. Presently, California and Utah are the only two SOPs. Enforcement issues in the other 48 states are handled by USDA. As of 2009, there are 98 accredited certifying agents (54 domestic, 44 foreign) that certify approximately 28,000 certified organic operations.

Findings and Responses

Finding 1: NOP Needs to Improve Its Enforcement of Organic Operations that Violate Regulations. In its audit, the IG identified five instances where AMS recommended that NOP take enforcement action against companies that were marketing conventional products as organic. In one case, NOP never issued enforcement action. In the other four cases, enforcement action took up to 32 months to issue. The IG recommends not only reviewing and issuing appropriate civil penalties against the open case, but more importantly, clarifying the authority of NOP issuing civil penalties and implementing a formal process for determining when fines or other enforcement actions should be imposed. It also recommends establishing procedures for monitoring violating operations' compliance. AMS anticipates the recommendations to be implemented by September 2010.

Finding 2: Processing of Program Complaints Needed More Timely Action. Since 2004, AMS received 41 NOP-related complaints. These complaints can result in enforcement actions against certifiers or organic farms and processors. NOP did not resolve 19 of the complaints in a timely manner (average of three years), and six

complaints remained unresolved. AMS says it was in the process of revising its procedures to address complaints during the audit and believes with its increased staff size and establishment of a complaint database is responsive to the problem.

Finding 3: NOP Did Not Properly Approve and Manage the California State Organic Program. In order for a state to become an approved SOP, it must have noncompliance, mediation, and appeal procedures that meet NOP regulations. However, NOP approved California as an SOP in 2004 without the required compliance and enforcement procedures, because it wanted the state to “operate and develop procedures as they progressed.” In its 2005 NOP audit, the IG documented this problem, but NOP failed to act. AMS says California is beginning to address these issues and has given them to June 2010, at which point it will initiate enforcement actions if California does not fully comply.

Finding 4: AMS Needs to Determine Whether NOP Regulations Should Require Periodic Residue Testing. While OFPA, Section 2107(a)(6), requires “periodic residue testing by certifying agents” for “pesticide and non-organic residue,” NOP did not incorporate this procedure into the regulations because of the cost and position that the NOP regulations are process-based rather than tolerance-based. Under the recommendation of the IG, AMS has requested a written legal opinion from USDA’s Office of General Council, which provides legal advice to the Department. It also plans to implement periodic residue testing by September 2010.

Finding 5: Evaluations of NOP’s Accreditation Process Were Not Performed Annually. NOP regulations require that it assemble a peer review panel pursuant to the *Federal Advisory Committee Act* (FACA) to annually evaluate its adherence to accreditation procedures. Citing budget constraints, NOP has never done so. NOSB has repeatedly expressed concerns with NOP’s accreditation of certifying agents and lack of process review. The IG recommends that NOP establish a peer review panel under FACA or determine if the regulations should be modified to allow a third-party review instead. As a cheaper alternative to a FACA panel, the NOSB advised the NOP to use a National Institute of Standards and Technology (NIST) National Voluntary Conformity Assessment Evaluation Program evaluation. NOP plans to do so by September 2010 and initiate an amendment to OFPA in 2012.

Finding 6: AMS Needs to More Effectively Identify Inconsistent Operating Practices and Clarify Program Requirements. The IG audit reveals that AMS was not ensuring consistent oversight of organic operations by its certifying agents. The IG documented

that all four certifying agents reviewed were enforcing different requirements on their 20 organic operations. Examples of problems include: inadequate procedures to prevent commingling of conventional and organic products on split operations; lack of uniformity on size and duration of outdoor access for livestock; and, inadequate recordkeeping. Aside from revising procedures to focus on problem areas—especially outdoor access for livestock, the IG recommends that NOP staff summarize the problem areas on an annual basis and standardize its method for issuing guidance.

Finding 7: NOP Oversight of Foreign Certifying Agents Needs Significant Improvement. Of the 44 foreign certifying agents, NOP did not complete onsite reviews for five as required by regulations. NOP did not anticipate receiving so many applications for foreign certifiers and did not develop a policy for handling applicants where travel may be hazardous. As a result, there is reduced assurance that these certifying agents followed NOP regulations when certifying approximately 1,500 organic operations. For about half of the foreign agents who did receive an onsite review, that review was not given for more than two years. AMS responded that four of the five outstanding site reviews have now been completed and the last will be completed in the coming months. It also agreed to define timeframes and processes for accreditation.

Conclusion

Organic-based systems and strategies are the solution to the pesticide problem. Therefore, organic integrity must be continuously protected and strengthened. Organic standards, practices, and compliance are built on the strong statutory requirements of OFPA. The law was written to ensure vibrant, dynamic organic standards. The recent IG report illustrates the importance of a vigilant grassroots that continues to refine and advance organic practices and policy, and the importance of transparent oversight.

During the first decade of the 2000’s, while organic farming pioneers and recently converted operations were producing healthy organic food, new players—many from the conventional arena—were entering the organic marketplace. Faced with a small budget and an increasingly powerful organic lobby, the newly formed NOP found itself struggling to implement some of its regulations. In an effort to strengthen the new federal standards for organic integrity, advocates continue to call for improvements and full compliance. The resulting two USDA IG audits, combined with new AMS management and an increased NOP budget, promise ongoing improvements and the adoption of official policies to ensure the highest level of compliance and organic integrity.

