

NATIONAL ORGANIC PROGRAM REVIEW OF THE CALIFORNIA 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 (CA SOP) under the USDA National Organic Program (NOP).
- 1.2. The CA SOP is responsible for enforcement of the Federal Organic Foods Production Act of 1990, and the California Organic Products Act of 2003.
- 1.3. The CA SOP is jointly administered by the CDFA and The California Department of Public Health (CDPH). CDPH enforces laws pertaining to processed products marketed as “organic;” whereas, CDFA enforces laws pertaining to all non-processed products marketed as “organic.”
- 1.4. The CDFA uses a network of County Agricultural Commissioners (CAC) to distribute work related to enforcement and complaint activities. The field work in these offices is generally conducted by CAC Inspectors/Biologists trained and licensed to conduct inspections, investigations, and tests for a variety of programs administered by the State and CAC. CAC sign annual contracts to perform organic registration, spot inspections, residue testing, and compliant investigations on behalf of the State.
- 1.5. CDPH has a network of regional offices throughout the state in which CDPH staff is dispatched to conduct spot inspections and enforcement activities.
- 1.6. The CA SOP is authorized to handle appeal requests from organic certification applicants and operations pursuant to § 205.681.
- 1.7. There are approximately 4,200 certified organic operations in the State of California.
- 1.8. The NOP granted the CA SOP additional requirements that supplement NOP regulations allowing for the registration of USDA accredited certifying agents (certifiers) and all organic operators, including those operations that are exempt from certification pursuant to § 205.101(a)(1), in the State of California. There are 29 certifiers; 3,475 organic production (farm) operations; and, 2,640

organic processors registered with the CA SOP.

- 1.9. Pursuant to the USDA organic regulations, the NOP conducted an onsite review of the CA SOP from October 13 through October 16, 2015.
 - 1.10. The onsite review was conducted by Lars Crail, Auditor, NOP Accreditation and International Activities Division.
 - 1.11. CA SOP responded to the NOP's review observations and findings outlined in this report. The NOP accepted CA SOP's responses and will work with the CA SOP to implement modifications to the State organic program.
2. OBJECTIVES OF REVIEW
- 2.1. The objective of the review was to assess the system capabilities and performance of the CA SOP in controlling the proper application and enforcement of the USDA regulations for organic agricultural products produced, handled, and certified in the State of California. The review's scope was limited to the activities of CDFA and one CAC: County of San Diego.
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 USDA organic regulations at 7 CFR § 205.620- 622. The regulations require the USDA AMS to conduct onsite reviews of State Organic Programs not less than once during each 5-year period.
 - 3.2. The following statutes, regulations, and procedures 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.
 - 3.2.4. CDFA Quality Systems Manual, Version 2.0 (July 1, 2014).
 - 3.2.5. CDPH Organic Processed Product Program Procedures (Revised 3/6/2015)
4. PROTOCOL
- 4.1. The review was accomplished by a review of operation files and interviewing of CDFA personnel at the CDFA headquarters office in Sacramento, California.
 - 4.2. At the CA SOP headquarters office in Sacramento, the NOP auditor (auditor) reviewed

the compliance, enforcement, and appeals system to determine if the CA SOP was operating according to established procedures and the USDA organic regulations. The auditor reviewed case files and interviewed persons with responsibilities related to their activities.

- 4.3. The auditor also conducted a review of operation files and interviewed personnel at the San Diego County Department of Agriculture (SD CAC), Weights and Measures office in San Diego, California.
 - 4.4. The auditor accompanied SD CAC personnel during a spot inspection of a certified crop operation in Encinitas and a farmers market in San Diego.
 - 4.5. Any issues of concern or suspected non-compliances identified by the auditor were immediately brought to the attention of the accompanying CA SOP or SD CAC personnel.
 - 4.6. The auditor conducted a closing meeting (via telephone) with CDFA and SD CAC officials in San Diego on October 16, 2015. During the meeting, the auditor provided a complete summary of all findings and observations in this report.
 - 4.7. CA SOP officials responded to the report's findings and observations. The NOP has accepted CA SOP's responses.
 - 4.8. This final report will be published on the USDA NOP website.
5. PRIOR REVIEW FINDINGS AND CA SOP RESPONSES
- 5.1. On August 13, 2012, NOP initiated an onsite review of the CA SOP and subsequently released a report with three (3) findings and one outstanding finding (2009 Review – Finding 5). CA SOP responded with proposed corrective actions which the NOP accepted.
 - 5.2. Corrective actions for the four (4) findings were verified and cleared (determined to be effectively implemented).
 - 5.3. Finding 5 (2009). 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. CA SOP Response: In April 2010, CA SOP Investigators attended the NOP's National Access to Pasture Training. Training included regulation implementation timelines, basic requirements of pasture for ruminants, feeding areas during the non-grazing season, organic

bedding requirements, temporary confinement, requirements for finishing beef, other ruminant pasture management, recordkeeping, and dry matter intake calculation. In addition, the CA SOP conducted organic regulatory training at 13 locations throughout the state of California from July 27, 2010, until August 31, 2010. All county personnel conducting CA SOP functions were required to attend the training and all counties contracting with the CA SOP attended. Approximately 166 county personnel received training in regard to the federal access to pasture and livestock rule. The CA SOP continues taking steps to address the compliance and enforcement activities of livestock operations. These steps include training of county and CA SOP staff on conducting spot inspections of livestock operations and the development of a Livestock Producer checklist for inspections. The CA SOP may also utilize the expertise of the CDFA's Animal Health and Food Safety Services Division and CDFA's Feed, Fertilizer and Livestock Drugs Regulatory Services.

Verification of Corrective Action: The auditor reviewed training records of CDFA and SDA CAC personnel; interviewed SD CAC inspectors; and determined that there are sufficient skills, knowledge, experience, and resources to conduct spot inspections of livestock operations.

- 5.4. Finding 1 (2012). Existing policies, procedures, and internal forms for conducting compliance and enforcement activities require refinement. The following auditor observations illustrate where modification of procedures and clarification of terms is required: CA SOP Response: The CA SOP agrees with this finding that modifications are needed for certain procedures and clarification of terms may be required. Please see below for detailed CA SOP responses to the individual observations.
- 5.4.1. Notification templates issued to organic operations for organic registration expiration are titled, "Notice of Noncompliance," "Notice of Proposed Revocation," and "Notice of Revocation." The term "Revocation" requires clarification or elimination since the term "Revocation" in § 205.662 states that an operation is ineligible to receive certification for a period of 5 years. Organic registration due to nonpayment or no submission of a renewal application is considered a correctable violation; whereas, "Revocation" is reserved for willful and egregious violations. The use of the term, "Revocation," will confuse certified operations and certifiers.

CA SOP Response: The Director [CDFA Inspection Services] and county agricultural commissioners can initiate the revocation process for failure to comply with 7 CFR § 205.662 or any part of the regulations adopted pursuant to the NOP. Since neither 7 CFR § 205.662 or FAC Section 46013.2(f)(COPA) states that the State must initiate revocation, the CA SOP will use the term “Suspension” in place of “Revocation” for correctable violations on all notification templates.

Verification of Corrective Action: CDFA issues a “Notice of Expiration of Organic Registration” to operations that do not renew annual registration. The use of the terms “suspension” and “revocation” are correctly used for adverse actions taken by the CA SOP in accordance with the USDA organic regulations.

- 5.4.2. CA SOP compliance notification templates indicate that CAC are copied; however, certifiers are not listed as copied. Since certified operations receive compliance notifications from a certifier, CAC, or the CA SOP, it is essential that all organizations responsible for certification oversight communicate and are informed of compliance actions proposed or initiated. CA SOP Response: Certifiers were previously notified only after actions had been finalized. The CA SOP’s database system will now capture an operation’s certifier information, which will allow the CA SOP to inform the certifiers of any actions that may impact the operation. Templates have been revised to ensure certifiers are copied.

Verification of Corrective Action: Certifying agents are notified when compliance notifications are issued to certified operations. Certifying agents have access to CDFA’s organic database which allows certifying agents to view CDFA’s communication and actions with their certified operations.

- 5.4.3. Section 1.4.3 of the CDFA Quality Systems Manual (QSM) describes the procedures for renewal of registration. Whereas the notification templates issued to operations indicate “Revocation” for failure to renew registration, the QSM procedures use the term “Suspension.” CA SOP Response: The Director [CDFA Inspection Services] and county agricultural commissioner can initiate the revocation process for failure to comply with 7 CFR 205.662 or any part of the regulations adopted pursuant to the NOP. Since neither 7 CFR 205.662 or FAC Section 46013.2(f)(COPA) states that the State must initiate revocation, the CA

SOP will use the term “Suspension” in place of “Revocation” for correctable violations on all notification templates.

Verification of Corrective Action: The CDFA QSM was updated (Section 1.6.4) to indicate that CDFA issues a “Notice of Expiration.” There is no use of the terms “suspension” or “revocation.”

- 5.4.4. The auditor determined that CA SOP complaint files are incomplete. In many cases, complaint investigations are assigned to CAC and an investigative report was submitted to the CA SOP. In other cases, the CA SOP issued revocation of organic registration and fines to non-compliant operations. These complaint case files contained no information on the current status or outcome of the complaint. CA SOP Response: The CA SOP understands it is the NOP’s policy that each complaint follows a specific process and should contain information for all of the following steps: investigation, decision, final report, and case closure letter to all interested parties. The CA SOP works diligently to maintain complete files that contain all information pertaining to each case and has developed a formal process to ensure closure of all cases. Beginning September 2013, once a case is assigned, the CA SOP will review the case at the beginning of each month to update the status of each complaint. For any open complaint over 60 days old, the CA SOP will require the agency (certifiers or CAC) that’s been assigned to the case to provide a written status report. This procedure will be followed until a closure letter has been received by the CA SOP. Verification of Corrective Action: CDFA’s organic database can generate and display the status and details of all complaint cases. The database can also generate an aging report listing for open cases.
- 5.4.5. The Spot Inspection Checklist templates do not adequately assist the inspector verifying compliance to USDA organic regulations. For example, there is no checklist section or check box to verify compliance to § 205.200 where operations must implement production practices that “maintain or improve the natural resources of the operation, including soil and water quality.” Checklists do not prompt the inspector to verify or allow the inspector to record whether an organic operator has a copy of the USDA organic regulations or understands how to access

an electronic version. CA SOP Response: The CA SOP disagrees with this observation as a finding. The Spot Inspection Checklist developed by the CA SOP is a tool used to assist in verifying compliance and is not intended to be an all-inclusive check list of NOP/CA SOP regulations. NOP Determination: NOP expects CA SOP to instruct inspectors that the checklist is not all-inclusive. Furthermore, CA SOP must instruct inspectors to record all identified compliance issues, regardless of whether a production practice or standard is specifically listed for verification on the Spot Inspection Checklist. CA SOP must include this topic in the next scheduled inspector training for the 2013-2014 fiscal year.

Verification of Corrective Action: The auditor's interview of SD CAC spot inspectors confirmed that the inspectors are authorized to identify noncompliance(s) to the USDA organic regulations that are not specifically addressed in the spot inspection checklist template. During the spot inspections observed by the NOP auditor, the SD CAC inspectors carried and used the USDA organic regulations and COPA.

- 5.4.6. Pursuant to § 205.501(a)(15)(i) certifiers are required to submit non-compliance and adverse action notification copies to the Administrator; however, under the CA SOP, these copies are submitted to the CA SOP. The CA SOP is not tabulating and tracking the amount and type of non-compliances issued by certifiers, CAC, and CA SOP. Compiling this information for quantitative analysis will identify certified operation violation trends and frequencies. This information could be used to determine organic operation education strategies and improve compliance activities. CA SOP Response: The SOP's new database system will allow for the collection of non-compliances issued by certifiers, including the ability to generate reports for quantitative analysis of certified operation violation trends and frequencies.

Verification of Corrective Action: CDFA is collecting and retaining compliance notices issued by certifying agents to their certified operations. The CDFA organic database can sort and categorize noncompliances and adverse actions issued by CDFA and CAC; however, CDFA continues to investigate a method to sort and categorize compliance notice types issued by certifying agents.

5.5. Finding 2 (2012). Training of CAC personnel is not adequate. CAC personnel conduct the majority of spot inspections assigned by the CA SOP. CAC personnel are responsible for and conduct various regulatory tasks separate from CA SOP duties. Many county personnel are temporarily employed and/or frequently rotate to other employment positions. All these combined factors limit the proficiency level of county personnel conducting compliance and enforcement activities of organic operations. Below are the auditor's observations while interviewing and witnessing a spot inspection conducted by the San Luis Obispo County Department of Agriculture office personnel: CA SOP Response: The CA SOP agrees that training can always be improved. It is not true that "many" county personnel are temporarily employed. It is true that county staff is responsible for enforcement of multiple agricultural programs however no seasonal or temporary employees are allowed to conduct compliance and enforcement activities of organic operations. County agricultural enforcement officials are required to have a Bachelor's degree as a minimum educational requirement. The CDFA also has a very comprehensive and strict county licensing program. Prior to enforcement all biologists must pass an exam to become licensed in standards which include the organic program. To further ensure that all county agricultural staff has received training, the CA SOP will provide four statewide follow-up training sessions to county personnel during the 2013/2014 fiscal year. This training will prioritize enforcement and sampling activities. See the addendum for detailed responses to the individual observations.

Verification of Corrective Action: CDFA continues to provide CAC personnel annual training and additional training if requested.

5.5.1. During a spot inspection, the CAC inspector was unprepared to collect samples for pesticide residue testing. The CAC inspector was not equipped with gloves, containers, or labeling tools to carry out pesticide residue sampling. Furthermore, the CAC inspector did not feel she was adequately trained to collect samples and unclear as to when sampling should occur. CA SOP Response: The CA SOP is issuing a directive to the counties stating county inspectors should be prepared to collect samples for prohibited substances. During the four training sessions (as stated in response to 8.2, Finding 2.), the CA SOP will direct county personnel to

have testing kits at inspections, provide additional training on sampling, and reinforce the necessity and importance of having NOP/CA SOP regulations available for reference. The CA SOP is also performing a cost analysis for providing testing kits to the counties, and will provide testing kits if feasible. The QSM will also be updated to state that leaving equipment in a vehicle for long periods of time leads to exposure that may contaminate tools, containers, gloves, and other equipment. County personnel will be reminded of this as well during the training sessions.

Verification of Corrective Action: During one of the spot inspections observed by the NOP auditor, the SD CAC inspector collected a plant sample for residue testing. She conducted the sampling with the proper tools and handled the collected sample according to established procedures. During the other spot inspection, the SD CAC inspector was equipped with adequate forms and tools to collect a residue sample if necessary.

- 5.5.2. The CAC inspector did not use the CA SOP Spot Inspection Form (ORG-101 SICLS) in the CA SOP QSM to conduct the inspection. CA SOP Response: The CA SOP Spot Inspection Cover Sheet (ORG-101SICLS) is intended to be used as a tool for the CA SOP. County personnel are directed to the QSM and the requirement to use the CA SOP Spot Inspection Cover Sheet and applicable spot inspection checklists. The CA SOP is reminding county personnel of the QSM requirement. NOP Determination: CA SOP must include this topic in the next scheduled inspector training for the 2013-2014 fiscal year. NOP accepts this response and will review its implementation and effectiveness during the next onsite review of the CA SOP.

Verification of Corrective Action: During the spot inspections observed by the auditor, all SD CAC inspectors used the spot inspection forms to record the results of the inspection.

- 5.5.3. The CAC inspector did not have a copy of the USDA organic regulations for reference during the inspection. CA SOP Response: During the CA SOP training sessions, county inspectors will be directed to have hard copies of NOP/CA SOP regulations with them or in their vehicle for reference during inspections. County

inspectors with the ability to access the organic regulations in their entirety electronically will not be required to keep hard copies with them.

Verification of Corrective Action: During the spot inspections observed by the auditor, all SD CAC inspectors had copies of the USDA organic regulations and COPA.

5.5.4. A major issue of concern was not identified by the CAC inspector:

A small walnut orchard registered as organic, but non-certified (exempt from certification pursuant to § 205.101(a) (< \$5,000)) sells walnuts as ingredients to a processing operation making organic product claims. For a certified processing operation to make organic walnut claims, the ingredients must be certified organic.

CA SOP Response: While the walnut orchard is registered as organic, it is under no obligation to certify the walnuts as organic; unless the operation is making a certified organic claim. The grower is not required to know what the buyer will be doing with the raw product. In this situation, because the walnuts are being used as an ingredient by a processor, who is then making the organic claim; it is the processor who would be in violation for using uncertified walnuts. NOP

Determination: The NOP agrees with the CA SOP that the operation is not in violation of the USDA organic regulations. However, the issue of concern is that the CAC inspector was not aware that the processor purchasing the non-certified organic walnuts for resale or processing may be in violation of the USDA organic regulations. Identification of the alleged violation should prompt an inspector to record the finding for further investigation. CA SOP must provide additional guidance and instruction to inspectors during proposed training in the 2013-2014 fiscal years.

Verification of Corrective Action: The NOP auditor interviews with CDFR and SD CAC personnel determined that when they are aware that any violation of the USDA organic regulations identified during spot inspections, but not associated with the operation, will be noted and regarded as a complaint to investigate.

5.5.5. The CAC inspector did identify the use of a prohibited input, latex paint, applied to the trunks of the walnut trees; however, the inspector indicated that she would conduct research to identify an alternative compliant product for the operator to use.

The county inspector's discussion with the operator was interpreted by the auditor as providing consultancy to overcome non-compliant production activities. CA SOP Response: CA SOP training of county personnel will cover prohibited consulting activities such as providing consultancy to help an operation overcome non-compliant production activities. County personnel will be reminded of the regulations prohibiting consultancy and directed to refer these operations to their certifier, consultant, or other third party for advice on correcting non-compliant activities.

Verification of Corrective Action: During the auditor's review of files and observation of two spot inspections, there was no evidence that CA SOP personnel were providing consultancy.

- 5.6. Finding 3 (2012). Certifiers are not consistently notified when CA SOP and CAC offices issue noncompliances, adverse actions, settlement agreements, and appeal outcomes to certified operations. Certifiers are not informed of activities that affect their certified operations; and, in some cases, actions by the CA SOP may require a certifier to initiate compliance actions. For example, if a certified operation does not renew organic registration, that operation is in violation of certification and the certifier is required to issue a non-compliance notification pursuant to § 205.662(a). Unless the certifier is notified by the CA SOP of compliance and enforcement activities, certifiers are unable to comply with USDA organic regulations. CA SOP Response: Certifiers were previously notified only after actions had been finalized. The CA SOP's database system will now capture an operation's certifier information, which will allow the CA SOP to inform the certifiers of any actions that may impact the operation. Templates have been revised to ensure certifiers are copied.

Verification of Corrective Action: Certifying agents are notified when compliance notifications are issued to certified operations. Certifying agents have access to CDFA's organic database which allows certifying agents to view CDFA's communication and actions with certified operations.

6. INTRODUCTION TO CURRENT OBSERVATIONS AND FINDINGS

- 6.1. Unless otherwise specified in the observations and findings of this report, processes and activities observed during this audit were compliant with USDA organic regulations, or

NOP policies and procedures.

7. OBSERVATIONS

- 7.1 Observations are notable facts identified by the auditor that do not constitute a compliance issue; however, some of the observations include auditor recommendations for the CA SOP to consider.
- 7.2 All CDFA and SD CAC personnel interviewed and witnessed possess the knowledge, skills, and experience to successfully implement the CA SOP. At all times, CA SOP and SDA CAC personnel conducted themselves professionally.
- 7.3 Since the implementation of the CA SOP, quality manual, forms, and cooperative agreements are established and implemented.
- 7.4 CDFA has successfully implemented a database to manage collected information regarding organic registration, compliance, and enforcement activities.
- 7.5 There are 408 registered organic operations in San Diego County of which 51 organic operations are exempt from certification in accordance with §205.101(a). The annual contract (FY 2015/2016) established between CA SOP and SD CAC requires SD CAC to conduct 90 random spot inspections plus an additional 50 spot inspections of operations located at farmers markets. SD CAC has the discretion to spot inspect any combination of producer, farmers market, restaurant, handler, or retail locations. CA SOP does require that uncertified organic operations be spot inspected prior to any certified operations; however, for San Diego County, the majority of spot inspections will be conducted on certified operations due to the large proportion of registered certified organic operations. CA SOP and CAC inspectors use the same CA SOP Spot Inspection Checklist templates for both certified and non-certified organic operations. The spot inspection checklist items required to be verified and recorded by CAC inspectors are also verified annually by the operation's certifying agent to determine compliance with the USDA organic regulations. CA SOP should consider developing a specific spot inspection checklist for certified organic operations. A spot inspection checklist for certified organic operations could focus on verifying whether the operation's certifying agent is conducting accreditation activities in accordance with the USDA organic regulations. As an example, CA SOP and CAC inspectors could verify that the certified operation has completed and submitted an annual update, received an annual onsite

inspection, received a copy of the annual inspection, received approvals for all used labels and received a compliant organic certificate. Any issues of concern or identified noncompliances of certifying agent activities would then be communicated to the NOP for further handling. If the CA SOP designed a spot inspection report template for certified operations, the NOP could review the template and make suggestions.

CA SOP Response: The SOP will reformat its current spot inspection checklist (template), and create an additional spot inspection checklist. There will then be one checklist for certified operations and one for non-certified operations. The SOP requests further clarification to confirm that for certified operations, the NOP is essentially directing the SOP to develop a checklist to audit the certifier's activities, and that the checklist should not focus on reviewing the operation's actual production activities; as the NOP observation states the checklist for certified operations could focus on verifying whether the operation's certifying agent is conducting accreditation activities in accordance with the USDA organic regulations. The SOP will develop the certified operation spot inspection checklist, once clarification on the purpose of checklist is received from the NOP. The SOP will then submit the checklist to the NOP for review and input.

Determination: NOP accepts this response and will provide further clarification and assistance.

- 7.6 7 CFR §§ 205.620(e) and 205.621(a) state that State Organic Program amendments must be submitted by the State Organic Program's governing official to the NOP for approval before implementation. In 2014, CA SOP submitted significant changes to their policies and procedures in the form of their Quality System Manual (QSM). Future changes to the QSM may be significant and some changes may be minor. The NOP will clarify what is considered an "amendment" and what must be submitted for approval. An "amendment" may be an update to the QSM; therefore, the NOP requests that the CA SOP submit all new draft versions of the QSM for NOP approval prior to its implementation.

CA SOP Response: Refer to the Response for 8.2; Finding 2, regarding definition of "amendment."

Determination: Refer to the Determination for 8.2; Finding 2.

7.7 At the CA SOP office the NOP auditor reviewed a residue sampling case (March 2014) where the results indicated residues over the 5% EPA tolerance. CA SOP issued a noncompliance notice and order to cease organic sales of the product. The certifying agent was notified to investigate the operation. The certifying agent issued the operation a notice of proposed suspension. The operation requested mediation with the certifier which resulted in a settlement agreement. Several months later, the operator was found in violation of the terms of the settlement agreement and a combined notice of noncompliance and proposed suspension was issued by the certifying agent. The operation surrendered its certification to the certifying agent. The certifying agent did not continue to issue the operation a suspension notification. CA SOP officials were kept informed of the certifying agent's actions, but were unaware of the NOP policy for certifying agents to continue and complete adverse actions if an operation does not request mediation or file an appeal during a proposed adverse action. Had CA SOP officials' knowledge of the NOP Policy, they could have directed the certifying agent to issue a notice of suspension despite the operation surrendering its certification. This NOP policy was discussed and presented during the 2013 and 2015 NOP training for certifying agents. For those two trainings, CA SOP officials did not attend. The NOP auditor recommends that CA SOP officials attend all annual certifying agent training presented by the NOP to maintain knowledge of current NOP policies and guidance. CA SOP Response: The SOP attended the 2016 annual certifying agent training presented by the NOP, and will continue attending future annual NOP training to help ensure adherence to NOP policies. In addition to the NOP training, the SOP is requesting that the NOP implement a system to directly notify the SOP of any NOP policy changes to the program.

The SOP contends that the certifying agent should have known to issue a notice of suspension despite the operation surrendering its certification, since it's assumed that he/she attended one of the NOP trainings. Additionally, under 8.3, Finding 3, the NOP states the CA SOP and CAC are not notifying the NOP when issuing noncompliances to certified operations. Since the NOP is requiring the SOP/CAC to notify them when issuing noncompliances to certified operations; the SOP believes the certifying agent

should have also notified the NOP of its actions against the certified operation. While both the SOP and NOP provide regular training, procedural issues may still occur; as demonstrated by this case and the one outlined in 8.1, Finding 1.

Therefore, the SOP respectfully requests that additional policy memos be issued to provide clarification on key areas of concern, and to reinforce what was communicated verbally. Policy memos are also an excellent resource for new employees.

Determination: NOP accepts this response and will provide further guidance regarding available NOP policy resources.

- 7.8 CA SOP provides annual training to CAC staff and inspectors; however, CA SOP has not established training criteria or guidance for CACs to implement when onboarding new CAC inspectors. A standardized training program and/or guidance such as required study material (NOP Handbook, NOP training presentations, etc...) and mentoring, could potentially improve inspector proficiency and the effectiveness and consistency of spot inspection activities.

CA SOP Response: The SOP will develop and implement training criteria or guidance for CACs to implement when onboarding new CAC inspectors, which will include checklists, study materials, and other organic training resources; to help improve inspector proficiency, and the effectiveness and consistency of spot inspection activities.

Determination: NOP accepts this response.

- 7.9 CA SOP is not conducting field performance evaluations of CAC spot inspectors. CA SOP should consider developing a plan or process to conduct an annual sampling of CAC spot inspections to evaluate inspector performance and identify areas for program improvement.

CA SOP Response: The SOP agrees with this observation. The SOP will develop a formal field performance evaluation process that will include onsite reviews of CAC inspectors during spot inspections. CDFA will develop a "field" training review checklist that will be signed by the county inspector and the CDFA reviewer, as proof that the inspector has successfully completed the review. This evaluation process will part of the SOP county audits.

Determination: NOP accepts this response.

8. FINDINGS, CA SOP RESPONSES, AND NOP DETERMINATIONS

8.1 Finding 1. CDFA CA SOP Quality System Manual Ver. 2.0 (July 1, 2014), Section 2.3.3, Spot Inspection Procedures. During the NOP auditor's witnessing of a SD CAC spot inspection of a crop operation, the following issues were identified as not in accordance to approved procedures:

- Although the SD CAC inspector possessed and used a copy of the USDA organic regulations during the spot inspection, the version used was last updated on September 11, 2006 and is not current.
- The CA SOP "Spot Inspection Cover Sheet" (ORG-101 SICLS) and "Producer Spot Inspection Checklist" (ORG-101 SIPCL) used by the SD CAC inspector were 2011 template versions and not the current 2014 template versions.

CA SOP Response:

- The SD CAC has corrected this oversight with a revision to their inspection procedures. The revised procedures require all inspectors to reference the National Organic Program's electronic Code of Federal Regulations online at www.ecfr.gov; during inspections, and for the issuance of violation notices. Printed copies will also be available to inspection staff. The hard copies will be reprinted annually or when a change has been issued by the NOP.

In addition, the SOP will continue to instruct and remind staff from all counties, through training and other correspondence, that they are required to use the most recent versions of manuals, checklists, and other materials during inspections. The SOP will also conduct evaluations of county inspectors.

- The SD CAC inspector followed the correct procedures. The "Spot Inspection Cover Sheet" (ORG-101 SICLS) and "Producer Spot Inspection Checklist" (ORG-101 SIPCL) used by the SD CAC inspector, were downloaded from the SOP website (database) the morning of October 15, 2015; just prior to conducting the spot inspection. The SOP website contains more than one link to each of its forms. Due to a linking issue during updates to the website; the link used by the SD CAC inspector for the templates had not been updated to the

2014 versions of the templates. The SOP will test all links whenever updates are made to its website, to ensure the links connect to the most recent versions of the form templates.

Determination: NOP accepts this response.

- 8.2 Finding 2. 7 CFR §205.621(a) states, “A State organic program’s governing State official must submit to the Secretary a proposed State organic program and any proposed amendments to such approved program.” CA SOP conducts onsite audits of all CAC offices at least every five (5) years to include records, personnel, and procedures. CA SOP uses the checklist template “County Audit” to record the audit activity and observations. This template should be a controlled document and part of the Quality System Manual (QSM). The NOP auditor did not identify other CA SOP procedures or templates in use that should be considered controlled documents; however, CA SOP should review state organic program records and forms to ensure the QSM is complete. Documents added or updates to the QSM are considered amendments and must be approved by the NOP.

CA SOP Response: The SOP agrees that the "County Audit" checklist should be included in the QSM, and will add the checklist as a controlled document to the QSM. The SOP requests confirmation that the NOP is requesting review and approval of all changes to the QSM, no matter how minute the changes may be. The SOP also requests additional confirmation on what types of updates are considered amendments. The NOP states that documents added or updates to the QSM are considered amendments and must be approved by the NOP. However, under Observation 7.6, the NOP states that it will clarify what is considered an "amendment" and what must be submitted for approval, and that an "amendment" may be an update to the QSM.

Determination: NOP accepts this response. An “amendment” is defined as any substantive change to the existing NOP approved QSM that alters the processes or policies of the CA SOP.

- 8.3 Finding 3. 7 CFR § 205.668(a) describes the noncompliance procedures under State organic programs and states that “A State organic program’s governing State official

must promptly notify the Secretary of commencement of any noncompliance proceeding against a certified operation and forward to the Secretary a copy of each notice issued.” CA SOP and CAC are issuing noncompliances to certified operations and copies are not issued to the NOP. The NOP will provide instructions to the CA SOP to provide electronic notifications.

CA SOP Response: The SOP agrees to notify the NOP when issuing noncompliances to certified operations, and will inform the counties that they are required to do the same. The SOP will await further instructions from the NOP for providing electronic notifications, before implementing this change.

Determination: NOP accepts this response and will provide further instruction for submitting electronic notifications.

8.4 Finding 4. The NOP auditor reviewed one case where SD CAC and CA SOP issued several notices to a certified operation. The reviewed records disclosed the following facts:

- Three notices of noncompliance (Notice of Violation) were issued by SD CAC September 2013 through November 2014. One Notice of Noncompliance was issued by CA SOP to the same operation on May 2015.
- The three notices issued by SD CAC indicated different violations of the state and national organic regulations.
- During a spot inspection of the operation in September 2013, product samples were taken by the CAC inspector. The operation was notified of the results in January 2014 and issued a notice of noncompliance (§ 205.272(b)(2)) for allowing organic product to contact prohibited substances. In March 2015, CAC issued the operation a Notice of Proposed Action and a \$1,000 fine for the September 2013 samples that contained a pesticide residue determined to be above the 5% EPA tolerance. This proposed notice appears to be a combined notice of noncompliance (§ 205.671) and a proposed fine of \$1,000. The proposed notice has not been resolved as of the date of the CA SOP review and outstanding for over two years.
- In May 2015, CA SOP instructed SD CAC to investigate the operation due to a

product sample collected (April 2015) by another CAC at a farmers market where the sample resulted in the CA SOP issuing a noncompliance and cease and desist order (May 2015) for residue levels above 5% EPA tolerance. The investigation has not been completed by CAC as of the date of the CA SOP review.

The NOP Auditor's comments:

- 7 CFR §205.662(b) states that “When a certified operation demonstrates that each noncompliance has resolved, the...State organic program’s governing State official, as applicable, shall send the certified operation a written notification of noncompliance resolution.” Or, 7 CFR §205.662(c) states “ When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the...State organic program’s governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification....” No resolution or proposed adverse action notices were subsequently issued to the operation. For example, there are no resolution notices, nor was any proposed suspension or revocation notifications issued for any of the issued noncompliances. No closure has occurred for the multiple noncompliances that were issued.
- SD CAC has not addressed the compliance issues in a timely manner. Residue sampling results were not provided to the operation until four months after the sampling occurred. SD CAC did not issue a timely noncompliance for identified residues above the 5% EPA tolerance (14 months). CA SOP instructed SD CAC to conduct an investigation of the operation which has not been completed after five months.

CA SOP Response:

- The SD CAC issued three Notices of Noncompliance (Notices of Violation) to the same operation in September 2013. In November 2014 SD CAC issued another Notice of Noncompliance to the same operation. The SOP confirms that it issued a Notice of Noncompliance to the same operation as well, in May 2015.
- The Notices of Noncompliance issued by SD CAC and the Notice of

Noncompliance issued by the SOP, were all for different violations of state and national organic regulations.

- The Notice of Proposed Action and proposed \$1,000 fine (based on the operation's history of repeated violations) issued by SD CAC, was resolved and adjudicated with a signed Stipulation and Waiver to Order; issued on March 30, 2015. However, the case status should have been changed to "Closed" in the database, when the notice was resolved. SD CAC will issue reminders to staff and implement procedures to help ensure status information is updated in the database.
- The CA SOP did not locate any records indicating it assigned an investigation to SD CAC in May 2015. However, in April 2015, the Orange County CAC collected samples from the same operation referenced in this Finding; at a Certified Farmers' Market in Fullerton, CA. The sample resulted in the CA SOP issuing a Notice of Noncompliance, and Cease and Desist Order (May 2015) for residue levels above 5% of the EPA tolerance. The CA SOP then referred the case to the operation's certifier. Upon receipt of the referral, the certifier performed a spot inspection and collected additional samples for residue testing.
- In May 2015 the certifier also issued a Notice of Noncompliance to the operation for the positive residue results from the samples collected by the CAC in April 2015. From June 2015 through October 2015, the certifier continued its investigation of the operation. During this timeframe, the certifier issued two additional Notices of Noncompliance for different violations.
- In November 2015 the certifier completed its investigation, and it issued a Notice of Noncompliance Correction to the operation. The case was then closed by the certifier.
- While the SOP considered this case closed by the certifier, it still appeared that the investigation wasn't completed; since the SOP did not actually issue a notice of closure. Moving forward, the SOP will no longer issue Notices of Noncompliance when a case is referred to the certifier. The SOP will monitor the investigation, and work closely with the certifier to help ensure applicable notices are issued in a timely manner, and cases are closed upon completion of the

investigation.

- In 2015, SD CAC added two additional inspectors to its organic program, to meet increased workloads and address compliance issues in a timely manner. In addition, SD CAC has changed its procedures to ensure the timely issuance of notices of noncompliance, adverse actions, and notices of resolution to the operations and their certifiers. The CA SOP did not locate any records instructing SD CAC to conduct an investigation of the above operation.
- In its response to 8.4, Finding 4, the CA SOP indicated the referenced investigation was referred to the operation's certifier. Due to the complexity of the case, and the certifier collecting additional samples, this case required more time to complete the investigation.

Determination: NOP accepts this response.

END OF REPORT