



United States Department of Agriculture

Agricultural Marketing Service
National Organic Program

KENTUCKY DEPARTMENT OF AGRICULTURE

111 Corporate Drive, Frankfort, Kentucky, 40601, U.S.A.

meets all the requirements prescribed in the USDA National Organic Program Regulations

7 CFR Part 205

as an Accredited Certifying Agent

for the scope of

Crops, Handling, Livestock, Wild Crops Operations

This certificate is receivable by all officers of all courts of the United States as prima facie evidence of the truth of the statements therein contained. This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture .

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CERTIFICATE OF ACCREDITATION





National Organic Program
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NATIONAL ORGANIC PROGRAM: AUDIT & CORRECTIVE ACTION REPORT

GENERAL INFORMATION

- **Certifier Name** Kentucky Department of Agriculture, (KDA)
- **Physical Address** 111 Corporate Drive, Frankfort, Kentucky 40601, U.S.A.
- **Audit Type** Renewal Audit
- **Auditors & Audit Dates** Jessica Walden, Alicia Hudson, Alison Howard, 05/17/2021 to 05/20/2021
- **Audit Identifier** NOP-10-21

CERTIFIER OVERVIEW

KDA is a state government agency that was initially accredited on January 13, 2006 by the NOP. KDA is currently accredited for crops, wild crops, livestock, and handling. The KDA office is in Frankfort, Kentucky where all certification activities are conducted. As of April 2021, KDA certifies 236 organic operations consisting of 124 crop, 82 livestock, 1 wild crop, and 29 handling operations. All certified operations are located within the state of Kentucky.

At the time of the audit, KDA had one staff member dedicated full-time to the organic program (Organic Program Manager), three additional KDA staff that assist with the program, and four contract inspectors.

NOP DETERMINATION:

NOP reviewed the audit results to determine whether KDA's corrective actions adequately addressed previous noncompliances. NOP also reviewed any corrective actions submitted as a result of noncompliances issued from findings identified during the audit.

Any noncompliance labeled as “**Cleared**” indicates that the corrective actions for the noncompliance are determined to be implemented and working effectively. Any noncompliance labeled as “**Accepted**” indicates acceptance of the corrective actions and verification of corrective action implementation will be conducted during the next audit.

Noncompliances from Prior Assessments

AIA-3367-20 - Cleared.

AIA-3368-20 - Cleared.

AIA-3369-20 - Cleared.

AIA-4124-20 - Cleared.

AIA-3360-20 - Accepted. (NOP-13-19.NC1) – 7 C.F.R. §205.501(a)(5) states “A private or governmental entity accredited as a certifying agent under this subpart must: Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.”

Comments: *KDA staff do not have sufficient expertise in organic processing/handling techniques. KDA approved three non-compliant products and labels for a processor/handler of multi-ingredient organic beverage products.*

2020 Corrective Action: KDA issued a notice of noncompliance to the operation. KDA received updated product profiles and labels and issued a noncompliance resolution notice. KDA has developed a new policy regarding processing and handling operations. KDA will no longer certify any “Made with organic (specified ingredients or food group(s)).” KDA is no longer verifying restricted products on the National List except for cleaning/sanitizing products. KDA submitted a copy of the letter that was sent to the operations they certify informing them of these changes. KDA gave the producers that are affected by these changes 60 days to apply with another certifier. KDA intends to follow the instruction document NOP 2604 and will keep in contact with their accreditation manager during the process. KDA submitted an internal policy for accepting handling applications. KDA has also updated their Quality Manual that references the policy and its guidelines when determining the acceptance of handler applications. KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual.

2021 Verification of Corrective Action: KDA continues to demonstrate that they do not have sufficient expertise in organic production or handling techniques to fully comply with and implement a USDA organic certification program. The auditors found that KDA continues to certify processors of multi-ingredient products without verifying that all ingredients comply with the NOP regulations. KDA is not following their Quality Manual, which states that KDA will only certify processors who use 100% organic and certified organic ingredients and that they will no longer certify processors that use materials on the National List. The auditors identified three certified processor operations that use ingredients on the National List. For all three operations, there was no evidence that KDA verified whether the non-organic ingredients used in certified products comply with the National List annotation. In addition, the auditors’ reviews of certification files found the following:

1. For one product, a non-organic fish ingredient is listed as organic on the finished product feed label.

2. For several organic feed products, their labels state that all agricultural ingredients are organic. However, supporting documentation on file shows that the feed formulations include feed supplements that contain non-organic agricultural ingredients. These non-organic agricultural ingredients are represented as organic on the finished product feed label. KDA based this approval on a Material Review Organization's (MRO) approved material list and did not further review the feed supplement for compliance or adequately review the finished product feed labels for compliance.
3. For one processing facility file, the inspector noted that product profiles were complete for a multi-ingredient product, when in fact the product profiles did not contain the ingredients listed on the finished product label.

2022 Corrective Action: KDA continues to implement the Organic Processor Policy established in July 2019. KDA's Organic Processor Policy states that KDA will continue to certify feed mill facilities, but any premixes used will be reviewed for compliance by a third-party partner. Feed mills were and continue to be an exception to the 100% organic limitation for processors. KDA is requiring additional staff training. KDA implemented the use of an Organic Program Training and Development Standard Operating Procedure in 2021 and submitted the procedure to the NOP. Two staff completed the Live Online IOIA Organic Processing Inspection Training in September 2021 and KDA provided their certifications of completion to the NOP. KDA is requiring all processing/handling reviewers and inspectors to take the 'Organic Regulations and Retail Labeling' and 'Input Material Review' trainings in the Organic Integrity Learning Center by December 1, 2022. KDA will have a consultant conduct a one-time review of all feed labels and will conduct a specific training on evaluating feed labels by October 1, 2023.

AIA-3361-20 - Accepted. (NOP-13-19.NC2) – 7 C.F.R. §205.501(a)(4) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;"

Comments: *KDA is not conducting final reviews within a reasonable time after completion of the on-site inspections. Four files reviewed indicated a time period of 5 to 6 months between inspection and final review. Additionally, in three of the four files reviewed, final reviews and decisions were not completed prior to the annual update deadline for the following certification year.*

2020 Corrective Action: KDA began addressing this problem in 2018 and is still adding additional staff to accommodate the growth of their program. In 2018, a second organic program specialist was hired in May. The KDA also hired a contract reviewer in August of 2018 who works about 15 hours a week conducting initial and final reviews. KDA is aware that they are still understaffed and hired two contract inspectors for 2019 to conduct inspections. The Division Director for the Organic Certification Program attended both the Crop and Livestock IOIA training allowing him to conduct inspections and assist with initial reviews. KDA has been approved to add two additional contract employees. KDA has agreed to co-host an IOIA training in October of 2019, so that several employees are able to attend an IOIA inspector training. In 2020, KDA plans to evaluate if the current staff levels are enough to get files completed in a timely manner. KDA's goal is to reduce the time between completed inspections to final review to 3 months or less. As part of their internal audit, KDA's Plant Division Director and Organic Program Support will evaluate a sample of files to determine if the time between inspection and final review is meeting their goal. If KDA isn't meeting their goal, the KDA will report to KDA Executive Director of Marketing and the Deputy Executive Director of Marketing in writing that the number of trained personnel is still insufficient. KDA will then evaluate adding additional staff.

2021 Verification of Corrective Action: The auditors verified that KDA has a high staff turnover and is currently understaffed. KDA has only one staff member dedicated to the organic program

(Organic Program Manager) and certifies 236 operations. The number of operations certified by KDA has increased by 9% since their last audit in 2019. Review of certification files found that KDA is still failing to complete certification activities within a reasonable length of time:

1. In one case, a certified handler was not inspected in 2019 and 2020.
2. In another case, KDA did not inspect two handling facilities in 2018, 2019, or 2020. KDA issued the operations certificates in 2017 and letters of good standing in 2018 and 2019.
3. In another case, KDA issued a Notice of Noncompliance to an operation six months after conducting an inspection.
4. In another case, KDA has yet to review an inspection report for a handler inspection that occurred 14 months ago. The post-inspection review is not complete and, to date, KDA has not issued a new certificate to this operation since 2018.
5. In another case, KDA completed a post-inspection review more than a year after receiving an operation's annual update.
6. In another case, KDA made a certification decision 16 months after conducting an inspection of a livestock operation.

2022 Corrective Action: As of March 2022, KDA certifies less than two hundred operations. KDA has increased the total number of personnel to twelve, which includes four full-time staff that conduct inspections, reviews, and implement the adverse action process; five temporary contractors who act as reviewers and inspectors, and three other KDA staff who act as reviewers and inspectors. KDA submitted a personnel list to the NOP. KDA also created a new job classification in 2021 to assist with staff retention.

KDA has implemented the use of a whiteboard to track certification activities and deadlines. Certification staff record the name of the operation and at weekly team meetings, KDA staff review the whiteboard to assign tasks, review task timelines, and update the board. The weekly meeting ensures that KDA staff are aware of impending deadlines and next steps. KDA also implemented the use of a Master Workflow spreadsheet to track certification timelines. KDA updated the *Incomplete Submissions* and *Adverse Action Procedures* sections of its Quality Manual to include information on how staff are to use the spreadsheet and whiteboard. The Organic Program Manager is responsible for training staff on the use of the tools. KDA previously provided the Master Workflow spreadsheet, updated Quality Manual, and photos of the whiteboard to the NOP.

AIA-3362-20 - Accepted. (NOP-13-19.NC3) – 7 C.F.R. §205.405(a)(1) states, “When the certifying agent has reason to believe, based on a review of the information specified in §205.402 or §205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification.”

Comments: *KDA issued a letter to an applicant following the on-site inspection identifying the use of prohibited inputs and noncompliant recordkeeping instead of issuing a Notice of Noncompliance or a combined Notice of Noncompliance and Notice of Denial. The letter also indicated that if the operator did not respond, a Notice of Denial would be issued.*

2020 Corrective Action: KDA reviewed the NOP's Penalty Matrix and Instruction document NOP 4002. KDA understands that an accidental application of a prohibited application must receive a combined Notice of Noncompliance and Denial/Proposed Suspension. KDA's Quality Manual now states, “The accidental application of prohibited substances to land also is considered an uncorrectable noncompliance and should result in a denial of certification or a combined Notice of Noncompliance and Proposed Suspension. Portions of land must be suspended as warranted... Land to which prohibited substances have been applied must be suspended from organic operation for three years, pursuant to § 205.202 of the regulations.” KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual. To ensure

continued compliance, KDA's Division Director will review any file that has a prohibited substance application and make sure the enforcement actions comply with the regulations and NOP 4002.

2021 Verification of Corrective Action: The auditors verified that KDA's current Quality Manual includes a compliant process. However, the auditors' review found that KDA is still not implementing a compliant process when denying an applicant for certification:

1. In one case, KDA failed to issue a written notice of denial to an applicant after issuing a Notice of Noncompliance. Instead, KDA issued a Notice of Proposed Suspension and accepted a surrender of certification from the applicant.
2. In another case, KDA received and accepted a mediation request from an applicant six months after the deadline to respond to the combined Notice of Noncompliance and Denial.
3. In another case, KDA issued an applicant a Notice of Denial one month after issuing the applicant a combined Notice of Noncompliance and Denial that instructed the applicant to submit a voluntary withdrawal of their certification if they were not continuing with certification.
4. In another case, KDA issued a Notice of Noncompliance to an applicant after issuing a combined Notice of Noncompliance and Denial for the same noncompliance. Months later, KDA issued the operation a Notice of Noncompliance for failure to submit annual updates even though the operation was never certified.

2022 Corrective Action: KDA implemented the use of a New Applicant Decisions Standard Operating Procedure (SOP). The SOP explains that the adverse action process for applicants ends in denial and does not involve issuing a proposed suspension. It also provides clarification of when to issue a combined notice of noncompliance and denial. KDA provided NOP with the SOP and a September 16, 2022 email to all staff informing them of the SOP. In September 2022, KDA also implemented the use of an Adverse Action Procedure that provides the Organic Program Manager and the Organic Program Specialist a step-by-step guide for issuing, recording, and following up on noncompliances and adverse actions. KDA submitted the procedure, as well as a September 16, 2022 email informing staff, to the NOP.

AIA-3363-20 - Accepted. (NOP-13-19.NC4) – 7 C.F.R. §205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.”

Comments: *KDA's process for settlement agreements did not comply in the following manner:*

- *KDA issued a Notice of Suspension when the terms of the settlement agreement were not met by the operation instead of issuing a Notice of Proposed Suspension.*
- *KDA entered into a settlement agreement with an operation requiring the operation to submit a surrender of certification by a certain date. The operation did not submit the surrender form, however, KDA entered the operation as “surrendered” into the Organic Integrity Database.*

2020 Corrective Action: KDA's staff reviewed the NOP's “Adverse Actions Refresher” Training from February 13, 2018 to better understand the process for adverse actions. KDA revised their Organic Quality Manual to include that a final adverse action notice may not be issued if a settlement term is being broken. KDA submitted a template letter that they will issue to operations that were issued a Settlement Agreement to let them know that they have fully met the terms of the agreement. To ensure continued compliance the KDA program Support Staff and the Division Director will pick a sample of at least 10 settlement agreements to verify they comply with the regulations. This will be done during the annual internal audit and will be reported to KDA Executive Director of Marketing and the Deputy Executive Director of Marketing in writing whether this corrective action, and all other NOP requirements, were completed or not completed in the preceding calendar year.

2021 Verification of Corrective Action: KDA could not locate three of four requested settlement

agreements. As a result, the auditors could not verify whether KDA has effectively implemented corrective actions. For the one settlement agreement reviewed by the auditors, KDA entered into the settlement agreement seven months after issuing a combined Notice of Noncompliance and Notice of Denial, which does not comply with the timeline requirements in the USDA organic regulations.

2022 Corrective Action: KDA implemented the use of a file naming convention in September 2021 and created a digital Master Producer File for each operation that contains the operation's files since 2020. KDA provided NOP with a training slide presented to the organic team in Summer 2021 on the naming convention and a screenshot of the master producer files folder. Regarding the timeliness of completing the adverse action process, KDA implemented the use of a whiteboard and Master Workflow spreadsheet to better track deadlines. KDA updated the *Incomplete Submissions* and *Adverse Action Procedures* sections of its Quality Manual to include information on how staff are to use the spreadsheet and whiteboard. The Organic Program Manager is responsible for training staff on the use of the tools. KDA previously provided NOP with the Master Workflow spreadsheet, updated Quality Manual, and photos of the whiteboard. KDA also plans to develop a new database that will be used in the 2023 certification year to manage certification milestones and improve recordkeeping. KDA provided NOP with the file naming convention document and the database request for proposal.

AIA-3364-20 - Accepted. (NOP-13-19.NC5) –7 C.F.R. §205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.”

Comments: *KDA's process and forms for verifying compliance with the requirements of the USDA's international organic trade arrangements does not comply in the following manner:*

- *KDA does not fully verify a product's compliance with the US – Canada Equivalency Arrangement, including label and livestock stocking rate requirements.*
- *KDA's inspection reports do not require the inspector to verify whether the operation is using any products and/or ingredients imported under an international organic trade arrangement.*

2020 Corrective Action: KDA updated its Export Addendum to effectively verify the requirements of the trade arrangements. KDA has added a question to the Inspection Report for all scopes that asks “Is the producer importing products from countries outside of the US? If yes, did you update Section 4 of the application?” The application includes a section on Importing and Exporting that requires a description of the material being imported, country of Origin, and attachment of import certificates. KDA revised their Organic Quality Manual to include this new review process to ensure compliance with the USDA's international organic trade arrangements. KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual. KDA's Plant Division Director and Organic Program Specialists will audit any producer that is importing or exporting during their internal program review. KDA's internal audit will verify that all terms for the trade agreement are being met and that an Export Addendum form is completed for that operation.

2021 Verification of Corrective Action: KDA reported that only one operation is involved in international activities and that operation currently exports organic products to Canada. KDA could not locate the inspection report or organic system plan (OSP) for this operation. As a result, the auditors could not assess whether this operation completed the relevant sections of the OSP and application templates or whether the inspector verified the operator's compliance with the US – Canada Equivalency Arrangement. In addition, KDA's corrective action included auditing files of producers exporting and importing during their internal program review and KDA failed to do this during their internal program review.

2022 Corrective Action: KDA implemented the use of a file naming convention in September 2021

and created a digital Master Producer File for each operation that contains the operation's files since 2020. KDA provided NOP with a training slide presented to the organic team in Summer 2021 on the naming convention and a screenshot of the master producer files folder. KDA also maintains a physical copy of each operator file. KDA developed and submitted to the NOP an addendum to their inspection report that covers questions relevant to Canadian Equivalency, including label and livestock stocking rate requirements. KDA shared the addendum with the organic team on September 28, 2022. KDA's current inspection report forms include questions about imported ingredients.

AIA-3365-20 - Accepted. (NOP-13-19.NC6) –7 C.F.R. §205.501(a)(7) states, “A private or governmental entity accredited as a certifying agent under this subpart must: have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.” NOP 2025, Sections 3.1 and 3.2 states, the annual internal program review of all certification activities ensures adherence to the regulations. The review must be conducted in a planned and systematic manner and the results must be documented in a report, which must: a. Identify the dates on which the review was conducted; Identify any findings; Identify how any proposed corrective actions will be addressed in a timely and appropriate manner; and assess prior findings and implemented corrective actions of prior program reviews. Qualified program reviewers must have the expertise to conduct such reviews, including knowledge of certification, auditing, and the USDA organic regulations.

Comments: *KDA's annual internal program review does not comply in the following manner:*

- *The review report does not include a summary of findings and proposed corrective actions to be addressed in a timely and appropriate manner.*
- *The review does not assess prior findings and implemented corrective actions of prior program reviews.*
- *The 2018 review report did not include the dates of the review or identify the auditor(s) who conducted the review.*
- *The 2018 program review was conducted by two Division Directors and a Marketing Specialist. The Division Directors' and Marketing Specialist's qualifications did not demonstrate knowledge of certification, auditing, and the USDA organic regulations*

2020 Corrective Action: KDA revised their Quality Manual to comply with the criteria listed in NOP 2025. KDA will verify that their internal program review is conducted in accordance with 7 C.F.R. §205.501(a)(7) and NOP 2025. In addition, KDA's internal program review will include a summary of findings that contain all relevant information and that the reviewers have the expertise to conduct such reviews, including knowledge of certification, auditing, and the USDA organic regulations. The internal program review team shall utilize the applicable program review checklists NOP-2005 through NOP-2005-6 in an abbreviated format. The internal program review will be conducted no later November 1st each year, for the report to be compiled, corrective actions implemented, and all submitted as part of the annual report submitted to the NOP by January 13th each year.

2021 Verification of Corrective Action: The auditors' review of KDA's 2020 internal program review found that KDA did not verify that corrective actions from prior noncompliances were implemented and that the noncompliances were sufficiently corrected. Specifically, several of KDA's corrective actions stated that as part of the internal program review KDA would review a sample of relevant files. The auditors' review also found that KDA did not review the necessary files and several of the noncompliances with corrective actions involving action during the internal program review process remain outstanding.

2022 Corrective Action: KDA developed the following procedures and forms and provided these documents to the NOP:

1. KDA created an Internal Audit File Selection Standard Operating Procedure (SOP), which describes how files will be selected for review and which file types will be selected, including certification scope, denial, surrender, investigation, and adverse action files. This procedure also defines when the internal auditors will receive the files to review and how their reviews will be recorded.
2. KDA created a spreadsheet to record the file selection for the internal audit. This spreadsheet also identifies what type of file was chosen for review (investigation, denial, suspension, etc.).
3. KDA created a spreadsheet to record any noncompliances identified during the internal audit. This spreadsheet records the details of the noncompliance, the date it was issued, the date and details of the corrective action or rebuttal, and the status of the noncompliance.

KDA will implement the use of the new documents with its 2022 internal audit. KDA informed the internal program reviewers of the updates in an email on September 15, 2022 and provided the email to the NOP.

AIA-3366-20 - Accepted. (NOP-13-19.NC7) – 7 CFR § 205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.” ***NOP 2027 Instruction Personnel Performance Evaluation*** section 3.2 describes performance evaluation criteria certifying agents should use to evaluate staff annually.

Comments: *KDA’s performance evaluations do not include the evaluation criteria listed in NOP 2027 to fully evaluate certification staff and inspector performance, as required by §205.501(a)(6).*

2020 Corrective Action: KDA created an addendum to the employees’ performance evaluation and updated their Field Witness Evaluation Form. The evaluation criteria on both forms include all the performance criteria listed in NOP 2027. KDA updated its Quality Manual to reflect the addendum and changes. During their annual internal program review, KDA’s Plant Division Director and Organic Program Specialists will work together to determine and evaluate the performance of each of the staff members.

2021 Verification of Corrective Action: KDA did not implement the corrective actions submitted to the NOP. KDA is not evaluating certification staff performance according to the criteria listed in NOP 2027. KDA’s Plant Division Director and Organic Program Specialists did not work together to determine and evaluate the performance of each of the staff members during their annual internal program review.

2022 Corrective Action: KDA confirmed that both the Plant Division Director and the Organic Program Manager reviewed and understand NOP 2027. At the end of 2021, KDA developed a new personnel evaluation form, and in April 2022, KDA implemented the use of a Personnel Evaluation procedure and a Personnel Requirements Spreadsheet. The documents apply to all certification personnel, including contractors. KDA submitted the documents to the NOP. The evaluation form includes the performance criteria listed in NOP 2027, the procedure specifies the dates by which field and annual personnel evaluations will occur, and the spreadsheet is used to document the completion of personnel and field evaluations, trainings, and other annual requirements. KDA communicates requirements to certification personnel through monthly program update emails and at regular team meetings.

Noncompliances Identified during the Current Assessment

AIA-6622-21 - Accepted. 7 C.F.R. §205.670(g) states, “If test results indicate a specific agricultural product contains pesticide residues or environmental contaminants that exceed the Food and Drug Administration's or the Environmental Protection Agency's regulatory tolerances, the certifying agent must promptly report such data to the Federal health agency whose regulatory tolerance or action level has been exceeded. Test results that exceed federal regulatory tolerances must also be reported to the appropriate State health agency or foreign equivalent.”

Comments: *KDA failed to demonstrate compliance with the pesticide residue sampling requirements. KDA does not carry out the procedures of NOP 2613 Instruction Responding to Results from Pesticide Residue Testing. KDA does not notify operations of test results. In addition, interviews with KDA staff found that KDA does not inform operations that their product may be sold as organic when residues are not detected.*

Corrective Action: KDA has implemented the use of a Chain of Custody spreadsheet, which includes the date KDA receives the sample results and the date they are mailed to the operation. KDA provided the NOP with a copy of the spreadsheet. On September 15, 2022, KDA implemented the use of a sample results template letter. The template includes a reminder to staff that if residues were not detected, the operation should be informed that their product may be sold as organic.

AIA-6623-21 - Accepted. 7 C.F.R. §205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.”

Comments: *KDA did not conduct annual performance evaluations for all personnel in 2020. The auditors' review of personnel files found that KDA did not conduct performance evaluations for two contract inspectors in 2020. In addition, KDA did not conduct inspector field evaluations for one of four inspectors in 2020.*

Corrective Action: At the end of 2021 KDA developed a new personnel evaluation form and in April 2022 KDA implemented the use of a Personnel Evaluation procedure and a Personnel Requirements Spreadsheet. The documents apply to all certification personnel, including contractors. KDA submitted the documents to the NOP. The evaluation form includes the performance criteria listed in NOP 2027, the procedure specifies the dates by which field and annual personnel evaluations will occur and the spreadsheet is used to document the completion of personnel and field evaluations. KDA communicates requirements to certification personnel through monthly program update emails and at regular team meetings.

AIA-6624-21 - Accepted. 7 C.F.R. §205.501(a)(1) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part;”

Comments: *KDA does not have sufficient expertise in organic production or handling techniques to fully comply with and implement a USDA organic certification program. The auditors' review of certification files and interviews with certification staff identified the following:*

- 1. The inspection reports do not provide verification that the inspectors are assessing the accuracy of the operation's Organic System Plan (OSP).*
- 2. Traceability worksheets completed by inspectors do not include enough detail for a reviewer to*

determine compliance.

3. *In/out balance audit activities conducted by the inspectors are not sufficient to determine compliance. The auditors' review of handler inspection reports found that inspectors are not calculating the quantities of organic ingredients and products in beginning and ending inventories. Therefore, there is no verification that the quantities of processed products produced and sold are supported by the quantities of organic ingredients received and in inventory.*
4. *Crop yields are not recorded in OSPs nor consistently verified during inspections.*
5. *KDA personnel do not follow the certification procedures outlined in their Quality Manual, including but not limited to the adverse action process, mediation and settlement agreement process, and staff oversight and evaluations.*
6. *During interviews with KDA staff, the auditor asked KDA to explain their justification for issuing a noncompliance to an operation regarding inaccurate feed labels. KDA failed to identify issues that were noncompliances and instead, identified issues that were not out of compliance with the NOP regulations.*
7. *For two organic retail labels reviewed and approved by KDA, the "certified organic by..." statement is not placed below the information identifying the handler or distributor.*
8. *The auditors reviewed one crop operation who uses a sodium nitrate fertilizer approved by an MRO, however, KDA did not require the operation to include in their OSP how their use of sodium nitrate is aligned with the requirements of 7 CFR 205.602(h).*

Corrective Action: KDA submitted updated inspection report templates for all scopes, which now prompt inspectors to verify the accuracy of the organic system plan (OSP). Inspection report templates also include traceback and mass balance templates that prompt additional details from the inspector, including the verification of crop yields, in order to capture the inspector's audit trail exercises during inspections. KDA added a prompt to the crop inspection report template that instructs inspectors to verify the compliant use of sodium nitrate, if applicable. KDA implemented the use of the new inspection report templates in September 2022.

In September 2022, KDA also implemented the use of an Adverse Action Procedure that provides the Organic Program Manager and the Organic Program Specialist a step-by-step guide for issuing, recording, and following up on noncompliances and adverse actions. KDA submitted the procedure as well as a September 16, 2022 email informing staff to the NOP.

KDA is also requiring additional staff training. KDA implemented the use of an Organic Program Training and Development Standard Operating Procedure in 2021 and submitted the procedure to the NOP. Two staff completed the Live Online IOIA Organic Processing Inspection Training in September 2021, and KDA provided their certifications of completion to the NOP. KDA is requiring all processing/handling reviewers and inspectors to take the 'Organic Regulations and Retail Labeling' and 'Input Material Review' trainings in the Organic Integrity Learning Center (OILC) by December 1, 2022. KDA will have a consultant conduct a one-time review of all feed labels and will conduct a specific training on evaluating feed labels by October 1, 2023. KDA submitted verification that they issued a notice of noncompliance to the operation in question whose labels were noncompliant.

AIA-6625-21 - Accepted. 7 C.F.R. §205.501(a)(9) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Maintain all records pursuant to §205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official;"

Comments: *KDA did not make all records available for inspection during the audit. KDA failed to provide the following documents to the auditors: inspection reports, organic system plans, settlement agreements, notices of noncompliance, notices of proposed suspension, evidence that*

adverse action notices were sent to the NOP, an accurate list of all inspections carried out in 2019 and 2020, and pesticide residue sample test results and notifications to operators. As of the final day of the audit, KDA was not able to locate these documents. KDA explained that many of the documents generated prior to 2020 are in their warehouse or in previous staff emails that are not accessible.

Corrective Action: KDA implemented the use of a file naming convention in September 2021 and created a Master Producer File for each operation that contains the operation's files since 2020. KDA has also begun including a general organic inbox on correspondence with operations so that emails remain accessible if staff leave. KDA provided NOP with the file naming convention document, a training slide presented to the organic team in Summer 2021 on the naming convention, and a screenshot of the master producer files folder. KDA also plans to develop a new database that will be used in the 2023 certification year to manage certification milestones and improve recordkeeping. KDA provided NOP with the file naming convention document and the database request for proposal.

AIA-6626-21 - Accepted. 7 C.F.R. §205.501(a)(11)(v) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Prevent conflicts of interest by: Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report."

Comments: *KDA does not consistently require applicable staff to complete an annual conflict of interest disclosure report. The auditors' review of certification personnel files found that not all personnel disclosed conflicts of interest in 2020 and 2021.*

Corrective Action: In April 2022, KDA implemented the use of a Personnel Requirements Spreadsheet, which documents annual staff requirements, including the submission of a conflict of interest (COI) disclosure form. The document applies to all certification personnel, including contractors. KDA submitted the 2022 Personnel Requirements Spreadsheet to the NOP, which included a 'yes' for all staff under the COI form column.

AIA-6627-21 - Accepted. 7 C.F.R. §205.670(d) states, "A certifying agent must, on an annual basis, sample and test from a minimum of five percent of the operations it certifies, rounded to the nearest whole number."

Comments: *KDA did not meet the requirement to sample and test from 5% of its certified operations annually in 2020. The auditors' review of sample collection files for 2020 found that 3.6% of operations were sampled and tested.*

Corrective Action: KDA uses a Master Workflow spreadsheet to determine the total number of samples needed and a whiteboard to record operations flagged for sample collection. In 2021, KDA assigned sample collection to inspectors along with their inspection assignments. KDA asked each inspector to collect two samples between May and October. KDA provided the NOP with a 2021 chain of custody spreadsheet as evidence they met the requirement to sample and test from 5% of operations in 2021. Staff inspectors are expected to review the whiteboard before leaving for an inspection and the organic program manager communicates sampling needs to contract inspectors based on their inspection assignments.

AIA-6634-21 - Accepted. 7 C.F.R. §205.404(b)(1) states, "The certifying agent must issue a certificate of organic operation which specifies the: Name and address of the certified operation;"

Comments: *KDA's organic certificates are not following the guidance of NOP 2603 Organic Certificates. The auditor's review of certification files found that the current certificate template states, "certified under the US National Organic Program 7 CFR Part 205," instead of "Certified*

to the USDA Organic Regulations, 7 CFR Part 205.”

Corrective Action: KDA submitted an updated certificate template (2022_Certificate-Blank) to NOP that contains the following language: “The operation listed below is certified to the USDA organic regulations, 7 CFR Part 205.” KDA implemented the use of the updated template on all certificates issued after September 14, 2022.

AIA-6635-21 - Accepted. 7 C.F.R. §205.403(c)(1) states, “The onsite inspection of an operation must verify: The operation's compliance or capability to comply with the Act and the regulations in this part;”

Comments: *KDA’s inspectors do not fully verify an operation’s compliance with the USDA organic regulations. The following are examples:*

- 1. The auditors’ review of livestock certification files found that inspectors are not verifying an operation’s compliance with the pasture rule, rations, days on pasture, allowable confinement for all classes of animals, origin of livestock, feed fed, health care practices, certified livestock products, and inputs.*
- 2. Inspectors are not conducting sufficient traceback and mass balance audit activities to determine compliance for all certification scopes reviewed (crops, livestock, and handling).*
- 3. KDA does not require the operator to provide their method for calculating dry matter demand and dry matter intake. KDA does not then verify the dry matter demand or dry matter intake through separate calculations from the operator’s records.*

Corrective Action: To address points one and three, KDA made the following updates to its organic system plan (OSP) and inspection report templates and provided the updated templates to the NOP:

- KDA’s inspection report asks the inspector to verify temporary confinement in accordance with §205.239(c), to verify reasons and lengths of temporary confinement are consistent with the OSP, to review and collect photos of confinement logs, and to document if confinement occurred during the grazing season.
- KDA’s OSP asks the operator to identify an approved reason(s) for temporary confinement.
- KDA updated its Pasture Log to ensure KDA can verify that starting and stopping grazing dates and the total days grazed by class of animal coincide with the region’s grazing season. Operations will use the Pasture Log to record grazing days throughout an entire year for each class of animal.
- KDA’s inspection report prompts the inspector to note the operator’s method for calculating dry matter demand. KDA’s inspection report requires the inspector to compare the feed mass balance exercise to the actual feed fed amounts allowing KDA to verify the feed on hand and the actual dry matter intake consumed from grazing. KDA also submitted a draft dairy feed/milk audit form to the NOP that inspectors will begin using on 2023 dairy inspections.

To address point two, KDA required staff to complete the ‘Traceability Techniques’ Organic Integrity Learning Center training and submitted evidence to NOP that eight staff had completed the training as of September 2022. KDA also provided a mass balance and traceability refresher training at their May 2022 staff training and provided NOP with the training slides. KDA submitted updated inspection report templates for all scopes, which now include traceback and mass balance templates with sufficient detail, including the verification of crop yields, to capture the inspector’s audit trail exercises during inspections. In June 2022, KDA implemented the use of the updated inspection report. KDA provided NOP with the Mass Balance/Traceback form and an email sent to staff informing them of the updates.

AIA-6636-21 - Accepted. 7 C.F.R. §205.403(e)(2) states, “A copy of the on-site inspection report and any test results will be sent to the inspected operation by the certifying agent.”

Comments: *KDA does not complete inspection reports for unannounced inspections. KDA staff stated that inspectors only complete exit interview forms for unannounced inspections. Inspectors then leave a completed exit interview form with the operation recording any identified issues of concern.*

Corrective Action: On June 21, 2021, KDA implemented the use of a Sampling/Unannounced Inspection Report template. The template is used for any unannounced inspection and the completed report is provided to the operation at the time the certificate is issued along with the annual inspection report. KDA submitted to the NOP the template and an email to certification personnel informing them to use the template.

AIA-6638-21 - Accepted. 7 C.F.R. §205.662(c) states, “Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent or State organic program's governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification.”

Comments: *KDA's adverse action process is not in compliance with the USDA organic regulations. The auditors identified significant issues with KDA's process:*

- 1. KDA issued a Notice of Suspension to an operation that was already suspended. The first Notice of Suspension was issued a year after KDA issued the operation a combined Notice of Noncompliance and Proposed Suspension. The second Notice of Suspension requested corrective actions and did not contain an effective date.*
- 2. KDA issued a Notice of Suspension three months after an operation's deadline to respond to the Notice of Proposed Suspension.*
- 3. KDA issued a Notice of Proposed Suspension to an operation applying for certification. Operations that are not certified cannot be suspended.*
- 4. KDA provided no documented evidence of resolution, according to the USDA organic regulations, for 18 out of the 25 Notices of Proposed Suspension they reported issuing. KDA staff explained these were likely issued to operations for not submitting their annual update and were resolved because the operations submitted the requested documents, which demonstrates KDA's overall lack of knowledge regarding the adverse action process.*

Corrective Action: In September 2022, KDA implemented the use of an Adverse Action Procedure that provides the Organic Program Manager and Organic Program Specialists a step-by-step guide for issuing, recording, and following up on noncompliances and adverse actions. KDA submitted to NOP the procedure and a September 16, 2022 email informing staff. KDA will lead a training on the procedure at their Fall 2022 team meeting.

AIA-6639-21 - Accepted. 7 C.F.R. §205.406(c) states, “If the certifying agent has reason to believe, based on the on-site inspection and a review of the information specified in §205.404, that a certified operation is not complying with the requirements of the Act and the regulations in this part, the certifying agent shall provide a written notification of noncompliance to the operation in accordance with §205.662.”

Comments: *KDA does not issue its certified operations a Notice of Noncompliance even though the review of the inspection report finds that the operation does not comply with the USDA organic regulations. The auditors' review of certification files found the following:*

- 1. For one dairy operation, the inspector noted missing records in the crop mass balance exercise and the total days grazed by the dairy herd was significantly shorter than regional average or days reported in the organic system plan (OSP).*

2. *Another dairy operation was reported to have used antibiotics on a calf without information on if the animal was identified or if it would be sold as nonorganic. Calves were grazed fewer days than other classes of animals without explanation in the OSP, the meat retail label's "certified organic by..." placement was noncompliant, and the operation did not have records of actual feed fed.*
3. *A third dairy operation was noted to have totally confined animals during the winter months from October to February, the feed audit included grain in the winter ration where the OSP did not include grain, the operation purchased cattle without origin information, and the dry matter demand (DMD) for bred heifers was not correct in the OSP.*
4. *In one crop operation file, instead of issuing a Notice of Noncompliance, KDA issued a certificate and Determination of Certification letter that asked the producer to improve on their record keeping system because the Exit Interview noted that no seed search and non-GMO verification information was provided.*

Corrective Action: KDA implemented the use of a Master Workflow spreadsheet with specific checkpoints to ensure inspection reports and exit interview forms are reviewed before a certification decision is made. If a review of the report or form determines a certified operation is not in compliance, KDA will issue the operation a notice of noncompliance. KDA updated their "Inspector Expectation Agreement," to state that inspectors shall submit inspection files within three weeks of inspection and inspectors must document issues of concern on KDA's Exit Interview form. KDA reviewed the expectations with inspectors during a February 2022 team meeting. KDA reviewed the files containing noncompliant labels and determined the operations had either surrendered or did not have any labels on file.

AIA-6640-21 - Accepted. 7 C.F.R. §205.403(a)(1) states, "A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue."

Comments: *KDA did not conduct an annual inspection of all its certified operations in 2019 or 2020 and they could not provide inspection dates for all operations for these years. Some operations were not inspected for multiple years.*

Corrective Action: KDA determined it lacked inspectors and a tracking system to determine when inspections were ready to be assigned. KDA addressed the issues as follows:

1. KDA increased the total number of personnel able to perform inspections to twelve, which includes four full-time staff, five contractors, and three other KDA staff. KDA has nine personnel performing crop inspections, six performing livestock inspections, and six performing handler inspections. KDA submitted a personnel list to the NOP. KDA also created a new job classification in 2021 to assist with staff retention.
2. KDA implemented the use of a Master Workflow spreadsheet to track certification files and identify when applicants are ready for inspection. The organic program manager checks in with inspectors weekly and updates the spreadsheet accordingly. KDA submitted the 2022 Master Workflow spreadsheet to the NOP, which showed that as of November 1, 2022, KDA had completed all 2022 livestock inspections and had two crop inspections remaining. KDA plans to complete processing/handling inspections in October and November 2022.
3. To further improve tracking inspection assignments, KDA plans to develop a database for use in the 2023 certification year. KDA provided NOP with the database request for proposal it released with a submission deadline of November 11, 2022.

AIA-6641-21 - Accepted. 7 C.F.R. §205.403(b)(2) states, "All on-site inspections must be

conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of subpart C of this part can be observed, except that this requirement does not apply to unannounced on-site inspections."

Comments: *KDA did not conduct inspections at a time when they could review activities for compliance with §205.240(b). The auditors' review of certification files found that KDA did not conduct dairy inspections during the operations' 2019 or 2020 grazing seasons. Additional review of the certifier spreadsheets showed that in 2019, of the 54 reported inspections only 17 livestock inspections occurred between April 1 and November 1. Of the 73 reported livestock inspections in 2020, only 33 livestock inspections occurred between April 1 and November 1. The NOP recognizes that inspections may occur outside of the grazing season, however, the NOP considers grazing season observations necessary to evaluate the pasture practice standards. Any certifier may conduct additional inspections at any time during the year to confirm other elements of compliance.*

Corrective Action: KDA determined they lacked inspectors and a tracking system to determine when inspections were ready to be assigned. In October 2021, two additional staff members received IOIA livestock inspection training. KDA provided NOP with their training certificates. As of September 2022, KDA has increased the number of personnel performing livestock inspections to six. KDA determined Kentucky's grazing season is from late March to early November. KDA implemented the use of a Master Workflow spreadsheet to track certification files and identify when applicants are ready for inspection. KDA submitted the 2022 Master Workflow spreadsheet to the NOP, which showed that all 2022 livestock inspections were completed on or before November 3, 2022.

AIA-6642-21 - Accepted. 7 C.F.R. §205.501(a)(2) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart."

Comments: *KDA's inspection reports do not fully verify an operation's compliance with the USDA organic regulations. The auditors' review of the 2021 livestock inspection report template found that the template does not prompt the inspector to report on the following:*

- 1. Whether the requirements of the pasture rule have been met.*
- 2. The dry matter intake (DMI) from as fed records for all classes of animals.*
- 3. The eligibility of animals sold and/or slaughtered as organic.*
- 4. Activities related to on-farm egg handling and washing.*
- 5. Whether monitoring records are maintained for biodiversity and natural resources.*
- 6. Whether the operator's OSP accurately reflects organic practices.*

Corrective Action: KDA made the following updates to its organic system plan (OSP) templates and inspection report templates and provided the updated templates to the NOP:

- KDA updated its inspection report to ask the inspector to describe and verify the requirements of the pasture rule, including details related to temporary confinement.
- KDA updated its Pasture Log to ensure KDA can verify that starting and stopping grazing dates and the total days grazed by class of animal coincide with the region's grazing season. Operations will use the Pasture Log to record grazing days throughout an entire year for each class of animal. KDA's inspection report requires the inspector to compare the feed mass balance exercise to the actual feed fed amounts allowing KDA to verify the feed on hand and the actual dry matter intake consumed from grazing.
- KDA updated its livestock OSP to ensure that KDA inspectors are verifying whether animals are eligible for organic slaughter.
- KDA updated its livestock OSP to include a section for describing on-farm egg handling. KDA updated its inspection report template to prompt the inspector to describe the egg handling

process, if relevant, and to verify that any inputs used are listed on the operator's master input list.

5. KDA updated its crop inspection report template to include two questions that ask the inspector to report whether biodiversity monitoring records are maintained and to describe practices that maintain or improve the biological resources on farm.
6. KDA updated its livestock and crop inspection report templates to prompt the inspector to verify that the operators' OSPs accurately list all practices and inputs. A space is also provided for the inspector to list the necessary changes and updates to the OSP.

KDA will implement the use of the updated OSPs for the 2023 certification year and informed staff to begin using the Inspection Report Crop_6.7.22 and 2022 Inspection Report Liv_6.7.22 on June 7, 2022.

NATIONAL ORGANIC PROGRAM: CORRECTIVE ACTION REPORT

AUDIT AND REVIEW PROCESS

An onsite Mid-term Assessment of the Kentucky Department of Agriculture (KDA) organic program was conducted on May 6-10, 2019. The National Organic Program (NOP) reviewed the auditor's report to assess KDA's compliance to the USDA organic regulations. This report provides the results of NOP's assessment.

GENERAL INFORMATION

Applicant Name	Kentucky Department of Agriculture (KDA)
Physical Address	111 Corporate Drive, Frankfort, KY 40601
Mailing Address	111 Corporate Drive, Frankfort, KY 40601
Contact & Title	Megan Clark, Organic Program Specialist
E-mail Address	Megan.clark@ky.gov
Phone Number	502-782-4112
Reviewer(s) & Auditor(s)	Graham Davis, NOP Reviewer Penny Zuck and Bridget McElroy, On-site Auditors
Program	USDA National Organic Program (NOP)
Review & Audit Date(s)	NOP corrective action review: October 4, 2019 NOP assessment review: May 30, 2019 Onsite audit: May 6-10, 2019
Audit Identifier	NOP-13-19
Action Required	None
Audit & Review Type	Mid-Term Assessment
Audit Objective	To evaluate the conformance to the audit criteria; and to verify the implementation and effectiveness of KDA's certification system.
Audit & Determination Criteria	<i>7 CFR Part 205, National Organic Program as amended</i>
Audit & Review Scope	KDA's certification services in carrying out the audit criteria during the period: June 2017 through April 2019

KDA is a state government agency that was initially accredited on January 13, 2006 by the NOP. KDA is currently accredited for crops, wild crops, livestock, and handling. The KDA office is in Frankfort, Kentucky where all certification activities are conducted. As of May 6, 2019, KDA certifies 217 organic operations which consist of 117 crop, 80 livestock, 0 wild crop, and 20 handling operations. All certified operations are located within the state of Kentucky.

KDA has two Certification Program Support Staff who are dedicated to the organic program. KDA employs three inspectors who conduct organic inspections part-time and contracts with two inspectors for organic inspections only.

In addition to the audit activities conducted at KDA's office, two witness audits were conducted.

Both operations were certified to the scopes of crops and livestock (one dairy operation and one poultry/layer operation).

NOP DETERMINATION:

NOP reviewed the onsite audit results to determine whether KDA's corrective actions adequately addressed previous noncompliances. NOP also reviewed any corrective actions submitted as a result of noncompliances issued from Findings identified during the onsite audit.

Non-compliances from Prior Assessments

Any noncompliance labeled as "**Cleared**," indicates that the corrective actions for the noncompliance are determined to be implemented and working effectively.

NP3252LCA.NC3 – Cleared

NP6123LLA.NC1 – Cleared

NP6123LLA.NC2 – Cleared

NP7151PZA.NC1 – Cleared

AP-38-18.NC2 – Cleared

AP-385-18.NC1 – Cleared

AP-385-18.NC2 – Cleared

Non-compliances Identified during the Current Assessment and Corrective Actions

Any noncompliance labeled as "**Accepted**," indicates that the corrective actions for the noncompliance are accepted by the NOP and will be verified for implementation and effectiveness during the next onsite audit.

NOP-13-19.NC1 – Accepted. 7 C.F.R. §205.501(a)(5) states "A private or governmental entity accredited as a certifying agent under this subpart must: Ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned."

Comments: *KDA staff do not have sufficient expertise in organic processing/handling techniques. KDA approved three non-compliant products and labels for a processor/handler of multi-ingredient organic beverage products.*

Corrective Actions: KDA issued a notice of noncompliance to the operation. KDA received updated product profiles and labels and issued a noncompliance resolution notice. KDA has developed a new policy regarding processing and handling operations. KDA will no longer certify any "Made with organic (specified ingredients or food group(s))." KDA is no longer verifying restricted products on the National List except for cleaning/ sanitizing products. KDA submitted a copy of the letter that was sent to the operations they certify informing them of these changes. KDA gave the producers that are affected by these changes 60 days to apply with another certifier. KDA intends to follow the instruction document NOP 2604 and will keep in contact with their accreditation manager during the process. KDA submitted an internal policy for accepting handling applications. KDA has also updated their Quality Manual that references

the policy and its guidelines when determining the acceptance of handler applications. KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual.

NOP-13-19.NC2 – Accepted. 7 C.F.R. §205.501(a)(4) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;”

Comments: *KDA is not conducting final reviews within a reasonable time after completion of the on-site inspections. Four files reviewed indicated a time period of 5 to 6 months between inspection and final review. Additionally, in three of the four files reviewed, final reviews and decisions were not completed prior to the annual update deadline for the following certification year.*

Corrective Actions: KDA began addressing this problem in 2018 and is still adding additional staff to accommodate the growth of their program. In 2018, a second organic program specialist was hired in May. The KDA also hired a contract reviewer in August of 2018 who works about 15 hours a week conducting initial and final reviews. KDA is aware that they are still understaffed and hired two contract inspectors for 2019 to conduct inspections. The Division Director for the Organic Certification Program attended both the Crop and Livestock IOIA training allowing him to conduct inspections and assist with initial reviews. KDA has been approved to add two additional contract employees. KDA has agreed to co-host an IOIA training in October of 2019, so that several employees are able to attend an IOIA inspector training. In 2020, KDA plans to evaluate if the current staff levels are enough to get files completed in a timely manner. KDA’s goal is to reduce the time between completed inspections to final review to 3 months or less. As part of their internal audit, KDA’s Plant Division Director and Organic Program Support will evaluate a sample of files to determine if the time between inspection and final review is meeting their goal. If KDA isn’t meeting their goal, the KDA will report to KDA Executive Director of Marketing and the Deputy Executive Director of Marketing in writing that the number of trained personnel is still insufficient. KDA will then evaluate adding additional staff.

NOP-13-19.NC3 – Accepted. 7 C.F.R. §205.405(a)(1) states, “When the certifying agent has reason to believe, based on a review of the information specified in §205.402 or §205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant. When correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification.”

Comments: *KDA issued a letter to an applicant following the on-site inspection identifying the use of prohibited inputs and noncompliant recordkeeping instead of issuing a Notice of Noncompliance or a combined Notice of Noncompliance and Notice of Denial. The letter also indicated that if the operator did not respond, a Notice of Denial would be issued.*

Corrective Actions: KDA reviewed the NOP’s Penalty Matrix and Instruction document NOP 4002. KDA understands that an accidental application of a prohibited application must receive a combined Notice of Noncompliance and Denial/Proposed Suspension. KDA’s Quality Manual

now states, “The accidental application of prohibited substances to land also is considered an uncorrectable noncompliance and should result in a denial of certification or a combined Notice of Noncompliance and Proposed Suspension. Portions of land must be suspended as warranted... Land to which prohibited substances have been applied must be suspended from organic operation for three years, pursuant to § 205.202 of the regulations.” KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual. To ensure continued compliance, KDA’s Division Director will review any file that has a prohibited substance application and make sure the enforcement actions comply with the regulations and NOP 4002.

NOP-13-19.NC4 – Accepted. 7 C.F.R. §205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.”

Comments: *KDA’s process for settlement agreements did not comply in the following manner:*

- *KDA issued a Notice of Suspension when the terms of the settlement agreement were not met by the operation instead of issuing a Notice of Proposed Suspension.*
- *KDA entered into a settlement agreement with an operation requiring the operation to submit a surrender of certification by a certain date. The operation did not submit the surrender form, however, KDA entered the operation as “surrendered” into the Organic Integrity Database.*

Corrective Actions: KDA’s staff reviewed the NOP’s “Adverse Actions Refresher” Training from February 13, 2018 to better understand the process for adverse actions. KDA revised their Organic Quality Manual to include that a final adverse action notice may not be issued if a settlement term is being broken. KDA submitted a template letter that they will issue to operations that were issued a Settlement Agreement to let them know that that they have fully met the terms of the agreement. To ensure continued compliance the KDA program Support Staff and the Division Director will pick a sample of at least 10 settlement agreements to verify they comply with the regulations. This will be done during the annual internal audit and will be reported to KDA Executive Director of Marketing and the Deputy Executive Director of Marketing in writing whether this corrective action, and all other NOP requirements, were completed or not completed in the preceding calendar year.

NOP-13-19.NC5 – Accepted. 7 C.F.R. §205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.”

Comments: *KDA’s process and forms for verifying compliance with the requirements of the USDA’s international organic trade arrangements does not comply in the following manner:*

- *KDA does not fully verify a product’s compliance with the US – Canada Equivalency Arrangement, including label and livestock stocking rate requirements.*
- *KDA’s inspection reports do not require the inspector to verify whether the operation is using any products and/or ingredients imported under an international organic trade arrangement.*

Corrective Actions: KDA updated its Export Addendum to effectively verify the requirements of the trade arrangements. KDA has added a question to the Inspection Report for all scopes that

asks “Is the producer importing products from countries outside of the US? If yes, did you update Section 4 of the application?” The application includes a section on Importing and Exporting that requires a description of the material being imported, country of Origin, and attachment of import certificates. KDA revised their Organic Quality Manual to include this new review process to ensure compliance with the USDA’s international organic trade arrangements. KDA emailed their staff to inform them of the revision to their quality manual along with a copy of the revised quality manual. KDA’s Plant Division Director and Organic Program Specialists will audit any producer that is importing or exporting during their internal program review. KDA’s internal audit will verify that all terms for the trade agreement are being met and that an Export Addendum form is completed for that operation.

NOP-13-19.NC6 – Accepted. 7 C.F.R. §205.501(a)(7) states, “A private or governmental entity accredited as a certifying agent under this subpart must: have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.” NOP 2025, Sections 3.1 and 3.2 states, the annual internal program review of all certification activities ensures adherence to the regulations. The review must be conducted in a planned and systematic manner and the results must be documented in a report, which must: a. Identify the dates on which the review was conducted; Identify any findings; Identify how any proposed corrective actions will be addressed in a timely and appropriate manner; and assess prior findings and implemented corrective actions of prior program reviews. Qualified program reviewers must have the expertise to conduct such reviews, including knowledge of certification, auditing, and the USDA organic regulations.

Comments: *KDA’s annual internal program review does not comply in the following manner:*

- *The review report does not include a summary of findings and proposed corrective actions to be addressed in a timely and appropriate manner.*
- *The review does not assess prior findings and implemented corrective actions of prior program reviews.*
- *The 2018 review report did not include the dates of the review or identify the auditor(s) who conducted the review.*
- *The 2018 program review was conducted by two Division Directors and a Marketing Specialist. The Division Directors’ and Marketing Specialist’s qualifications did not demonstrate knowledge of certification, auditing, and the USDA organic regulations.*

Corrective Actions: KDA revised their Quality Manual to comply with the criteria listed in NOP 2025. KDA will verify that their internal program review is conducted in accordance with 7 C.F.R. §205.501(a)(7) and NOP 2025. In addition, KDA’s internal program review will include a summary of findings that contain all relevant information and that the reviewers have the expertise to conduct such reviews, including knowledge of certification, auditing, and the USDA organic regulations. The internal program review team shall utilize the applicable program review checklists NOP-2005 through NOP-2005-6 in an abbreviated format. The internal program review will be conducted no later November 1st each year, for the report to be compiled, corrective actions implemented, and all submitted as part of the annual report submitted to the NOP by January 13th each year.

NOP-13-19.NC7 – Accepted. 7 CFR § 205.501(a)(6) states, “A private or governmental entity

accredited as a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.” NOP 2027 Instruction Personnel Performance Evaluation section 3.2 describes performance evaluation criteria certifying agents should use to evaluate staff annually.

Comments: *KDA’s performance evaluations do not include the evaluation criteria listed in NOP 2027 to fully evaluate certification staff and inspector performance, as required by §205.501(a)(6).*

Corrective Actions: KDA created an addendum to the employees’ performance evaluation and updated their Field Witness Evaluation Form. The evaluation criteria on both forms include all the performance criteria listed in NOP 2027. KDA updated its’ Quality Manual to reflect the addendum and changes. During their annual internal program review, KDA’s Plant Division Director and Organic Program Specialists will work together to determine and evaluate the performance of each of the staff members.

NOP-13-19.NC8 – Accepted. 7 C.F.R. §205.402(a)(2) states, “Upon acceptance of an application for certification, a certifying agent must: Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part.”

Comments: *KDA’s material review process does not include notification to operations of material decisions for allowed inputs with restrictions.*

Corrective Actions: KDA provides ALL producers with copies of approved product lists. These lists contain all the restrictions and their meanings. The following statement was added to KDA’s website, “Operations certified by KDA may utilize inputs or products which are approved by the above listed material review organizations in accordance with any restrictions required by the regulations. Products not appearing on any of these lists should be reviewed by KDA **prior to use...**”. The KDA requires producers to fill out an input list for both crop and livestock operations. The first and final reviewer determine if products are allowed, restricted, or prohibited. If the reviewer feels there is an issue with the restriction(s) on an input, they will negatively answer the question and provide written details on the issue. This will then be followed up with a noncompliance or request for more information. Inspectors also verify a product’s use at inspections. All future inspections and reviews will include verifications of resolution, and ability to comply with restrictions.

NOP-13-19.NC9 – Accepted. 7 C.F.R. §205.403(d) states, “Exit interview. ... The inspector must also address the need for any additional information as well as any issues of concern.”

Comments: *KDA provides its operations with an Exit Interview document at the conclusion of each inspection. This document records issues of concern, and additional information to be submitted by a certain date. When issues of concern are identified and recorded on this document, inspectors do not reference and list the organic regulations.*

Corrective Actions: All KDA inspectors and reviewers were instructed by email to cite the regulations on all exit interviews. KDA reminded their staff that their Quality Manual states, “In accordance with 205.403(d) the inspection shall close with an exit interview that includes a

summary overview and any specific issues of concern witnessed by the inspector. Issues of concern shall include notation of the appropriate regulation...” KDA’s Plant Division Director and Organic Program Specialists will inspect a sample of 25 exit interviews during the annual internal program review to ensure all inspectors are citing applicable regulations. If any inspector is identified in the program review as not citing the regulations, the Plant Division Director will contact the inspector and the inspector’s supervisor at KDA to discuss measures that need to be taken to meet compliance. This new review procedure has been added to the KDA Quality Manual.

NOP-13-19.NC10 – Accepted. 7 C.F.R. §205.501(a)(2) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart.”

Comments: *KDA’s Organic Quality Manual states: “When KDA receives a notice from the NOP providing any information or clarification regarding a substance being added or removed from the National List (7 CFR § 205.601 or §205.603), or regarding the outcome of a petition to add or remove a substance from the National List, KDA will notify its clients with a letter explaining the status of the substance within 15 days.” As of May 9, 2019, KDA has not sent notification to all operations regarding the regulatory changes to the National List that occurred in December 2018.*

Corrective Actions: On June 5th, 2019, KDA sent a letter to its producers informing them of changes to the NOP that were issued on Dec 27, 2018, April 30, 2019, May 7, 2019, and February 14, 2019. KDA has revised their Quality Manual to state that they will notify its clients within 45 days. KDA has also added updates from the NOP to their website. Their website will list all public information that the USDA releases regarding organic certification. KDA will notify clients that do not have access to the website in writing. The Organic Program Specialist will update the new feature to the website once a month. During KDA’s annual internal program review, the KDA Plant Division, Director and Organic Program Specialist will verify that all policy changes released from the NOP are listed on the website and letters have been mailed.

NATIONAL ORGANIC PROGRAM: CORRECTIVE ACTION REPORT

AUDIT AND REVIEW PROCESS

The National Organic Program (NOP) conducted a compliance assessment of Kentucky Department of Agriculture (KDA) in accordance with the terms in KDA's Notice of Accreditation Deferment dated January 12, 2017. An onsite audit was conducted on May 31 – June 2, 2017, and the audit report reviewed to determine KDA's compliance with the USDA organic regulations.

GENERAL INFORMATION

Applicant Name	Kentucky Department of Agriculture (KDA)
Physical Address	111 Corporate Drive Frankfort, KY 40601
Mailing Address	111 Corporate Drive Frankfort, KY 40601
Contact & Title	Brent Burchett, Director
E-mail Address	brent.burchett@ky.gov
Phone Number	502-782-4120
Reviewer(s) & Auditor(s)	Graham Davis, NOP Reviewer; Penny Zuck, On-site Auditor, Onsite Auditor.
Program	USDA National Organic Program (NOP)
Review & Audit Date(s)	Corrective Actions Review: July 27, 2018 NOP assessment review: August 28, 2017 Onsite audit: May 31 – June 2, 2017
Audit Identifier	NP7162PZA
Action Required	None
Audit & Review Type	Compliance Assessment
Audit Objective	To evaluate the conformance to the audit criteria; and to verify the implementation and effectiveness of KDA's certification system.
Audit & Determination Criteria	<i>7 CFR Part 205, National Organic Program as amended</i>
Audit & Review Scope	KDA's certification services in carrying out the audit criteria during the period: May 2016 through June 2017

KDA is a State government agency and was initially accredited on January 13, 2006 by the NOP. KDA is currently accredited for crops, wild crops, livestock, and handling. The KDA office is in Frankfort, Kentucky where all certification activities are conducted. As of May 31, 2017, KDA certifies 186 organic operations which consist of 168 crop, 61 livestock, 0 wild crop, and 20 handling operations. All certified operations are located within the state of Kentucky.

KDA has three staff members who are dedicated to the program: The Organic Program Manager and two support staff. KDA employs seven inspectors.

In addition to the audit activities conducted at KDA's office, two witness audits were conducted. One operation was certified to the scopes of crops, livestock, and on-farm processing and the other was certified to the handler/processor scope.

NOP DETERMINATION:

NOP reviewed the onsite audit results to determine whether KDA's corrective actions adequately addressed previous noncompliances. NOP also reviewed any corrective actions submitted as a result of noncompliances issued from Findings identified during the onsite audit.

Non-compliances from Prior Assessments

AIA112812.NC7 – Cleared
AIA112812.NC9 – Cleared
AIA112812.NC10 – Cleared
NP3252LCA.NC2 – Cleared
NP6123LLA. NC3 – Cleared
NP6123LLA. NC4 – Cleared
NP6123LLA.NC5 – Cleared
NP6123LLA. NC6 – Cleared
NP6123LLA.NC7 – Cleared
NP6123LLA.NC8 – Cleared
NP6123LLA.NC9 – Cleared
NP6123LLA.NC10 – Cleared
NP6123LLA.NC11 – Cleared
NP6123LLA.NC12 – Cleared

NP3252LCA.NC3 – Accepted. 7 CFR § 205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.”

Comments: *Some KDA organic inspectors and reviewers are not evaluated on their performance. An evaluation is conducted by a supervisor that is not associated with the certification program. No evaluations are conducted of inspectors conducting inspections.*

2013 Corrective action: Starting in 2014, the KDA organic program manager will do one on-site witness audit for each inspector annually. The results will be documented in KDA's new Inspector Evaluation and Inspector Field Evaluation forms. Since the organic program manager does not directly supervise the inspectors, the program manager will submit these evaluations to the relevant supervisors for consideration. If an inspector did not receive a satisfactory evaluation, then the program manager would work with the relevant supervisor to determine the

best course of action. This would most likely include additional training, followed by a second witness audit of the inspector. KDA submitted copies of the evaluation forms as evidence.

2016 Verification of Corrective Action: Auditors reviewed the annual performance evaluations KDA conducted for each inspector in 2015 and in January 2016. The reviewed performance evaluations were based only on documents submitted by the inspectors. KDA conducted inspector field evaluations in 2014 but did not conduct inspector field evaluations in 2015.

2016 Corrective Actions: KDA has completed a field evaluation of one inspector and has scheduled remaining inspector field evaluations to be completed prior to the end of 2016. KDA has revised its Quality manual to state inspectors will receive an annual field evaluation that will be recorded and retained as part of their annual evaluation.

2017 Verification of Corrective Actions: The KDA Quality Manual was revised; however, one inspector did not receive a field performance evaluation in 2016.

2018 Corrective Actions: KDA submitted copies of 2017 inspector field evaluations verifying that KDA's organic inspectors received a field evaluation in 2017. Six of seven KDA's organic inspectors have received a 2018 field evaluation (KDA submitted copies of the inspector field evaluations). The KDA Plant Division Director and Organic Program Specialists have implemented a compliance verification process that will occur prior to November 1st each year. KDA will review records during the compliance verification process to ensure all inspectors have successfully completed a field evaluation for the calendar year. If any inspector has not received a field evaluation, KDA will schedule a field evaluation to be completed by the end of the year. As part of the compliance verification process, the Plant Division Director will report to the KDA Executive Director and Deputy Executive Director of Marketing by November 10th of each year whether this corrective action, and all other NOP requirements were completed in the preceding calendar year. KDA's new compliance review process has been added to their quality manual. KDA notified their staff via email to review the updated sections of KDA's Quality Manual. The email also stated that the changes are effective August 1, 2018.

NP6123LLA.NC1 – Accepted. - 7 CFR §205.670(d) states, “A certifying agent must, on an annual basis, sample and test from a minimum of five percent of the operations it certifies, rounded to the nearest whole number.”

Comments: *KDA is not currently conducting pesticide residue testing and did not conduct sampling and testing in 2014 or 2015.*

2016 Corrective Actions: KDA has established a service contract with the Federal Gastonia Lab for pesticide residues testing. KDA will collect and submit a minimum of 10 samples for testing prior to the end of the 2016 calendar year. KDA's Quality Manual has been revised to state KDA adopts the sampling processes explained in NOP 2610 “*Sampling Procedures for Residue Testing.*”

2017 Verification of Corrective Actions: No residue samples were collected and analyzed during 2016. During a witness audit, the auditor observed an inspector collect a sample in accordance to the regulations and NOP 2610 *Sampling Procedures for Residue Testing.*

2018 Corrective Actions: In 2017, KDA collected residue samples from 5% of the operations it certifies (nine samples for 168 certified operations). Nine samples have been collected and tested

in 2018. The KDA Plant Division Director and Organic Program Specialists have implemented a compliance verification process that will occur prior to November 1st each year. ***The KDA determined a date of November 1st (mid-year) because the anniversary date of their clients is April 1st.*** The KDA Plant Division Director and Organic Program Specialists will inspect records during the compliance verification process to ensure the required amount of pesticide residue samples have been collected and tested for the calendar year. As part of the compliance verification process, the Plant Division Director will report to the KDA Executive Director and Deputy Executive Director of Marketing by November 10th of each year whether this corrective action, and all other NOP requirements were completed in the preceding calendar year. KDA's new compliance review process has been added to their quality manual. KDA notified their staff via email to review the updated sections of KDA's Quality Manual. The email also stated that the changes are effective August 1, 2018.

NP6123LLA.NC2 – Accepted. 7 CFR § 205.403(a)(2)(i-iii) states, “A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.” NOP 2609, *Unannounced Inspections*, section 4.1.1, states “...certifying agents conduct unannounced inspections of 5% of their total certified operations per year.”

Comments: *KDA conducted one unannounced inspection during 2015. KDA should have conducted six unannounced inspections to reach the 5% of KDA's reported 129 total certified operations.*

2016 Corrective Actions: KDA has conducted one unannounced inspection to date and has selected the subjects of the remaining nine unannounced inspections to occur prior to the end of the 2016 calendar year. KDA's Quality Manual has been revised to state that 5% of operations will receive an unannounced inspection annually.

2017 Verification of Corrective Actions: KDA conducted three unannounced inspections in 2016 but did not obtain the minimum 5% of total certified operations. At the time of the compliance audit, no unannounced inspections had been conducted in 2017.

2018 Corrective Actions: In 2017, KDA conducted unannounced inspections at 5% of the operations it certifies (nine unannounced inspection for 168 certified operations). As of this date, KDA has conducted five unannounced inspections in 2018. The KDA Plant Division Director and Organic Program Specialists have implemented a compliance verification process that will occur prior to November 1st each year. ***The KDA determined a date of November 1st (mid-year) because the anniversary date of their clients is April 1st.*** The KDA Plant Division Director and Organic Program Specialists will inspect records during the compliance verification process to ensure the required amount of unannounced inspections have been conducted for the calendar year. As part of the compliance verification process, the Plant Division Director will report to the KDA Executive Director and Deputy Executive Director of Marketing by November 10th of each year whether this corrective action, and all other NOP requirements were completed in the preceding calendar year. KDA's new compliance review process has been added to their quality manual. KDA notified their staff via email to review the updated sections of KDA's Quality Manual. The email also stated that the changes are effective August 1, 2018.

Non-compliances Identified during the Current Assessment and Corrective Actions

Any noncompliance labeled as “**Accepted**,” indicates that the corrective actions for the noncompliance are accepted by the NOP and will be verified for implementation and effectiveness during the next onsite audit.

NP7151PZA.NC1 – Accepted. 7 CFR § 205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.” NOP 2603, *Instruction Organic Certificates*, Section 3.1 states, “Organic certificates should be issued in English and include the following...Certifying agent’s name, address, web site, and phone number; ... Anniversary date (when the certified operation must submit its annual update).”

Comments: *The organic certificates issued by KDA do not include KDA’s website address.*

Corrective Actions: Beginning September 2017, KDA added the KDA website address to all certificates being issued by KDA. KDA submitted a copy of the KDA’s revised certificate template which includes their website address. KDA revised their organic quality manual to include a new review process to confirm all required information is being included on certificates they issue. KDA Organic Program Specialists and the KDA Plant Division Director will review five certificates selected at random during the compliance verification process to ensure the website address is included, in addition to the other required components identified in *NOP 2603, Instruction - Organic Certificates*. This will occur prior to November 1st each year. KDA’s new certificate review process has been added to their quality manual. KDA notified their staff via email to review the updated section of KDA’s Quality Manual.

NATIONAL ORGANIC PROGRAM: CORRECTIVE ACTION REPORT

AUDIT AND REVIEW PROCESS

The National Organic Program (NOP) received Kentucky Department of Agriculture (KDA) accreditation renewal application on July 13, 2015. The NOP reviewed KDA's application, conducted an onsite audit, and reviewed the audit report to determine KDA's capability to operate as a USDA accredited certifier.

GENERAL INFORMATION

Applicant Name	Kentucky Department of Agriculture (KDA)
Physical Address	111 Corporate Drive Frankfort, KY 40601
Mailing Address	111 Corporate Drive Frankfort, KY 40601
Contact & Title	Adam Watson, Organic Program Coordinator.
E-mail Address	adam.watson@ky.org
Phone Number	502-782-4133
Reviewer Auditors	Jason Lopez, NOP Reviewer Alan Kohles, Lead auditor, Penny Zuck Second Auditor, John Reid, Observer
Program	USDA National Organic Program (NOP)
Review Dates Audit Dates	NOP assessment review: July 7-8, 2016 Onsite audit: May 2-5, 2016
Audit Identifier	NP6123LLA
Action Required	Yes
Audit & Review Type	Renewal Assessment
Audit Objective	To evaluate the conformance to the audit criteria; and to verify the implementation and effectiveness of KDA's certification
Audit & Determination Criteria	<i>7 CFR Part 205, National Organic Program as amended</i>
Audit & Review Scope	KDA's certification services during the period: September, 2013 through May 2016.

The Kentucky Department of Agriculture (KDA), Division of Marketing, Organic Certification Program is a State government agency initially accredited by the National Organic Program (NOP) on January 13, 2006 for the scopes: crops, wild crops, livestock, and handling. The KDA office is located in Frankfort, Kentucky where all certification activities are conducted. As of May 5, 2016, KDA certified 156 organic operations which consist of 128 crop, 41 livestock, 0 wild crop, and 24 handling operations. All certified operations are located within the state of Kentucky.

In addition to the audit activities conducted at KDA's office, a witness audit was conducted at an organic dairy operation and. a review audit was conducted at a processing facility.

NOP DETERMINATION:

NOP reviewed the onsite audit results to determine whether KDA's corrective actions adequately addressed previous noncompliances. NOP also reviewed any corrective actions submitted as a result of noncompliances issued from the Findings identified during the current onsite audit.

Non-compliances from Prior Assessments

Any noncompliance labeled as "**Cleared**," indicates that the corrective actions for the noncompliance are determined to be implemented and working effectively. Any noncompliance labeled as "**Outstanding**" indicates that either the auditor could not verify implementation of the corrective actions or that records reviewed and audit observations did not demonstrate compliance. Any noncompliance labeled as "**Accepted**" indicates acceptance of the corrective actions and verification of corrective action implementation will be conducted during the next onsite audit.

AIA112812.NC2 – Cleared
NP3252LCA.NC1 – Cleared
NP3252LCA.NC4 – Cleared

AIA112812.NC7 – Accepted – 7 CFR §205.501(a)(15)(i) states, "A private or governmental entity accredited as a certifying agent under this subpart must submit to the Administrator a copy of any notice of denial of certification (§205.405), notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation (§205.662) simultaneously with its issuance."

Comments: *KDA's quality manual outlines a policy for sending such notices to the Administrator. However, KDA has not implemented this policy in 2012.*

2012 Corrective Action: KDA submitted all Notices of Noncompliance issued since May 2012 to NOP Appeals. KDA has implemented procedures to submit all future adverse actions at least once a month. This requirement is reflected in the KDA quality manual.

2013 On-site Verification: KDA has not submitted copies of issued notices to the NOP Appeals for the months of June through August 2013.

2013 Corrective Action: On November 18, 2013, KDA sent copies of all Notices of Noncompliance and Noncompliance Resolution to NOP Appeals. KDA hired a new administrative support staff, who began work on November 1, 2013. This individual is now responsible for submitting all adverse actions to the NOP simultaneously with their issuance.

2016 Verification of Corrective Actions: The KDA Program Manager provided copies of issued emails demonstrating compliance; however, the program manager stated that KDA has not submitted Notices of Noncompliance and Noncompliance Resolution copies to the NOP since September 2015.

2016 Corrective Actions: KDA has hired two new support staff positions that will assume responsibility of submitting adverse actions to the NOP. The personnel have been trained on this Quality Manual process and KDA has resumed submission of adverse action notices to the NOP via email. KDA has amended its Quality Manual "Adverse Actions Procedures" to state the submission of notices of noncompliance and noncompliance resolutions to the NOP will be the responsibility of the Program Manager to prevent this noncompliance due to staffing fluctuations.

AIA112812.NC9 – Accepted – 7 CFR §205.403(c) (1) states, “The on-site inspection of an operation must verify the operation's compliance or capability to comply with the Act and the regulations in this part.”

Comments: *Inspections rarely included any in-out balance or traceability audits. Two livestock inspection reports did not include sufficient information to verify the organic status of recently purchased animals. Three livestock inspection reports did not include sufficient information to determine the total number of days on pasture, the length of the grazing season, and compliance with the requirements of § 205.237(c)(1). Although some operators' dry matter intake (DMI) forms were incomplete and/or had errors, the inspector did not include additional information or details in the inspection reports on how he or she verified compliance with DMI requirements.*

2012 Corrective Action: In February 2013, the KDA program manager conducted training with its inspectors, review staff, administrative support, and program supervisor to emphasize the importance of collecting quantitative information in inspection reports in order to verify compliance with the pasture rule. KDA has revised its final review form to evaluate in-out balance audits and DMI calculations completed by inspectors.

2013 On-site Verification: KDA acknowledged that inspectors are not consistently conducting mass balance and audit trace back verification activities. The auditor's review of inspection reports confirmed the inconsistency. Dairy milk production was the most common mass balance conducted by inspectors. However, inspection reports only ask the inspector to indicate “yes” or “no” to whether “yields and sales consistent with acreage and production records,” and “Do farm records track products back to their fields of production?” There is no record of how verification was conducted by the inspector.

2013 Corrective Action: KDA submitted a copy of a milk trace-back audit related to the file in question as evidence to rebut this finding. KDA also submitted a blank form for trace-back audits to improve consistency among auditors. KDA evaluates trace-back audits during the final review and returns any inadequate audits to the inspector for revisions. If an inspector submits multiple inadequate trace-back audits, then the program manager would note this on the annual performance evaluation and conduct internal training. KDA conducted training on December 16, 2013 to explain the expectations for on-site inspections.

NOP 2601 Instruction The Organic Certification Process, states “The inspection includes, but is not limited to: reconciliation of the volume of organic products produced or received with the amount of organic products shipped, handled and/or sold, also known as trace-back audits or in-out balances.”

2016 Verification of Corrective Actions: The review of two KDA inspection reports indicated that mass balance (in/out) and trace-back inspection activities and results are not consistently recorded in the reports.

2016 Corrective Actions: On June 13, 2016 KDA conducted an Organic Program Meeting in part to specifically focus on training inspectors on proper mass balance verification activities during inspections. Additionally, KDA will use a spreadsheet to track inspector performance with the presented training materials. Upon the identification of an improper mass balance audit the information will be shared with inspector's evaluating supervisor. In the event that an audit is incomplete, or not conducted, corrective actions such as requiring the inspector to return to the operation to complete the audit will be implemented.

AIA112812.NC10 – Accepted – 7 CFR §205.501(a) (3) states, “A private or governmental entity accredited as a certifying agent under this subpart must carry out the provisions of the Act

and the regulations, including the provisions of §§205.402 through 205.406 and §205.670.”

Comments: *Two of four labels reviewed did not identify all organic ingredients as organic on the ingredients statement, as required by § 205.303(b) (1). The reviewers and inspectors did not list this as a noncompliance.*

2012 Corrective Action: KDA adopted the USDA’s label review checklists, using the published information in *NOP 2005*, for both 100% organic, organic, and “Made with Organic Ingredients” labels. KDA reviewed these checklists at the February 2013 training. First reviewers will complete the checklists during the initial reviews, and if inspectors collect any additional labels while onsite, then the final reviewers will also complete these checklists for the new labels.

2013 On-site Verification: The auditor found that KDA label reviews are conducted with the label review checklist. In one case, the auditor found that the reviewer incorrectly identified a label as compliant when the label displayed the “Certified organic by KDA” statement to the side of the manufacturer’s name and contact information instead of underneath as required by the regulations.

2013 Corrective Action: KDA sent a Notice of Noncompliance to the operation on January 30, 2014. KDA has clarified its policies on label reviews, focusing on the information panel and the placement of the “Certified Organic By ***” statement.

2016 Verification of Corrective Actions: The review of the KDA label review processes and several labels in client files indicated that KDA had approved one label that included “sugar” in the ingredient statement and the product did not contain sugar. This is not a truthful claim since sugar is not an ingredient in the product. In addition, if sugar was being used in the organic product, because of its agricultural status, it must be organic and would need to be identified as such in the ingredient statement. The product profile for this product included baking powder as an ingredient, however it was not listed in the ingredient statement on the label. Actual ingredients in the product did not match those listed in the ingredient statement.

2016 Corrective Actions: KDA issued noncompliance for this incorrect label and the operation provided corrective actions. KDA reviewed and approved the operation’s corrected label and issued the operation a notice on noncompliance resolution. KDA revised its label review checklist to verify the product profile ingredients and ingredients listed on the label. Label reviews are exclusively completed by the program manager. Program support staff will be trained to conduct label reviews after their completion of external training.

NP3252LCA.NC2 – Accepted – 7 CFR § 205.501(a) (7) states, “A private or governmental entity accredited as a certifying agent under this subpart must: have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.”

Comments: *KDA did not conduct an annual program review for 2012.*

2013 Corrective action: KDA will conduct an internal review on January 9, 2014 using internal staff and the NOP audit checklists. The program manager, administrative support staff, and one inspector will review KDA’s 2013 activities using the NOP’s audit checklists as a base. The results will be submitted to the NOP as part of KDA’s annual report on January 13, 2014. KDA modified their quality manual to ensure that future annual reviews are conducted as required. The procedure specifies the use of NOP checklists to complete the review by January

13th each year, and it also requires that any identified noncompliances be addressed during the first quarter organic team meeting.

2016 Verification of Corrective Actions: A review of KDA's February 2014 Quality Manual indicated that an annual program review procedure was included in the manual that stated that the program review is to be completed annually by January 13th. But the procedure was deleted from the April 2016 KDA Quality Manual and therefore the 2015 program review was not conducted.

2016 Corrective Actions: KDA will conduct a program review on October 18, 2016. KDA's Quality Manual was revised October 2016. It indicates an annual review will be conducted prior to December 15th each year by KDA employees not involved in certification activities or an outside consultant.

NP3252LCA.NC3 – Accepted – 7 CFR § 205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.”

Comments: *Some KDA organic inspectors and reviewers are not evaluated on their performance. An evaluation is conducted by a supervisor that is not associated with the certification program. No evaluations are conducted of inspectors conducting inspections.*

2013 Corrective action: Starting in 2014, the KDA organic program manager will do one on-site witness audit for each inspector annually. The results will be documented in KDA's new Inspector Evaluation and Inspector Field Evaluation forms. Since the organic program manager does not directly supervise the inspectors, the program manager will submit these evaluations to the relevant supervisors for consideration. If an inspector did not receive a satisfactory evaluation, then the program manager would work with the relevant supervisor to determine the best course of action. This would most likely include additional training, followed by a second witness audit of the inspector. KDA submitted copies of the evaluation forms as evidence.

2016 Verification of Corrective Action: Auditors reviewed the annual performance evaluations KDA conducted for each inspector in 2015 and in January 2016. The reviewed performance evaluations were based only on documents submitted by the inspectors. KDA conducted inspector field evaluations in 2014, but did not conduct inspector field evaluations in 2015.

2016 Corrective Actions: KDA has completed a field evaluation of one inspector and has scheduled remaining inspector field evaluations to be completed prior to the end of 2016. KDA has revised its Quality manual to state inspectors will receive an annual field evaluation that will be recorded and retained as part of their annual evaluation.

Non-compliances Identified during the Current Assessment

Any noncompliance labeled as “**Accepted**,” indicates that the corrective actions for the noncompliance are accepted by the NOP and will be verified for implementation and effectiveness during the next onsite audit.

NP6123LLA.NC1 – Accepted - 7 CFR §205.670(d) states, “A certifying agent must, on an annual basis, sample and test from a minimum of five percent of the operations it certifies, rounded to the nearest whole number.”

Comments: *KDA is not currently conducting pesticide residue testing and did not conduct sampling and testing in 2014 or 2015.*

Corrective Actions: KDA has established a service contract with the Federal Gastonia Lab for pesticide residues testing. KDA will collect and submit a minimum of 10 samples for testing prior to the end of the 2016 calendar year. KDA’s Quality Manual has been revised to state KDA adopts the sampling processes explained in NOP 2610 “*Sampling Procedures for Residue Testing.*”

NP6123LLA.F2 – Accepted - 7 CFR § 205.403(a)(2)(i-iii) states, “A certifying agent may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this part.” NOP 2609, *Unannounced Inspections*, section 4.1.1, states “...certifying agents conduct unannounced inspections of 5% of their total certified operations per year.”

Comments: *KDA conducted one unannounced inspection during 2015. KDA should have conducted six unannounced inspections to reach the 5% of KDA’s reported 129 total certified operations.*

Corrective Actions: KDA has conducted one unannounced inspection to date and has selected the subjects of the remaining nine unannounced inspections to occur prior to the end of the 2016 calendar year. KDA’s Quality Manual has been revised to state that 5% of operations will receive an unannounced inspection annually.

NP6123LLA. NC3 – Accepted - 7 CFR § 205.501(a)(11)(v) – states “Prevent conflicts of interest by:... Requiring all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and all parties responsibly connected to the certifying agent to complete an annual conflict of interest disclosure report.”

Comments: *KDA certification staff and inspectors completed three of nine annual Conflict of Interest statements for 2016. The auditors’ review of KDA’s personnel records showed six annual conflicts of interest statements on file for 2014. The records reviewed also showed there were no conflicts of interest statements completed in 2015 and only new certification personnel had completed the 2016 conflict of interest statements.*

Corrective Actions: During the June 13th Organic Program Meeting the remaining organic program staff completed Conflict of Interest Statements. KDA’s Quality Manual was revised and requires the annual completion of conflict of interest statements by all KDA organic program personnel.

NP6123LLA. NC4 – Accepted - 7 CFR § 205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.” NOP 2025, *Instruction Internal Program Review*, Section 3.1, states, “Internal program reviews are conducted by personnel different from those who perform certification activities.”

Comments: *The 2014 KDA program review was conducted by the KDA Program*

Manager. The KDA Program Manager conducts certification activities precluding him from conducting the annual internal reviews of KDA's organic certification program.

Corrective Actions: KDA employees not involved in certification activities will conduct a program review on October 18, 2016. KDA's Quality Manual was revised on October 2016, and indicates an annual review will be conducted prior to December 15th each year by KDA employees not involved in certification activities or by an outside consultant.

NP6123LLA.NC5 – Accepted - 7 CFR § 205.501(a)(21) states, “A private or governmental entity accredited as a certifying agent under this subpart must Comply with, implement, and carry out any other terms and conditions determined by the Administrator to be necessary.” NOP 2603, *Instruction Organic Certificates*, Section 3.1 states, “Organic certificates should be issued in English and include the following...Anniversary date (when the certified operation must submit its annual update).”

Comments: *The organic certificates issued by KDA do not include the anniversary date.*

Corrective Actions: KDA has amended its organic certificate template to include the anniversary date.

NP6123LLA.NC6 – Accepted - 7 CFR § 205.403 (a)(1) states, “ ... An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

Comments: *KDA did not conduct onsite inspections of six KDA certified operations in 2015.*

Corrective Actions: KDA hired additional staff and trained additional inspectors that will allow KDA to complete all inspection prior to the end of the year. On October 18, 2016, the remaining inspections will be assessed and reprioritized to ensure all inspections are completed prior to year-end.

NP6123LLA.NC7 – Accepted - 7 CFR § 205.662(a)(3) states, “When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program's governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation. Such notification shall provide: ... (3) The date by which the certified operation must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.”

Comments: *The five Notifications of Noncompliance reviewed by the auditors do not inform the recipient of the option to rebut noncompliance(s).*

Corrective Actions: KDA amended its notice of noncompliance template to include the option of rebuttal as follows:” In order to resolve the above noncompliance please submit information on how you will correct each noncompliance, rebuttal of the noncompliance, or documentation that it has been corrected.” KDA implemented the use of this template and archived the previous version in the KDA shared drive folder. The program manager is the only individual utilizing the template so no other notification of the update was issued.

NP6123LLA.NC8 – Accepted - 7 CFR § 205.662(c) states, “When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent or State organic program's governing State official shall send the certified

operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. The notification of proposed suspension or revocation of certification shall state: (1) The reasons for the proposed suspension or revocation; (2) The proposed effective date of such suspension or revocation; (3) The impact of a suspension or revocation on future eligibility for certification; and (4) The right to request mediation pursuant to §205.663 or to file an appeal pursuant to §205.681.”

Comments: *KDA’s Notifications of Proposed Suspension includes a resolution option allowing the operator to correct the noncompliance(s) and submit the corrective actions. KDA resolved an issued Notice of Proposed Suspension by accepting a certified operations corrective actions and issuing a Notice of Noncompliance Resolution.*

Corrective Actions: KDA has revised its procedures and no longer allows corrective actions to resolve a notice of proposed suspension. KDA notices of proposed suspension offer mediation and appeal as methods of resolution. KDA will now only allow the correction of noncompliances by means of a settlement agreement reached through the resolution process of mediation. KDA has established a Quality Manual process for evaluating mediation requests, and a base template for drafting settlement agreements. KDA has implemented the new process.

NP6123LLA.NC9 – Accepted - 7 CFR § 205.501(a)(11)(iv) states, “Not giving advice or providing consultancy services, to certification applicants or certified operations, for overcoming identified barriers to certification.”

Comments: *The auditors identified three instances in which the inspector gave advice or provided consultancy services. The first instance was documented in a reviewed inspection report, the inspector indicated that the operator “needs to establish a temporary buffer of 10-15 feet.” The auditors later witnessed an inspector tell the operator that “a buffer area of 20-25 feet from the area of prohibited substance application applied would be required” for an area in his organic fields where aerial spraying was conducted by the power company along power lines. Additionally during the same witness audit, the inspector told the operator he would need to bush hog around the new telephone poles that were recently installed in one organic field to create a 15 foot buffer area.*

Corrective Actions: On June 13, 2016, KDA held training focusing on what constitutes consultation during inspections. KDA took the opportunity to clearly emphasis the importance of the proper separation between inspectors and operators. Training material was provided and attendance recorded.

NP6123LLA.NC10 – Accepted - 7 CFR § 205.404(a) states, “Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the certifying agent determines that the organic system plan and all procedures and activities of the applicant’s operation are in compliance with the requirements of this part and that the applicant is able to conduct operations in accordance with the plan, the agent shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.”

Comments: *The auditors’ general certification file review showed KDA is not conducting certification reviews and notifying operations of the outcome in a timely manner. In three of the*

eleven reviewed files, KDA's general certification process from the date KDA received the application to the date findings were sent to the operation was 11- 13 months.

Corrective Actions: KDA addressed this by reassigning the industrial hemp program responsibilities to another State program manager displacing a large work load from the organic certification program personnel. In addition, the organic certification program hired two extra program staff. KDA plans to initially use the new staff as office support and increase their responsibilities and workload in 2017 to include inspections. A total of five KDA staff will attend external inspector trainings in 2016 for additional training and initial training for new hires.

NP6123LLA.NC11 – Accepted - 7 CFR § 205. 501(a)(8) states that a certifier must, “Provide sufficient information to persons seeking certification to enable them to comply with the applicable requirements of the Act and the regulations in this part;...”

Comments: *KDA Organic System Plan templates provided to the operations do not request information on whether operations import or export products and the procedures necessary to comply with USDA organic regulations and organic trade agreements.*

Corrective Actions: KDA has amended its 2017 certification application and OSP forms to include an Import/Export section for applicants to report international activities. Additionally, KDA will add National Organic Program Fact Sheets “*Exporting Organic Products from the U.S.*” and “*Importing Organic Products to the U.S.*” to its standard information packet made available on the KDA website and/or mailed to prospective certification operations. KDA employees were provided information on these resources and forms during training.

NP6123LLA.NC12 – Accepted - 7 CFR § 205.642 states, “The certifying agent shall provide each applicant with an estimate of the total cost of certification and an estimate of the annual cost of updating the certification.”

Comments: *KDA is not providing each applicant with a cost estimate. KDA's practice of providing a fee schedule is not sufficient for the applicant to determine a total cost estimate.*

Corrective Actions: KDA has created a new Fee Estimate document. It will be included as a part of the 2017 Organic Certification application. The new document will be added to all previous fee schedules available on the KDA website and the KDA shared drive folder. KDA provided staff training on the new fee schedule.

AUDIT INFORMATION

Applicant Name:	Kentucky Department of Agriculture (KDA)
Physical Address:	100 Fair Oaks Lane, 5 th Floor, Frankfort, KY 40601
Contact & Title:	Adam Watson, Organic Program Manager
E-mail Address:	Adam.Watson@ky.gov
Phone Number:	(502) 564-4983
Auditor(s):	Betsy Rakola
Program:	USDA National Organic Program (NOP)
Audit Date(s):	November 20, 2013 – February 10, 2014
Audit Identifier:	NP3252LCA
Action Required:	No
Audit Type:	Corrective action assessment
Audit Objective:	To verify review and approve corrective actions addressing the non-compliances identified during the September 9-12, 2013 on-site mid-term assessment.
Audit Criteria:	7 CFR Part 205, National Organic Program; as amended.
Audit Scope:	KDA's November 18 and December 13, 2013 response letters to the mid-term non-compliance report.
Location(s) Audited:	Desk

GENERAL INFORMATION

The Kentucky Department of Agriculture (KDA), Division of Marketing, Organic Certification Program, is a State government agency and was accredited as a certifying agent by the National Organic Program (NOP) on January 13, 2006 for the following scopes: crops, wild crops, livestock, and handling. As of August 20, 2013, KDA's client list included 45 crop, 34 livestock, 1 wild crop, and 19 handling operations certified to the USDA organic regulations. All certified operations are located within the state of Kentucky. State regulations require exempt organic operations to register their status with KDA and to pay a nominal registration fee; four exempt operations appear in KDA's database. KDA is approved to issue TM-11 certificates under USDA export trade agreements with Taiwan and Japan. KDA has not issued any export certificates since the prior assessment conducted in November 2012.

The KDA office is located in Frankfort, Kentucky, and all certification activities are conducted out of this office. All information is maintained in a central database and paper files, as well as on the KDA's electronic network folders.

AUDIT INFORMATION

During the mid-term assessment, the corrective actions for the non-compliances identified during the compliance assessment were found to be implemented and effective. Those non-compliances were cleared. Four of the previous noncompliances (AIA112812.NC2, 7, 9, and 10) were not

found to be completely implemented and effective; therefore, the noncompliances remain outstanding. There were four new noncompliances identified during the mid-term assessment. The NOP notified KDA of these findings in writing on October 18, 2013. KDA submitted a response to the NOP on November 18, 2013, December 13, 2013, and January 31, 2014.

FINDINGS

AIA112812.NC1 – Cleared

AIA112812.NC3 – Cleared

AIA112812.NC4 – Cleared

AIA112812.NC5 – Cleared

AIA112812.NC6 – Cleared

AIA112812.NC8 – Cleared

AIA112812.NC11 – Cleared

AIA112812.NC2 – Accepted - §205.501(a)(5) states, “A private or governmental entity accredited as a certifying agent under this subpart must ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.” *Most staff had not had any recent organic training and did not have any plans to complete such training. The program manager and the pending hire plan to attend IOIA training in 2013, and the program manager will attend the NOP ACA training, but there is currently no training plan in place for the other certification staff members.*

KDA 2012 Corrective Action: KDA has made funding available for training opportunities and has encouraged employees to complete training with IOIA, the NOP, or other available resources. The organic program manager will develop and implement quarterly trainings for internal personnel, identifying topics based on identified needs. Evidence of 2013 in-house training is included in the responses to NC9 and NC10. **NOP 2013 On-site Verification:** Since the NOP completed the November 2012 Compliance Assessment, KDA’s Program Manager successfully attended the IOIA Basic Livestock training course on August 2, 2013; attended NOP training on January 15, 2013; and attended Accredited Certifier Association training on January 16-17, 2013. One KDA inspector/reviewer completed advance processor training in December 2012. KDA’s internal training consists of quarterly meetings and periodic organic topics distributed to certification staff for review and signoff. The auditor reviewed the internal training packet material for the 2013 first and second quarters. The training packet materials included the attendance list, agenda, and training documents. The third quarter training was not conducted; however, according to the program manager, two internal trainings will occur for KDA certification staff during the fourth quarter. The auditor reviewed one of the periodic organic topic packet dated February 20, 2013 that required a staff signature acknowledgement that the training materials were read and reviewed. The auditor questioned the KDA Program Manager about a plan for future external KDA staff training. He stated that no written plan exists and that no external training is planned with the exception of his attendance at the upcoming 2014 NOP and Accredited Certifiers Training in February. Due to the absence of an external training plan, this noncompliance remains outstanding. **KDA 2013 Corrective Action:** Starting in 2014, KDA will require all inspectors to complete external training on USDA organic certification at least once every two years. Specific topics will be based on the results of the

annual inspector evaluation, as evidenced by the new inspector evaluation forms. The KDA organic program manager will evaluate the adequacy of trainings based on the expertise of the trainer or the organization conducting the training. KDA will submit a progress report on training to the USDA no later than July 7, 2014 to detail their year-to-date progress.

AIA112812.NC7 – Accepted. §205.501(a)(15)(i) states, “A private or governmental entity accredited as a certifying agent under this subpart must submit to the Administrator a copy of any notice of denial of certification (§205.405), notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation (§205.662) simultaneously with its issuance.” *KDA’s quality manual outlines a policy for sending such notices to the Administrator. However, KDA has not implemented this policy in 2012.* **KDA 2012 Corrective Action:** KDA submitted all Notices of Noncompliance issued since May 2012 to NOP Appeals. KDA has implemented procedures to submit all future adverse actions at least once a month. This requirement is reflected in the KDA quality manual. **NOP 2013 On-site Verification:** KDA has not submitted copies of issued notices to the NOP Appeals for the months of June through August 2013. **KDA 2013 Corrective Action:** on November 18, 2013, KDA sent copies of all Notices of Noncompliance and Noncompliance Resolution to NOP Appeals. KDA hired a new administrative support staff, who began work on November 1, 2013. This individual is now responsible for submitting all adverse actions to the NOP simultaneously with their issuance.

AIA112812.NC9 – Accepted. §205.403(c)(1) states, “The on-site inspection of an operation must verify the operation's compliance or capability to comply with the Act and the regulations in this part.” *Inspections rarely included any in-out balance or traceability audits. Two livestock inspection reports did not include sufficient information to verify the organic status of recently purchased animals. Three livestock inspection reports did not include sufficient information to determine the total number of days on pasture, the length of the grazing season, and compliance with the requirements of § 205.237(c)(1). Although some operators’ dry matter intake (DMI) forms were incomplete and/or had errors, the inspector did not include additional information or details in the inspection reports on how he or she verified compliance with DMI requirements.* **KDA 2012 Corrective Action:** In February 2013, the KDA program manager conducted training with its inspectors, review staff, administrative support, and program supervisor to emphasize the importance of collecting quantitative information in inspection reports in order to verify compliance with the pasture rule. KDA has revised its final review form to evaluate in-out balance audits and DMI calculations completed by inspectors. **NOP 2013 On-site Verification:** KDA acknowledged that inspectors are not consistently conducting mass balance and audit trace back verification activities. The auditor’s review of inspection reports confirmed the inconsistency. Dairy milk production was the most common mass balance conducted by inspectors. However, inspection reports only ask the inspector to indicate “yes” or “no” to whether “yields and sales consistent with acreage and production records,” and “Do farm records track products back to their fields of production?” There is no record of how verification was conducted by the inspector. **KDA 2013 Corrective Action:** KDA submitted a copy of a milk trace-back audit related to the file in question as evidence to rebut this finding. KDA also submitted a blank form for trace-back audits to improve consistency among auditors. KDA evaluates trace-back audits during the final review and returns any inadequate audits to the inspector for revisions. If an inspector submits multiple inadequate trace-back audits, then

the program manager would note this on the annual performance evaluation and conduct internal training. KDA conducted training on December 16, 2013 to explain the expectations for on-site inspections.

AIA112812.NC10 – Accepted - §205.501(a)(3) states, “A private or governmental entity accredited as a certifying agent under this subpart must carry out the provisions of the Act and the regulations, including the provisions of §§205.402 through 205.406 and §205.670.” *Two of four labels reviewed did not identify all organic ingredients as organic on the ingredients statement, as required by § 205.303(b)(1). The reviewers and inspectors did not list this as a noncompliance.* **KDA 2012 Corrective Action:** KDA adopted the USDA’s label review checklists, using the published information in *NOP 2005*, for both 100% organic/organic and “Made with Organic Ingredients” labels. KDA reviewed these checklists at the February 2013 training. First reviewers will complete the checklists during the initial reviews, and if inspectors collect any additional labels while onsite, then the final reviewers will also complete these checklists for the new labels. **NOP 2013 On-site Verification:** The auditor found that KDA label reviews are conducted with the label review checklist. In one case, the auditor found that the reviewer incorrectly identified a label as compliant when the label displayed the “Certified organic by KDA” statement to the side of the manufacturer’s name and contact information instead of underneath as required by the regulations. **KDA 2013 Corrective Action:** KDA sent a Notice of Noncompliance to the operation on January 30, 2014. KDA has clarified its policies on label reviews, focusing on the information panel and the placement of the “Certified Organic By ***” statement.

New noncompliances, 2013 mid-term assessment

NP3252LCA.NC1 – Accepted. NOP § 205.662 (a) states, “When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program's governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation.” *Annual updates are required by KDA certified operations to be submitted by May 15th. Annual updates for 18 operations have not been received and no noncompliances have been issued by KDA.* **KDA corrective action:** KDA reviewed its list of operations that had not submitted annual updates. Two were listed in error, and four surrendered their certificates. KDA sent Notices of Noncompliance to the remaining operations on the list. As evidence, KDA submitted a copy of an October 9, 2013 Notice of Noncompliance sent to an operation which had not submitted an annual update. KDA has hired a new administrative support staff, who will be assigned to complete this task in a timely manner.

NP3252LCA.NC2 – Accepted. NOP § 205.501(a)(7) states, “A private or governmental entity accredited as a certifying agent under this subpart must: have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any noncompliances with the Act and the regulations in this part that are identified in the evaluation.” *KDA did not conduct an annual program review for 2012.* **KDA corrective action:** KDA will conduct an internal review on January 9, 2014 using internal staff and the NOP audit checklists. The program manager, administrative support staff, and one inspector will review KDA’s 2013

activities using the NOP's audit checklists as a base. The results will be submitted to the NOP as part of KDA's annual report on January 13, 2014. KDA modified their quality manual to ensure that future annual reviews are conducted as required. The procedure specifies the use of NOP checklists to complete the review by January 13th each year, and it also requires that any identified noncompliances be addressed during the first quarter organic team meeting.

NP3252LCA.NC3 – Accepted. NOP § 205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.” *Some KDA organic inspectors and reviewers are not evaluated on their performance. An evaluation is conducted by a supervisor that is not associated with the certification program. No evaluations are conducted of inspectors conducting inspections.* **KDA corrective action:** starting in 2014, the KDA organic program manager will do one on-site witness audit for each inspector annually. The results will be documented in KDA's new Inspector Evaluation and Inspector Field Evaluation forms. Since the organic program manager does not directly supervise the inspectors, the program manager will submit these evaluations to the relevant supervisors for consideration. If an inspector did not receive a satisfactory evaluation, then the program manager would work with the relevant supervisor to determine the best course of action. This would most likely include additional training, followed by a second witness audit of the inspector. KDA submitted copies of the evaluation forms as evidence.

NP3252LCA.NC4 – Accepted. NOP § 205.660(d) states, “Each notification of noncompliance, rejection of mediation, noncompliance resolution, proposed suspension or revocation, and suspension or revocation issued pursuant to §205.662, §205.663, and §205.665 and each response to such notification must be sent to the recipient's place of business via a delivery service which provides dated return receipts.” *Notifications of noncompliance resolution are not issued by KDA via a delivery service which provides dated return receipts.* **KDA corrective action:** KDA has used a delivery service with dated return receipts for other adverse action notices, and they will begin to use this service for Notices of Noncompliance in December 2013. KDA trained staff on this new practice on December 16, 2013.

AUDIT INFORMATION

Entity Name:	Kentucky Department of Agriculture
Physical Address:	100 Fair Oaks Lane, 5th Floor, Frankfort, KY40601
Mailing Address:	100 Fair Oaks Lane, 5th Floor, Frankfort, KY40601
Contact & Title:	Adam Watson, Organic Program Manager
E-mail Address:	Adam.Watson@ky.gov
Phone Number:	502-564-4983
Auditor(s):	Betsy Rakola, Agricultural Marketing Specialist
Program:	USDA National Organic Program (NOP)
Audit Date(s):	Onsite November 28 – 29, 2012. Corrective action audit March 3, 2013.
Audit Identifier:	AIA112812BJR
Action Required:	No
Audit Type:	Corrective Action Assessment
Audit Objective:	To verify continuing compliance to the audit criteria.
Audit Criteria:	7 CFR Part 205, National Organic Program, Final Rule, dated December 21, 2000; updated November 9, 2012.
Audit Scope:	Submitted corrective actions.
Location(s) Audited:	Desk

The USDA National Organic Program (NOP) completed a compliance audit of the Kentucky Department of Agriculture’s (KDA) Organic Certification Program from November 28-29, 2012. Based on the findings of this assessment, the NOP issued KDA a Notice of Noncompliance on January 23, 2012. KDA submitted corrective actions on February 22, 2013. The NOP accepted KDA’s proposed actions as evidence of compliance, supporting its continued accreditation to the USDA organic regulations.

GENERAL INFORMATION:

The KDA, Division of Marketing, Organic Certification Program is a State government agency and was accredited as a certifying agent by the National Organic Program (NOP) on January 13, 2006 for crops, wild crops, livestock, and handling operations. As of November 28, 2012, KDA’s client list included 47 crop, 35 livestock, and 33 handling operations certified to the USDA organic regulations. KDA does not currently have any certified wild crop operations. All certified clients are located within the state of Kentucky. State regulations require exempt organic operations to register their status with KDA and to pay a nominal registration fee; three exempt operations appear in KDA’s database. KDA has a memorandum of understanding with Quality Certification Services, Inc. (QCS) of Gainesville, FL to allow QCS to do EU, JAS and Taiwan export verification for its clients using the KDA’s certification files/inspection reports; QCS issues all TM-11 certificates for these clients.

FINDINGS

Observations made, interviews conducted, and procedures and records reviewed verified that the Kentucky Department of Agriculture is currently operating in compliance with the requirements of the audit criteria, except as noted in the noncompliances below. Six noncompliances from the October 2011

compliance assessment were verified as being effectively implemented. Eleven new noncompliances were identified during the November 2012 compliance assessment.

NP024200A.NC1 – Cleared.

NP024200A.NC3 – Cleared.

NP024200A.NC7 – Cleared.

NP024200A.NC8 – Cleared.

NP024200A.NC9 – Cleared.

AIA101211JDM.NC1 – Cleared.

AIA112812.NC1 – Accepted. §205.501(a)(15)(ii) states, “A private or governmental entity accredited as a certifying agent under this subpart must submit to the Administrator a list, on January 2 of each year, including the name, address, and telephone number of each operation granted certification during the preceding year.” *KDA’s certified client list for 2011 included only 68 operations in the state of Kentucky. The current list shows 105 clients, all of which are located in the state of Kentucky. Of these, only 10-15 were new applicants in 2012. Therefore, the previous list submitted to the Administrator did not include as many as 25% of KDA’s clients.* **Corrective Action:** KDA has implemented electronic records management for all organic certification files. The staff now scans all files for network storage and tracks them in a database. The database includes exempt operations (tracked by order of Kentucky state law), as well as operations which have surrendered or withdrawn their certifications. KDA submitted a complete and accurate list of certified operations to the NOP on December 28, 2012 showing 92 active, non-exempt clients.

AIA112812.NC2 – Accepted. §205.501(a)(5) states, “A private or governmental entity accredited as a certifying agent under this subpart must ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.” *Most staff had not had any recent organic training and did not have any plans to complete such training. The program manager and the pending hire plan to attend IOIA training in 2013, and the program manager will attend the NOP ACA training, but there is currently no training plan in place for the other certification staff members.* **Corrective Action:** KDA has made funding available for training opportunities and has encouraged employees to complete training with IOIA, the NOP, or other available resources. The organic program manager will develop and implement quarterly trainings for internal personnel, identifying topics based on identified needs. Evidence of 2013 in-house training is included in the responses to NC9 and NC10.

AIA112812.NC3 – Accepted. § 205.670 (c) states, “A certifying agent must conduct periodic residue testing of agricultural products to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)). Samples may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples. Such tests must be conducted by the certifying agent at the certifying agent’s own expense.” *KDA does not currently have a sampling program in place but plans to work with its state laboratory to establish one.* **Corrective Action:** KDA has implemented a new policy to sample 5% of its certified operations. Kentucky’s state laboratory is in the process of installing new equipment and training personnel to support this program, and

implementation is expected by May 2013. If the laboratory is not prepared to accept samples for residue testing under the organic program, KDA will use the USDA-AMS National Science Laboratory instead.

AIA112812.NC4 – Accepted. § 205.662(b) states, “When a certified operation demonstrates that each noncompliance has been resolved, the certifying agent or the State organic program’s governing State official, as applicable, shall send the certified operation a written notification of noncompliance resolution.” *KDA does not send a resolution letter for Notices of Noncompliance resulting from a failure to submit annual updates. Once the inspector contacts clients to schedule the inspection, it is assumed that the clients have been notified, either verbally or via email, that their application was received. For other Notices of Noncompliance, the certification determination letter notifying the client of their successful certification serves as a substitute to communicate the resolution of the noncompliance.* **Corrective Action:** KDA began issuing Notices of Resolutions of Noncompliances in February 2013, submitting a new template to the NOP as objective evidence. KDA also revised its adverse action procedures to state that all operations shall be notified of a satisfactory resolution of noncompliances in writing, and that a copy will be sent to NOP Appeals.

AIA112812.NC5 – Accepted. §205.662(c) states, “When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent ... shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification.” *KDA’s draft quality manual states, “When it is not possible to correct a noncompliance, the Notice of Noncompliance and Notice of Suspension will be combined into one,” instead of stating that the Notice of Noncompliance and Notice of Proposed Suspension will be combined into one. To date, KDA has not issued any combined Notices of Noncompliance with either Notices of Proposed Suspension or Notices of Suspension.* **Corrective Action:** KDA corrected its quality manual to state that, when correction of a noncompliance is not possible, then Notice of Noncompliance and Notice of Proposed Suspension/Notice of Denial of certification will be combined into one.

AIA112812.NC6 – Accepted. §205.662(c)(2) “The notification of proposed suspension or revocation of certification shall state the proposed effective date of such suspension or revocation.” *KDA’s Notice of Proposed Suspension template included all the required information, except for the proposed effective date of suspension. KDA has not issued any Notices of Proposed Suspension during the last year.* **Corrective Action:** KDA revised its Notice of Proposed Suspension template to include an effective date of suspension, and KDA provided a copy of the template to the NOP as supporting evidence.

AIA112812.NC7 – Accepted. §205.501(a)(15)(i) states, “A private or governmental entity accredited as a certifying agent under this subpart must submit to the Administrator a copy of any notice of denial of certification (§205.405), notification of noncompliance, notification of noncompliance correction, notification of proposed suspension or revocation, and notification of suspension or revocation (§205.662) simultaneously with its issuance.” *KDA’s quality manual outlines a policy for sending such notices to the Administrator. However, KDA has not implemented this policy in 2012.* **Corrective Action:** KDA submitted all Notices of Noncompliance issued since May 2012 to NOP Appeals. KDA has implemented

procedures to submit all future adverse actions at least once a month. This requirement is reflected in the KDA quality manual.

AIA112812.NC8 – Accepted. § 205.402(a)(2) states, “Upon acceptance of an application for certification, a certifying agent must determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part.” *KDA’s livestock OSP form does not ask about the source of bedding made up of roughages, any temporary confinement, the length of the grazing season, or the number of days on pasture. The handling OSP does not require information on the prevention of contamination or commingling. If this information is not included, it is the responsibility of the inspector to request it and evaluate it while on site for the inspection. Therefore, it is not possible for the initial reviewer to determine livestock producers’ ability to comply with the requirements of §205.239 or §205.237(c)(1).* **Corrective Action:** KDA has revised its OSP forms for 2013. The handling OSP now requests a description of Organic Control Points under Section 2: Assurance of Organic Integrity. The initial review checklist asks whether sufficient information was included in the OSP. The livestock OSP now includes questions on the start and end date of the operation’s grazing season; dates when animals have access to pasture; feed rations tables with fields for months fed, purchase logs, quantities, animal class, and certifying agent; and a table for temporary confinement. The initial review checklist now asks about livestock purchases, the completion of required pasture information, whether edible bedding is used, whether DMI records were included, and whether herd management lists are complete. If applicants do not submit information sufficient to determine compliance, KDA will issue them a Notice of Noncompliance.

AIA112812.NC9 – Accepted. §205.403(c)(1) states, “The on-site inspection of an operation must verify the operation's compliance or capability to comply with the Act and the regulations in this part.” *Inspections rarely included any in-out balance or traceability audits. Two livestock inspection reports did not include sufficient information to verify the organic status of recently purchased animals. Three livestock inspection reports did not include sufficient information to determine the total number of days on pasture, the length of the grazing season, and compliance with the requirements of § 205.237(c)(1). Although some operators’ dry matter intake (DMI) forms were incomplete and/or had errors, the inspector did not include additional information or details in the inspection reports on how he or she verified compliance with DMI requirements.* **Corrective Action:** In February 2013, the KDA program manager conducted training with its inspectors, review staff, administrative support, and program supervisor to emphasize the importance of collecting quantitative information in inspection reports in order to verify compliance with the pasture rule. KDA has revised its final review form to evaluate in-out balance audits and DMI calculations completed by inspectors.

AIA112812.NC10 – Accepted. §205.501(a)(3) states, “A private or governmental entity accredited as a certifying agent under this subpart must carry out the provisions of the Act and the regulations, including the provisions of §§205.402 through 205.406 and §205.670.” *Two of four labels reviewed did not identify all organic ingredients as organic on the ingredients statement, as required by § 205.303(b)(1). The reviewers and inspectors did not list this as a noncompliance.* **Corrective Action:** KDA adopted the USDA’s label review checklists, using the published information in *NOP 2005*, for both 100% organic/organic and “Made with Organic Ingredients” labels. KDA reviewed these checklists at the February 2013 training. First reviewers will complete the checklists during the initial reviews, and if inspectors collect any additional labels while onsite, then the final reviewers will also complete these checklists for the new labels.

AIA112812.NC11 – Accepted. § 205.663 states, “Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this part may be mediated at the request of the applicant for certification or certified operation and with acceptance by the certifying agent. Mediation shall be requested in writing to the applicable certifying agent...” *KDA’s OSP producer affidavit states that, in the event of a dispute, KDA shall not offer mediation.* **Corrective Action:** KDA has revised all documentation to remove the provision barring mediation. KDA will now evaluate each request for mediation on a case-by-case basis and proceed accordingly.

AUDIT INFORMATION

ACA Name:	Kentucky Department of Agriculture (KDA)
Est. Number:	N/A
Physical Address:	100 Fair Oaks Lane, 5th Floor, Frankfort, KY 40601
Mailing Address:	100 Fair Oaks Lane, 5th Floor, Frankfort, KY 40601
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E-mail Address:	Michael.Fitzgerald@ky.gov
Phone Number:	502-564-0290 Ext 230
Auditor(s):	Betsy Rakola, Accreditation Manager
Program:	USDA National Organic Program (NOP)
NOP Audit Date(s):	February 21 – March 7, 2012
Audit Identifier:	NP0242OOA and AIA101211JDM
Action Required:	No
Audit Type:	Corrective Action audit
Audit Objective:	To verify continuing compliance to the requirements of the audit criteria.
Audit Criteria:	7 CFR Part 205, National Organic Program, Final Rule, December 21, 2000, amended February 17, 2010.
Audit Scope:	Submitted corrective actions.
Location(s) Audited:	Desk

The NOP conducted a 5-year accreditation renewal assessment of the Kentucky Department of Agriculture (KDA) from August 30 – September 2nd, 2010. KDA's accreditation renewal date was January 13, 2011. This assessment, NP0242OOA, resulted in fourteen noncompliances, and the NOP issued a Notice of Noncompliance to KDA on October 13, 2010. KDA's first round of corrective actions due November 13, 2010, were received by the NOP on December 6, 2010. Due to procedural and personnel changes KDA's file was assigned to NOP for review and response for the corrective action review pertaining to the accreditation renewal audit. The corrective actions review process did not resume until March 2, 2011.

On March 2, 2011, the submitted corrective actions were reviewed and found to be inadequate. A request for additional information from KDA was submitted. The response which was due March 11, 2011, was received by the NOP via mail on March 31, 2011.

On April 5, 2011, a second review of the corrective actions began and was completed on April 20, 2011. The corrective actions were again found to be inadequate. KDA was contacted on April 20, 2011, to request a conference call to review the corrective actions response.

On April 26, 2011, a conference call was held with KDA and KDA agreed to send in additional corrective actions by May 6, 2011. The corrective actions were received via email on May 13, 2011. The third corrective action review process began again on July 18, 2011 and was completed August 16, 2011. Additional information was requested by NOP for the final noncompliance and corrective actions arrived on August 23, 2011.

It was recommended by the accreditation committee that an additional onsite audit was needed due to numerous noncompliances, and the inability to resolve those noncompliances through a desk audit only. On October 12–14, 2011, an NOP auditor conducted a compliance assessment to verify the implementation and effectiveness of KDA's corrective actions submitted for noncompliances NP0242OOA.NC1–14. The compliance assessment included on-site evaluations of an organic coffee processing operation and an organic hay/crop operation, both certified by KDA.

The NOP completed the AIA101211JDM assessment report on December 6, 2011. The assessment verified the corrective actions for five noncompliances but found nine noncompliances to be outstanding. One additional new noncompliance was identified. The NOP issued a Notice of Noncompliance to the Kentucky Department of Agriculture on December 20, 2011.

Representatives of the KDA contacted the NOP on January 20th and February 6th, 2012 to notify the NOP that corrective actions would be late. The delay was due to an additional review by the KDA's new Commissioner of Agriculture. The KDA delivered corrective actions to the NOP on February 21, 2012. Overall, KDA's response demonstrates that the new Commissioner intends to reduce the client load, increase staff resources, and strengthen proper enforcement of the NOP regulations, including adverse actions. The Accreditation Manager determined the corrective actions to be sufficient, and the Accreditation Committee unanimously recommended renewal of KDA's accreditation. KDA's mid-term assessment in FY2013 will verify all corrective actions.

FINDINGS

Observations made, interviews conducted, and procedures and records reviewed verified that KDA is operating in compliance to the requirements of the audit criteria except as noted below. The corrective actions submitted and reviewed, as well as additional information examined during the on-site assessment, found that KDA had implemented nine of the fourteen noncompliances identified during the Surveillance-Accreditation Renewal. Those noncompliances are cleared. However, five noncompliances remained outstanding. In addition, there was one new noncompliance. KDA's final corrective actions for all outstanding noncompliances have now been accepted, and they will be verified during the next on-site assessment.

Noncompliances cleared as of October 2011

NP0242OOA.NC2 – Cleared. NOP § 205.239(a)(3) states, "The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including: Appropriate clean, dry bedding. When roughages are used as bedding, they shall have been organically produced in accordance with this part by an operation certified under this part, except as provided in

§205.236(a)(2)(i), and, if applicable, organically handled by operations certified to the NOP.” *Non-organic straw was being used at the livestock operation observed during the witness inspection. The inspector indicated this on his inspection report. A review of the previous inspection report indicated that the inspector had also noted the use of non-organic straw at the same operation. There was no noncompliance for using the non-organic straw.* **Corrective Actions:** KDA corrective actions stated that KDA did not consider straw part of the normal diet but is now aware that the straw would be covered under roughage under the Pasture Rule. KDA informed the producer where the witness audit was conducted that they could no longer use conventional straw. As a preventative measure, KDA held a meeting with all of its inspectors and informed them of this policy during training. KDA provided a training sign in document and agenda which showed that on March 28, 2011, the inspectors and other part time staff were provided training on: Changes to the Pasture Rule, DMI Calculations, Bedding and fencing. KDA stated that they have notified all livestock clients that all bedding that is considered roughage must be organic. KDA provided documentation with dates of seminars in the states where KDA has livestock operations and made it clear that where roughages are used for bedding only those organically produced are allowed. KDA stated if a producer uses non-organic roughage for bedding we will issue a notice of noncompliance and an example was provided of a notice of noncompliance template. **Onsite Verification (October):** *Several files including the operation visited during the previous audit were examined during the assessment showing that certified bedding is now being used.*

NP0242OOA.NC4 – Cleared. NOP § 205.403(c) states, “The on-site inspection of an operation must verify: (1) The operation's compliance or capability to comply with the Act and the regulations in this part; (2) That the information, including the organic production or handling system plan, provided in accordance with §§205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation; (3) That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.” *One of the 6 files reviewed contained an inspection report that was incomplete from question 79 through the end of the report. All of the reports reviewed were mainly a checklist indicating the inspector had verified the information but did not contain objective evidence for the final reviewers to make a determination of certification.* **Corrective Actions:** KDA’s corrective actions state that the file that was noted in the noncompliance as incomplete was completed using the inspector’s notes and a copy was provided to the client. In addition, KDA indicated that a variety of styles existed in the way KDA inspectors captured the results of inspection reports, some of the inspectors used a checklist, some a narrative and others a combination of the two. As a preventive action KDA has written a new inspection report which now contains more room for capturing objective evidence for the final reviewer to make a determination of certification. KDA provided a training sign in sheet mentioned previously, to document the training of the inspectors on this new inspection sheet. Procedures were modified which show that KDA will make sure the new inspection report is finished before being submitted for the final review and determination of certification. **Onsite Verification (October):** *Several files examined indicated that the inspection reports were completed prior to the final review.*

NP024200A.NC5 – Cleared. NOP § 205.404(a) states, “Within a reasonable time after completion of the initial on-site inspection, a certifying agent must review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant.” Procedures for the Kentucky Department of Agriculture Organic Certification Program, Granting Certification requires a review of the on-site inspection...within 30 days of completion of the onsite inspection. *One of 6 files reviewed found that the inspection was conducted 2½ months ago and has yet to be reviewed and have a final decision made for continued certification.* **Corrective Actions:** KDA submitted a modification of the KDA procedures to reflect the same period as stated in the regulations sited above from “within 30 days” to “within a reasonable time after completion of the initial on-site inspection, a certifying agent will review the on-site inspection report, the results of any analyses for substances conducted and any additional information requested from or supplied by the applicant and issue a final decision for new or continued certification.” In addition, KDA changed procedures to require “appointments for inspections to be scheduled within 60 days of the receipt of the client’s application” from “within 30 days.” This modification was designed to give enough time for KDA to not be in violation of its procedures in the future. The corrective actions provided have been submitted and accepted. **Onsite Verification (October):** *Database examined indicated that inspections were completed within established timeframes as shown in the procedures for several recent operations.*

NP024200A.NC6 – Cleared. NOP § 205.404(b)(4) states, “The certifying agent must issue a certificate of organic operation which specifies the: Name, address, and telephone number of the certifying agent.” *Certificates being issued indicate that the Executive Director is the certifying agent.* **Corrective Actions:** KDA submitted a revised Certificate to indicate the Kentucky Department of Agriculture as the Certifying Agent. Also, KDA stated that all subsequent certificates from the time of the audit were changed to reflect KDA as the Certifying Agency. The corrective actions provided have been submitted and accepted. **Onsite Verification (October):** *Several files and certificates were examined which indicated that the certificates had been modified to reflect the changes outlined in the corrective actions and an interview with the Program Coordinator indicated that all renewals in the new year would have the same modifications to the new certificates issued.*

NP024200A.NC10 – Cleared. NOP § 205.501(a)(6) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services.” *Employees are evaluated annually by the KDA, however, these evaluations contain limited criteria for the organic program and the individuals evaluating them are not familiar with the organic program and they are not receiving any input from the Organic Marketing Supervisor as to how the employees involved with organic certification are performing their duties. Also, evaluations for contracted inspectors were not available for review.* **Corrective Actions:** KDA states that evaluations procedures are now changed so that the Executive Director (ED), an IOIA trained inspector familiar with the organic program will evaluate all employees involved in the KDA program. The Organic Marketing Supervisor will also offer input into how employees are

performing to the ED and will evaluate contract inspectors. All will use a new evaluation question sheet that was developed pertaining to the organic certification program to make the evaluation more specific. **Onsite Verification (October):** *Marketing Supervisor was interviewed and explained the new process and provided a copy of the procedures to show how the evaluations would be completed, to reinforce the submissions provided by the program coordinator.*

NP0242OOA.NC11 – Cleared. NOP § 205.501(a)(11)(vi) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Prevent conflicts of interest by: Ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection.” *One of the 6 files reviewed found that the person that conducted the inspection also conducted the final review and made the final decision for certification.* **Corrective Actions:** KDA submitted the following for a corrective action response. “One of the files examined by the auditors had the same person who did the inspection, do the final review and make the certification decision. This happened because after the on-site inspection had been conducted, the Executive Director, who does the final review and makes the final decision, realized that the meat processor recently inspected was the same one where he would be taking his livestock for processing. Feeling this was a conflict of interest; the same person who inspected did the final review and made the certification decision. To prevent this from occurring in the future, the Executive Director has listed on his Conflict of Interest form all of the entities that he could possibly have a conflict with. The Supervisor will do the final review and make the certification decision in these rare cases after the initial review and on-site inspection are performed by other parties. The final review and certification decision shall not be made by the same person who inspects the operation.” A copy of the conflict of interest form was received. **Onsite Verification (October):** *Program Coordinator was interviewed and explained the background behind the noncompliance and explained how inspections and final decisions will be managed in the future using the conflict of interest form as provided as a guide so that this will not occur in the future.*

NP0242OOA.NC12 – Cleared. NOP § 205.501(a)(18) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Provide the inspector, prior to each on-site inspection, with previous on-site inspection reports and notify the inspector of its decision regarding certification of the production or handling operation site inspected by the inspector and of any requirements for the correction of minor noncompliances.” *It was observed during the processing witness inspection that the inspector did not have the previous on-site inspection report or copies of the labels approved.* **Corrective Actions:** KDA submitted that to prevent this from occurring in the future KDA added to its first review and final checklists a requirement that the inspector receive a copy of the file with all supporting documents including any previous noncompliance before it is assigned to an inspector. Copies of these checklists with modifications were provided. The corrective actions provided have been submitted and accepted. **Onsite Verification (October):** *During both witness audits the inspectors both had copies of the previous inspection reports with them and at the processing operation a label review occurred and copies of approved labels were in the inspectors materials.*

NP0242OOA.NC13 – Cleared. NOP § 205.504(a) states, “A private or governmental entity seeking accreditation as a certifying agent must submit the following documents and information to demonstrate its expertise in organic production or handling techniques; its ability to fully comply with and implement the organic certification program...(b)(2) A copy of the procedures to be used for reviewing and investigating certified operation compliance with the Act and the regulations in this part and the reporting of violations of the Act and the regulations in this part to the Administrator.” *The KDA has not updated the livestock application nor has established procedures for implementing § 205.240 Pasture Practice Standard.* **Corrective Actions:** KDA submitted updated Crop and Livestock applications establishing procedures for implementing § 205.240 Pasture Practice Standards. The new applications make provisions for calculating Dry Matter Demand (DMD) and Dry Matter Intake (DMI) and provide space for listing feed rations. A copy of the applications and the forms for calculating the rations and days on pasture was provided. **Onsite Verification (October):** *Interviews with program coordinator, and examination of two livestock operation files indicated that the new forms were being used and the corrective actions are being implemented.*

NP0242OOA.NC14 – Cleared. NOP § 205.510(a) states, “An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of the notification of accreditation, the following reports and fees...” *Annual reports for accreditation years 2008 and 2009 have not been submitted as required by the NOP.* **Corrective Actions:** KDA submitted both annual reports directly to the NOP, and as a preventative measure provided a copy of the modified “Internal Policy for Organic File Management Process” procedures showing that the KDA Administrative Assistant’s responsibility to compile the data and send the annual report on time as part of their regular job duties. **Onsite Verification (October):** *Interviews with program coordinator, and the organic support staff indicated that they were aware of the requirement for the report and what that report entailed and how it can be produced by hand; however, it was indicated that the report completion difficult due to the inability of the KDA existing database management system to produce the required report which may need modifications by the KDA IT department in order to function as specified.*

NP0242OOA.NC1 – Accepted. NOP § 205.201(a) states, “The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable; (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; (5)

A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances.” *A review of the application records showed that reviews of initial and updated application materials and OSPs were not being adequately completed by the applicant/client. OSPs in all of the files reviewed were not complete and could not have been determined to be compliant prior to the on-site inspections. The incomplete OSPs are being submitted to the inspectors to conduct the on-site inspections.* **Corrective Actions:** KDA submitted a modified checklist to ensure that all sections of the OSP are completed by the producer/processor and determined to be in compliance with the NOP prior to being submitted to the inspectors for the on-site inspections. A copy of this new checklist was provided. KDA also stated that the file in question was sent back to the producer so that the section could be completed. As a preventative measure and to ensure that no incomplete OSP is given to an inspector, KDA stated that the first reviewer has been instructed to return the incomplete application to the Administrative Assistant who will mail the incomplete application back to the producer with instructions that it be completed and returned to KDA. A copy of this “Internal Policy for Organic File Management” was provided; however, it was determined to be inadequate and a later modified version was sent in and reviewed. The procedure states that when the completed OSP is returned to KDA it will be reviewed again and if found to be complete will be given to the Supervisor who will give it to the appropriate inspector. KDA provided a training sign in document and agenda which showed that on March 28, 2011, the inspectors and reviewers were provided training on this policy. The corrective actions provided have been submitted and accepted. **Onsite Verification (October):** *The Checklist was found in several files, however, there was no indication of follow up for missing components of the application and OSP materials. During the witness inspection at the Crop operation visited the application was completed during the on-site inspection partially by the inspector and then by the applicant. NOP OSP materials and application materials were missing from the Crop operation visited. See the finding AIA101211JDM.NC1 below when formulating a corrective action response to this noncompliance.* **Corrective Action:** KDA’s “Internal Policy for Organic File Management” has been modified to define a complete file. It further states that incomplete files will be sent back to the applicant for completion, and that all communication shall be in writing.

NP024200A.NC3 – Accepted. NOP § 205.402(a) states, “Upon acceptance of an application for certification, a certifying agent must: (1) Review the application to ensure completeness pursuant to §205.401; (2) Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of subpart C of this part.” *Review of selected files indicated that applications were not being sufficiently reviewed for compliance prior to being assigned to an inspector.* **Corrective Actions:** KDA submitted a modified checklist to ensure that all sections of the OSP are completed by the producer/processor and determined to be in compliance with the NOP prior to being submitted to the inspectors for the on-site inspections. A copy of this new checklist was provided. In addition, a copy of the “Internal Policy for Organic File Management” was provided however it was determined to be inadequate and a later modified version was sent in and reviewed. The procedure states that the first reviewer will insure that the OSP is completed before passing it on to the Supervisor for inspection. KDA provided a training sign in document and agenda which showed that on March 28, 2011, the inspectors

and reviewers were provided training on this policy. **Onsite Verification (October):** *The Checklist was found in several files, however, there was no indication of follow up for missing components of the application and OSP materials. During the witness inspection at the Crop operation visited the application was completed during the on-site inspection partially by the inspector and then by the applicant. NOP OSP materials and application materials were missing from the Crop operation visited. See the finding AIA101211JDM.NC1 below when formulating a corrective action response to this noncompliance.* **Corrective Actions:** In addition to the actions noted in NC1, KDA will now allow inspectors to return files to the reviewer for the collection of additional data. KDA has also implemented a database to track all aspects of the certification process, which will note the status of applications.

NP0242OOA.NC7 – Accepted. NOP § 205.405(a) states, “When the certifying agent has reason to believe, based on a review of the information specified in §205.402 or §205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this part, the certifying agent must provide a written notification of noncompliance to the applicant.” NOP § 205.662 (a) states, “When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program's governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation.” *Review of certification files and interviews with the Organic Marketing Supervisor revealed that noncompliances are not being issued for applicants or certified operations. Issues that are not compliant with the NOP Rule are classified as “conditions” and are being required to be resolved prior to issuance of the certificate or issuance of an updated certificate.* **Corrective Actions:** KDA stated that it now issues certificates with a letter listing the previously named “conditions,” as noncompliances, where issues are not compliant with the NOP rules and regulations. Minor noncompliances are to be resolved before the following year’s inspection. Any major noncompliance must be dealt with immediately or within 30 days. An example of this letter was provided but was inadequate; two other letters were sent to replace the initial letter and were found to be adequate. **Onsite Verification (October):** *While examining a recent Notice of Noncompliance (NoNC) issued by KDA no date was included in the NoNC. In addition, further examination of records indicated that no Notice of Resolution of Noncompliances were being issued by KDA to show the resolution of noncompliances.* **Corrective Actions:** KDA’s “Internal Policy for Organic File Management” now states that all noncompliances shall be issued in writing by the Supervisor to the applicant. KDA also states that it will issue formal notices of noncompliance resolution.

NP0242OOA.NC8 – Accepted. NOP § 205.501(a)(1 & 4) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part; Use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part.” *As a result of the review of the selected files and interviews with the Organic Marketing Specialist it is evident that there is not sufficient number of personnel to adequately comply with and implement the organic certification program. Also, there has been no training conducted for the Pasture Rule.*

Corrective Actions: KDA has stated that since the findings of the audit in trying to address this noncompliance the Commissioner of Agriculture seeing the need in the program has allowed them to hire an administrative assistant who will be responsible for all file management functions an area which needed improvement. The assistant also sat in on and observed the May IOIA training to learn the importance of documentation and is undergoing training with the Supervisor. KDA provided a sign in sheet and agenda for Pasture Rule training held in March of 2011, the DMI calculation form and calculations were completed by inspectors attending. KDA also held 3 training sessions in 3 different locations so that producers and others interested could better understand the Pasture Rule. **Onsite Verification (October):** *Since September 2010, the time of the last audit there has not been improvement in the number of full-time personnel in the organic department. The program coordinator and the administrative specialist are the only full-time persons in the program. One reviewer also serves as a part-time inspector. There are two other part-time inspectors however there has been no recent training for either inspector.* **Corrective Actions:** The new KDA Commissioner and Executive Director have indicated their intentions to provide adequate human resources to the KDA organic department. KDA has elected to cease certification activities for out-of-state clients, reducing its total client base from 268 to 68, a 75% reduction. In addition, KDA is implementing personnel changes to bring two additional employees into the organic department. The administrative assistant has also received additional training in organic procedures. Additional personnel issues will be resolved within the next month as a result of a larger human resources assessment at the KDA.

NP0242OOA.NC9 – Accepted. NOP § 205.501(a)(2) states, “A private or governmental entity accredited as a certifying agent under this subpart must: Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart.” *Interviews with organic staff and reviews of application/update client files indicated that there are not sufficient records being maintained to provide evidence of the ability of KDA to fully comply with the requirements for accreditation. Initial review records, final review records, certification determination records, phone conversations currently being used to communicate with the applicant/client for issues on “conditions” needing attention before the certification/continuing certification decision can be made, and phone conversations requesting additional information are some examples, but not limited to, records that are not being maintained.* **Corrective Actions:** KDA stated that KDA had been relying on phone conversations to resolve some issues of concern. When the auditors were at KDA the Program Coordinator (PC) failed to show the auditors notebooks where the PC had recorded what was discussed, with whom, when and what the resolution was. Now KDA states that a written explanation of the answer to their questions is sent out in response. In the future KDA will not only respond in writing but the Administrative Assistant and PC will keep detailed phone logs and each conversation and the ensuing discussion is noted and then placed in the producers file with the topic of discussion and date of discussion. An example of this log was provided. The initial review checklist was expanded and a final review page must be completed before the final signature granting certification. Examples of these checklists were provided. **Onsite Verification (October):** *Interviews with program coordinator, and organic staff and reviews of application/update client files indicated that there are not sufficient records being maintained to provide evidence of the ability of KDA to fully comply with the requirements for accreditation. Initial review records, final review records, certification determination records are some examples, but not limited to, records that are not being maintained. Database*

*that is used to track certified operations has not been completed or modified so that the program is useful for queries to the system. Some of the certified operation materials requested were provided just before the closing meeting. **Corrective Actions:** KDA has improved its internal database in order to maintain records of certification activities. It has also updated the "Internal Policy for Organic File Management" policy to reflect record-keeping requirements. Lastly, KDA is in the process for developing new Standard Operating Procedures to ensure compliance with NOP § 205.501(a)(2).*

AIA101211JDM.NC1 – Accepted. NOP § 205.406 states, "(a) To continue certification, a certified operation must annually...submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan which includes: (i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year's organic system plan during the previous year; and (ii) Any additions or deletions to the previous year's organic system plan, intended to be undertaken in the coming year, detailed pursuant to §205.200; (2) Any additions to or deletions from the information required pursuant to §205.401(b). **Onsite Verification (October):** *Examination of files and observation during witness audits show that even though a new checklist has been developed and was present in the files examined (developed to accurately reflect the completeness of the application and OSP). During the witness inspection at the Crop operation visited the application was completed during the on-site inspection partially by the inspector and then by the applicant. NOP OSP materials and application materials were missing from the Crop operation visited and from the files associated with this operation. It appears that KDA is not requiring completed OSP/application materials and requests for these required materials are unresponsive. **Corrective actions:** see the corrective actions for NP0242OOA.NC1.*