

NOP Newsletter | Jan./Feb. 2011 | Organic Integrity from Farm to Table. Consumers Trust the Organic Label.

## NOP Responds to Fraudulent Activity Trends

For more than a year now the NOP has stressed as a priority protecting the integrity of the USDA organic label. It integrated the mission into its operating strategic plan and devoted more resources to its Compliance and Enforcement division than ever before in the history of the program.

Recently, the program noted a couple of trends in the type of fraudulent activity being reported.

### 1) Increase in complaints alleging production and misuse of fraudulent NOP certificates.

Since the beginning of the 2011 fiscal year, NOP's Compliance and Enforcement Division has received a noticeable increase in these types of complaints.

#### NOP's Response

In addition to levying civil penalties and other available enforcement actions against operators that produce and/or use fraudulent NOP certificates, the NOP is making the public aware of these documents. Copies of the fraudulent certificates will be posted on the NOP website when possible. On Feb. 11, NOP announced for the first time the circulation of a fraudulent NOP certificate that falsely represented several soy products as certified to the NOP standard (see <http://bit.ly/AMS026-11>). So far there has been no evidence that products were sold under the false certificate.

### 2) Increase in complaints alleging misrepresentation of agricultural products as USDA organic. Misrepresentation by uncertified organic producers and handlers.

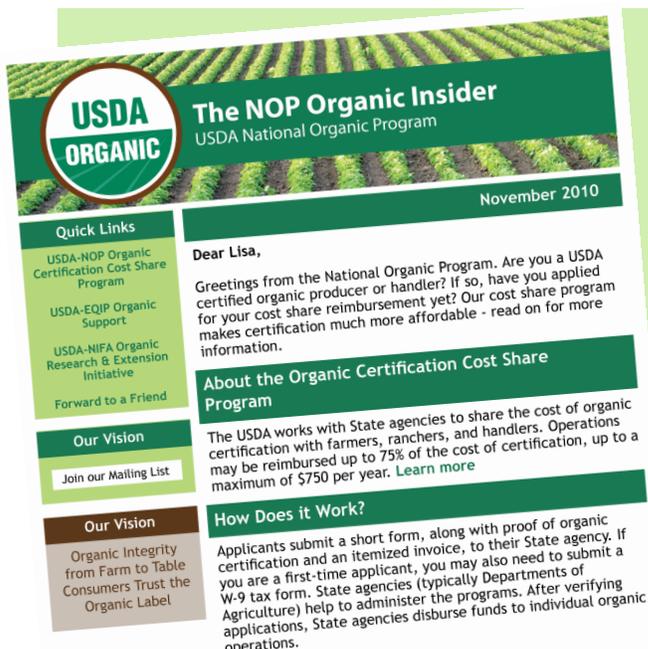
Several such complaints concern operations that have been suspended from NOP certification due to failure to adhere to NOP requirements regarding record-keeping and the maintenance of updated Organic Systems Plans.

The program has levied more civil penalties through settlement agreements against operations that continue to represent products as organic after suspension than ever

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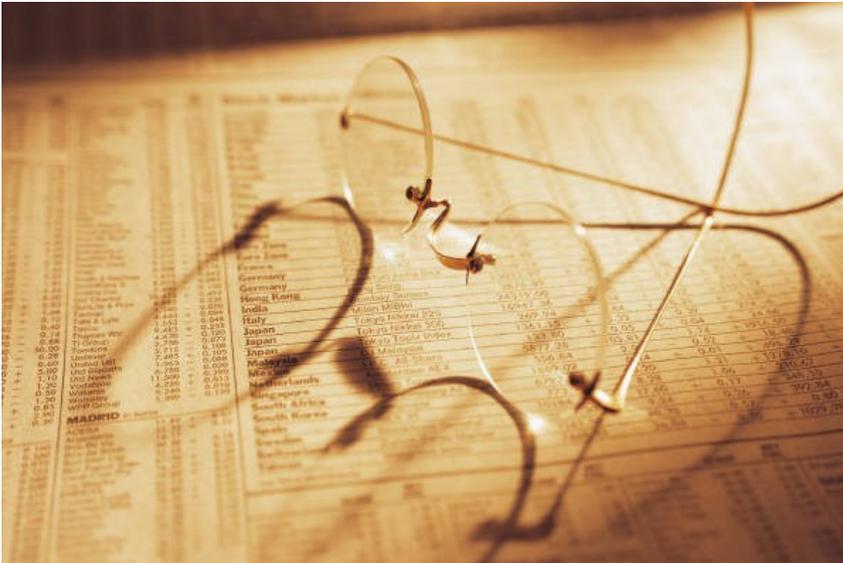
Subscribe to the *NOP Organic Insider*, an email notification service of the National Organic Program. The NOP frequently announces new information available on its website. Subscribers can now pick what information they'd like to receive directly via email for their convenience. Visit <http://bit.ly/NOPOrganicInsiderRegistration>.

## USDA Makes it Easy to Find Organic Market News Data

Market news reports, published by USDA's Agricultural Marketing Service, has long been offered as a marketing-facilitating program for producers in production planning. Through the Market News Program, the USDA provides unbiased information to buyers and sellers of agricultural commodities that reflect current conditions on supply, demand, price, trend, movement, and any other information pertinent to trading. The idea behind the reports is to place the producer and buyer on a more equal bargaining basis.

Now, the program has made it easier to find relevant data specifically for organic agricultural products.

USDA houses four electronic market news portals, broken up by commodity: fruit and vegetable, livestock and grain, dairy, and poultry (see "resources" navigation panel under <http://www.ams.usda.gov/MarketNewsAndTransportationData>).



While each portal differs slightly in content organization, easy-to-follow navigational cues allow the user to find the organic data he or she needs. For example, the fruit and vegetable market news portal offers organic data options as custom reports, marked on the center of the page. On the livestock and grain portal, users can search the left-hand navigation panel for one of four standard organic reports, including biweekly reports of organic grain and feedstuffs prices across the eastern cornbelt and upper Midwest, and weekly national feed and seed and hay summaries.

USDA reporters collect information at the local level, through interviews with buyers and sellers, personal observation of transactions, and by checking sales records. Moreover, under the Mandatory Reporting Act, packers who are required to report price and volume information do so at scheduled intervals. Reporters identify pertinent information such as price, grades, and any other factors that can affect the market. They also interview by phone widely scattered buyers and sellers. On the local level, information gathered by reporters is quickly assembled into concise and comprehensive reports, which are then released to the public through commercial news media and secondary disseminators.

Reports are disseminated as frequently as every business day to every year, depending on the type of report. The market news service ensures that no marketing group is disadvantaged by the lack of needed information and that members of the agricultural community can make more informed decisions on the type and amount of a commodity to produce, when and where to market, and price levels to offer or accept.

For more information, visit <http://www.ams.usda.gov/MarketNewsAndTransportationData>.

## NOP Responds to Fraudulent Activity Trends *(continued from pg. 1)*

before. Since the beginning of the 2010 calendar year, six operations have been issued civil penalties for selling organic products without certification.

As with public notice of fraudulent NOP certificates, levied civil penalties for misrepresenting agricultural products as organic without certification serve as critical enforcement actions. NOP continues to fulfill its commitment to protect organic integrity and ensure consumer confidence in the USDA organic seal.

## Comprehensive Look: NOP Analyzes Certifying Agent Performance



Ensuring certifying agents implement a quality certification process is one of eleven principles enacted by NOP to protect organic integrity (*NOP Newsletter, Dec. 2010*), a major objective in the age of enforcement.

Many are probably familiar with how regulations and compliance actions work but are less familiar with accreditation—what is it and how does this function of the NOP protect organic integrity?

Under the NOP, accreditation is an assessment of the education, experience, and level of competence of a certifying agent's ability to provide certification to organic producers and handlers. Having a strong accreditation program is critical as the NOP relies on accredited certifying agents to ensure that certified operations comply with the NOP regulations. So, how does the NOP determine whether a certifying agent qualifies to be accredited, and when accredited, what actions are taken to monitor how well accredited

certifying agents are performing?

To be accredited, a certifying agent must demonstrate sufficient expertise in organic production and handling practices to fully comply with, and implement the NOP certification program. An audit, with on-site visit, of a certifying agent is the principle tool used to determine an agent's qualifications. When sufficient expertise and ability to comply with the regulations are demonstrated, the NOP grants accreditation.

To remain accredited, an agent must be reevaluated every five years. On-site audits help the NOP assess how well an accredited certifying agent is performing. Comprehensive reports of findings are then analyzed to determine areas of improvement for the certifier when providing NOP certification. The NOP also relies on these assessments to improve the certification process and the accreditation program.

Recently, the NOP established an objective of achieving continuous improvement in the accreditation program. To meet this objective, the program is conducting an analysis of domestic and foreign certifying agent audit annually. Results are then used to formulate recommendations on improving the accreditation program.

In 2010, the NOP analyzed 40 audit reports for type and frequency of regulatory noncompliance among certifiers. The reports covered audits of 26 domestic agents and 14 foreign agents. The findings: significant noncompliance trends in reviewing organic system plans, scheduling and conducting inspections, improperly issuing or failing to issue noncompliance notices, and eliminating or minimizing conflicts of interest.

Based upon these trends, the NOP developed recommendations to improve the accreditation program, which, when implemented, will help improve the quality of the certification process. Therefore, in addition to sharing this information, throughout the course of the year NOP will 1) provide in-depth, specified training for certifying agents with focus on the major points of noncompliance, 2) develop more web-based training programs for enhanced access to these opportunities, and 3) increase outreach and technical assistance to accredited certifying agents.

Analysis of domestic and foreign certifying agent audit reports will be repeated in September 2011, at which point the NOP will develop a new set recommendations for improving the accreditation program towards 2012.

## First Foreign Assessment of 2011: India

In January, representatives of NOP conducted an assessment of NOP's organic recognition agreement with the government of India, affirming NOP's commitment to continue surveying certifiers and government counterparts overseas.

The recognition agreement with India authorizes the foreign agency to accredit agents in its respective country to certify products according to the NOP regulations.

The assessment in January included an onsite review of the Agricultural and Processed Food Products Export Development Authority (APEDA), which is housed under the India Ministry of Commerce & Industry, according to ISO 17011 guidelines. USDA auditors also reviewed two certifying bodies accredited by APEDA. As part of the certifier review, NOP evaluated a total of five operations representing various certification scopes for their compliance with the NOP regulations. The review included observing certifiers perform actual or mock audits on various certified operations.

The NOP is finalizing a technical report based on the assessment. Onsite reviews occur every two to three years under a recognition agreement.



## Understanding NOP's International Agreements



USDA facilitates agricultural trade with other nations to enhance market scope and potential for U.S. producers and processors. Organic agriculture poses no exception, and the NOP plays an important role in establishing agreements with foreign countries to provide increased market opportunities for U.S. organic agriculture.

The nature of NOP's international partnerships fall under one of three categories:

**Recognition agreement** | Allows a foreign government to accredit certifying agents in its country. These accredited agents can then certify organic products in that country to the NOP standards.

*The NOP has these agreements with Denmark, Israel, India, Japan, New Zealand, and United Kingdom.*

**Equivalency arrangement** | Allows products produced and certified according to one country's organic standards to be sold as organic in the partnering country, provided specific requirements are met.

*The NOP has this arrangement with Canada. The arrangement includes some critical variances.*

**Export agreement** | Allows U.S. organic products to be sold as organic in a partnering country, provided specific requirements are met.

*The NOP has this agreement with Japan and Taiwan.*

See more information at <http://www.ams.usda.gov/NOPInternationalAgreements>.



## Request for Comments

The *Federal Register* comment period remains open for NOP's "made with organic" draft guidance.

Until March 14, 2011, the public can comment on the draft guidance, which addresses the use of non-organic ingredients in "made with organic" products and clarifies the use of percentage statements under the "made with organic" labeling category.

Processed products that contain at least 70 percent organic ingredients can be labeled "made with organic [specified ingredients or food group(s)]." For example, soup made with at least 70 percent organic ingredients and only organic vegetables may be labeled "soup made with organic vegetables."

To comment on the guidance, visit [www.regulations.gov](http://www.regulations.gov) and search for document number AMS-NOP-10-0045. Once finalized, the document will be incorporated into the NOP Program Handbook.

Additionally, the NOP is reviewing the organic regulations (7 CFR part 205) concerning their impact on small businesses.

As announced on Feb. 25, the NOP is conducting the review under criteria contained in section 610 of the Regulatory Flexibility Act. In doing so, the program will consider (1) the continued need for the regulations; (2) the nature of complaints or comments received from the public concerning the regulations; (3) the complexity of the regulations; (4) the extent to which the regulations overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local regulations; and (5) the length of time since the regulations have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulations.

"As we periodically review our regulations we will consider these criteria to determine how the NOP standards should continue to be enforced," said Rayne Pegg, AMS administrator.

The NOP invites the public to provide written comments, views, opinions, and other information specific to the impact of the NOP regulations on small businesses. Interested persons can send comments by visiting <http://www.regulations.gov> (reference document number AMS-NOP-11-0005; NOP-11-01).

See the full press release at [http://bit.ly/AMS030\\_11](http://bit.ly/AMS030_11).

## Guidance Documents Coming Down the Pike

The NOP is currently reviewing public comments on the following guidance documents:

- Compost and vermicompost in organic crop production
- Wild crop harvesting
- Commingling and contamination prevention in organic production and handling
- Use of chlorine materials in organic production and handling
- Outdoor access for poultry

First published in the *Federal Register* as draft guidance, these documents closed for comment on Dec. 13, 2010.

As clarified in the Program Handbook, guidance documents set forth interpretations of NOP statutory or regulatory requirements, explain changes in interpretation or policy, or address unusually complex or highly controversial issues faced by the organic agricultural industry.

## Notice on Neotame

On Jan. 6, 2011, NOP sent an *Organic Insider* notice informing stakeholders and other interested parties that Neotame is not allowed in organic foods.

Following multiple inquiries about the validity of internet claims that the artificial sweetener Neotame was allowed in organic foods, the NOP responded with a public notice stating that the substance is not permitted in organic foods or foods labeled “made with organic,” nor is it permitted in organic livestock feed.

To see the full notice, visit <http://www.ams.usda.gov/NOPCorrespondence>.



## USDA Organic Farming Systems Research Conference

March 16 - 18, 2011 | GWU Jack Morton Auditorium | 805 21st St NW, Washington, DC

In March, USDA’s Economic Research Service will sponsor a three-day conference to examine findings from research on organic farming systems, including many longstanding projects.

USDA invites researchers, policymakers, farmers, ranchers and others who are interested in exploring the implications of organic farming systems research to attend.

Conference objective are:

- To examine findings from U.S. research on organic farming systems, including two key types of research—long-term farming experiments and nationwide economic producer surveys.
- To explore the implications of these findings for U.S. agricultural productivity, economic viability, environmental stewardship, and quality of life goals.
- To facilitate dialogue among the various disciplines, farm groups and other stakeholders involved in organic farming systems research, and to generate recommendations for improving the way this research is conducted.
- To create new ideas for future research in organic farming systems.

Visit <http://www.ers.usda.gov/ConferenceCenter/OrganicFarmingSystems/> to find more information, including the preliminary agenda, and to register for the conference.

## State Updates

### Washington State Appoints New Organic Certification Manager

On Feb. 16, Brenda Book was announced as the new Organic Certification Manager for the Washington State Department of Agriculture.



“Brenda brings a strong knowledge of the Organic Program and sound understanding of the program’s customer base,” said Kirk Robinson, assistant director to the state’s Food Safety and Consumer Services Division, when making the announcement.

During the interim prior to her appointment, the Organic Program was jointly managed by Book and Les Eklund. Information about the Washington State Department of Agriculture’s Organic Program is available at <http://agr.wa.gov/FoodAnimal/Organic>.

## Breaking Down USDA's Marketing Claims

Consumers have more information than ever about the food they purchase these days. Products are labeled with myriad of marketing claims that weren't necessarily available to them only a decade ago. However, it's possible that the deluge of these labels are actually confusing consumers more than helping.

So many marketing claims. What do they mean? Here are some of the more common ones overseen specifically by USDA.

### **Regulated Claims**

**Organic** | Codified by 7 CFR Part 205, the national organic standards, which apply only to agricultural products. Validated through certification, which includes inspections and document reviews, and based on production and handling systems that are biologically-based.

**Natural** | USDA regulates the term as it applies to meat and poultry products. Denotes that product does not contain any artificial flavor or flavoring, coloring ingredient, or chemical preservative (as defined in 21 CFR 101.22), or any other artificial or synthetic ingredient and that the product and its ingredients are not more than minimally processed. Minimal processing may include traditional processes used to make food edible or to preserve it or make it safe for human consumption (e.g., smoking, roasting). It also includes physical processes that do not fundamentally alter the raw product and/or that only separate a whole into component parts (e.g., grinding meat, separating eggs into albumen and yolk, pressing fruits to produce juices are considered "minimally processed"). The label does not cover farm practices. Meat and poultry products that are labeled "natural" may be produced with non-organic feed, antibiotics, and hormones that are not permitted under the organic regulations.



### **Voluntary Production Claims**

Increasingly, livestock and meat producers are using production and/or processing claims to distinguish their products in the marketplace. In addition to using these marketing claims, producers and/or processors can have these claims certified and verified through a third-party audit.



**Grass-fed** | Grass and forage fed for the lifetime of the ruminant animal, with the exception of milk consumed prior to weaning. Forage includes grass (annual and perennial), forbs (e.g., legumes, Brassica), browse, or cereal grain crops in the vegetative (pre-grain) state.

Animals cannot be fed grain or grain byproducts and must have continuous access to pasture during the growing season. Hay, haylage, baleage, silage, crop residue without grain, and other roughage sources may also be included as acceptable feed sources. Routine mineral and vitamin supplementation may also be included in the feeding regimen.

**Naturally-raised** | Livestock raised entirely without growth promotants or antibiotics (except for parasite control) and have never been fed animal by-products.

### **Other Claims**

Neither USDA nor FDA regulations define animal husbandry practices or livestock living conditions for egg laying flocks (the only exception is codified in the NOP regulations). Instead the USDA has established the following labeling policies that address the design of the layer house. Ultimately the USDA requires truthfulness of a marketing claim, absent of the intent to mislead, that is based on supporting documentation.

## Breaking Down USDA's Marketing Claims *(continued from page 7)*



**Free-range** | Egg laying flock is provided shelter in a building, room, or area with unlimited access to food and fresh water and continuous access to the outdoors during the production cycle. The outdoor area may or may not be fenced and/or covered with netting-like material.

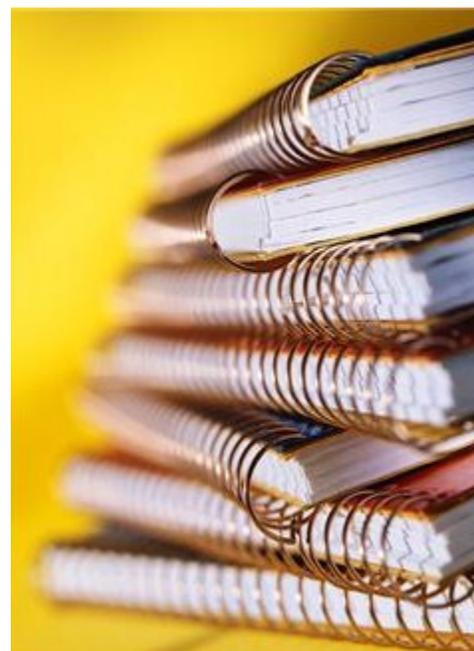
**Cage-free** | Confinement of an egg laying flock to a building, room, or enclosed area with unlimited access to food and fresh water providing freedom to roam within the area during the production cycle.

**Pasture-raised** | The USDA has not developed a labeling policy as too many variables exist to define such a descriptor.

## NOP Kicks off the New Year with Handbook Update

On Jan. 31 the NOP released version two of the Program Handbook, which now includes a new section of documents. Policy memos, in addition to guidance documents and instructions, are now compiled in the handbook to formally communicate NOP policy regarding specific regulatory requirements. The complete collection of memos cover the following:

- Accredited Certifying Agent Inspection Authority
- Sulfur Dioxide in wine made with organic fruit
- Attestation Statement for agricultural products certified under the U.S.-Canadian Equivalence Arrangement
- Use of Natural Flavors
- Certification of agricultural products that meet NOP Standards
- Labeling of Alcoholic Beverages
- Verification of Materials
- Access to the Outdoors for Livestock
- Reporting Health and Safety Violations
- Private Label Certification
- Additional Requirements for California State Organic Program
- Calculating the Percentage of Organically Produced Ingredients
- Grower Group Certification
- NOP Statements on Cloning and Organic Livestock Production
- Confinement of Poultry Flocks.



The newest version of the handbook also includes a new instruction document that addresses disclosure of information concerning USDA accredited certifying agents and certified operations. The complete Program Handbook is available at [www.ams.usda.gov/NOPProgramHandbook](http://www.ams.usda.gov/NOPProgramHandbook).

Subscribe to the *NOP Organic Insider*, an email notification service of the National Organic Program. The NOP frequently announces new information available on its website. Subscribers can now pick what information they'd like to receive directly via email for their convenience. To subscribe, visit <http://bit.ly/NOPOrganicInsiderRegistration> (case sensitive).

**USDA ORGANIC** The NOP Organic Insider  
USDA National Organic Program

November 2010

**Quick Links**

- USDA-NOP Organic Certification Cost Share Program
- USDA-EQIP Organic Support
- USDA-NIFA Organic Research & Extension Initiative
- Forward to a Friend

**Our Vision**

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**Our Vision**

Organic Integrity from Farm to Table Consumers Trust the Organic Label

**Dear Lisa,**

Greetings from the National Organic Program. Are you a USDA certified organic producer or handler? If so, have you applied for your cost share reimbursement yet? Our cost share program makes certification much more affordable - read on for more information.

**About the Organic Certification Cost Share Program**

The USDA works with State agencies to share the cost of organic certification with farmers, ranchers, and handlers. Operations may be reimbursed up to 75% of the cost of certification, up to a maximum of \$750 per year. Learn more

**How Does it Work?**

Applicants submit a short form, along with proof of organic certification and an itemized invoice, to their State agency. If you are a first-time applicant, you may also need to submit a W-9 tax form. State agencies (typically Departments of Agriculture) help to administer the programs. After verifying applications, State agencies disburse funds to individual organic operations.

## The National Organic Standards Board invites you to participate in their spring meeting

April 26-29, 2011 | Red Lion Hotel on Fifth Avenue

1415 5th Avenue | Seattle, WA 98101-2313

### Oral Public Comments

Although the NOSB meeting agenda or draft recommendations won't be available until mid-March, we are now accepting online reservations for oral comments at the spring 2011 board meeting. To reserve a five-minute public comment slot on either Tuesday, April 26 or Thursday, April 28, 2011, please visit <http://www.ams.usda.gov/nosbseattleslots>.



### Written Public Comments

Once the NOSB meeting agenda and draft recommendations are released in mid-March, instructions for providing written comments to the NOSB will be provided at <http://www.ams.usda.gov/NOSB> and via the NOP Organic Insider. To subscribe to these notifications, please visit <http://bit.ly/NOPOrganicInsiderRegistration>.

### Questions?

[Katherine.Benham@ams.usda.gov](mailto:Katherine.Benham@ams.usda.gov) | 202-720-3252. [Patricia.Atkins@ams.usda.gov](mailto:Patricia.Atkins@ams.usda.gov) | 202-720-3252

### Updates to Electronic Petitioned Substances Database

New technical reports have been uploaded for the following substances:

#### 205.601 Crops

Copper products  
Sulfur dioxide (smoke bombs)

#### 205.605 Handling

Attapulgit  
Calcium acid pyrophosphate  
Silicon dioxide  
Sodium acid pyrophosphate

*These petitions are available for view at [www.ams.usda.gov/NOPPpetitionedSubstances Database](http://www.ams.usda.gov/NOPPpetitionedSubstancesDatabase).*

### NOP Appeals

In December/January, the NOP Appeals office received 1,405 adverse action/non-compliance notifications\*:

597 Notices of Noncompliances | 83 Notices of Proposed Suspension | 66 Notices of Suspension

18 Notices of Proposed Revocation | 0 Notices of Revocation | 38 Denials of Certification

570 Notices of Resolution | 33 Surrenders of Certification

Additionally, an appeal filed by Country Life, LLC, was closed without a decision by the AMS administrator. The decision is available in the NOP electronic reading room at <http://www.ams.usda.gov/AMSV1.0/NOPReadingRoomHome>.

\*These letters are submitted to the Administrator as part of the accreditation requirements for accredited certifying agents under §205.501(a)(15)(i). Procedural requirements for adverse action letters issued to operations are outlined in §205.405 and §205.662. These numbers are based on the letters received by the AMS Administrator from accredited certifying agents during December 2010-January 2011. These numbers may include letters issued prior to these months, may not include all letters issued during these months, and may not include letters submitted to a State Organic Program.