



UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

Washington, D.C. 20250



MAY - 8 2009

REPLY TO

ATTN OF: 03703-1-Ch

TO: Doug Caruso
Administrator
Farm Service Agency

ATTN: T. Mike McCann
Director
Operations Review and Analysis Staff

FROM: Robert W. Young
Assistant Inspector General
for Audit

SUBJECT: Controls Over Aquaculture Grant Recovery Act Funds – Phase I

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided \$50 million to administer the 2008 Aquaculture Grant Program (AGP) to assist aquaculture producers in recovering from losses associated with high feed costs during the 2008 calendar year. Congress, in enacting the Recovery Act, emphasized the need for accountability and transparency in the expenditure of the funds. Further, on February 18, 2009, the Office of Management and Budget (OMB) issued guidance that required Federal agencies to establish rigorous internal controls, oversight mechanisms, and other approaches to meet the accountability objectives of the Recovery Act.

Funding for AGP is provided by the Commodity Credit Corporation (CCC), a Federal corporation within the Department of Agriculture. However, since CCC has no operating personnel, administration of its programs and activities is carried out primarily by the Farm Service Agency (FSA). Because the current AGP is a new program, and its governing provisions are spelled out by the Recovery Act itself, the Office of the General Counsel ruled that FSA can implement the program through a Notice of Funds Availability (NOFA) rather than through the normal rulemaking process.

On April 27, 2009, we held an entrance conference with members of your staff and briefed them on the objectives of our ongoing review. To accomplish our objectives, we are in the process of assessing the program's policies and procedures, as well as its internal controls. Although some of the agency's management controls and processes are carried forward from the previous aquaculture program, others are being newly developed and implemented based on the requirements and provisions of the Recovery Act. In order to better assist FSA officials in

ensuring that AGP will fully comply with the oversight and accountability objectives of the Recovery Act, we are providing comments on procedures and requirements that are still under development.

As part of its NOFA, issued to each State on April 17, 2009, FSA provided a draft Memorandum of Agreement (MOA) for review and comment. Once comments are received and the MOA is finalized, it will constitute the primary guidance to the States and outline the requirements to be followed when disbursing grant funds to eligible aquaculture producers. The MOA's provisions include: (a) eligibility of aquaculture producers to receive grant funds; (b) requirements for collection of calendar year (CY) 2007 feed delivery data to be used in allocations of funds among participating States; (c) payment limitations to aquaculture producers; and (d) reporting requirements for participating States under the Recovery Act.

Because the finalized MOA will largely take the place of program regulations for AGP, we believe it is critical that it include adequate provisions to ensure that participating States implement the program in a consistent and equitable manner nationwide. Further, the MOA needs to provide the States with sufficient guidance to ensure compliance with the requirements of OMB and of the Recovery Act.

Although our review is still in its early stages and we have not yet visited any participating State, an FSA official informed us that finalization of the MOA is imminent and that our comments on it would need to be received quickly for consideration and possible incorporation into the MOA. Therefore, we are providing this memorandum suggesting modifications to the draft MOA. This letter will be the first in a series that will report on our oversight activities during the initial phase of this audit.

Based on our review of the draft MOA, we suggest the following additions and/or amendments:

1. The cover letter transmitting the MOA to the State Governors specified that when providing data to FSA on aquaculture feed deliveries in CY 2007, they were to (a) include feed for all aquaculture species in the State that was delivered to an individual or entity that is still in operation in CY 2009 and (b) exclude feed deliveries to Federal or State-owned hatcheries. We suggest that these requirements be included in Section C, Determining Amount of Assistance, of the MOA. We believe this is needed because although the terms of the finalized and signed MOA are binding on the States, any terms contained only in the cover letter may not be.
2. The feed delivery data which the States are required to supply under Section C should be limited to those producers who meet the eligibility criteria under Section B, Definitions. This would serve the same purpose as the current exclusion of State and Federally-owned hatcheries, in that it would base the allocation of grant funds among the States on feed deliveries to eligible producers only.

3. Section D.5, Providing Assistance, specifies an \$80,000 per person payment limitation for AGP funds. However, it does not address instances where multi-person partnerships or joint ventures applying for grant funds may have recently changed from sole proprietorships or taken on additional partners. We believe the wording of the MOA should be clarified to ensure that the payment limitation applied to each applicant is based on its business structure as it existed during CY 2008.
4. Section D.3.b, Providing Assistance, should specify how “losses” are to be defined. We are concerned that States could interpret this in different ways, leading to possible inequities in producer payments. For instance, one State could limit payments to producers who operated at an actual loss during CY 2008; other States might apply this definition to any producer whose profits were reduced by high feed costs during that year.
5. Section F.14, Terms of This Agreement, should specify timeframes for States to submit their internal reviews. The same would apply to single audits in cases where those are required to be performed.
6. The MOA should incorporate a record retention policy for both State agriculture agencies and aquaculture producers receiving payments. Such a provision would ensure that records are available for any FSA or other reviews as provided for under Section F.16, Terms of This Agreement.

Please provide a written response to this letter within 5 days, outlining your proposed actions. If you have any questions, please contact me at 720-6945, or have a member of your staff contact Ernest M. Hayashi, Director, Farm and Foreign Agricultural Division, at 720-2887.



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United States
Department of
Agriculture

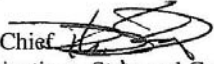
Farm and Foreign
Agricultural
Services

Farm Service
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TO: Director, Farm and Foreign Agriculture Division
Office of Inspector General

FROM: Philip Sharp, Chief 
Audits, Investigations, State and County Review Branch

SUBJECT: Response to Office of Inspector General Memorandum Dated May 8, 2009:
Audit 03703-1 -CH, Controls Over Aquaculture Grant Recovery Act Funds
Phase I

Attached is a memorandum dated May 15, 2009 from the Farm Service Agency's Deputy Administrator for Farm Programs which responds to your request for information on the subject audit.

If you have any questions, contact Lisa Goree at 720-3583.

Attachment



RF
5-15-09

United States
Department of
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Farm and Foreign
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TO: Philip Sharp
Chief, Audits, Investigations, and State and County Review Branch

FROM: Jonathan W. Coppess *JWC* **MAY 15 2009**
Deputy Administrator for Farm Programs

SUBJECT: Response to the Office of the Inspector General (OIG) Memorandum, dated May 8, 2009, Controls Over Aquaculture Grant Recovery Act Funds – Phase I, Audit 03703-1-CH

JW

This is in response to your memorandum of May 12, 2009, requesting a written response to OIG memorandum dated May 8, 2009, Controls Over Aquaculture Grant Recovery Act Funds – Phase I.

Provided below are responses to the six recommendations to the Deputy Administrator for Farm Programs provided in the OIG memorandum, dated May 8.

Recommendation 1:

The cover letter transmitting the Memorandum of Agreement (MOA) to the State Governors specified that when providing data to FSA on aquaculture feed deliveries in CY 2007, they were to (a) include feed for all aquaculture species in the State that was delivered to an individual or entity that is still in operation in CY 2009 and (b) exclude feed deliveries to Federal or State-owned hatcheries. We suggest that these requirements be included in Section C, Determining Amount of Assistance, of the MOA. We believe this is needed because although the terms of the finalized and signed MOA are binding on the States, any terms contained only in the cover letter may not be.

Response to Recommendation 1:

The Farm Service Agency (FSA) concurs with Recommendation 1 with respect to including requirements for 2007 feed delivery data in the MOA.

FSA has revised item 1 of Section C, Determining Amount of Assistance, of the draft MOA to include the following sentence:

“The State’s 2007 feed deliveries must include feed for all aquaculture species in the State that was delivered to an individual or entity that is still in operation in 2009. In addition, the State’s 2007 feed deliveries must not include 2007 feed deliveries to Federal or State-owned hatcheries.”



Recommendation 2:

The feed delivery data which the States are required to supply under Section C should be limited to those producers who meet the eligibility criteria under Section B, Definitions. This would serve the same purpose as the current exclusion of State and Federally-owned hatcheries, in that it would base the allocation of grant funds among the States on feed deliveries to eligible producers only.

Response to 2:

In order to provide grant funding to the States within 120 days of the enactment of the American Recovery and Reinvestment Act of 2009 (Recovery Act), FSA requested feed delivery data from the States during Phase II of the program implementation plan. The definition of an eligible aquaculture producer was not finalized during Phase II. The MOA will not be finalized and executed with the States until Phases III and IV of the program implementation plan. Furthermore, the States will not know the eligible aquaculture producers in the State until after the States complete an application signup period.

Recommendation 3:

Section D.5, Providing Assistance, specifies an \$80,000 per person payment limitation for AGP funds. However, it does not address instances where multi-person partnerships or joint ventures applying for grant funds may have recently changes from sole proprietorships or taken on additional partners. We believe the wording of the MOA should be clarified to ensure that the payment limitation applied to each applicant is based on its business structure as it existed during CY 2008.

Response to 3:

FSA concurs with Recommendation 3 with respect to clarifying that the payment limitation applied to each applicant is based on its business structure as it existed during CY 2008.

Item C.7 of the draft MOA has been revised to include the following sentence:

“The payment limitation shall be applied to an applicant based on the applicant’s business structure as it existed during calendar year 2008.”

Recommendation 4:

Section D.3.b, Providing Assistance, should specify how “losses” are to be defined. We are concerned that States could interpret this in different ways, leading to possible inequities in producer payments. For instance, one State could limit payments to producers who operated at an actual loss during CY 2008; other States might apply this definition to any producer whose profits were reduced by high feed costs during that year.

Response to 4:

FSA concurs with Recommendation 4 with respect to specifying how “losses” are to be defined.

FSA has revised Section C, Determining Amount of Assistance, of the draft MOA to include:

- The calculation that States shall use to determine the amount of assistance provided to eligible aquaculture producers.
- The payment rate that States shall use when determining the amount of assistance provided to eligible aquaculture producers.

Furthermore, FSA has revised item 3.b of Section D, Providing Assistance, of the draft MOA to read as follows:

“Experienced at least a 25 percent price increase of 2008 feed costs above the applicable State’s previous 5 year average (2003-2007), as determined in item C5; and”

Recommendation 5:

Section F.14, Terms of This Agreement, should specify timeframes for States to submit their internal reviews. The same would apply to single audits in cases where those are required to be performed.

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Response to 5:

FSA concurs with Recommendation 5 with respect to specifying a timeframe for States to submit their internal reviews and single audits, if required.

Section F, Terms of This Agreement, has been revised as follows:

- Item 14 was revised to include the following sentence:

“The State agrees to conduct internal random reviews on 5 percent of the total applications the State receives from applicants.”

- Item 15 was added and reads as follows:

“The State agrees to submit results of the internal random reviews electronically to FSA not later than 90 days after providing assistance to eligible aquaculture producers. Results of internal random reviews shall be emailed to Amy Mitchell, Special Programs Manager, at amy.mitchell1@wdc.usda.gov.”

- Item 12 was revised to read as follows:

“The State agrees to have an annual audit of this program if required by the Single Audit Act Amendments of 1996 and OMB Circular A-133 (Attachment). Audit findings shall be submitted to FSA within 30 days after the State receives the audit findings.”

Recommendation 6:

The MOA should incorporate a record retention policy for both State agriculture agencies and aquaculture producers receiving payments. Such a provision would ensure that records are available for any FSA or other reviews as provided for under Section F.16, Terms of This Agreement.

Philip Sharp

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Response to 6:

FSA concurs with recommendation 6 with respect to incorporating a record retention policy for both the State and aquaculture producers.

Item 16 of Section F, Terms of This Agreement, has been added and reads as follows:

“The State shall retain financial and other records relating to the funds for a period of 3 years after completion of the distribution of grant funds or until final resolution of any audit findings or litigation claims relating to the distribution of such funds.”

Furthermore, item 8 of Section D, Providing Assistance, has been added and reads as follows:

“The State must have producers retain financial and other records relating to the funds for a period of 3 years after completion of the distribution of grant funds or until final resolution of any audit findings or litigation claims relating to the distribution of such funds.”

Attached is a copy of the revised draft MOA. A copy of the final MOA will be provided when available.

Attachment