

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
	)	
	)	
Teresa Payne	)	<b>Administrator's Decision</b>
	)	
	)	<b>APL-086-24</b>
Villa Grove, Illinois	)	
	)	

This Decision responds to an Appeal (APL-086-24) of a Notice of Noncompliance and Denial of Certification under the National Organic Program (NOP) issued to Teresa Payne (Payne) by Midwest Organic Services Association (MOSA), a USDA accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On or about March 5, 2024, Payne applied for crop certification to MOSA.
2. On August 14, 2024, MOSA issued a Notice of Noncompliance and Denial of Certification to Payne.
3. On September 9, 2024, Payne submitted an Appeal.

### **REGULATORY CITATIONS**

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” (b) Such records must: ... (2) Fully disclose all activities and transactions of the certified operation, in sufficient detail as to be readily understood and audited; records must span the time of purchase or acquisition, through production, to sale or transport and be traceable back to the last certified operation ... (5) Be sufficient to demonstrate compliance with the Act and the regulations in this part ...”

The organic regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must:

- (a) Comply with the Act and applicable organic production and handling regulations in this part;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (d) Maintain all records applicable to the organic operation ...” The organic regulations at

§205.401, Application for certification, state that, “A person seeking certification of a production or handling operation under this subpart must submit an application for certification to a certifying agent. The application must include the following information: (a) An organic production or handling system plan ... (d) Other information necessary to determine compliance with the Act and the regulations in this part.” After receipt of an application for certification, a certifying agent must, per the organic regulations at §205.402, Review of application, “(a)(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 ...” The organic regulations at §205.403, On-site inspection, require the certifying agent to verify information provided by the applicant during the application process and verify the operation’s compliance or capability to comply with the Act and the regulations.

## DISCUSSION

Payne applied to MOSA for crop certification on or about March 5, 2024. Payne has a small operation composed of two (b) (4) -acre fields and three small garden plots measuring (b) (4) (b) (4) and (b) (4). An overview map shows the entire property as (b) (4) acres. As part of the certification application, Payne submitted a 3 Year Field History for each of the prior 3 years (2021, 2022, and 2023) for the 5 plots, on or about May 16, 2024, along with extra handwritten notes. On July 16, 2024, MOSA conducted an inspection of Payne’s operation and attempted to clarify previous information provided by Payne; however, statements were made that conflicted with prior information.

On August 14, 2024, MOSA issued a Notice of Noncompliance and Denial of Certification, stating the field history information was incomplete, and addressing the conflicts between the original 3 Year Field History sheets and statements made at the inspection. MOSA reported that Payne had stated that the only input used was on-farm manure; however, Payne stated at the inspection that on-farm manure hadn't been used for several years. While the 3 Year Field History showed a bag of corn planted in 2023, Payne stated at the inspection that no corn was planted in 2023. The history forms were incomplete regarding the 3 garden plots and Payne had stated only wheat was planted in 2023, but at the inspection Payne stated vegetables had been planted the prior 3 years in the garden plots. At the inspection, MOSA's inspector updated the 3 Year Field History forms to try to make them accurate. MOSA concluded in the August 14, 2024 notice that the review of Payne's recordkeeping system hasn't demonstrated Payne's ability to comply with the requirement that operations maintain records that fully disclose all activities and transactions... in sufficient detail as to be readily understood and audited.

Payne filed an Appeal on September 9, 2024, and NOP, in a lengthy conversation with Payne, attempted to clarify and address the conflicts presented by MOSA. Payne stated that on-farm manure hadn't been used the prior 3 years but was planned for the organic operation. Further, no corn was planted in 2023, and Payne said the inspector saw the 1 bag of corn seed to be planted in the future. Lastly Payne stated there was downtrodden wheat on the edge of the garden plots, which had perennial organic herbs the past 3 years, though she also stated that vegetables were grown the prior 3 years but not in 2024, though were planned for the future. When NOP asked MOSA if it believed there was just confusion between past activity and

planned activity for the operation, MOSA stated to NOP that it couldn't determine what information was accurate.

AMS finds the evidence substantiates that Payne's records demonstrate an inability to maintain the records required to be granted, or maintain, organic certification. The records and information provided during the application process, including the inspection, are confusing, incomplete, and contain conflicting information. Looking specifically at the 3 Year Field History forms, the forms are meant to present information on the field history for the past 3 years; however, it appears Payne included future plans for the land for which organic certification was sought. Organic certification requires extensive recordkeeping covering planting, crop inputs, crop rotation, harvesting, and transport of crops. The organic regulations require that a certifying agent review an operation's application for certification. The inability to present accurate and non-conflicting information during the application process, and an accurate Organic System Plan (OSP) show that Payne, at this time, hasn't been able to comply with recordkeeping requirements during the certification application process, and is unlikely to be able to comply with the numerous recordkeeping requirements of certified operations. Therefore, MOSA was warranted in denying organic crop certification to Payne.

Additionally, AMS finds MOSA was justified in issuing the combined Notice of Noncompliance and Denial of Certification. The organic regulations at §205.405, Denial of certification, state that, "(a) ... 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..." The recordkeeping noncompliances of Payne are extensive; MOSA couldn't determine what information is accurate; and MOSA stated that there was a "systemic failure" of Payne's OSP design and implementation of adequate recordkeeping demonstrating an inability to

comply with the regulations. Therefore, MOSA determined that a combined notice was warranted. AMS agrees with MOSA's determination that a combined notice was warranted.

## **CONCLUSION**

AMS finds the evidence substantiates that Payne has demonstrated an inability to comply with the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.400, General requirements for certification; 7 C.F.R. §205.401, Application for certification; 7 C.F.R. §205.402, Review of application; and 7 C.F.R. §205.403, On-site inspections, as documentation/information submitted by Payne with the certification application and at the inspection was insufficient, unclear, and inconsistent. Therefore, Payne may not be certified organic at this time.

## **DECISION**

Payne's September 9, 2024 Appeal of the August 14, 2024 Notice of Noncompliance and Denial of Certification is denied. Payne is denied organic certification. However, pursuant to the organic regulations at 7 C.F.R. §205.405, Denial of certification, Payne may apply again for organic certification with any certifying agent at any time, with submission of complete, accurate, and nonconflicting information/documentation, to demonstrate Payne's ability to comply with the recordkeeping requirements of certified operations.

Additionally, attached to this formal Administrator's Decision denying Payne's Appeal is a Request for Hearing form. Should it wish to further appeal this decision, Payne has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 3rd  
day of February, 2025.

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service