

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Jaswantpura Farmer Group) **Administrator’s Decision**
) **APL-016-23**
Rajasthan, India)
)

This Decision responds to an Appeal (APL-016-23) of a Notice of Noncompliance and Denial of Certification under the National Organic Program (NOP) issued to Jaswantpura Farmer Group (JFG) of Rajasthan, India by SRS Certification GmbH (SRS), a USDA accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (USDA) organic regulations.²

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

¹ 7 U.S.C. 6501-6522

² 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 October 18, 2022, JFG applied to certifier SRS for crop certification of the 304 farms within its grower group.
2. On November 28 – December 3, 2022, SRS conducted an inspection of JFG, including inspecting numerous individual farms.
3. On January 22, 2023, SRS issued a Notice of Noncompliance and Denial of Certification to JFG.
4. On January 31, 2023, JFG filed 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: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part ...”

The regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent

organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603; (b) Nonsynthetic substances prohibited in §205.602 or §205.604 ...”

The regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... 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; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations...”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must: ... (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop ...”

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 for not less than 5 years beyond their creation ...
- (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...”

DISCUSSION

JFG is a grower group of 304 farms/farmers, which applied to SRS for crop certification on or about October 18, 2022. JFG states that it began organic management in 2008, and cultivates organic cotton, soybean, maize, and other crops, and has only organic crops. SRS conducted an inspection of JRF’s operation and numerous individual farms from November 28, 2022 through December 3, 2022. The inspector noted that JFG plants, irrigates, harvests, sorts, cleans, grades, packs, and dispatches its own crops from the 304 farms; and also maintains its own storage locations. However, the Inspection Report notes that numerous records were missing, including those recording inputs used on the crops, records on the receipt of crops from the various farms, processing records, and shipping records. The inspector stated that maps

weren't available for all farms; and JFG's Organic System Plan (OSP) had conflicting information on the actual size of the farms within the group. Further, three farms hadn't yet cultivated soybeans though estimated yields were shown for the farms in JFG's documents. JFG also didn't maintain records on soil monitoring, plant health, or post-harvest activities; and SRS found that JFG's internal inspections were not performed well, with additional training being needed for the inspectors.

SRS delineated the noncompliances in its Inspection Report as well as on a spreadsheet of the 2022 Noncompliances, wherein SRS also noted that JFG's internal control manual was missing various sections and procedures needed to ensure compliance with the organic regulations. Further, JFG's manual didn't provide a list of possible noncompliances, and potential sanctions to be applied against farms within the grower group, or corrective actions to be taken by farms in such situations.

SRS's inspector also noted in the Inspection Report that he observed six farms within JFG's grower group applying prohibited substances, namely fertilizers urea and DAP (diammonium phosphate); and pesticides Monocrotophos and Endosulfan. The inspector spoke to the six farmers who confirmed they used the prohibited substances on organic crops. The inspector also took photographs of the bottles or bags of various inputs found on these farmers' organic plots. The photographs show the following: bottles of Monolik by Shivalik; Kevin 360 by Sumil; and Shaktimaan by Swastik, all of which contain Monocrotophos and DAP. A bag from Acemain Adama Insecticide SP was also seen, as was a bottle of Shiva Gold Xtra Tricentanol, and a sprayer containing urea and Endosulfan. The inspector identified at which farm each of these substances were seen; and also noted that a high volume of these prohibited substances is sold at the supply shops in the various farming villages.

Research shows that DAP contains nitrogen and phosphorus. Monocrotophos is an organophosphate while Endosulfan is an organochlorine insecticide. All three are synthetics; and are not identified as allowed synthetic inputs under 7 C.F.R. §205.601, and are therefore, prohibited. Monocrotophos and Endosulfan are toxic; are banned in the United States; and are on the list of ‘extremely hazardous substances’ found in Appendix B of the EPA’s (Environmental Protection Agency) regulations found in Title 40 of the Code of Federal Regulations, Chapter I, Subchapter J, Part 355. They may not be used in organic crop production. Further, SRS noted that JFG stated the farms use ‘self-made herbal preparations’ as inputs; however, it couldn’t be determined if these inputs were compliant. Lastly, the inspector noted in the Inspection Report that there is a risk of contamination by prohibited substances to all the farms of the grower group as there are conventional farms on all sides. Based on its findings after the inspection and the review of JFG’s documentation, SRS issued a Notice of Noncompliance and Denial of Certification.

JFG argued in its Appeal that SRS should have issued a Notice of Noncompliance prior to issuing the combined Notice of Noncompliance and Denial of Certification, and thereby provide JFG with the opportunity to correct the recordkeeping noncompliances. However, while recordkeeping noncompliances may be correctable, the finding of prohibited substances being applied to six farms, the finding of containers from those substances on the six farms, and the admissions by the six farmers involved that they used the prohibited substances, justified the combined notice. The organic regulations at 7 C.F.R. §205.405 state that when the correction of a noncompliance isn’t possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. JFG didn’t offer any reason or explanation

for the use of prohibited substances by six of its farmers, nor identify any sanctions taken against those farmers.

CONCLUSION

Evidence substances that JFG has violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.202, Land requirements; and 7 C.F.R. §205.400, General requirements for certification. JFG failed to complete numerous sections of its OSP and maintain required records including records on inputs, soil monitoring, plant health observation, post-harvest activities, receipt of crops, processing, and shipping of product. While recordkeeping noncompliances may be correctable, the evidence also substantiates that prohibited substances were used on organic crops of six farms within JFG's grower group. The application of these substances was observed, as were the bottles and bags from the substances, and the six farmers involved admitted to such use. Therefore, JFG may not be certified organic under NOP standards.

DECISION

JFG's January 31, 2023 Appeal of the January 22, 2023 Notice of Noncompliance and Denial of Certification is denied. JFG is denied organic certification. However, pursuant to 7 C.F.R. §205.405(e), JFG may apply for certification again at any time with any certifying agent, though the new application must substantiate that JFG has corrected all the noncompliances cited as the basis for its initial denial of certification. However, as the application of prohibited

substances isn't correctable, the six farms on which prohibited substances were seen being applied may not be part of JFG's grower group and included in any subsequent application for certification until December 2, 2025, which is three years after SRS's inspector observed the application of prohibited substances.

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

Done at Washington, D.C., on this 20th
day of April, 2023.

**BRUCE
SUMMERS**
Bruce Summers
Administrator
Agricultural Marketing Service

Digitally signed by BRUCE
SUMMERS
Date: 2023.04.20 21:17:50
-04'00'