

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Taylor Brett, dba Brett Farms)
Adrian, Georgia) **Administrator's Decision**
) **APL-023-20**
)

This Decision responds to appeals (APL-023-20) of two Notices of Noncompliance and Proposed Suspension under the National Organic Program issued to Taylor Brett, dba Brett Farms (Taylor) of Adrian, Georgia by Americert International (AI). 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 August 22, 2017, Taylor was certified organic for crops by AI.
2. On January 14, 2020, AI issued a Notice of Noncompliance and Proposed Suspension to Taylor for numerous noncompliances found during the prior on-site inspection.
3. On January 15, 2020, Taylor filed an Appeal.
4. On March 24, 2020, AI issued a Formal Request for Information to Taylor.
5. On April 11, 2020, AI issued a Notice of Noncompliance and Proposed Suspension.
6. On April 13, 2020, Taylor filed an Appeal.

DISCUSSION

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)).” Further, “(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; (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. (c) The certified operation must make such records available for inspection and copying during normal business hours by ... the certifying agent.”

The organic 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 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; ... (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; ... and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §205.203, Soil fertility and crop nutrient management practice standard, state that, “...(c) The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops, soil, or water by plant nutrients, pathogenic organisms...Animal and plant materials include: (1) Raw animal manure, which must be composted unless it is:...(iii) Incorporated into the soil not less than 90 days prior to the harvest of a product whose edible portion does not have direct contact with the soil surface or soil particles;...” Additionally, the regulations at §205.601, Synthetic substances allowed for use in organic crop production, state that, “...(i) As plant disease control...(2)...copper-based materials must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides...”

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 that is submitted to an accredited certifying agent as provided for in §205.200;
- (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in §205.403;
- (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow...the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part...”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:...(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

AI issued a Notice of Noncompliance and Proposed Suspension to Taylor after an inspection on November 13, 2019 revealed numerous noncompliances. AI issued a second Notice of Noncompliance and Proposed Suspension after Taylor failed to fully respond to a subsequent Formal Request for Information. AI contends the noncompliances cited in the two notices constitute violations of various provisions of the organic regulations, and therefore, demonstrate an inability to comply with the regulations.

Taylor stated in its Appeals that it provided all required and requested records at or subsequent to the inspection and submitted all records/information requested by AI's formal request; corrected all errors on trip/haul tickets; and that inconsistencies on mass balance amounts were due to AI error. Taylor also stated that it didn't deny access to its facilities or records during the inspection and would begin soil testing to monitor copper usage accumulation in February 2020.

Addressing preliminary matters, Taylor has been certified organic since August 22, 2017, for crops including corn, soybeans, and broccoli, in fields totaling approximately (b) (4) acres. Conventional fields located in other counties are harvested separately. Also, the April 11, 2020 Notice of Noncompliance and Proposed Suspension was issued during the pendency of the Appeal of the January 14, 2020 Notice of Noncompliance and Proposed Suspension. The violations alleged in the second notice are new examples of recordkeeping violations. Therefore, it was determined that both notices and the Appeals would be handled together to enable a decision that would address all cited noncompliances.

A review of the voluminous amount of documentation substantiates that Taylor violated several provisions of the organic regulations. As stated in the January 14, 2020 Notice of Noncompliance and Proposed Suspension, the prior onsite inspection conducted November 13, 2019 revealed that Taylor's input application records didn't consistently record the rates at which the inputs were applied per acre, and the failure to document all activities in sufficient detail prevented the ability to conduct a mass balance of inputs. Although Taylor stated that it subsequently emailed the completed input records, though AI states it has no record of receiving these records, and that the records were to be available at the inspection. Records created and/or

submitted after the fact don't satisfy the recordkeeping requirements of the organic regulations, and therefore, Taylor violated the regulations at 7 C.F.R. §205.103.

An additional recordkeeping violation was found during an unannounced inspection on November 8, 2019 at a handler of crops sourced from Taylor. Receipt tickets listing Taylor as the source of 4 loads of soybeans didn't identify the individual fields from which the soybeans were harvested. Further, at the subsequent inspection of Taylor's operation on November 13, 2019, none of the tickets obtained from the handler were provided by Taylor, despite the inspector's request for all tickets and harvest records and Taylor's statement that all such records were submitted to the inspector. Taylor explained the discrepancy by telling the inspector that perhaps the truck drivers erred; and stating in the Appeal that there was a miscommunication with the drivers. However, engaging in harvesting activities and delivering crops to a handler, for which tickets were created, and not maintaining those tickets constitutes a failure to maintain documentation of all transactions and activities in sufficient detail so as to be readily understood and audited as required in the recordkeeping regulations.

Taylor further violated the recordkeeping regulations, as well as the regulations at 7 C.F.R. §205.400 by failing to provide access during the inspection to the silos where harvested crops are stored, so that the inspector could visually verify the contents. AI contends that Taylor's failure to provide access to the crop storage area prevented the comparison of the contents of the silos to Taylor's records, and therefore, an accurate audit of crops harvested couldn't be completed. Taylor states that its insurance carrier prohibits anyone but Taylor from climbing to the top of the silos, and therefore, Taylor climbed to the top and took pictures for the inspector, provided the measurements of the silos, and opened the bottom doors. However, while acknowledging Taylor's actions, AI found the pictures taken by Taylor weren't sufficient,

as they couldn't accurately reveal the contents of the dark unlit silos and therefore, those harvested crops also couldn't be included in the mass balance audit. Taylor hasn't substantiated its claim that the inspector was not allowed to climb the silos due to insurance restrictions. Therefore, not allowing AI to do so is a failure to allow access to a part of the operation and constitutes a violation of the regulations at 7 C.F.R. §205.400.

AI also stated that the mass balance audit of the soybean harvest revealed yields which appear inaccurate and are not reasonable, specifically, the calculated yields far exceeded the average per acre yield for all soybeans in Georgia for the prior 3 years according to the USDA National Agricultural Statistics Service. Taylor contends that the inaccurate/unreasonable yields are due to AI's miscalculations; however, AI states it is mostly like due to Taylor's records being inaccurate and failing to account for all transactions and activities. As seen above, evidence substantiates Taylor harvested and delivered soybean crops to a handler while not maintaining records of the harvest and delivery, which detrimentally affects the ability to accurately ascertain the harvest yields.

AI also found that although Taylor's broccoli crop was in the process of being harvested during the inspection, there were no planting or field logs, harvest records, or records of the amounts delivered to the handler. Although Taylor also failed to present sales records, it is reasonable that sales records weren't submitted if no sales had been completed at that time as Taylor stated. However, Taylor violated the recordkeeping regulations by failing to make available all records on production, harvesting, and handling activities and transactions.

Taylor's failure to maintain various records, record deficiencies, and failure to provide access to records also, by extension, constitutes a violation of the organic regulations at 7 C.F.R. §205.201, which require an operation's organic production plan to include a description of the

recordkeeping system implemented by the operation to comply with the requirements of 7 C.F.R. §205.103, Recordkeeping. The many recordkeeping noncompliances show a failure to implement a recordkeeping system.

Evidence substantiates that Taylor also failed to maintain required and accurate records in the past. An October 19, 2018 Notice of Noncompliance stated that at the prior inspection, which was held September 18, 2018, Taylor failed to provide access to all records to the inspector. Specifically, the inspector requested to review all harvest and sales records, but Taylor presented only partial records, stating that the remaining records were in his home. However, Taylor didn't retrieve the records and stated that the inspector couldn't enter his home. Subsequently, Taylor signed an "Acknowledgement of Recordkeeping Access Requirements under Section 205.103 of the USDA National Organic Program," which sets forth the requirements under the cited regulation. Taylor also agreed to retrieve records if they are in a private home, and that failure to provide access to all requested records at all future inspections may be interpreted as a willful violation of the organic regulations and may lead to further adverse actions by AI. AI also submitted a Previous Noncompliance and Corrective Action Update Form submitted by Taylor on September 9, 2019, stating sales information would be available at the upcoming inspection and all noted recordkeeping noncompliances were resolved.

Subsequent to issuance of the first Notice of Noncompliance and Proposed Suspension on January 14, 2020, AI sent Taylor a Formal Request for Information with a Surveillance Questionnaire on March 24, 2020. The questionnaire asked Taylor to identify all parcels/fields, list their acreage, whether they would continue to be managed organically, and list all crops currently planted or planned in the following 90 days, by field, acreage, date planted or planned, and estimated/actual harvest date. Additionally, the questionnaire asked if Taylor has crop

insurance on the listed crops, and to submit a copy of the application for crop insurance including information and maps for fields identified as organic in the crop insurance application. Within minutes of receiving the email, Taylor contacted NOP to ask if it was required to answer the questionnaire. NOP told Taylor that it must answer the questionnaire as the organic regulations require a certified operation to submit information deemed necessary by a certifying agent to determine compliance with the organic regulations (7 C.F.R. §205.406(a)(4)).

However, while Taylor submitted the completed questionnaire to AI on April 6, 2020 along with some attachments, Taylor didn't submit the requested documentation. Therefore, on April 11, 2020, AI issued another Notice of Noncompliance and Proposed Suspension, which Taylor appealed. AI stated that Taylor's failure to submit the requested documentation is "part of a pattern of withholding records or failing to provide access to records;" and evidence substantiates it constitutes another violation of the recordkeeping regulations at 7 C.F.R. §205.103, as well as the regulations at 7 C.F.R. §205.201, which require a certified operation to provide all additional information deemed necessary by a certifier to evaluate compliance with the organic regulations. On April 11, 2020, AI also issued another Formal Request for Information or Records to Taylor, requesting multiple records and maps regarding the 2019 and 2020 crops. Taylor informed NOP and AI that it is attempting to get the requested information and maps from the USDA Farm Service Agency but has been unable to do so due to the Corona virus pandemic.

AI also stated in both Notices of Noncompliance and Proposed Suspension that Taylor's noncompliances, in particular the recordkeeping noncompliances, constitute repeat, willful violations of the organic regulations and demonstrate Taylor's inability to comply with the regulations. As discussed above, Taylor previously received a Notice of Noncompliance for

recordkeeping violations; and acknowledged the recordkeeping requirements and that a failure to provide all requested records in the future could be deemed a willful violation. Also, Taylor Brett is the authorized representative for another organic operation, William Brett, dba William Brett Farms, which also received Notices of Noncompliance and Proposed Suspension by AI on January 14, 2020 and April 11, 2020, for similar recordkeeping noncompliances, which Taylor appealed (Case APL-024-20). Taylor had also signed an acknowledgment of obligations for this operation. AI also identified another grain operation previously represented by Taylor Brett which received adverse action notices for recordkeeping noncompliances. Although involvement in other operations doesn't necessarily equate to knowledge of recordkeeping obligations as contended by AI, Taylor's history of recordkeeping noncompliances substantiates a persistent, willful violation of the regulations.

In addition to the recordkeeping violations, evidence substantiates that Taylor violated the organic regulations concerning soil fertility and crop nutrient management practice standards. The regulations at 7 C.F.R. §205.203 require that raw animal manure which is incorporated into the soil of a product whose edible portion does not have direct contact with the soil surface or soil particles must be incorporated not less than 90 days prior to harvest of the crop/product. However, Taylor began harvesting the broccoli crop on November 2, 2019, which was only 60 days after applying the raw manure on September 2, 2019. Taylor admitted to this violation of the organic regulations.

Further, as AI contends, Taylor violated the organic regulations at 7 C.F.R. §205.601 by failing to conduct regular soil tests to determine if copper used for disease control is accumulating in the soil. The regulations, while allowing the use of synthetic copper for disease control, also require that such material must be used in a manner that minimizes accumulation in

the soil. Although Taylor stated in 2019 that it would conduct soil testing, the November 13, 2019 inspection found that it hadn't done so yet. Taylor stated in the Appeal that testing would be done in February 2020. However, this is, in effect, an admission that testing wasn't done.

Lastly, AI states in the January 14, 2020 adverse action notice that Taylor must pay the cited contractual noncompliance penalties pursuant to a fee schedule approved by NOP and that failure to pay such fees when imposed is a violation of the NOP standards. However, while NOP accepted AI's fee schedule, NOP doesn't explicitly approve such fee schedules and will not intervene or rule in a contractual matter between Taylor and AI.

In conclusion, the evidence substantiates that Taylor violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.203, Soil fertility and crop nutrient management practice standard; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.601, Synthetic substances allowed for use in organic crop production. Specifically, Taylor failed to maintain numerous required records and make those records available to AI at inspection; failed to fully disclose all activities and transactions in sufficient detail as to be readily understood and audited, and be sufficient to demonstrate compliance with the organic regulations; failed to provide AI full access during an inspection; failed to follow the approved OSP; failed to observe the minimum harvest interval after applying manure to crops; and failed to conduct soil tests on the accumulation of an allowed synthetic substance.

Further, Taylor's noncompliances, particularly in recordkeeping, are systemic and represent repeated, willful noncompliance with the organic regulations. AI issued two combined Notices of Noncompliance and Proposed Suspension, both citing to numerous recordkeeping noncompliances. The organic regulations at §205.662(c) provide that, "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.” Section 205.662(d) also provides for the issuance of a notice of proposed suspension when a certifier has to reason to believe the operation has willfully violated the Act or regulation. Based on the totality of the evidence, including the fact that these many recordkeeping noncompliances occurred despite prior adverse action by AI, and Taylor’s acknowledgement of recordkeeping obligations, AI had reason to believe that Taylor willfully violated the Act and the regulations. Therefore, AI was justified in issuing combined Notices of Noncompliance and Proposed Suspension.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, Taylor has been unable to comply with the organic regulations at 7 CFR §205.103; 7 C.F.R. §205.201; 7 C.F.R. §205.203; 7 C.F.R. §205.400; and 7 C.F.R. §205.601. The noncompliances, particularly in recordkeeping, are systemic and represent a repeated, willful noncompliance with the organic regulations. Therefore, Taylor may not remain certified organic at this time.

DECISION

The Appeals are denied and AI’s two Notices of Noncompliance and Proposed Suspension are affirmed. Taylor’s organic certification is suspended. However, pursuant to 7 C.F.R. 205.662(f)(1), Taylor may request reinstatement of its certification at any time with any certifying agent. The request must be accompanied by evidence demonstrating correction of

each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations. Additionally, attached to this formal Administrator's Decision denying Taylor's Appeals is a Request for Hearing form. Taylor has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this _____
day of _____, 2020.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service