

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
)	
Agricola Etchoexport SC)	
de RL de CV)	
)	Administrator's Decision
)	APL-036-23
Ciudad Obregon,)	
Sonora, Mexico)	
)	

This Decision responds to an Appeal (APL-036-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Agricola Etchoexport SC de RL de CV (Etchoexport) of Ciudad Obregon, Sonora, Mexico by USDA accredited certifying agent Oregon Tilth Certified Organic (OTCO). Etchoexport 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

INTRODUCTION

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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

believe they are adversely affected by a noncompliance decision of a certifying agent or NOP may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On October 14, 2021, Etchoexport was certified for crops.
2. On November 28, 2022, OTCO issued a Notice of Noncompliance to Etchoexport.
3. On January 19, 2023, OTCO issued a Notice of Proposed Suspension to Etchoexport.
4. On February 10, 2023, OTCO accepted Etchoexport’s request for mediation.
5. On March 7, 2023, OTCO issued a Notice of Unsuccessful Mediation to Etchoexport.
6. On April 4, 2023, Ethoexport filed an Appeal.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §205.403, On-site inspections, states, “(a) *On-site inspections*. (1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in the operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation ... for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue. ... (b) *Scheduling* ... (2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation’s compliance with or capability to comply with the applicable provisions of subpart C of this part can be observed ...

(c) *Verification of information.* The on-site inspection of an operation must verify: (1) The operation's compliance or capability to comply with the Act and the regulations in this part ...”

The 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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent ... (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 ... (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 regulations at §205.406, Continuation of certification, states, 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: (1) An updated organic production or handling system plan ... (b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation ...”

DISCUSSION

Etchoexport was certified organic for crops on October 14, 2021; and is certified by OTCO. OTCO attempted to schedule and conduct the 2022 annual inspection of Etchoexport; and after Etchoexport cancelled a scheduled inspection and failed to re-schedule the inspection

for another time, OTCO issued a Notice of Noncompliance on November 28, 2022. The Notice instructed Etchoexport to contact OTCO within 21 days to schedule an inspection. However, after Etchoexport again failed to contact OTCO and schedule an inspection, OTCO issued a Notice of Proposed Suspension on January 19, 2023. Etchoexport requested mediation which was accepted by OTCO on February 10, 2023. However, Etchoexport failed to proceed with mediation, specifically payment of OTCO's mediation fee, and OTCO issued a Notice of Unsuccessful Mediation on March 7, 2023. OTCO's Fee Schedule, to which operations agree when becoming certified by OTCO, provides for the payment of a mediation fee.

Etchoexport filed an Appeal on April 4, 2023, stating that it didn't have the necessary funds to pay the mediation fee at the time, but is now in a position to do so. As the cancellation of a scheduled inspection and failure to re-schedule and have an inspection conducted is the only noncompliance cited by OTCO, NOP contacted OTCO to determine the timeframe needed for OTCO to conduct the inspection, prior to contacting Etchoexport about a possible settlement of the Notice of Proposed Suspension. OTCO informed NOP on April 28, 2023, that an inspection had been scheduled for the following week, the first week of May 2023; however, again Etchoexport cancelled the inspection. Etchoexport also informed OTCO that it wished to surrender its certification; however, OTCO informed Etchoexport that an operation with a pending proposed suspension may not circumvent adverse action by surrendering certification.

NOP contacted Etchoexport on May 1, 2023, stating that an operation may not remain certified if it doesn't cooperate in the conducting of annual inspection, and asked Etchoexport if it will allow OTCO to conduct the inspection scheduled for the following week or if it intended to surrender certification. NOP told Etchoexport that a Settlement Agreement could be offered by which either Etchoexport would agree to allow an inspection to be conducted; or providing

that Etchoexport would surrender certification. Etchoexport failed to respond to NOP. NOP contacted Etchoexport again on May 9, 2023, asking if it would agree to an inspection by OTCO in the near future, or if Etchoexport wished to surrender its certification. NOP told Etchoexport that if it didn't respond and provide an answer, the matter would proceed with administrative action by NOP and Etchoexport's certification may be suspended. Again, Etchoexport failed to respond to NOP, and has yet to do so. OTCO also confirmed on May 15, 2023 that Etchoexport hasn't contacted them to schedule a new date for the inspection which had been scheduled for the first week of May 2023, and which Etchoexport again cancelled.

CONCLUSION

Evidence substantiates that Etchoexport has violated the organic regulations at 7 C.F.R. §205.403, On-site inspections; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. The conducting of an annual on-site inspection of a certified operation by its certifying agent is a crucial part of the certifier's oversight of the operation. On-site inspections allow the certifier to visually observe the operation, confirming if the actual practices of the operation correspond with what was reported by the operation in its Organic System Plan and related documents, as well as reviewing required documentation to ensure it is maintained and that the keeping of records is contemporaneous with the activities as they occur on the operation. However, evidence substantiates that Etchoexport has failed to cooperate with its certifier OTCO to schedule and then to allow the certifier to conduct the required annual on-site inspection. NOP attempted to resolve this matter by contacting OTCO and Etchoexport to determine a timeframe for the conducting of the inspection; however, Etchoexport failed to respond to both inquiries by NOP. As Etchoexport has denied its certifier

the ability to conduct the required inspection to determine and verify that Etchoexport is in compliance with the organic regulations, Etchoexport may not remain certified.

DECISION

Etchoexport's Appeal of April 4, 2023 is denied. The January 19, 2023 Notice of Proposed Suspension is affirmed. The organic certification of Etchoexport is suspended. However, pursuant to the organic regulations at 7 C.F.R. §205.662(f), Etchoexport may request reinstatement of its organic certification at any time and with any certifier, though Etchoexport must agree to and allow the chosen certifier to conduct an on-site inspection of Etchoexport's operation.

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

Done at Washington, D.C., on this 18th day of May, 2023.

BRUCE SUMMERS

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Date: 2023.05.18 22:04:29 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service