



1400 Independence Ave. SW
Room 2642-S, STOP 0268
Washington, D.C. 20250

August 19, 2019

Jason Fearneyhough
Deputy Commissioner
Texas Department of Agriculture
P.O. Box 12847
Austin, TX 78711
Jason.Fearneyhough@TexasAgriculture.gov

Re: Executed Settlement Agreement with National Organic Program

Dear Mr. Fearneyhough:

The USDA Agricultural Marketing Service has received the signed settlement agreement between the Texas Department of Agriculture (TDA) and the National Organic Program. The countersigned agreement is attached for your records.

The National Organic Program will oversee TDA's completion of the terms in the settlement agreement. Please have your team send any correspondence related to the settlement agreement to both me and to Ms. Penelope Zuck, NOP Accreditation Manager, at penelope.zuck@usda.gov.

If you have any questions; you can reach me at 202-260-8077 or by email at Jennifer.tucker@usda.gov.

Sincerely,

A handwritten signature in dark ink that reads "Jennifer Tucker". The signature is written in a cursive, flowing style.

Digitally signed by JENNIFER
TUCKER
Date: 2019.08.19 16:14:48 -04'00'

Jennifer Tucker, Ph.D.
Deputy Administrator
National Organic Program

Cc:

Jessica Escobar: Jessica.Escobar@TexasAgriculture.gov
Randy Rivera: Randy.Rivera@TexasAgriculture.gov

Enclosure: Executed Settlement Agreement

Settlement Agreement

THIS SETTLEMENT AGREEMENT is entered into by the United States Department of Agriculture (USDA) Agricultural Marketing Service (AMS), and the Texas Department of Agriculture (TDA).

USDA, AMS and TDA have decided to compromise and settle the issues among them related to alleged violations of the Organic Foods Production Act of 1990 (7 U.S.C. §§ 6501 et seq.) (OFPA) and the USDA organic regulations (7 CFR Section 205).

Accordingly, the parties agree to the following:

1. The Secretary of Agriculture has jurisdiction in this matter.
2. USDA, AMS agrees not to issue a Notice of Proposed Suspension to TDA based on outstanding and unresolved noncompliances with the USDA organic regulations.
3. TDA has been given the opportunity to consult with legal counsel regarding this Settlement Agreement, is executing this Settlement Agreement of its own free will, and understands and accepts the terms of this Settlement Agreement.
4. No alteration or variation of the terms of this Settlement Agreement shall be valid unless made in writing and signed by both parties.
5. In the event of an alleged breach of the terms in this settlement agreement, the agreement shall be terminated, and USDA may propose suspension of TDA's livestock scope.
6. TDA agrees to the following actions:

- A. TDA agrees to complete the following terms to resolve the outstanding noncompliances generated from NOP's August 2018 visit to TDA.

A1: TDA agrees to provide its Strategic Plan for Training and Program Certifications to NOP once finalized. If this document is not finalized by October 31, 2019, TDA agrees to provide a training plan for its organic livestock program for 2020 and 2021 to document its commitment to capacity development in this area.

A2: Within 60 days of settlement execution, TDA agrees to provide NOP with its policies and procedures related to conducting records requests and reviews for split operations; and its policies and procedures for both requesting from and providing records to other certifiers to ensure compliance for operations that hold organic certificates from more than one certifier.

A3: Within 60 days of settlement execution, TDA agrees to provide its procedures for ensuring that inspectors are scheduled to conduct inspection(s) of livestock operations at time(s) when it can verify compliance to all applicable USDA organic

regulations.

- B. TDA agrees that all inspectors and reviewers involved in the certification of TDA's livestock operations will complete an additional 8 hours of training related to livestock, in addition to any previously completed/scheduled training, by December 31, 2019.
 - C. TDA indicated that it would continue its practice of conducting unannounced inspections both during and outside of the non-grazing season. TDA also agrees to conduct at least one unannounced inspection, in addition to the annual announced inspection, of each of its certified livestock operations before April 30, 2020.
 - D. TDA agrees to assess the qualifications of its staff and/or contract inspectors before assigning them to specific inspections and agrees only to assign inspectors with the knowledge and experience needed to inspect the specific operation, based on its size and operational complexity. NOP will assess inspector qualifications and assignments during its Spring 2020 compliance review (Term G below).
 - E. TDA agrees to conduct a program review of its livestock scope of accreditation, using an external expert/resource before December 31, 2019. TDA shall provide the report and corrective actions to the NOP by January 31, 2020. TDA and NOP will agree in advance on the identification of the party to conduct the review.
 - F. TDA agrees to not accept any new livestock clients until NOP has reviewed the results of the program review and completed any other necessary compliance checks. NOP shall complete its program and compliance review no later than April 30, 2020.
 - G. NOP will conduct a compliance audit of TDA's livestock program in Spring 2020. NOP shall complete its compliance audit no later than May 31, 2020.
7. NOP agrees to issue a Notice of Resolution once all terms of the settlement agreement are successfully completed.

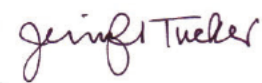
This Settlement Agreement will become effective once both parties sign below.




Authorized Representative, TDA

8/15/19

Date



Jennifer Tucker, Ph.D., Deputy Administrator
National Organic Program, AMS

 Digitally signed by JENNIFER TUCKER
Date: 2019.08.19 11:28:04 -04'00'

Date



1400 Independence Avenue, SW
Room 3071-S, STOP 0201
Washington, D.C. 20250-0201

May 15, 2020

The Honorable Dan Hunter
Assistant Commissioner
Texas Department of Agriculture
Post Office Box 12847
Austin, Texas 78711

Dear Assistant Commissioner Hunter:

This letter is in response to the Texas Department of Agriculture's (TDA) letter dated May 1, 2020, requesting a 60-day grace period in the August 2019 settlement agreement between the U.S. Department of Agriculture (USDA) and TDA. The letter also summarizes the results of the National Organic Program's (NOP) desk-based compliance review of the TDA organic livestock program, conducted on April 14 - 16, 2020. This review was an agreed-upon element of the settlement agreement. NOP shared these results with TDA's staff during the exit interview on April 16, 2020, and during a subsequent call on April 22, 2020.

Compliance Review Summary

NOP's compliance review found that TDA's livestock program continues to not fully comply with the USDA organic regulations. Specifically, TDA has not completed four of the eight settlement agreement terms. The following points describe the outstanding items and how they violate the USDA organic regulations:

- TDA agreed to conduct one unannounced inspection of its livestock operations, in addition to the required annual announced inspection, by April 30, 2020. However, seven out of eight certified organic livestock operations did not receive annual inspections in 2019. Furthermore, one livestock operation has not received an onsite inspection since 2017. The review also found that TDA only conducted two livestock inspections since signing the settlement agreement.

TDA's failure to conduct annual inspections is a violation of 7 C.F.R. §205.403(a)(1), which states, "An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue."

- In late February 2020, TDA informed NOP that the organic program coordinator resigned, and that an organic inspector was appointed as the interim coordinator. After 8 months, TDA still has only one livestock inspector and no livestock reviewers (not counting the interim program coordinator). Other staff are in-training.

TDA's lack of sufficient, adequately trained livestock certification staff is a violation of 7 C.F.R. §205.501(a)(4), which states, "a certifying agent under this subpart must: use a sufficient number of adequately trained personnel, including inspectors and certification review personnel, to comply with and implement the organic certification program established under the Act and the regulations in subpart E of this part;"

- TDA still has not developed the required procedure for conducting records requests and reviews for split operations, an item agreed to in the August 2019 settlement agreement. In addition, TDA's livestock organic system plan (OSP) and inspection report do not include those requirements.

The lack of procedures is a violation of 7 C.F.R. §205.504(b)(1), which states, "a certifying agent must submit ... procedures to be used to evaluate certification applicants, make certification decisions," TDA's insufficient livestock OSP, specifically, is a violation of 7 C.F.R. §205.201(a)(5), which states, "An organic production or handling system plan must include: 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;" TDA has shared plans to update its OSP and inspection report forms; however, this has not been completed to date.

- NOP issued a non-compliance to TDA in December 2019 citing problems with TDA's inspection documentation, specifically related to verification of dry matter intake and grazing days. TDA initially rebutted the non-compliance, which NOP did not accept. TDA's corrective action was to develop a new inspection report addendum. However, during the compliance review, NOP auditors found that a subsequent inspection did not record the number of days grazed for all classes of animals and dry matter intake percentage from pasture.

This outstanding non-compliance reflects an ongoing lack of knowledge and effective implementation of the USDA organic regulations. This is a violation of 7 C.F.R. §205.501(a)(1), which states, "a certifying agent under this subpart must: have sufficient expertise in organic production or handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations"

In addition to the above outstanding terms, NOP's compliance review showed that TDA continues to face issues with implementing its crops and handling certification program, as well as:

- TDA is not conducting annual inspections of all its certified operations. TDA failed to inspect 33 of its 186 (18%) certified operations in 2019. Six operations were not inspected since 2017, and one operation has not been inspected since 2016. TDA received a non-compliance for failing to conduct inspections in 2015. Additionally, TDA is not always processing certifications of new scopes in a timely manner. For example, a review of a certified livestock operation's file indicates the operation applied for crop certification in March 2019, but it still hasn't been inspected for the crop scope. The review found that the issues were due to TDA's lack of sufficient, adequately trained certification staff. This is another violation of 7 C.F.R. §205.501(a)(4).
- TDA did not conduct required inspector field evaluations for all inspectors in 2019. In addition, reviewers are not evaluated on their certification activities. TDA does not have a procedure to evaluate certification review activities. TDA received non-compliances previously in 2015 and in 2019 for not conducting performance evaluations of all its staff.

Therefore, TDA's actions are a recurring violation of 7 C.F.R. §205.501(a)(6), which states, "a certifying agent under this subpart must: conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, ..."

- TDA is not issuing updated annual certificates and did not know that NOP instructions allow updated certificates to be issued after reviewing the annual update or after the annual inspection. Also, TDA issued a notice of non-compliance to a livestock operation in March 2019; however, they have not yet issued a notice of resolution or taken adverse actions. Interviews with certification staff indicated they did not know if the non-compliances had been corrected. The review found that TDA is not ensuring its certification staff has the expertise to successfully perform their certification duties.

This is a violation of 7 C.F.R. §205.501(a)(5), which states "a certifying agent under this subpart must: ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned."

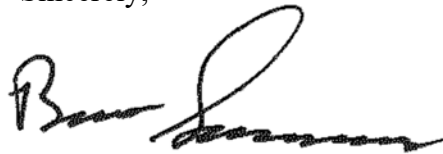
- TDA's inspection exit interviews does not fully comply with the requirements of 7 C.F.R. §205.501(a)(6), which states, "The inspector must conduct an exit interview ... to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection." The review of inspection reports found that it is unclear whether the exit interview covers the need for additional information, and confirms the accuracy and completeness of the inspection observations.

NOP has communicated concerns about TDA's overall lack of capacity to administer its organic program since 2010. In 2017, NOP deferred its renewal of TDA's accreditation given these ongoing challenges. A visit to TDA in August 2018 reaffirmed the significance of these problems, focusing on the livestock program. In early 2020, TDA's own peer reviewer identified significant needs for program improvement.

Despite the recent assignment of an acting program manager, the non-compliances indicate challenges across the TDA organic program, beyond livestock. The full program will be assessed again when NOP's auditors conduct TDA's regularly scheduled mid-term accreditation audit in Fall 2020. This is in addition to the agreed-upon compliance audit of the livestock scope under the settlement agreement.

In conclusion, NOP has determined that TDA continues to lack the administrative capacity to certify and oversee livestock operations. We acknowledge that time does remain in the settlement agreement's defined timeline and that there have been recent challenges outside TDA's control. As such, we are extending the settlement agreement's deadline in response to your request. TDA must complete all items in the settlement agreement by July 30, 2020. NOP will conduct the agreed-upon compliance audit in August 2020, travel restrictions permitting. This will be followed by the mid-term accreditation audit in the Fall 2020.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Summers". The signature is fluid and cursive, with a large loop at the end.

Bruce Summers
Administrator



NMPF Dairy FARM Animal Care Program

Focused Animal Welfare Audit

FSNS Certification & Audit
San Antonio, TX 78216

Of:

Natural Prairie Dairy Farms

(b) (6)

Site contacts:

(b) (6)

Conducted by:

(b) (6), (b) (7)(C)

FSNS Certification & Audit, LLC

(b) (4)



SITE(S)

Natural Prairie Dairy Farms

(b) (6)

DAIRY COOPERATIVE

Select Milk

(b) (6)

NOTIFICATION

Notification received from (b) (6)

Tuesday, July 23, 2019

RESPONSE

(b) (4)

BACKGROUND INFORMATION

(b) (4)

SCOPE

(b) (4)

OBSERVATIONS

(b) (4) [Redacted text block]

Interview:

(b) (4) [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

Observations:

(b) (4) [Redacted]

[Redacted]

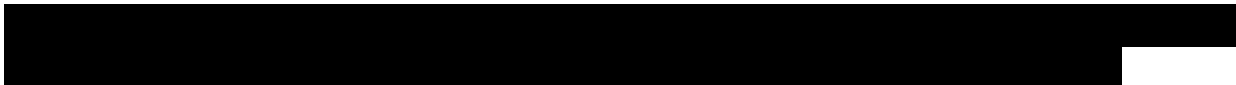
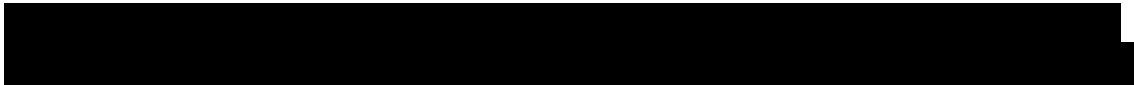
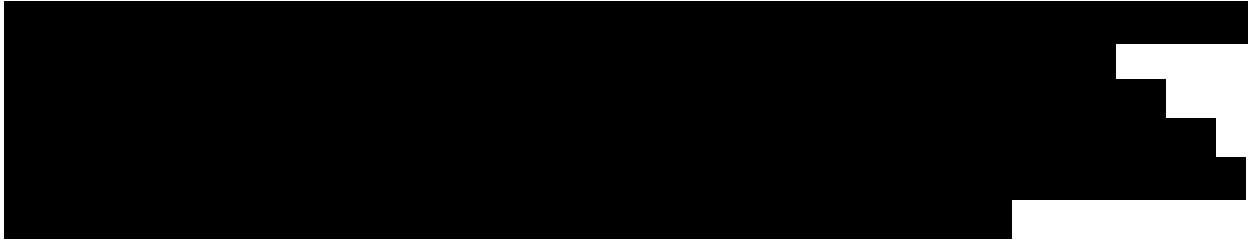
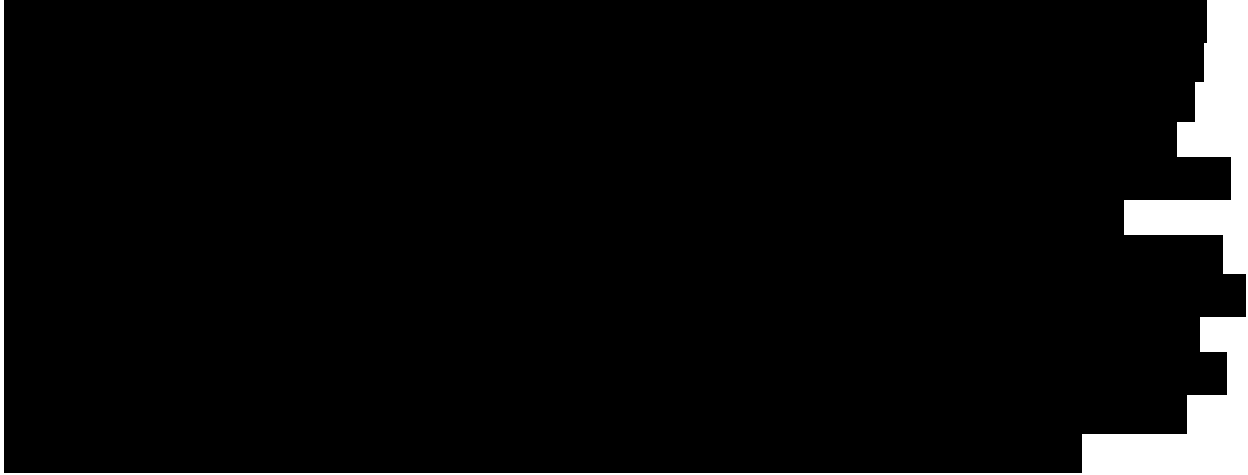
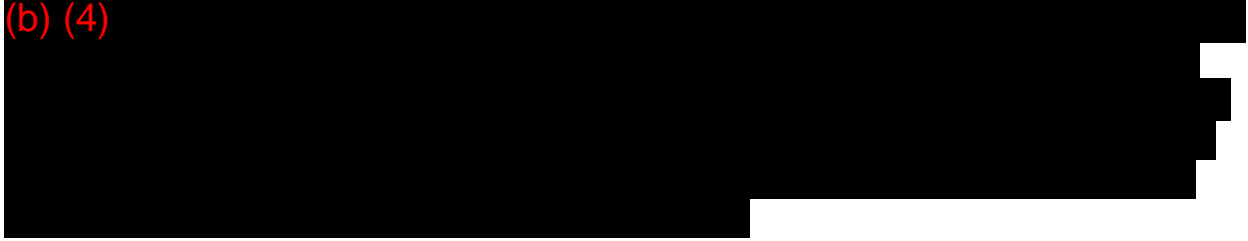
[Redacted]

[Redacted]

[Redacted]


[Redacted]

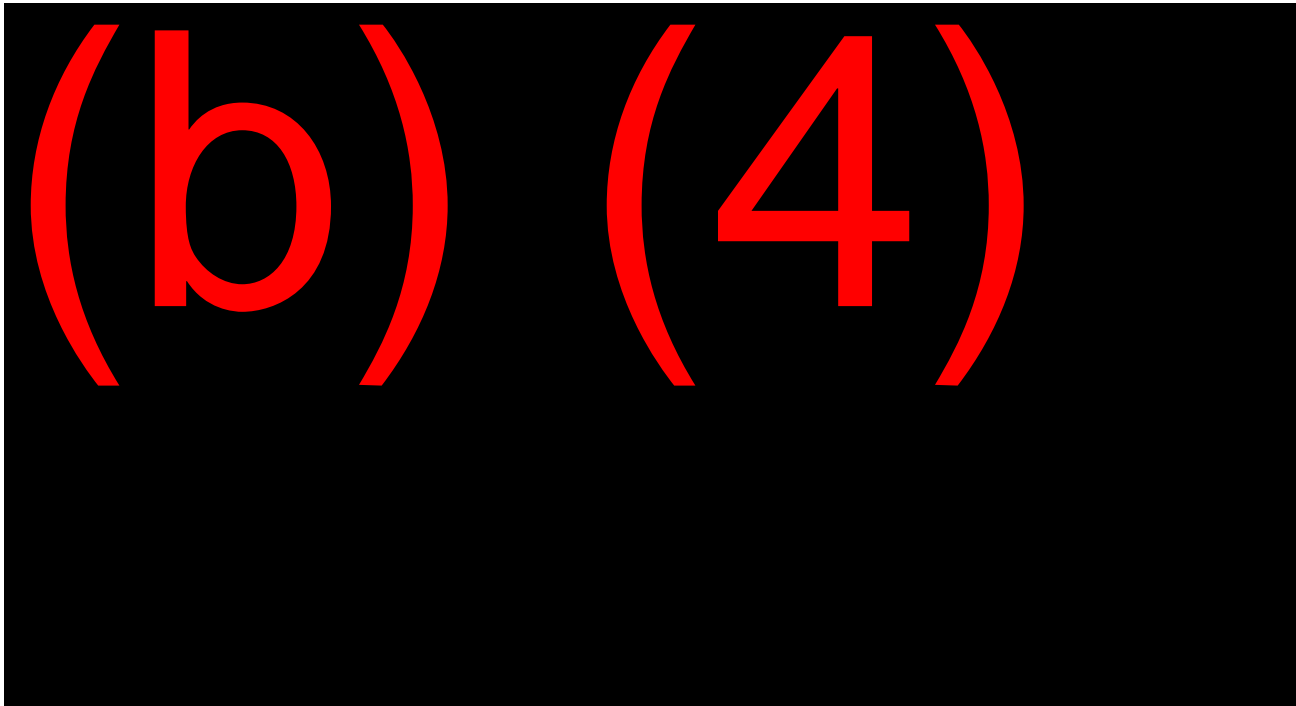
(b) (4)



ACTION RECOMMENDED

(b) (4)





FOLLOW UP

(b) (4)

Riders to Final Report

(b) (4)