

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
J.M.S. Farm) **Administrator’s Decision**
) **APL-043-22**
Buckingham, Illinois)
)

This Decision responds to Appeals (APL-043-22) of two Notices of Proposed Suspension under the National Organic Program (NOP) issued to J.M.S. Farm (JMS) of Buckingham, Illinois by Global Organic Alliance (GOA), 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. JMS was certified organic for crops by GOA on June 26, 2003.
2. On December 13, 2019, JMS and GOA entered into a Settlement Agreement requiring specific recordkeeping.
3. On February 16, 2022, GOA issued a Notice of Proposed Suspension to JMS after an unannounced inspection on January 12, 2022 found noncompliances regarding records that were required under the Settlement Agreement.
4. On February 16, 2022, GOA issued a Notice of Noncompliance citing to additional recordkeeping noncompliances not covered by the GOA Settlement Agreement.
5. On March 15, 2022, GOA issued a Notice of Proposed Suspension after JMS' submission to the noncompliance notice failed to resolve the recordkeeping deficiencies.
6. On March 15, 2022, GOA also issued a Notice of Rejection of Mediation, rejecting JMS' mediation request of March 4, 2022 to the February 16, 2022 Notice of Proposed Suspension.
7. On March 31, 2022, JMS filed Appeals to both proposed suspension notices.
8. On July 18, 2022, JMS and NOP entered into a Settlement Agreement whereby JMS agreed to maintain and have available at inspection numerous required records, and to submit specified records to GOA within 60 days of execution of the agreement.
9. On October 10, 2022, GOA notified NOP that JMS had breached the NOP Settlement Agreement by failing to submit the required records to GOA within 60 days of execution

of the Settlement Agreement. JMS also failed to cooperate with GOA on scheduling an inspection of the operation.

10. On October 11, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to JMS giving JMS an additional 30 days to submit the required records and cooperate in scheduling an inspection.
11. On December 30, 2022, NOP issued a Resolution of Notice of Noncompliance and Request for Corrective Action, after being informed by GOA that JMS had submitted the required records and an inspection had been conducted at which no noncompliances were found.
12. On October 4, 2023, GOA issued a Notice of Noncompliance to JMS citing to recordkeeping noncompliances found at the September 19, 2023 inspection, which GOA stated is a breach of the NOP Settlement Agreement.
13. On November 9, 2023, GOA informed NOP of the breach of the Settlement Agreement by JMS.
14. On November 14, 2023, NOP issued a Notice of Noncompliance and Request for Corrective Action to JMS, giving JMS 45 days to cooperate with GOA on scheduling and conducting an inspection and submitting specific information/documentation identified in GOA's October 4, 2023 notice.
15. On December 18, 2023, NOP issued a Status on JMS Reply to Notice of Noncompliance and Request for Corrective Action, stating that although GOA informed NOP that JMS had submitted a reply to the prior NOP notice, the reply wasn't sufficient to address the records and information required under the Settlement Agreement. NOP gave JMS an additional 45 days to submit detailed records.

16. On February 8, 2024, GOA confirmed that JMS hasn't submitted the required records.

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; ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.”

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 ... (4) A description of the recordkeeping system implemented to comply with the requirements ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

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 ...
(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 ...”

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: (1) An updated organic production or handling system plan ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part. (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

On June 26, 2003, GOA certified JMS for crops. After GOA issued a Notice of Proposed Suspension to JMS on December 4, 2019, and GOA granted mediation, the parties entered into a Settlement Agreement on December 13, 2019, whereby JMS agreed to maintain and have available for inspection specific records and cooperate with GOA on a future unannounced inspection. However, on January 12, 2022, GOA conducted an unannounced inspection of JMS and found recordkeeping deficiencies, and Mr. Schneider, the owner and operator of JMS, wasn't fully cooperative in meeting with the GOA Inspector for the inspection. Mr. Schneider stated he had health problems, causing difficulties in writing/recordkeeping. Subsequently, GOA

issued a Notice of Proposed on February 16, 2022, citing to the numerous recordkeeping noncompliances found at the inspection which were a breach of the prior GOA settlement. GOA also issued a Notice of Noncompliance on February 16, 2022, citing to additional recordkeeping noncompliances that hadn't been delineated in the GOA Settlement Agreement. After JMS failed to resolve the recordkeeping deficiencies in the noncompliance notice, GOA issued a 2nd Notice of Proposed Suspension on March 15, 2022. On March 15, 2022, GOA also issued a Notice of Rejection of Mediation regarding JMS' March 4, 2022 mediation request to the February 16, 2022 Notice of Proposed Suspension.

On March 31 2022, JMS filed Appeals to both proposed suspension notices. The Appeals are handwritten notes stating that JMS is appealing the notices. NOP telephoned Mr. Schneider to ascertain if he wanted to submit any information or documentation supporting the Appeals. He stated that he doesn't have anything to submit to NOP and reiterated what he had told the inspector on January 12, 2022, namely that health problems impeded his ability to maintain records. Mr. Schneider noted his age and stated that his former wife had done all the recordkeeping; he also noted that he had unsuccessfully tried to have someone else help. However, since recordkeeping noncompliances are correctable, NOP offered JMS a Settlement Agreement, which became effective July 18, 2022. JMS agreed to maintain and have available at inspections for 2022 and 2023, as well as at unannounced inspections, specific records; to submit other delineated records to GOA within 60 days of execution of the agreement; and to endeavor to ensure records are legible, understandable, and auditable.

However, on October 10, 2022, GOA notified NOP that JMS had breached the NOP Settlement Agreement by failing to submit the required records to GOA within 60 days of execution of the Settlement Agreement and had also failed to cooperate with GOA on scheduling

an inspection of the operation. Therefore, on October 11, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to JMS giving JMS an additional 30 days to submit the required records identified in the Settlement Agreement and cooperate in scheduling an inspection. Subsequently, on December 30, 2022, NOP issued a Resolution of Notice of Noncompliance and Request for Corrective Action, after being informed by GOA that JMS had submitted the required records and an inspection had been conducted at which no noncompliances were found.

However, on October 4, 2023, GOA issued a Notice of Noncompliance to JMS citing to recordkeeping noncompliances found at a September 19, 2023 inspection. GOA listed various records that hadn't been maintained or weren't available at the inspection, and that Mr. Schneider wasn't present at the inspection of crop fields, nor did Mr. Schneider allow an inspection of bins and equipment due to a dog being on the property. GOA stated that JMS breached the July 18, 2022 NOP Settlement Agreement. On November 9, 2023, GOA notified NOP of JMS' breach of the Settlement Agreement and GOA's issuance of the prior October 4, 2023 Notice of Noncompliance.

Certifiers are to notify NOP when it is believed that a NOP Settlement Agreement has been breached, and therefore, NOP issued JMS a Notice of Noncompliance and Request for Corrective Action on November 14, 2023. NOP delineated the specific recordkeeping noncompliances and gave JMS 45 days to cooperate with GOA on scheduling and conducting an inspection of the entire operation and submitting specific information/documentation identified in GOA's October 4, 2023 notice. JMS submitted a response to GOA on December 12, 2023, only stating that the inspector stated his presence wasn't necessary on the crop field inspection; that no organic grain was sold in 2022; that no organic seed was available; that all bins are

appropriately labeled; that he provided all required records; that cleanout records are in a blue spiral notebook, which he submitted; and that health challenges has caused problems in keeping records. However, GOA found that JMS' submission of only a handwritten letter with the few statements cited above, and a few pages from the blue spiral notebook weren't sufficient to address the recordkeeping noncompliances.

Since JMS had submitted a response, NOP issued a Status on JMS Reply to Notice of Noncompliance and Request for Corrective Action on December 18, 2023, stating that the reply wasn't sufficient to address the records and information required under the Settlement Agreement. NOP gave JMS an additional 45 days to submit detailed records. However, as of February 8, 2024, GOA confirmed that JMS hasn't submitted the required records.

Therefore, AMS finds that JMS has breached the NOP Settlement Agreement of July 18, 2022. JMS agreed to maintain and have available various records required for the organic operation, but despite being given opportunities to come into compliance, has failed to do so. The various records were specifically identified in the Settlement Agreement, GOA's October 4, 2023 noncompliance notice, and NOP's notices.

The July 18, 2022 Settlement Agreement between NOP and JMS, Term 4J states that, "JMS agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against JMS." Clause 3D of the Settlement Agreement states that, "JMS withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above." Paragraph 2 states, "USDA, AMS agrees not to issue a formal Administrator's Decision charging JMS with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." A closure

letter sent to JMS on July 18, 2022 with the executed agreement stated that, "... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, and AMS may pursue an administrative hearing process."

CONCLUSION

Evidence substantiates that JMS has violated the organic regulations at 7 C.F.R. §205.103; 7 C.F.R. §205.201; 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by the failure to maintain and have available to its certifier specified records required for JMS' organic operation and allowing the certifier to verify JMS' compliance with the organic regulations. AMS further finds that JMS has breached the July 18, 2022 Settlement Agreement with NOP. Accurate and detailed recordkeeping is required of all organic operations in order that their compliance with the organic regulations can be verified. Despite several opportunities, JMS has failed to maintain the required records and to have them available for inspection by its certifier. Therefore, the February 16, 2022 and March 15, 2022 Notices of Proposed Suspension are revived. JMS can't remain certified at this time.

DECISION

JMS' March 31, 2022 Appeals of the February 16, 2022 and March 15, 2022 Notices of Proposed Suspension are denied. JMS' crop certification is to be suspended. However, pursuant to the organic regulations at 7 C.F.R. §205.662, JMS may apply for reinstatement of its organic certification at any time, and with any certifier, with evidence substantiating that the noncompliances cited by GOA regarding recordkeeping have been resolved.

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

Done at Washington, D.C., on this 14th
day of February, 2024.

BRUCE SUMMERS Digitally signed by BRUCE
SUMMERS
Date: 2024.02.14 07:17:04 -05'00'
Bruce Summers
Administrator
Agricultural Marketing Service