

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Finca Nava) **Administrator's Decision**
Sinaloa, Mexico) **APL-082-20**
)
)

This Decision responds to an Appeal (APL-082-20) of a Notice of Denial of Reinstatement of Certification issued to Finca Nava (Nava) by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). 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 organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. Nava is a formerly certified organic operation which had crop certification.
2. On October 6, 2017, Nava’s organic certification was suspended by USDA-accredited certifying agent Organic Crop Improvement Association (OCIA) for failing to timely file its certification renewal documentation.
3. On June 1, 2020, Nava submitted a Request for Reinstatement of its certification.
4. On July 7, 2020, OCIA wrote NOP recommending that NOP deny Nava’s request for reinstatement after finding that Nava had sold products as organic while suspended.
5. On August 14, 2020, NOP issued a Notice of Denial of Reinstatement of Certification stating that Nava was found to have sold products as organic from July 17, 2019 to September 6, 2019 while Nava’s certification was suspended in violation of the organic regulations at 7 C.F.R. Part 205.
6. On August 27, 2020, Nava filed an Appeal.

DISCUSSION

The NOP issued a Notice of Denial of Reinstatement of Certification to Nava stating that Nava had violated the organic regulations, thereby failing to demonstrate its ability to fully comply with, and implement, an organic certification program pursuant to the USDA organic regulations at 7 C.F.R. Part 205.

The organic regulations at 7 C.F.R. §205.100(a) state that, “Except for operations exempt

or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.”

Specifically, NOP states in the August 14, 2020 Notice of Denial of Reinstatement of Certification that OCIA’s June 27, 2020 inspection of Nava’s operation shows that Nava continued to sell product, specifically mangoes, labeled as organic from July 17, 2019 to September 6, 2019, after Nava’s certification had been suspended. NOP stated that Nava’s certification had been suspended October 6, 2017 and hadn’t been reinstated.

In its Appeal, Nava stated that it didn’t sell mangoes as organic from July 17, 2019 to September 6, 2019, while suspended. Nava acknowledged that it used the term “organic” in its registry of the mango fruit harvested last season and shouldn’t have done so; however, the mangoes were sold as conventional.

A review of the evidence shows that on October 6, 2017, Nava’s organic certification was suspended after it failed to timely submit its renewal documentation to its certifier OCIA. Nava’s certification remains suspended. On June 1, 2020, Nava submitted a request to be reinstated, and OCIA conducted an on-site inspection on June 27, 2020. The Crop Production Inspection Report of OCIA states that Nava denied labeling or marketing mangoes as organic during its suspension; however, the inspection found that Nava sold (b) (4) tons of mangoes, worth \$ (b) (4), as organic from July 17, 2019 to September 6, 2019, in (b) (4) transactions, while suspended. During the inspection, Nava provided to the inspector a Harvest Summary and

Sales of Mangoes spreadsheet which shows the sale of mangoes identified as organic during the timeframe in question. Specifically, the spreadsheet has a column showing the date of each sale; a column showing the weight of each sale; and also has a column entitled “tipo” (type) which identifies each sale of the Kent variety of Mangoes as being organic. Mango Kent Organico is also seen in the title of the document. Further, as noted in the inspection report, organic mangoes are distinguished by the placement of “RRR” in front of the batch/lot number, which is also seen for all transactions on the Harvest Summary sheet. The Inspection Exit Interview document also references the placement of “RRR” to designate organic mangoes, when the inspector stated that Nava must ensure that new boxes engraved with “RRR Sinoloa” be used for the harvesting of organic mangoes.

The inspector also obtained a Receipt during the inspection showing that (b) (4) bought mangoes identified as “organico” from Nava on July 19, 2019, though the seller is identified as (b) (4). The inspector noted in the Inspection Report that Nava’s owner also markets organic and conventional mangoes under other names. The numerous invoices obtained during the inspection showing the Nava’s sale of mangoes during the timeframe in question, identify the seller as (b) (4), or (b) (4) or Nava. The invoices do not contain batch numbers or identify the mangoes as organic; however, Nava’s Harvest Summary as noted above identifies the mangoes as organic and has the organic RRR denotation, as does an internal control document. One such document of July 17, 2019 for batch/lot RRR13696 matches the first entry on the Harvest Summary. The inspector noted in the Inspection Report that Nava’s documentation lacked the batch/lot number that would enable better traceability and specifically stated that documentation should contain this information.

Nava stated in its Appeal that it only denoted the mangoes as organic in its internal documents, but that the mangoes were sold as conventional. This could potentially explain why the invoices don't contain any reference to the mangoes as being organic, while the Harvest Summary and internal control documents show the "RRR" organic designation. However, this wouldn't explain why (b) (4), which bought mangoes from Nava, would identify them as organic on its documentation. Further, accepting Nava's statement that it incorrectly identified the conventional mangoes as organic in its internal recordkeeping, raises other concerns. The NOP instructions 2605, "Reinstating Suspended Operations," states that a suspended operation seeking reinstatement must be inspected and the inspection must verify whether "there is a system in place that will prevent commingling of noncompliant product produced or inventoried during the suspension period." As Nava states it identified conventional mangoes as organic in its recordkeeping during suspension, it appears that Nava doesn't have a recordkeeping or internal control system that would prevent the commingling of conventional product with organic product. Therefore, Nava can't meet the requirements for reinstatement of its certification.

OCIA's inspection also found other grounds for NOP's denial of reinstatement of Nava's certification. The inspection found that Nava's buffer zones are not sufficient to avoid possible contamination in the south end of the plot where it borders properties owned by 2 producers, who are not certified organic and of which information regarding the possible use of chemical inputs is unknown. This uncertainty makes the need for adequate buffer zones even more crucial. The inspection also found that Nava's recordkeeping is deficient regarding field histories and production activities, as well as the cleaning of equipment also used in conventional

production. The inspector also found that the materials table in Nava's Organic System Plan wasn't complete and accurate.

CONCLUSION

The evidence substantiates that Nava violated the organic regulations at 7 C.F.R. §205.100 which demonstrates Nava's inability to fully comply with, and implement, an organic certification program pursuant to the USDA organic regulations at 7 C.F.R. Part 205. Therefore, Nava hasn't met the requirements for reinstatement of its organic certification and NOP properly denied the reinstatement request. Specifically, while several noncompliances were found during the OCIA inspection of Nava, NOP denied Nava reinstatement based on the finding that Nava sold mangoes as organic while under suspension, with (b) (4) transactions from July 17, 2019 to September 6, 2019, totaling (b) (4) tons of mangoes, worth \$ (b) (4). This constitutes a violation of the organic regulations at 7 C.F.R. §205.100, What has to be certified, which state that any operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as organic, must be certified.

DECISION

Nava's Appeal is denied and the NOP-issued Notice of Denial of Reinstatement of Certification is affirmed. As Nava sold product as organic while its certification was suspended, Nava's certification may not be reinstated. Nava's certification remains suspended.

Attached to this formal Administrator's Decision is a Request for Hearing form. Nava has thirty days to request an administrative hearing before an Administrative Law Judge. If Nava

does not request a hearing in that period, this Decision will be implemented, and the denial of reinstatement of Nava's certification will become final.

Done at Washington, D.C., on this 29th
day of March, 2021.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service