

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
Natural Food Certifiers (NFC)	)	<b>Administrator's Decision</b>
Spring Valley, NY	)	<b>APL-001-17</b>

This Decision is in response to an appeal APL-001-17, filed by Natural Food Certifiers (NFC), a U.S. Department of Agriculture (USDA)-accredited certifying agent. NFC appealed a Notice of Proposed Suspension of Accreditation issued by the USDA, Agricultural Marketing Service (AMS), National Organic Program (NOP), which concluded that NFC was not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the USDA organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or 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 AMS Administrator, pursuant to §205.680 and §205.681 of the USDA organic regulations.

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

## FINDINGS OF FACT

1. NFC is currently a USDA-accredited certifying agent, based in Spring Valley, NY. NFC was accredited as a USDA organic certifier on October 8, 2002.
2. On December 15-18, 2015, NOP auditors conducted a mid-term assessment of NFC's accreditation system.
3. On May 9, 2016, the NOP issued NFC a Notice of Noncompliance due to identifying two (2) outstanding noncompliances from a previous assessment, as well as seventeen (17) new noncompliances during the mid-term assessment. Some of the findings described in the Notice of Noncompliance included:
  - NFC was conducting certification inspections without receiving updated organic system plans; NFC did not issue notices of noncompliance to operations for failing to submit updated organic system plans (§ 205.406(a); § 205.402(a)(1)).
  - NFC issued organic certificates with missing or incorrect information (§ 205.404).
  - Annual performance evaluations of inspectors and the NFC Director were incomplete (§205.501(a)(6)).
  - NFC has no training program for staff or contracted staff and the NFC Director admitted to being unfamiliar with some NOP requirements, particularly concerning international trade verification and inspector field evaluations (§205.501(a)(5)).
  - At a witness inspection during the audit, the inspector did not verify all parts of the organic system plan (§205.403(c)(2)).
  - NFC is not carrying out its procedures for different certification activities: label review, material reviews, tracking of deadlines for operations to respond to

requests or notices. NFC is not carrying out all provisions of the USDA organic regulations (§205.501(a)(3)).

4. On June 7, 2016, NFC submitted corrective actions to the NOP. On June 21, 2016, the NOP requested modifications to NFC's corrective actions because sixteen (16) of the seventeen (17) actions submitted were deemed inadequate to bring the certifier into compliance. NFC did not submit corrective actions for the two previous noncompliances.
5. On July 4, 2016, NFC submitted revised corrective actions to the NOP.
6. On September 1, 2016, the NOP issued NFC a Notice of Proposed Suspension of Accreditation because the corrective actions submitted for eighteen (18) noncompliances were either incomplete or did not sufficiently address the noncompliance.
7. On October 3, 2016, NFC submitted an appeal, which was accepted as timely.

#### **DISCUSSION**

The NOP cited nineteen (19) noncompliances based on the 2015 mid-term accreditation assessment of NFC. Two of these noncompliances carried over from earlier assessments in 2010 and 2012. Despite multiple opportunities, NFC has failed to resolve most of the noncompliances found in 2015: when this appeal was initiated, nineteen (19) noncompliances remained outstanding.

In its appeal, NFC asserts that the May 9, 2016 Notice of Noncompliance and the September 1, 2016 Notice of Proposed Suspension and Corrective Action Report lack detail and specifics on the alleged violations. The record in this case shows this to be inaccurate. Both the Noncompliance Report, which accompanied the Notice of Noncompliance, and the Corrective Action Report, which accompanied the Notice of Proposed Suspension, provide a detailed account of the noncompliance findings, corrective actions submitted, and whether these were

adequate to resolve the noncompliance. Specifically, the NOP advised NFC that a) some noncompliances were unaddressed; b) that the corrective actions were incomplete; c) that all components of the noncompliance must be addressed in the corrective action; and d) that a preventative action and supporting documents as evidence were needed (when applicable).

NFC's appeal states it took corrective actions during the on-site audit and continued to take further corrective actions after the audit. NFC submitted responses to eighteen (18) noncompliances with the appeal. AMS reviewed these responses and made the following determinations. While NFC has taken some positive steps to address some of the noncompliances, such as hiring a Document Manager and Administrative Assistant, developing checklists, and outsourcing performance reviews, there are issues that were not addressed. Outstanding issues include: (1) no template for a notice of noncompliance, and no evidence that these notices are issued when warranted; (2) NFC did not implement its own proposed corrective action to implement a web-based recordkeeping system to correct its file management and versioning issues; and (3) there was no corrective action submitted for the findings of unfamiliarity with NOP policies regarding international trade. Further, there was no evidence to demonstrate that NFC could verify compliance with international trade arrangements, except for the EU equivalency arrangement.

In addition, AMS notes that, despite extensive noncompliance findings during the 2015 audit, NFC has not attended any annual certifier training offered by the NOP from 2013 through 2017. While attending the training is not a regulatory requirement, the consistent lack of attendance further illustrates NFC's lack of demonstrated investment in remaining current with program requirements.

## CONCLUSION

The record in this case demonstrates that NFC has not complied with requirements to maintain accreditation, as described in § 205.501(a). Attempts to correct noncompliances were inadequate, and NFC has failed to demonstrate that it has the organizational capacity to correctly apply the USDA organic regulations. The corrective actions that NFC submitted prior to the appeal did not address all components of each noncompliance, nor do they provide a description of the actions taken to prevent a reoccurrence of the noncompliance or documentary evidence to show implementation of corrective actions. NFC has attempted to resolve some issues through its appeal. However, the number, scope, and recurrent incomplete responses to the noncompliances demonstrate that NFC is not yet fully compliant. AMS finds that the NOP's Notice of Proposed Suspension of Accreditation was appropriate.

## DECISION

NFC's organic accreditation is to be suspended. Attached to this formal Administrator's Decision is a Request for Hearing form. NFC has 30 days to request an administrative hearing before an Administrative Law Judge. If NFC does not request a hearing in that period, this Decision will be implemented and the NOP will suspend NFC's organic accreditation.

In accordance with §205.665(g)(1) of the USDA organic regulations, "A certifying agent whose accreditation is suspended by the Secretary under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its accreditation. 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 regulations in this part."

Done at Washington, D.C., on this 7<sup>th</sup>  
day of July, 2017.

A handwritten signature in cursive script, appearing to read "Bruce Summers", written over a horizontal line.

Bruce Summers  
Acting Administrator  
Agricultural Marketing Service