

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Patrick Martin,) **Administrator's Decision**
Rock Island Farms) **APL-006-17**
Gouverneur, New York)
)

This Decision responds to an appeal (APL-006-17) of a Notice of Proposed Suspension of National Organic Program certification issued to Patrick Martin, doing business as Rock Island Farms of Gouverneur, New York, by NOFA-NY Certified Organic, LLC. 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 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. NOFA-NY Certified Organic, LLC is an accredited certifying agent under the USDA organic regulations. Patrick Martin is the operator of Rock Island Farms of Gouverneur, New York, which is certified under USDA organic regulations for crops and livestock.
2. On April 13, 2016, NOFA-NY issued Rock Island Farms a Notice of Noncompliance for a failure to submit a 2016 update application and certification fees.
3. On July 29, 2016, NOFA-NY issued Rock Island Farms a Notice of Proposed Suspension for a failure to submit a 2016 update application and certification fees. NOFA-NY proposed a 30-day suspension.
4. On September 2, 2016, NOFA-NY received Rock Island Farms' request for Mediation. NOFA-NY accepted the request via a letter dated September 6, 2016.
5. On September 26, 2016, NOFA-NY issued Rock Island Farms a Notice of Unsuccessful Mediation after Patrick Martin did not provide the required documentation to NOFA-NY.
6. On October 10, 2016, NOP received Rock Island Farms' appeal request, in which Patrick Martin stated that he had submitted all documentation to NOFA-NY.

DISCUSSION

NOFA-NY proposed a suspension of Rock Island Farms' organic certification for a period of 30 days. The effect of suspension would prohibit all sale, labeling or representation of its products as organic. The 2016 suspension is the third time in which Rock Island Farms has received Notices of Noncompliance and/or Proposed Suspension, between July 2014 and September 2016.

In its July 29, 2016 Notice of Proposed Suspension, NOFA-NY cited Rock Island Farms for noncompliance with the following section of the USDA organic regulation: section 205.406

(Continuation of certification). NOFA-NY provided a specific example of the noncompliance in its notice and stated, "A partial application has been received however no response has been received to the requests for additional items to complete the application. Outstanding items included: Updated Animal List, 2015 Harvest Records, 2015 Purchased Feed Log for July-December, 2015, Livestock Medication Records for July-December, and 2015 Feed Ration Dry Matter Intake Forms for July-December."

In response, the appellant, stated that, "three of the five requested forms were faxed to the NOFA-NY office by the date requested, but I was unable to fax the remaining forms until after September 21, 2016." He further indicated the remaining forms were submitted to NOFA-NY, but not until after September 21, 2016. Patrick Martin did not provide any supplemental information to support the claim that all remaining documents were submitted to NOFA-NY.

Evidence provided by the certifier demonstrates the noncompliance, as it relates specifically to annual update applications. This was a previous issue for Rock Island Farms in both 2014 and 2015. On April 3, 2014, NOFA-NY issued Rock Island Farms a Notice of Noncompliance for a failure to submit a 2014 update application. Rock Island Farms then received a Notification of Proposed Suspension by May 30, 2014, and by July 9, 2014, was issued a Notice of Suspension. The deficiencies stemming from 2014 noncompliance were corrected by April 2015 and Rock Island Farms was reinstated by NOP; however, the operation again fell out of compliance later into 2015. On June 19, 2015, NOFA-NY issued Rock Island Farms a Notice of Noncompliance for failure to submit a 2015 update application. The 2015 noncompliance was resolved by July 2015.

The cumulative effect of the documentation provided by NOFA-NY shows that Rock Island Farms failed to submit annual, updated applications in 2016, 2015, and 2014 as required

by the USDA organic regulations for continuation of certification. This led to NOFA-NY issuing multiple letters of noncompliance and, in 2014 and 2016, notifications of proposed suspension. This recurring pattern demonstrates a systemic failure of Rock Island Farms' ability to comply with the USDA organic regulations. Specifically, section 205.406 requires that certified operations must annually submit to the certifying agent, an updated organic system plan and other information deemed necessary by the certifying agent to determine compliance.

CONCLUSION

The appellant did not provide timely and complete information to continue organic certification and resolve the July 29, 2016 Notice of Proposed Suspension issued by NOFA-NY. The findings in this case demonstrate that Rock Island Farms has been notified of the same noncompliance in 2014, 2015 and again in 2016. This pattern demonstrates a systemic failure of the operation to remain in compliance with the USDA organic regulations, § 205.406 (Continuation of certification).

DECISION

The appeal is denied and NOFA-NY's Notice of Proposed Suspension is upheld. Rock Island Farms is to be suspended.

Attached to this formal Administrator's Decision denying Rock Island Farms' appeal is a Request for Hearing form. Rock Island Farms has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Rock Island Farms waives the hearing, the Agricultural Marketing Service will direct NOFA-NY to issue a Notice of Suspension. The suspension will be effective for 30-days from the date of the hearing waiver. After the 30-day suspension period, the operation may, "...submit a request to the Secretary for reinstatement of its certification. 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 25th
day of April, 2017.



Bruce Summers
Acting Administrator
Agricultural Marketing Service