

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
Carol A. and Nathan D. Harkness) **Administrator's Decision**
Cozy Valley Farm) **APL-028-17**
)

This Decision responds to an appeal (APL-028-17) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to Cozy Valley Farm of Gillett, Pennsylvania by Northeast Organic Farming Association of New York (NOFA-NY). 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 is an accredited certifying agent under the USDA organic regulations. Cozy Valley Farm (Cozy Valley) of Gillett, Pennsylvania, is certified under USDA organic regulations for crops and livestock.
2. On April 3, 2014, NOFA-NY issued a Notice of Noncompliance to Cozy Valley for missing the February 28, 2014 deadline to submit an updated organic system plan and certification fees.
3. On July 29, 2014, NOFA-NY issued a Notice of Proposed Suspension to Cozy Valley.
4. On October 22, 2014, Cozy Valley and NOFA-NY signed a Settlement Agreement in which Cozy Valley agreed to provide NOFA-NY updated certification materials and application fees by February 28 of each year.
5. On February 28, 2015, Cozy Valley missed the deadline to submit continuation of certification fees/materials. NOFA-NY arranged a 2-installment payment plan for Cozy Valley Farm, the first installment was collected in late March 2015 and the second on November 19, 2015.
6. On June 13, 2016, NOFA-NY issued a Notice of Noncompliance to Cozy Valley for failing to submit continuation of certification materials/fees. The noncompliance was resolved in September 2016.
7. On March 7, 2017, NOFA-NY sent a reminder letter to Cozy Valley stating that the February 28 deadline for submitting the 2017 certification materials/fees has passed and extending the deadline to March 23, 2017. This marks the fourth consecutive year that Cozy Valley missed the February 28 deadline.

8. On April 6, 2017, NOFA-NY issued a Combined Notice of Noncompliance and Proposed Suspension to Cozy Valley for failing to submit 2017 certification fees/materials per the Settlement Agreement. NOFA-NY proposed a 30-day suspension.
9. On April 28, 2017, Cozy Valley submitted a request for mediation to NOFA-NY.
10. On May 1, 2017, Cozy Valley submitted an appeal to the National Organic Program, which was accepted.
11. On May 4, 2017, NOFA-NY rejected Cozy Valley's request for mediation.

DISCUSSION

NOFA-NY proposed a 30-day suspension of Cozy Valley's organic certification, which would prohibit all sale, labeling or representation of its products as organic until the operation's certification is reinstated. The reason for the proposed suspension was the repeated failure, from 2014 to 2017, to submit the documents and fees needed to continue certification on time.

The record in this case shows that NOFA-NY offered flexibility to Cozy Valley on multiple occasions to bring the operation into compliance. This included reminder letters, mediation that resulted in a settlement agreement in 2014, and alternative payment plans in 2015 and 2016, so that payment of certification fees coincided with operational cash flow. In addition, when Cozy Valley did not submit the updated certification materials and fees by the deadline again in 2017, NOFA-NY extended the deadline for Cozy Valley by nearly one month. NOFA-NY issued a Combined Notice of Noncompliance and Proposed Suspension for breaking the terms of the 2014 Settlement Agreement, which was executed to resolve a prior Notice of Proposed Suspension issued in 2014.

In its appeal, Cozy Valley explained that drought conditions in 2016 adversely affected the operation's milk production capacity. Cozy Valley also described how measures to adjust

herd size, pasture management, calving schedules, and lower milk production caused by drought, has reduced monthly operational income below monthly costs for 2016 and into 2017. In the appeal, Cozy Valley acknowledged the cash flow imbalance, but offered no alternative actions or timetable to indicate how the noncompliance could be corrected.

CONCLUSION

Cozy Valley Farm has repeatedly failed to comply with the requirement in the USDA organic regulations to annually submit an updated organic system plan and pay certification fees in 2014, 2015, 2016 and 2017. The USDA organic regulations require producers or handlers to pay annual certification fees and submit an updated organic production or handling system plan annually to their certifier (§ 205.406). This is a basic and essential requirement for organic certification. In this case, the 4-year pattern of failing to submit materials on time to continue certification demonstrates that the operation has not met certification requirements.

DECISION

The appeal is denied and NOFA-NY's Notice of Noncompliance and Proposed Suspension is upheld. Cozy Valley Farm, operated by Carol A. and Nathan D. Harkness, is to be suspended.

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

If Cozy Valley Farm 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 August, 2017.



Bruce Summers
Acting Administrator
Agricultural Marketing Service