

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Daniel Smith) **Administrator's Decision**
Kara Smith) **APL-036-17**
)
)

This Decision responds to an appeal (APL-036-17) of a Notice of Denial of Certification of National Organic Program issued to Daniel and Kara Smith of Johnsbury, Vermont by Vermont Organic Farmers (VOF). 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 § 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 CFR Part 205

FINDINGS OF FACT

1. VOF is an accredited certifying agent under the USDA organic regulations. Daniel and Kara Smith (Smiths) of Johnsbury, Vermont have a dairy livestock operation currently in transition to organic certification under USDA organic regulations.
2. On March 20, 2017, VOF received a complaint that the Smiths purchased and fed uncertified haylage to their herd during the organic transition period (May 15, 2016 – May 15, 2017). VOF opened an investigation.
3. On April 21, 2017, the Smiths submitted an application for certification to VOF.
4. On May 15, 2017, VOF conducted the certification inspection at Smiths' operation. The Smiths did not disclose any feed purchases to the VOF inspector and the organic system plan (OSP) did not list any feed purchases.
5. On May 16, 2017, VOF confirmed that on two separate occasions a neighboring farmer sold his nonorganic haylage to the Smiths: 10 tons on March 12, 2017 and 5 tons on April 12, 2017.
6. On May 17, 2017, VOF contacted Daniel Smith and presented the dates and quantities of feed reported by the seller. Daniel Smith admitted to the purchases and having provided the conventional feed to the transitioning herd.
7. On May 19, 2017, VOF issued the Smiths a Denial of Certification in accordance with USDA organic regulation §205.405(g) because of false statements regarding purchases of nonorganic feed and omission of the purchase from the operation's OSP.
8. On May 19, 2017, Daniel Smith submitted an appeal to AMS.

DISCUSSION

VOF issued a Denial of Certification because the Smiths failed to disclose the purchase and feeding of conventional haylage to the operation's livestock herd during the organic transition period. The Smiths did not disclose these purchases to VOF in the OSP or at the inspection for certification. VOF determined the lack of candor to be a willful misrepresentation of the operation's activities.

In the appeal to AMS, Daniel Smith admitted his failure to disclose the purchases of the uncertified feed to VOF. Daniel Smith claimed the purchases occurred after attempts to locate certified organic feed were unsuccessful and proposed selling the 10 cows that ate the nonorganic feed.

CONCLUSION

The Smiths misrepresented its compliance with the USDA organic livestock feed requirements by providing nonorganic feed to the dairy animals in transition to organic production. The Smiths fed nonorganic feed beginning in March 2017 and applied for organic certification in April 2017. The USDA organic regulations require that milk or milk products intended to be sold as organic must be from animals under continuous organic management for 12 months, except that feed from land in the third year of transition to organic production may be fed to dairy animals during the 12-month period (§ 205.236(a)(2)). Further, the USDA organic regulations require that livestock consume organically produced feed (§205.237(a)).

The Smiths purchased and fed nonorganic haylage from a neighboring nonorganic farm to their dairy cows in transition to organic production. Additionally, the Smiths failed to disclose these purchases and feeding to the certifying agent. Based on information from the seller of the feed and the Smiths later admittance to purchasing and feeding nonorganic feed, the certifying

agent properly issued a Denial of Certification in accordance with §205.405(g) of USDA organic regulations, which states, “Notwithstanding paragraph (a) of this section, if a certifying agent has reason to believe that an applicant for certification has willfully made false statements or otherwise purposefully misrepresents the applicant’s operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(iii) of this section without first issuing a notification of noncompliance.”

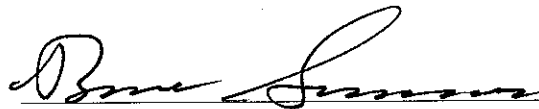
DECISION

The appeal is denied and VOF’s Denial of Certification is upheld. Daniel and Kara Smith may reapply for organic certification at any time. However, any dairy animal that consumed nonorganic feed during the transition period would need to restart the transition to organic production or remain in nonorganic production.

Attached to this formal Administrator’s Decision denying Daniel and Kara’s appeal is a Request for Hearing form. The Smiths have thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 17th

day of October, 2017.



Bruce Summers
Acting Administrator
Agricultural Marketing Service