

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)
John Zook) **Administrator's Decision**
120 Horst Road) **APL-016-17**
Myerstown, PA 17067)
)

This Decision responds to an appeal (APL-016-17) of a Notice of Proposed Suspension of National Organic Program certification issued to John Zook of Myerstown, Pennsylvania by Ohio Ecological Food and Farm Association (OEFFA). 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. OEFFA is an accredited certifying agent under the USDA organic regulations. John Zook, Myerstown, Pennsylvania, is certified under USDA organic regulations for crops and livestock.
2. On August 30, 2013, OEFFA issued a Notice of Noncompliance to Zook for insufficient recordkeeping for crop inputs, crop harvest, equipment clean-outs, buffer harvest and disposition, and the feed supplement ingredients.
3. On September 10, 2014, OEFFA issued a Notice of Proposed Suspension to Zook because the recordkeeping noncompliances found in 2013 had not been fully resolved. During the July 23, 2014 inspection, the inspector noted missing documentation for equipment clean-outs and buffer harvest and disposition (end use of product).
4. On October 24, 2014, after receiving Zook's plan for correcting the recordkeeping issues and sample record forms, Zook and OEFFA entered into mediation. OEFFA explained to Zook that mediation would be considered successful if implementation of these corrective actions were verified at the next inspection.
5. On April 30, 2015, OEFFA conducted an inspection of the Zook operation. The inspector found that the recordkeeping issues were not fully corrected. OEFFA provided additional time for Zook to correct the noncompliances.
6. On June 24, 2015, OEFFA conducted a spot check inspection. The inspector found that Zook had not fully corrected the recordkeeping noncompliances.
7. On February 22, 2016, OEFFA and Zook entered a Settlement Agreement which included terms to address the recordkeeping issues as well as other noncompliances

related to dry matter intake calculations for livestock and the use of micronutrients as a soil amendment.

8. On August 30, 2016, OEFFA conducted an inspection of the Zook operation. The inspector reported the continuation of noncompliances related to recordkeeping: incomplete equipment cleaning and purge records and hay harvest records. The inspection also found additional noncompliances related to other practices of the operation.
9. On December 20, 2016, OEFFA issued a Notification of Termination of Mediation because the terms of the 2016 Settlement Agreement were not met and recordkeeping noncompliances remained unresolved.
10. On January 24, 2017, Zook submitted an appeal of the September 10, 2014, Notice of Proposed Suspension.

DISCUSSION

OEFFA proposed a suspension of John Zook's organic certification. The effect of suspension would prohibit all sale, labeling or representation of its products as organic.

From 2013 to 2016, OEFFA repeatedly notified John Zook of missing records that were needed to verify compliance with the USDA organic regulations. During that time, OEFFA clearly described the recordkeeping issues to John Zook, what corrective actions he needed to take and provided a reasonable timeframe for when the corrective actions would be verified. These efforts included two mediations and a Settlement Agreement in 2016, between OEFFA and John Zook.

In the appeal, John Zook described how future equipment cleaning records would indicate how and when the equipment was purged prior to use on Zook's organic farm. The

record in this case shows a pattern of Zook proposing resolutions to findings of noncompliance and inspectors unable to verify that corrective actions are fully implemented, plus finding new noncompliances at each inspection. The appeal does not address the broader issue of failing to have an organized recordkeeping system in place to prevent the annual recurrence of missing records.

CONCLUSION

The operation of John Zook has shown systemic and repeated noncompliance with the USDA organic regulations regarding recordkeeping practices. The USDA organic regulations require that producers maintain clear and thorough records concerning the production, harvesting, and handling of agricultural products. Records must be adequate to demonstrate compliance with the organic standards, and must be available during inspection (§205.103).

Recordkeeping is a basic and essential requirement for organic certification. An operation's records are key to verifying compliance with the USDA organic regulations. In addition to repeated issues with recordkeeping, which are the basis for this decision, three consecutive inspections since 2013 have found other noncompliances related to livestock treatments, crop inputs, cleanliness of livestock, separate legal entities sharing certification and missing information on feed ration records.

Despite John Zook consistently responding to certifier notices, as he did by submitting a timely appeal, the evidence shows that it is unlikely that another opportunity to implement corrective actions would bring the operation into compliance. The operation shows a clear pattern of noncompliance and inability to fulfill a settlement agreement to resolve this case.

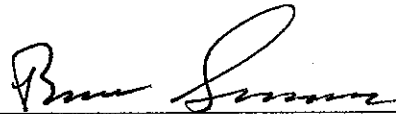
DECISION

The appeal is denied and OEFFA's Notice of Proposed Suspension is upheld. John Zook is to be suspended.

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

If John Zook waives the hearing, the Agricultural Marketing Service will direct OEFFA to issue a Notice of Suspension. After a 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 23rd
day of August, 2017.



Bruce Summers
Acting Administrator
Agricultural Marketing Service