

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
Certisys)	Administrator’s Decision
Brussels, Belgium)	APL-018-20
)	

This Decision responds to an Appeal (APL-018-20) of a Notice of Noncompliance and Proposed Suspension of Accreditation issued to Certisys by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). 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 organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. Certisys is accredited by the USDA/AMS/NOP to certify organic operations for crops, wild crops, and handling.
2. On November 2, 2016, NOP issued a Noncompliance Report detailing numerous noncompliances found during the June 13 – 17, 2016 on-site renewal audit of Certisys. After reviewing Certisys' responses, NOP subsequently issued a Corrective Action Report on February 7, 2017 accepting Certisys' corrective actions to the noncompliances.
3. On May 17, 2019, NOP issued a Noncompliance Report detailing the multiple noncompliance findings of an April 26 – May 8, 2019 on-site mid-term audit of Certisys.
4. On November 26, 2019, NOP issued a Notice of Noncompliance and Proposed Suspension of Accreditation, stating that Certisys has failed to demonstrate its ability to fully comply with and implement its USDA organic certification program pursuant to the USDA organic regulations at 7 CFR Part 205.
5. On December 24, 2019, Certisys filed an Appeal.

DISCUSSION

The NOP issued a Notice of Noncompliance and Proposed Suspension of Accreditation to Certisys, stating that Certisys has failed to demonstrate its ability to fully comply with, and implement, its USDA organic certification program pursuant to the USDA organic regulations at 7 CFR Part 205.

The organic regulations at 7 CFR §205.501, General requirements for accreditation, state that, “(a) A private or governmental entity accredited as a certifying agent under this subpart must: (1) Have sufficient expertise in organic production and handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part; (2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart; (3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§205.402 through 205.406 and §205.670...”

Specifically, NOP states in the May 17, 2019 Noncompliance Report upon which the November 26, 2019 Notice of Noncompliance and Proposed Suspension of Accreditation is based, that the April 26 – May 8, 2019 on-site, mid-term renewal audit revealed that 5 noncompliances remained outstanding from the June 13 – 17, 2016 on-site audit. NOP found that Certisys hadn’t fully implemented its NOP-accepted corrective actions for these outstanding noncompliances. Further, NOP found 9 new noncompliances at the 2019 audit, which demonstrate that Certisys’ certification personnel continue to lack the knowledge necessary to implement a USDA organic certification program that is compliant with the USDA organic regulations and policies. The noncompliances illustrate a systemic failure of Certisys’ certification system.

In its Appeal, Certisys stated that, “During (the) last NOP audit in April-May 2019 we became fully aware of the necessary measures to be taken to comply with the USDA organic regulations. Our corrective actions did not fully correct the outstanding noncompliances identified during the 2016 audit. It seems important to us to mention that we are aware of some internal shortcomings and that we agree with the content of your final report.” Certisys then

stated it has experienced exceptional circumstances in the past 2 years, including a new computer system and losing 2 very experienced staff members. Certisys individually addressed each noncompliance cited by NOP, including the 2016 outstanding noncompliances and new 2019 noncompliances, stated corrective actions taken or planned for each, and provided documentation to substantiate the corrective actions.

A review of the evidence shows that a prior on-site audit on June 13 – 17, 2016 had identified several noncompliances, to which Certisys had submitted corrective actions. These were approved by NOP in a Corrective Action Report of February 7, 2017. However, the April 26 – May 8, 2019 mid-term audit, for which NOP prepared the May 17, 2019 Noncompliance Report, revealed that several of the 2016 noncompliances were still outstanding. Specifically, NOP found that Certisys hadn't submitted the agreed-upon general and detailed maps for a grower group; didn't provide evidence of having sent inspection reports to 3 reviewed operations; hadn't issued resolution notices to 2 operations where corrective actions had been accepted by Certisys; hadn't issued notices of noncompliance to 2 operations despite inspection findings warranting their issuance; and didn't conduct field evaluations every 2 years for all inspectors.

The 2019 mid-term audit also revealed 9 new noncompliances. Organic certificates issued by Certisys were found to be missing anniversary dates and contained other errors; issues with grower group certification records prevented NOP from verifying compliance of the sampling criteria for grower group member inspections; and a review of inspection reports and related documents of Certisys from their inspections of grower group members revealed numerous noncompliances pointing to Certisys' certification personnel not being adequately trained. Additionally, 3 of 4 product labels provided by Certisys contained errors; Certisys

didn't have compliant procedures for mediation; inspection forms did not allow inspectors to record traceability and in/out balance activities and outcomes; and notices of noncompliances weren't issued to grower group members when warranted, while other members were issued unwarranted notices of noncompliance. Lastly, in 3 cases, Certisys reported negative residue test results to operations but failed to indicate that the product may be sold as organic; and in 1 case, Certisys determined that the residue level was non-compliant and investigated, but didn't immediately inform the operation that the product may not be sold as organic.

Certisys stated in its Appeal that it has now implemented corrective actions for the 2016 noncompliances and has implemented or will implement corrective actions for the 2019 noncompliances. Certisys detailed the action taken for each noncompliance; stated that it has modified numerous documents; and planned to hold annual NOP training on January 23, 2020. Certisys submitted with its Appeal and subsequently, an extremely voluminous amount of documentation, including a February 12, 2020 Annual Update Report to the USDA; an Internal Audit Report following up on the 2016 noncompliances; and a list of certified operations with the current status for each; a new table of organization; and February 2020 Annual Performance Evaluations for all NOP-involved staff. Certisys submitted documentation purporting to substantiate the corrective action taken for each noncompliance, i.e. signed inspection reports and letters to operations sent with the inspection reports. Certisys submitted a revised Application Review Report; Inspection Plan for Operations; Instructions for NOP Inspectors; NOP Certificate template; and Evaluation for Internal Control Systems, to name a few. Subsequent to the January 23, 2020 training planned for staff, Certisys submitted documentation from the training including the attendee list with signatures of attendees, and numerous presentations shown at the training.

However, while Certisys submitted an extensive Appeal and documentation addressing each cited noncompliance and corrective action taken or planned, these actions were taken after receiving the Notice of Noncompliance and Proposed Suspension of Accreditation. Although Certisys has submitted materials regarding the noncompliances, NOP was justified in issuing the adverse action, as NOP's 2019 mid-term audit found that Certisys had violated numerous organic regulations. Specifically, the cited noncompliances constituted violations of the organic regulations at 7 CFR §205.202, Land requirements; 7 CFR §205.300, Use of the term "organic;" 7 CFR §205.303, Packaged products labeled "100 percent organic" or "organic;" 7 CFR §205.402, Review of application; 7 CFR §205.403, On-site inspections; 7 CFR §205.406, Continuation of certification; 7 CFR §205.501, General requirements for accreditation; 7 CFR §205.504, Evidence of expertise and ability; and 7 CFR §205.662, Noncompliance procedure for certified operations.

The violation of all these regulations in total constitutes a violation of the regulations at 7 CFR §205.501(a) which state that, "A private or governmental entity accredited as a certifying agent under this subpart must: (1) Have sufficient expertise in organic production and handling techniques to fully comply with and implement the terms and conditions of the organic certification program established under the Act and the regulations in this part; (2) Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart; (3) Carry out the provisions of the Act and the regulations in this part, including the provisions of §§205.402 through 205.406 and §205.670..." This constitutes a systemic failure by Certisys.

Further, Certisys acknowledged in its Appeal that its prior corrective actions hadn't fully corrected the 2016 outstanding noncompliances and it is aware of its 'internal shortcomings. Certisys stated it agrees with the NOP May 17, 2019 Noncompliance Report upon which the

November 26, 2019 Notice of Noncompliance and Proposed Suspension of Accreditation is based. Additionally, the documentation submitted by Certisys with its Appeal and thereafter would need to be reviewed by NOP's Accreditation Division to definitively determine if all cited noncompliances have been corrected.

CONCLUSION

The evidence substantiates that Certisys has violated the organic regulations at 7 CFR §205.501, General requirements for accreditation, by failing to demonstrate its ability to fully comply with, and implement, its USDA organic certification program pursuant to the USDA organic regulations at 7 CFR Part 205. Certisys' noncompliances touch on various areas of a certifier's duties; and therefore, Certisys can't remain accredited at this time.

DECISION

Certisys' Appeal is denied and the NOP-issued Notice of Noncompliance and Proposed Suspension of Accreditation is affirmed. Certisys' accreditation as a USDA certifying agent is suspended. However, pursuant to 7 CFR §205.665(g)(1), Certisys may apply for reinstatement of its accreditation at any time. The documentation submitted by Certisys with its Appeal will be transmitted to NOP's Accreditation Division to be placed in Certisys' file.

Attached to this formal Administrator's Decision is a Request for Hearing form. Certisys has thirty days to request an administrative hearing before an Administrative Law Judge. If Certisys does not request a hearing in that period, this Decision will be implemented, and the suspension of Certisys' accreditation will become final.

Done at Washington, D.C., on this _____
day of _____, 2020.

**BRUCE
SUMMERS**

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SUMMERS
Date: 2020.05.14 13:34:48 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service