

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
)	
Community Food Basket)	
Happyville Farm)	Administrator’s Decision
)	APL-035-23
Idaho Falls, Idaho)	
)	

This Decision responds to an Appeal (APL-035-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Community Food Basket Happyville Farm (Happyville) of Idaho Falls, Idaho by USDA-accredited certifying agent Idaho State Department of Agriculture (ISDA). 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On June 10, 2020, ISDA certified Happyville for crops.
2. On October 25, 2021, ISDA issued a Notice of Noncompliance to Happyville.
3. On February 14, 2023, ISDA issued a Notice of Proposed Suspension to Happyville.
4. On March 16, 2023, Happyville filed an Appeal.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” (b) Such records must: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.”

The regulations at 7 C.F.R. §205.204, Seeds and planting stock practice standard, state that, “(a) The producer must use organically grown seeds, annual seedlings, and planting stock ...” and the producer must conduct a seed search for organic seed prior to using other than organically grown seeds, annual seedlings, and planting stock.

The regulations at 7 C.F.R. §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part

must: (a) Comply with the Act and applicable organic production and handling regulations of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200; ... (e) Submit the applicable fees charged by the certifying agent ...” Additionally, the regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan ... (3) An update on the correction of minor noncompliances previously identified by the certifying agent as requiring correction for continued certification; and (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

DISCUSSION

Evidence substantiates that Happyville was certified organic for crops on June 10, 2020, by ISDA. However, subsequent to an inspection on July 8, 2021, ISDA issued a Notice of Noncompliance to Happyville on October 25, 2021, identifying numerous noncompliances. ISDA’s inspector was unable to conduct successful trace back and mass balance exercises; and Happyville was missing detailed field maps, updated organic certificates for seed suppliers, verification of the treatment status of asparagus crowns and strawberry starts, information on inputs, and an affidavit from the city of Idaho Falls stating that bark mulch hadn’t been treated with a prohibited substance. ISDA stated that Happyville provided a response to noncompliance notice on November 24, 2021, specifically a plan for maintaining the required records and as well as numerous documents.

However, ISDA conducted the 2022 annual inspection on September 9, 2022, and again found numerous noncompliances, including the inability to conduct a successful mass balance exercise; missing certificates of suppliers; and the failure to provide an affidavit regarding the bark mulch treatment. ISDA deemed that Happyville had failed to resolve the October 25, 2021 Notice of Noncompliance, as many of the same noncompliances were still found, and therefore, issued a Notice of Proposed Suspension on February 14, 2023. Happyville filed an Appeal on March 16, 2023, stating that it is a small, non-profit, urban farm, with no electricity and only one laptop, and therefore, no electronic records are maintained, rather only paper records are kept. Happyville stated that ISDA visited their operation on three occasions in 2022 – May 13, 2022 for an unannounced inspection, September 9, 2022 for the annual inspection, and September 30, 2022 to obtain some documentation not available at the inspection. Happyville also stated that ISDA’s online portal wasn’t conducive to their laptop operating system and the forms used by ISDA don’t ‘fit’ their situation. Happyville argued there hasn’t been any violation of the organic integrity of their crops.

As Happyville’s noncompliances are related to recordkeeping, NOP offered Happyville a Settlement Agreement with terms requiring the submission and maintenance of missing and deficient records. The offer was sent to Happyville on July 20, 2023. After not receiving any response or acknowledgment by Happyville, NOP sent email reminders on July 31, 2023; August 3, 2023; and August 11, 2023; and also left voice messages on Happyville’s telephone line on August 21, 2023 and August 22, 2023. On August 23, 2023, NOP inquired whether ISDA had received any communication from Happyville, and ISDA forwarded an email of August 7, 2023 from Happyville, asking for clarification on a few points in the offered Settlement Agreement. On August 23, 2023, NOP replied to Happyville’s questions and asked

for Happyville to return the signed agreement if Happyville wished to accept it. NOP hasn't received any response by Happyville. NOP also confirmed with ISDA on August 30, 2023, that they haven't been contacted by Happyville. Additionally, it is noted that on June 8, 2023, ISDA issued a Notice of Noncompliance to Happyville for its failure to submit its certification renewal materials by the deadline.

CONCLUSION

The evidence substantiates that Happyville violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.204, Seeds and planting stock practice standard; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. Certifier ISDA previously issued a noncompliance notice to Happyville after an inspection found numerous recordkeeping noncompliances and the failure to maintain specified seed documentation. However, despite Happyville's proposed corrective actions, submitted after the prior noncompliance notice, another inspection by ISDA found the same noncompliances still exist. This resulted in issuance of the appealed February 14, 2023 proposed suspension notice. NOP attempted to resolve the proposed suspension by offering Happyville a Settlement Agreement requiring specific records be submitted and maintained by Happyville; however, the offered agreement wasn't accepted despite several reminders to Happyville. Therefore, the noncompliances remain unresolved; and Happyville can't remain certified.

DECISION

Happyville's March 16, 2023 Appeal of the February 14, 2023 Notice of Proposed Suspended is denied. The certification of Happyville is suspended. Pursuant to the organic

regulations at 7 C.F.R. §205.665(g)(1), Happyville may apply for reinstatement of its certification upon submission of all required documentation substantiating its compliance with the organic regulations.

Additionally, attached to this formal Administrator's Decision denying Happyville's Appeal is a Request for Hearing form. Should Happyville wish to appeal this matter further, Happyville has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 19th
day of September, 2023.

BRUCE SUMMERS

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SUMMERS
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Bruce Summers
Administrator
Agricultural Marketing Service