

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
)
Raul Narvaez Reyes)
) **Administrator's Decision**
) **APL-068-22**
)
Palmilla, Chile)
)

This Decision responds to an Appeal (APL-068-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Raul Narvaez Reyes (Reyes) of Palmilla, Chile by USDA-accredited certifying agent Certification of Environmental Standards GmbH (CERES). 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 December 22, 2017, CERES certified Reyes for crops.
2. On May 9, 2022, CERES issued a Notice of Noncompliance to Reyes.
3. On May 24, 2022, CERES issued a Notice of Proposed Suspension to Reyes.
4. On June 27, 2022, CERES accepted Reyes' request for mediation.
5. On June 30, 2022, Reyes and CERES entered into a Settlement Agreement to resolve the proposed suspension.
6. On July 7, 2022, CERES issued a Notice of Mediation Failure after Reyes didn't comply with the terms of the prior Settlement Agreement.
7. On August 7, 2022, Reyes filed an Appeal.

DISCUSSION

The USDA organic 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; (c) Permit on-site inspections with complete access to the production or handling operation ... (e) Submit the applicable fees charged by the certifying agent ...”

The regulations at §205.403, On-site inspections, state that an annual on-site inspection must be conducted annually of each certified operation, and that an authorized representative of

the operation who is knowledgeable about the operation must be present at the inspection. The regulations at §205.406, Continuation of certification, state that to continue certification, a certified operation must annually pay the certification fees and submit an updated Organic System Plan (OSP).

Evidence substantiates that Reyes was certified organic for crops on December 22, 2017, by CERES. However, after failing to pay its inspection and related certification fees; allow the scheduling and conducting of the required annual inspection; and submit an updated OSP, CERES issued a Notice of Noncompliance, and subsequent Notice of Proposed Suspension on May 24, 2022. CERES attempted to resolve the noncompliances by accepting Reyes' mediation request and entering into a Settlement Agreement with Reyes on June 30, 2022. Per the agreement, Reyes would pay the overdue fees, schedule and participate in an inspection by CERES, and submit an updated OSP. However, Reyes failed to comply with the terms of the settlement with CERES. Therefore, CERES issued a Notice of Mediation Failure on July 7, 2022, to which Reyes filed an Appeal on August 7, 2022.

Reyes stated in the Appeal that he wanted "to be able to take corrective actions for the certification process ... and bring the process started to a successful conclusion ... My interest is to correct everything that has happened so far." Reyes stated in a subsequent letter to NOP on September 8, 2022 that he wants to "close the non-conformities with CERES," and is in the process of selling the certified property and discontinuing the business as a grape producer. Reyes stated he hoped to close the non-compliances by September 28, 2022. Therefore, NOP contacted CERES to learn the amount of the overdue certification-related fees, with the goal of resolving the case. CERES provided the invoices which are overdue, showing that Reyes owes CERES 1,956,430 Chilean Pesos.

NOP emailed Reyes on September 20, 2022, to clarify his intentions. Reyes replied on September 21, 2022, that he initially wanted to continue certification; however, the COVID pandemic affected his business, and therefore, he is closing the business and selling the property. Reyes stated he has a 'pending balance' with CERES which he would pay in a 'few days more.' NOP responded to Reyes, stating that a Settlement Agreement could be offered to Reyes providing that he pay the overdue fees and surrender certification. Reyes replied on September 26, 2022 that he agreed with NOP's proposed resolution.

On October 4, 2022, NOP sent Reyes the offered Settlement Agreement with the terms agreed to in correspondence with Reyes. However, despite Reyes' prior statements, he hasn't returned the signed Settlement Agreement nor paid the certification fees owed to CERES. NOP sent reminders to Reyes on October 14, 2022; October 25, 2022; and November 2, 2022. Reyes replied on November 25, 2022, stating that he didn't, at the moment, have the monies to pay CERES. NOP emailed Reyes on January 5, 2023, asking if he was able to pay the overdue fees to CERES. After Reyes failed to respond, NOP emailed him on February 2, 2023, with a last chance offer to pay the overdue fees and a Settlement Agreement with a revised deadline of February 15, 2023.

As of February 15, 2023, the Settlement Agreement hasn't been returned to NOP; Reyes has not surrendered certification; and CERES confirmed that Reyes hasn't yet paid the fees. While still certified, Reyes also hasn't arranged for an inspection by CERES, or submitted required documentation stating that he is closing his business.

CONCLUSION

The evidence substantiates that Reyes violated the organic regulations at 7 C.F.R. §205.400, General requirements for certification; 7 C.F.R. §205.403, On-site inspections; 7

C.F.R. §205.406, Continuation of certification, by failing to pay owed certification-related fees; schedule and cooperate in an annual inspection; and submit an updated OSP. A certified operation remains certified, and is required to comply with the organic regulations, unless and until the operation's certification is suspended, revoked, or surrendered. However, despite expressing a desire to enter into a Settlement Agreement with NOP to resolve the proposed suspension, with Reyes agreeing to the proposed terms, and numerous reminders from NOP, Reyes has failed to sign the offered Settlement Agreement, pay the owed fees, or surrender certification. Therefore, Reyes may not remain certified.

DECISION

Reyes' August 7, 2022 Appeal of the May 24, 2022 Notice of Proposed Suspended is denied. The certification of Reyes is suspended. Pursuant to the organic regulations at 7 C.F.R. §205.665(g)(1), Reyes may apply for reinstatement of its certification once it has paid the owed certification fees to CERES and submitted all required documentation substantiating its compliance with the organic regulations.

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

Done at Washington, D.C., on this 21st
day of February, 2023.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service