

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
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Haddinger Farms) **Administrator's Decision**
Evansville, Wisconsin) **APL-051-20**
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)

This Decision responds to an Appeal (APL-051-20) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Haddinger Farms (Haddinger) by Midwest Organic Services Association (MOSA), a USDA accredited certifying agent. 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 8, 2015, Haddinger was certified organic for crops by MOSA.
2. On December 11, 2019, MOSA issued a Notice of Noncompliance.
3. On January 24, 2020, MOSA issued a Notice of Proposed Suspension.
4. On April 9, 2020, MOSA issued a Mediation Failure Notice.
5. On May 1, 2020, Haddinger filed an Appeal.
6. On June 5, 2020, NOP and Haddinger entered into a Settlement Agreement.
7. On August 11, 2020, MOSA informed NOP that Haddinger had failed to abide by the terms of the Settlement Agreement.
8. On August 20, 2020, NOP issued Haddinger a Notice of Noncompliance and Request for Corrective Action.

DISCUSSION

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:...(2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5

years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part...”

The organic regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent...An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §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 in this part; ... (e) Submit the applicable fees charged by the certifying agent...” Additionally, the organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees...”

MOSA issued a Notice of Proposed Suspension citing to Haddinger's failure to comply with recordkeeping obligations and submit required complete records and updates in a timely manner.

Haddinger stated in its Appeal that it "will work much more diligently to keep our records and correspondence timely."

A review of the evidence substantiates that on November 6, 2019, MOSA issued a Final Review Pre-Decision Requirements letter to Haddinger stating that, although its Organic System Plan (OSP) was received and reviewed, additional information was needed. Specifically, MOSA stated that Haddinger needed to, among other things, submit a separate Greenhouse OSP to verify greenhouse production; provide information on seed and planting stock; complete the crop rotation table; and submit various records which were missing from its submission. MOSA gave Haddinger until November 27, 2019 to submit the required documentation/information. On December 11, 2019, after Haddinger failed to meet the stated deadline, MOSA issued a Notice of Noncompliance extending the deadline to January 2, 2020 to submit the documentation/information.

Haddinger and MOSA engaged in phone conversations and emails regarding the required documentation; however, Haddinger didn't provide an adequate response by the deadline. Therefore, MOSA issued a Notice of Proposed Suspension on January 24, 2020. After Haddinger requested mediation, but didn't provide the requested material, MOSA issued a Mediation Failure letter on April 9, 2020 which also reaffirmed the Notice of Proposed Suspension. On April 22, 2020, MOSA acknowledged receipt of some documentation, but mediation had already failed. Haddinger then filed an Appeal on May 1, 2020.

During the pendency of that Appeal, both Haddinger and MOSA expressed their willingness to work together. MOSA also informed NOP that Haddinger resolved other noncompliances regarding the nonpayment of certification fees, though MOSA still stated it planned on issuing a Notice of Noncompliance for failing to submit the annual update paperwork and subsequent fees. However, MOSA stated it is “open to proceeding to work with him.” Haddinger stated it spoke to MOSA and their “lines of communication are working well. We also discussed ways to move forward to avoid a future situation such as this.”

Therefore, as the parties were willing to work together and the noncompliances were correctable, NOP entered into a Settlement Agreement with Haddinger on June 5, 2020. Pursuant to the agreement, Haddinger agreed to provide all documentation required for its current annual renewal, as well as all currently owed fees within 60 days of execution of the Settlement Agreement, and thereafter respond to all MOSA requests for documentation and pay all certification-related fees by the MOSA-set deadline. Haddinger agreed to provide as required in the November 6, 2019 Final Review Pre-Decision Requirements letter, any cited documentation not previously submitted, and to maintain and update all required records for its organic operation and have those records available at inspections. Haddinger further agreed to have verifiable documentation, such as a soil or plant tissue test showing micronutrient levels, available at inspections if it wishes to continue applying synthetic micronutrients to its organic land and to update this documentation every 3 years. Lastly, Haddinger agreed to undergo an unannounced inspection by its certifier within 1 year of the Settlement Agreement execution, and at Haddinger’s expense. The Settlement Agreement stated that MOSA would oversee compliance with the terms of the Settlement Agreement and report any breach of the agreement to NOP for appropriate action up to suspension of Haddinger’s certification. Further, a closure

letter sent to Haddinger on June 5, 2020, with the fully executed Settlement Agreement stated that failure to abide by the terms of the agreement would automatically void the agreement, and USDA/AMS would pursue administrative action against Haddinger.

However, on August 11, 2020, MOSA informed NOP that Haddinger had breached the terms of the Settlement Agreement. Specifically, MOSA stated that Haddinger had failed to provide to MOSA all required documentation for the current annual review, due within 60 days of execution of the Settlement Agreement, namely August 4, 2020, despite courtesy reminders by MOSA. MOSA confirmed on August 19, 2020, that Haddinger had still not submitted the required 2020 annual renewal documentation. Therefore, on August 20, 2020, NOP issued Haddinger a Notice of Noncompliance and Request for Corrective Action, requesting that Haddinger submit the outstanding annual renewal documentation to MOSA by September 19, 2020.

On September 22, 2020, NOP followed up with MOSA as to whether Haddinger had submitted the required documentation. MOSA stated that although it had received the annual update to the OSP, a review of the document found some areas incomplete and/or needing clarification. Further, some important addenda to the OSP were not submitted, i.e. the Crop Summary/Current Year Field Plan and a seed table form. On September 23, 2020, MOSA conducted the unannounced inspection pursuant to the Settlement Agreement and focused on recordkeeping. The resulting Producer Additional Inspection Report states that MOSA reviewed the field activity records which Haddinger had on his cell phone and which he texts to himself for later recording on paper. Seed documentation was available; however, an equipment cleanout sheet was not readily available for review. The inspector stated that it appears Haddinger has “many of the required field activity records. However, because they are in a

variety of places, including on his phone in text messages and emails, they are not easy to find or easily auditable for an outside, such as an inspector.”

Haddinger told the inspector that he would work on transferring his records onto paper prior to the annual inspection; and has not yet found a good replacement for a prior software system which he discontinued. The unannounced inspection didn't address the outstanding documentation for the annual OSP update. However, on October 16, 2020, MOSA stated that while it had received some additional updates to the OSP, it still hadn't received the supporting documentation/information that should have accompanied the annual update information. Subsequently, on October 24, 2020, MOSA conducted the annual inspection and the Farm Inspection Report. Although the inspector noted progress made by Haddinger in organizing recordkeeping and the submission of some records, the 2020 harvest and field activity information was not available and therefore, a complete seed-to-sale couldn't be conducted. Importantly, on November 6, 2020, MOSA informed NOP that Haddinger was delinquent in paying its 3rd quarter certification fees. MOSA submitted the September 1, 2020 3rd quarter fee invoice, as well as the first late notice sent September 7, 2020, and a final notice sent September 18, 2020. The overdue amount is \$231 and MOSA stated it would issue a Notice of Noncompliance for the nonpayment of certification fees.

In conclusion, Haddinger is in breach of the June 5, 2020 Settlement Agreement between Haddinger and NOP, which it freely signed. A closure letter had also been sent to Haddinger on June 5, 2020, after the Settlement Agreement was fully executed, reiterating that failure to abide by the terms of the agreement would automatically void the agreement, and USDA/AMS would pursue administrative action against Haddinger. Despite the considerations given Haddinger, it failed to abide by the Settlement Agreement and provide all required documentation for its

current annual renewal by the agreed-upon deadline. Haddinger has made progress on its recordkeeping, but has still failed to maintain and update all required records for its organic operation. Additionally, Haddinger has failed to timely pay all certification-related fees.

Clause 3D of the June 5, 2020 Settlement Agreement states that, “Haddinger withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above.” Paragraph 2 states, “USDA, AMS agrees not to issue a formal Administrator’s Decision charging Haddinger with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement.” The Settlement Agreement was entered into in resolution of a January 24, 2020 Notice of Proposed Suspension issued to Haddinger by its certifier, MOSA. As Haddinger breached the terms of the Settlement Agreement, paragraph 2 of the agreement is voided. The January 24, 2020 Notice of Proposed Suspension is ‘revived,’ and this Administrator’s Decision is hereby issued.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, evidence substantiates that Haddinger has been unable to comply with the organic regulations and submit the required documentation for its annual renewal and required updates to its OSP, thereby violating the regulations at 7 C.F.R. §205.103; 7 C.F.R. §205.201; and 7 C.F.R. §205.400. These violations occurred despite prior adverse actions by MOSA and a Settlement Agreement with NOP which Haddinger breached; as well as a subsequent Notice of

Noncompliance and Request for Corrective Action issued by NOP. Haddinger has also violated the regulations at 7 C.F.R. §205.400 and 7 C.F.R. §205.406 when it failed to pay its 3rd quarter certification fees. Therefore, Haddinger can't remain certified at this time.

DECISION

Haddinger's May 1, 2020 Appeal is denied, and MOSA's January 24, 2020 Notice of Proposed Suspension is affirmed. Haddinger's crop certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Haddinger may apply for reinstatement at any time. However, the request for reinstatement must be accompanied by evidence demonstrating that Haddinger has come into compliance with all organic regulations and Haddinger must pay any certification-related fees that are outstanding and/or due at that time. While under suspension, Haddinger may not sell, label, or represent any products as organic. Additionally, attached to this formal Administrator's Decision denying Haddinger's Appeal is a Request for Hearing form. Haddinger has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 9th
day of December, 2020.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service