

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
)  
)  
Vegetales Organicos ) **Administrator’s Decision**  
Schiagom S.A. de CV )  
) **APL-050-22**  
Penjamo, Guanajuato, Mexico )  
)

This Decision responds to an Appeal (APL-050-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Vegetales Organicos Schiagom S.A. de CV (Vegetales) of Penjamo, Guanajuato, Mexico by Oregon Tilth Certified Organic (OTCO), a USDA accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**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

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

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.

### **FINDINGS OF FACT**

1. On September 16, 2008, Vegetales was certified organic for crops by OTCO.
2. On July 15, 2021, OTCO issued a Notice of Noncompliance to Vegetales.
3. On September 22, 2021, OTCO issued a Notice of Proposed Suspension to Vegetales.
4. On March 5, 2022, OTCO and Vegetales entered into a Settlement Agreement, after OTCO accepted Vegetales' mediation request.
5. On April 7, 2022, OTCO issued a Notice of Unsuccessful Mediation after Vegetales failed to comply with the prior settlement terms. The notice revived the prior Notice of Proposed Suspension.
6. On May 2, 2022, Vegetales filed an Appeal.
7. On May 16, 2022, USDA/AMS entered into a Settlement Agreement with Vegetales.
8. On December 15, 2022, OTCO reported to NOP that Vegetales had breached the May 16, 2022 NOP Settlement Agreement.
9. On December 29, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to Vegetales.
10. As of February 8, 2023, Vegetales had not completed the required corrective action, leading to this Decision.

## 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 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...”

Certifier OTCO issued a Notice of Noncompliance on July 15, 2021, followed by a Notice of Proposed Suspension on September 22, 2021, stating that Vegetales had failed to pay its certification-related fees by the deadline. OTCO accepted Vegetales’ mediation request, and on March 5, 2022, OTCO and Vegetales entered into a Settlement Agreement whereby Vegetales agreed to pay to OTCO, within ten days of the effective date of their Settlement Agreement, the two overdue Invoices (numbers 1785 and 1807) from OTCO for certification-related fees. However, after Vegetales failed to make the agreed upon payment within 10 days, OTCO issued a Notice of Unsuccessful Mediation on April 7, 2022, reviving the September 22, 2021 Notice of Proposed Suspension.

Vegetales filed an Appeal with NOP on May 2, 2022. OTCO confirmed that Vegetales had subsequently paid the overdue invoices that were the subject of the prior Vegetales-OTCO Settlement Agreement. Therefore, NOP offered Vegetales a Settlement Agreement, which was accepted and executed on May 16, 2022. Pursuant to the NOP agreement, Vegetales agreed to pay all (future) certification-related fees to its certifier by the deadline set by the certifier.

However, on December 15, 2022, OTCO reported a breach of the NOP Settlement Agreement to NOP. Specifically, Vegetales had failed to pay Invoice 2013 (MX 71,200.80) and Invoice 2128 (MX 40,874.31) by the deadlines set by OTCO, which were June 4, 2022 and October 15, 2022, respectively. Therefore, on December 29, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action giving Vegetales twenty days, until January 18, 2023, to pay the delinquent certification-related fees.

OTCO stated to NOP on February 1, 2023, that Vegetales had not made any payment since September 1, 2022, despite the two invoices being reissued. However, it is noted that while Invoice 2128 was reissued with the original amount being unpaid, Invoice 2013 was reissued as Invoice 1975, and shows that a partial payment had been paid. Nevertheless, the invoices were to have been paid in full by the set deadline, which Vegetales failed to do. NOP sent an email to Vegetales on February 1, 2023, providing a last chance for Vegetales to make full payment of the invoices by February 6, 2023. OTCO subsequently confirmed that as of February 8, 2023, Vegetales hasn't made the required payments.

Vegetales agreed, per Term 4B of the May 16, 2022 NOP Settlement Agreement to pay all certification-related fees to its certifier by the deadline set by the certifier unless an extension was granted. No extension was requested or granted in this case. Further, the Settlement Agreement in Term 4D states that, "Vegetales agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing an administrative hearing process against Vegetales." Clause 3D of the Settlement Agreement states that, "Vegetales 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 Vegetales

with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement.” A closure letter sent to Vegetales on May 16, 2022 with the executed NOP agreement also stated that, “... failure to abide by the terms of the agreement shall automatically void the settlement agreement and USDA, AMS may pursue an administrative hearing process.”

### **CONCLUSION**

Evidence substantiates that Vegetales has violated the organic regulations at 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by failing to pay the applicable certification-related fees. Payment of fees is important, because it allow certifiers to continue providing the organic certification services that protect the market and ensures fairness within the organic market. Vegetales failure to pay occurred despite the September 22, 2021 Notice of Proposed Suspension; the March 5, 2022 Settlement Agreement with OTCO; the May 16, 2022 Settlement Agreement with NOP which Vegetales has breached; the re-issued invoices; the Notice of Noncompliance and Request for Corrective Action issued by NOP; and the reminder email by NOP. Therefore, the initial September 22, 2021 Notice of Proposed Suspension is revived. Vegetales can’t remain certified at this time.

### **DECISION**

Vegetales’ May 2, 2022 Appeal of the September 22, 2021 Notice of Proposed Suspension is denied, and Vegetales’ certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Vegetales may apply for reinstatement at any time after it has made full payment of all delinquent certification-related fees to OTCO. The request for

reinstatement must be accompanied by evidence demonstrating that said full payment has been made, and that Vegetales is also in compliance with all other organic regulations. While under suspension, Vegetales may not sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 13<sup>th</sup>  
day of February \_\_\_\_\_, 2023.

**BRUCE SUMMERS** Digitally signed by BRUCE  
SUMMERS  
Date: 2023.02.13 21:04:16 -05'00'  
Bruce Summers  
Administrator  
Agricultural Marketing Service