

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
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Herba Fructus Natyrore SH.P.K.) **Administrator’s Decision**
) **APL-019-22**
Elbasan, Albania)
)
)

This Decision responds to an Appeal (APL-019-22) of a Notice of Noncompliance and Proposed Revocation under the National Organic Program (NOP) issued to Herba Fructus Natyrore SH.P.K. (HFN) of Elbasan, Albania by EcoCert S.A. (EcoCert), 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 July 15, 2019, HFN was certified organic for crops and handling by EcoCert.
2. On October 29, 2021, EcoCert issued a Notice of Noncompliance and Proposed Revocation to HFN.
3. On December 23, 2021, EcoCert denied HFN's November 21, 2021 request for mediation.
4. On January 26, 2022, HFN filed an Appeal.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, 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; ... (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 the producer or handler of a certified operation must develop an organic production or handling system plan that describes the practices and procedures of the operation, the recordkeeping system implemented by the operation, and 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;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation ...”

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 and submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan which includes: (i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to, or other amendments made to the previous year’s organic system plan during the previous year; and (ii) Any additions or deletions to the previous year’s organic system plan, intended to be undertaken in the coming year, detailed pursuant to §205.200; (2) Any additions to or deletions from the information required pursuant to §205.401(b); ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

HFN was certified organic for crops and handling on July 15, 2019, specifically herbal and medicinal plants. In mid-December 2020, HFN shipped *Cistus Incanus* Organic from Batch HB-80-112, to its customer (b) (4) as seen on HFN’s Packing List and the December 17, 2020 Certificate of Inspection. (b) (4) Packing List-Invoice of February 8, 2021 shows that (b) (4) subsequently sent the HFN product to its client (b) (4) (b) (4) sampled and tested the product and the GBA laboratory report of February 26, 2021, revealed a finding of Glyphosate at 0.49 mg/kg in the BIO (organic) *Cistus Teekraut* (German for tea herb). (b) (4) notified (b) (4) of the finding, and (b) (4)

sent an additional retained sample for testing. The Eurofins laboratory report of March 12, 2021 conducted for (b) (4) directly, revealed a finding of Glyphosate at 0.19 mg/kg in the BIO Cistusblatter (German for Cistus leaves).

(b) (4) reported the findings to the Austrian organic control authorities on March 18, 2021, as seen on the Austria Bio Garantie GmbH report, which identifies the Bio Cistusblatter as INT20102209, HFN as the handler, (b) (4) as the importer, and (b) (4) as a handler.

(b) (4) Packing List-Invoice of February 8, 2021 to (b) (4) shows the product identified as INT20102209, originating in Albania. Subsequently, Germany's Federal Office for Agriculture and Food issued alert INEU-173/2021 on March 19, 2021, for the Cistus leaves with identification INT20102209 traced to HFN.

EcoCert investigated Germany's alert. HFN had previously submitted, to EcoCert, a Primoris laboratory report 20/007748 - dated November 3, 2020, for sampled Herba Cistus Incanus from Batch HB-80-112, which didn't show any pesticide residue. However, on November 26, 2020, EcoCert wrote HFN stating that the analysis for which the November 3, 2020 Primoris lab report was issued, wasn't complete, as testing hadn't been done for all required 'molecules.' EcoCert informed HFN of the additional prohibited substances for which analysis of the sample was needed, including Glyphosate; and that it couldn't issue the Certificate of Inspection (COI) until the required testing had been done. On November 30, 2020, EcoCert reiterated the need for additional analysis of the sample; and that it couldn't issue the COI until it was proven that the Organic Herba Cistus Incanus wasn't contaminated. EcoCert stated to NOP that it has received multiple European Commission OFIS (Organic Farming Information System) alerts regarding HFN in the past 2 years, and therefore, has been requesting sampling and analysis of each of HFN's products and lots prior to issuing COIs.

On December 11, 2020, HFN submitted to EcoCert a December 10, 2020 Primoris lab report 20/008901 - showing that no residues had been detected on the retested Batch HB-80-112. Based on receipt of this second Primoris lab report, EcoCert issued the COI on December 17, 2020. However, after receiving the German Federal Office alert, EcoCert contacted Primoris to verify the previously submitted laboratory reports. Primoris informed EcoCert in a September 3, 2021 email that the laboratory reports nos. 20/007748 and 20/008901 regarding Batch HB-80-112 were not valid and hadn't been issued by Primoris.

EcoCert then attempted to verify other laboratory reports allegedly from Primoris which HFN had submitted, and based on which EcoCert had issued other COIs. EcoCert sent Primoris a chart of the 17 COIs it had issued to HFN from December 17, 2020 to July 14, 2021, identifying the HFN Lots and the Primoris laboratory reports submitted by HFN for each. This chart is seen in a July 1, 2022 email to NOP. However, Primoris stated in a September 28, 2021 email to EcoCert that all the analysis reports identified in the chart as being issued by Primoris, and submitted to EcoCert by HFN as support for the 17 COIs, are "not authentic." In an email of October 1, 2021 to EcoCert, Primoris identified additional specific laboratory reports that it found were forgeries. EcoCert submitted a chart showing all the lab reports that had been forged.

When EcoCert contacted HFN, it admitted falsifying the Primoris analytical results and stated that it had done so due to time constraints and the need to obtain the COI. HFN had stated in an email to EcoCert on November 27, 2020, while waiting for the COI for the shipment including Batch HB-80-112 of Herba Cistus Incanus, that its "situation is very critical in relation to our customers ... several contracts has (sic) been canceled by our customer (sic) ... because of the long delay caused by Covid-19 pandemic." HFN again referenced the urgency of receiving

the COI after it was told by EcoCert that the products needed further analysis, stating that, “we have to lose again time, and almost all our customers needs (sic) the goods before 10 December...In this way we risk to lose all the contracts because we need almost 7-10 days for the report analysis, and after that we need to wait for several days for your final approval.” HFN subsequently submitted the forged December 10, 2020 Primoris lab report, which led to EcoCert issuing the December 17, 2020 COI.

EcoCert states that all the laboratory reports submitted by HFN since October 20, 2020, representing 57 lab tests, were forgeries. Given that 17 COIs were issued based on the forged documents, EcoCert issued a Notice of Noncompliance and Proposed Revocation to HFN on October 29, 2021. EcoCert stated that the noncompliances are willful violations of the USDA organic regulations, and therefore, it proposed a revocation of HFN’s crop and handling scopes of certification. It is noted that although EcoCert didn’t issue a Notice of Noncompliance prior to issuance of the combined notice, the organic regulations at 7 C.F.R. §205.662(c) state that when correction of a noncompliance isn’t possible, “the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification.” Further, the regulations at 7 C.F.R. §205.662(d) state that if the certifying agent “has reason to believe that a certified operation has willfully violated the Act or regulations in this part, the certifying agent ... shall send the certified operation a notification of proposed suspension or revocation of the entire operation or a portion of the operation, as applicable to the noncompliance.” HFN’s repeated forgery of laboratory analysis and submission of those forged documents to obtain COIs represents a major noncompliance and a willful violation of the organic regulations. As such, AMS agrees that EcoCert was justified in issuing the combined notice. EcoCert also subsequently rejected HFN’s mediation request on December 23, 2021,

stating that HFN didn't provide any new relevant information to address the noncompliances. EcoCert also noted that in the mediation request, HFN stated it had changed its sampling and testing procedures without EcoCert's approval, and again admitted forging the laboratory reports.

HFN stated in its Appeal of January 26, 2022, and additional letter of February 21, 2022 that Batch HB-80-112 of Herba Cistus Incanus met all requirements at the time it was shipped to its client (b) (4), and that it even conducted additional analysis per a November 26, 2020 request by EcoCert, discussed above. HFN contends that something happened to the product after it was shipped to (b) (4); and there is no definitive proof that HFN used prohibited substances on the Cistus Incanus Herba Organic crop or in its handling. HFN alleges that (b) (4) changed/manipulated the product, as it/HFN had shipped the 5,000 kg to (b) (4) in 100 bags of 50 kg each, as seen on HFN's Packing List of December 16, 2020, and the COI. However, (b) (4) returned the rejected product in 625 letter size packets of 8 kg each, under identification INT20102209, as seen on (b) (4) November 26, 2021 Packing List. Further, a (b) (4) Packing List-Invoice of February 8, 2021 to its client (b) (4) references INT20102209 with 5,000 kg in 8 kg sacks, documenting that (b) (4) repackaged the product shortly after its receipt from HFN and weeks before (b) (4) had it tested. Batch HB-80-112 also remained in (b) (4) possession for almost a year.

HFN further states it sampled and tested the returned product, as well as the product remaining in the original batch, which it still held. HFN submitted Primoris laboratory report 22/000312, dated January 31, 2022, showing the analysis of original remaining product from Batch HB-80-112 didn't reveal any prohibited substances. However, Primoris laboratory report 22/000313, dated January 31, 2022, shows the analysis of the returned product identified as

INT20102209 and revealed the presence of Glyphosate at 0.35 mg/kg; and Folpet (Folpet and Phtalimide combined) at 0.064 mg/kg. EcoCert told HFN that the 2 lab reports were not accepted as they were ‘after the fact.’ AMS also finds that the authenticity of the January 31, 2022 lab reports from Primoris for the original remaining product from Batch HB-80-112 and the returned product, hasn’t been confirmed. HFN submitted these lab reports to substantiate its contention that the product became contaminated while in (b) (4) possession; however, EcoCert’s finding of the falsification of numerous lab reports calls into question the authenticity of these reports.

NOP contacted (b) (4) regarding its repackaging of Batch HB-80-112. (b) (4) isn’t certified organic under NOP standards but is certified under the European Commission standards. (b) (4) stated that the shipment of Organic Herba Cistus Incanus arrived at their facility on December 21, 2020; however, (b) (4) personnel were on an extended break and didn’t return to the office until the end of January 2021. (b) (4) stated it repacked the product in 8 kg paper bags, because the delivered 50 kg bags were double the size allowed at their facility and that of their client (b) (4). (b) (4) confirmed that it shipped the product to (b) (4) on February 8, 2021; that (b) (4) sampled and tested the product, finding the presence of Glyphosate and notifying (b) (4); and it (b) (4) tested their retained sample, also found Glyphosate, and notified the Austrian authorities. (b) (4) acknowledges not returning the product to HFN until November 2021, stating the delay was due to HFN’s process for refunding (b) (4), and that the product remained at (b) (4)’s facility after its return by (b) (4). (b) (4) has cancelled all future business with HFN. However, as seen above, there is no evidence that the product was contaminated with Glyphosate during the repacking process or at any time while in the possession of (b) (4) or (b) (4). Further, (b) (4) promptly sampled and tested the product, as did

(b) (4) when informed of (b) (4) findings, and (b) (4) promptly reported the Glyphosate findings to the Austrian authorities. Additionally, the Primoris lab reports submitted by HFN to EcoCert to obtain the COI containing Batch HB-80-112, were falsified, and therefore, contamination of Batch HB-80-112 by HFN can't be ruled out.

Additionally, EcoCert's allegations against HFN go beyond the finding of a prohibited substance on Batch HB-80-112. EcoCert's investigation of the contamination of Batch HB-80-112 revealed that all 57 Primoris laboratory reports submitted by HFN since October 20, 2020, and upon which EcoCert issued 17 COIs, were forgeries and not issued by Primoris; and HFN admitted falsifying the lab reports. HFN stated in its Mediation Request and in its Appeal that it changed its internal sampling procedure to allow joint samples of different products when additional analysis was requested and/or for products with a "very low risk" of contamination. HFN then used a "laboratory format as template for the company to communicate the results separately for each specific products part of join (sic) samples." HFN stated it was a "human mistake" to use a lab report template in this manner, and shouldn't be considered fraud, as it didn't intend to hide anything from its certifier. HFN stated it has now conducted individual analysis for the products listed under COIs which Eco withdrew, and listed those COIs with customer name, products, lot numbers, analysis date, and lab report numbers in its Appeal. HFN also stated that it has not received any notice from its clients that any of the products covered by the COIs were unacceptable; and it has requested its clients to send their internal control procedures to HFN.

To support its contentions, HFN submitted laboratory reports it received from a client regarding a shipment of organic *Ruscus Aculeatus radix*, for which analysis of samples found substances below the limit of quantification. HFN also proposes the corrective actions of

engaging an expert to monitor its organic ‘projects,’ conducting internal audits, training for employees, changing internal procedures regarding sampling and the use of laboratory report formats, and providing a detailed quarterly report to its certifier. However, the re-analyses of products; laboratory reports from clients and the internal control procedures of clients, even if they were submitted; and HFN’s proposed corrective action, don’t negate the actions of HFN.

CONCLUSION

Evidence substantiates that HFN violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. § 205.406, Continuation of certification. HFN falsified approximately 57 laboratory reports which it submitted to its certifier to obtain 17 Certificates of Inspection, after which HFN shipped the identified products to clients. This constitutes fraud and a willful violation of the organic regulations. Possible delays in meeting clients’ needs do not justify or excuse the deviation from the requirements of the organic regulations or justify the falsification of laboratory analyses reports used to obtain Certificates of Inspection from its certifier. HFN’s actions substantiate a failure to comply with or maintain compliance with the organic regulations and therefore, HFN can’t remain certified.

DECISION

HFN’s January 26, 2022 Appeal of the October 29, 2021 Notice of Noncompliance and Proposed Revocation is denied. HFN’s crop and handling certification is to be revoked. Pursuant to the organic regulations at 7 CFR §205.662(f), HFN is ineligible to receive

certification for a period of 5 years following the date of revocation. Once its certification is revoked, HFN may not sell, label, or represent any products as organic, or handle any products identified as organic.

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

Done at Washington, D.C., on this 11th
day of August, 2022.

BRUCE
SUMMERS
Bruce Summers
Administrator
Agricultural Marketing Service

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