

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Asociacion de Productores)
Palto Café Amazonas) **Administrator’s Decision**
) **APL-065-22**
Utcubamba, Peru)
)

This Decision responds to an Appeal (APL-065-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Asociacion de Productores Palto Café Amazonas (Palto) of Utcubamba, Peru, by Organic Crop Improvement Association (OCIA), 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

¹ 7 U.S.C. 6501-6522

² 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 November 3, 2021, Palto was certified organic for crops by OCIA.
2. On February 11, 2022, OCIA issued a Notice of Noncompliance to Palto.
3. On March 16, 2022, OCIA issued a Notice of Proposed Suspension.
4. On July 18, 2022, OCIA issued a Notice of Denial of Mediation to Palto’s mediation request of March 29, 2022.
5. On July 29, 2022, Palto filed an Appeal.
6. On November 7, 2022, USDA/AMS entered into a Settlement Agreement with Palto.
7. On December 13, 2022, OCIA reported to NOP that Palto had breached the November 7, 2022 Settlement Agreement.
8. On December 14, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to Palto.

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; (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 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 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 ...”

Certifier OCIA issued a Notice of Noncompliance on February 11, 2022, stating that Palto had failed to submit its 2022 annual certification renewal documentation, updated Organic System Plan (OSP), and certification-related fees by the deadline. OCIA subsequently issued a Notice of Proposed Suspension on March 16, 2022, due to Palto’s continued failure to submit required documentation and fees. On July 18, 2022, OCIA denied Palto’s mediation request, noting that Palto had previously been suspended for failing to comply with regulations regarding certification renewal and the payment of fees, and was later reinstated.

Palto filed an Appeal on July 29, 2022, stating it needed to hire new internal inspectors and train them, but commits to submitting required materials on time in the future NOP confirmed with OCIA that Palto had subsequently submitted its 2022 certification renewal application, though still has an outstanding balance on 2022 inspection fees. OCIA also re-invoiced Palto for the fees on September 6, 2022. Although Palto violated the organic regulations at 7 C.F.R. §205.400 and 7 C.F.R. §205.406 by not submitting its renewal application and all fees by the deadline, NOP offered Palto a Settlement Agreement as the application was subsequently submitted. Pursuant to the agreement, executed on November 7, 2022, Palto agreed to pay the outstanding certification-related fees of \$689.60 for the 2022 inspection, within

30 days of execution of the Settlement Agreement. Additionally, Palto agreed to submit its 2023 renewal application, updated OSP, and certification fees by the renewal anniversary date, and respond to all other requests for information or documentation by the deadline set by the certifier unless an extension was granted by the certifier.

However, on December 13, 2022, OCIA reported to NOP that Palto hadn't paid the certification/inspection fees within 30 days of the settlement execution, which was December 6, 2022. Therefore, on December 14, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to Palto, stating that OCIA had reported a breach of the NOP Settlement Agreement, and giving Palto 20 days from receipt of the notice to comply with the terms of the Settlement Agreement and take the corrective action of making the agreed-upon payment to OCIA. Palto was told that failure to do so could result in suspension of Palto's certification.

NOP contacted OCIA on January 13, 2023 and was informed that Palto had still not paid the delinquent certification fees. Therefore, NOP sent a reminder email to Palto that day, instructing it to immediately pay the owed \$689.60. As of February 2, 2023, Palto has not made the agreed-upon payment.

Palto agreed, per Term 4B of the November 7, 2022 Settlement Agreement, to pay the delinquent \$689.60 for the 2022 inspection within 30 days of execution of the agreement. Further, the Settlement Agreement in Term 4E states that, "Palto 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 Palto." Clause 3D of the Settlement Agreement states that, "Palto 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 Palto 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 Palto on November 7, 2022 with the executed 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 Palto 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. This is despite the February 11, 2022 Notice of Noncompliance, the March 16, 2022 Notice of Proposed Suspension, the re-issued Invoice of September 6, 2022, and the November 7, 2022 Settlement Agreement with NOP which Palto has breached, and therefore, the initial March 16, 2022 Notice of Proposed Suspension is revived. Palto can't remain certified at this time.

DECISION

Palto's July 29, 2022 Appeal of the March 16, 2022 Notice of Proposed Suspension is denied, and Palto's certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Palto may apply for reinstatement at any time after it has made full payment of all delinquent certification-related fees to OCIA. The request for reinstatement must be accompanied by evidence demonstrating that said full payment has been made, and that Palto is also in compliance with all other organic regulations. While under suspension, Palto may not sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 9th day of Februaary _____, 2023.

BRUCE SUMMERS Digitally signed by BRUCE SUMMERS
Date: 2023.02.09 07:40:11 -05'00'
Bruce Summers
Administrator
Agricultural Marketing Service