

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
)
Ahimsa Sanctuary Farms LLC) **Administrator’s Decision**
) **APL-011-22**
Haikau, Hawaii)
)

This Decision responds to an Appeal (APL-011-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Ahimsa Sanctuary Farms LLC (Ahimsa) of Haikau, Hawaii by International Certification Services/Where Food Comes From (ICS/WFCF), 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 February 22, 2016, Ahimsa was certified organic for crops by ICS/WFCF.
2. On August 18, 2020, ICS/WFCF issued a Notice of Noncompliance to Ahimsa.
3. On November 13, 2020, ICS/WFCF issued a Notice of Noncompliance identifying remaining noncompliances to be addressed by Ahimsa.
4. On February 10, 2021, ICS/WFCF issued a Notice of Proposed Suspension to Ahimsa.
5. On February 17, 2021, ICS/WFCF accepted Ahimsa's mediation request.
6. On May 3, 2021, Ahimsa and ICS/WFCF entered into a Settlement Agreement.
7. October 29, 2021, ICS/WFCF issued a Notice of Proposed Suspension after finding that Ahimsa had breached its Settlement Agreement.
8. On November 12, 2021, ICS/WFCF issued a Notice of Rejection of Mediation to Ahimsa's mediation request.
9. On December 10, 2021, Ahimsa filed an Appeal.
10. On March 7, 2022, USDA/AMS entered into a Settlement Agreement with Ahimsa.
11. On April 14, 2022, ICS/WFCF reported to NOP that Ahimsa had breached the March 7, 2022 Settlement Agreement.
12. On April 22, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to Ahimsa.

13. On May 27, 2022, NOP, acknowledging that Ahimsa had submitted several of the requested documents, issued a Second Notice of Noncompliance and Request for Corrective Action to Ahimsa, providing additional time to respond.
14. On July 20, 2022, ICS/WFCF confirmed that the remaining noncompliances haven't been resolved by Ahimsa.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.100 What has to be certified, state that, "...each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part." The organic regulations at §205.102, Use of the term, "organic," state that, any agricultural product that is sold, labeled, or represented as organic must be produced and handled in accordance with the organic regulations.

The organic regulations at §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 ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

Certifier ICS/WFCF certified Ahimsa for crops on February 22, 2016. ICS/WFCF issued a Notice of Noncompliance on August 18, 2020, after the December 27, 2019 inspection of Ahimsa revealed labels lacking required certifier and ingredient information, and various recordkeeping noncompliances. ICS/WFCF issued a second Notice of Noncompliance on November 13, 2020, after finding that Ahimsa’s reply didn’t sufficiently address all the cited

noncompliances and delineated the remaining noncompliances. After Ahimsa again failed to adequately address all the noncompliances, ICS/WFCF issued a Notice of Proposed Suspension on February 10, 2021. ICS/WFCF accepted Ahimsa's mediation request on February 17, 2021, and subsequently, the parties entered into a Settlement Agreement on May 3, 2021. The Settlement Agreement contained specific terms requiring Ahimsa to cease using labels until they were approved by ICS/WFCF; and requiring Ahimsa to submit requested documents on inputs, planting stock and seeds, and suppliers; as well as pay all owed fees, and timely respond to ICS/WFCF requests. The agreement stated that a failure by Ahimsa to comply with all its terms would automatically void the agreement, and ICS/WFCF would reinstate the proposed suspension. Therefore, after Ahimsa failed to submit requested documents by the deadline set by ICS/WFCF and didn't complete its Organic System Plan (OSP), ICS/WFCF issued a Notice of Proposed Suspension on October 29, 2021. ICS/WFCF denied this second mediation request on November 12, 2021, detailing the numerous documents/noncompliances that Ahimsa had failed to submit/address, despite reminders from ICS/WFCF and their prior Settlement Agreement.

Ahimsa filed an Appeal with NOP on December 10, 2021. Ahimsa cited to its attempts to resolve the noncompliances, and issues with communications with its certifier. As Ahimsa had made progress in resolving cited noncompliances, which could be corrected, NOP offered Ahimsa a Settlement Agreement, which mirrored many of the items in the prior ICS/WFCF agreement and which remained unresolved. The NOP-Ahimsa Settlement Agreement was executed on March 7, 2022, and contained specific terms including the updating of the OSP; timely paying certification fees; assuring that its product labels contained all required information and not using labels until they were approved by the certifier; updating ingredient information in the OSP and submitting the organic certificates of ingredient suppliers; and

completing, submitting, and thereafter maintaining all required records including those on inputs, planting stock, seeds, seed searches, and planting and harvest logs.

However, on April 14, 2022, ICS/WFCF reported to NOP that Ahimsa had failed to comply with several terms of the NOP Settlement Agreement, listing the terms which Ahimsa breached. NOP issued a Notice of Noncompliance and Request for Corrective Action to Ahimsa on April 22, 2022, informing Ahimsa that a breach of the NOP agreement had been reported, and listing the multitude of documents which Ahimsa had failed to submit; noncompliances which weren't adequately addressed; items that weren't addressed at all; and that the label provided by Ahimsa is still not compliant. NOP gave Ahimsa 30 days to comply with the terms of the Settlement Agreement and take the corrective action of submitting the cited documents/information. On May 25, 2022, ICS/WFCF informed NOP that Ahimsa had submitted some of the required documentation, but not all noncompliances were resolved or even addressed. However, in light of Ahimsa's efforts to address the cited noncompliances, NOP issued a second Notice of Noncompliance and Request for Corrective Action on May 27, 2022, giving Ahimsa an additional 30 days to address the yet unresolved or unaddressed noncompliances which NOP delineated.

On June 24, 2022, Ahimsa wrote NOP and ICS/WFCF, addressing the NOP notice of May 24, 2022. However, on June 30, 2022, ICS/WFCF informed NOP that some items still remain unresolved. After Ahimsa submitted additional documentation, ICS/WFCF sent an updated assessment of the remaining unresolved items to NOP on July 5, 2022. NOP, in another attempt to obtain full compliance with Ahimsa, emailed Ahimsa on July 6, 2022, regarding the remaining unresolved items. NOP sent another reminder to Ahimsa on July 12, 2022. However, Ahimsa hasn't responded to NOP or submitted the remaining outstanding documentation and

information which was confirmed by ICS/WFCF on July 20, 2022. As seen, ICS/WFCF and NOP have both given Ahimsa many opportunities to fully come into compliance; however, Ahimsa has failed to do so.

The NOP-Ahimsa Settlement Agreement in Term 4J states that, “Ahimsa 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 Ahimsa.” Clause 3D of the Settlement Agreement states that, “Ahimsa 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 Ahimsa 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 Ahimsa on March 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

Ahimsa has violated the organic regulations at 7 C.F.R. §205.100, 7 C.F.R. §205.103, 7 C.F.R. §205.201, 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by failing to submit all required documentation and information per the organic regulations and as agreed to in its Settlement Agreement with NOP. The Settlement Agreement has been breached, thereby reviving the initial October 29, 2021 Notice of Proposed Suspension. Ahimsa can’t remain certified at this time.

DECISION

Ahimsa's December 10, 2021 Appeal of the October 29, 2021 Notice of Proposed Suspension is denied, and Ahimsa's crop certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Ahimsa may apply for reinstatement at any time, though a request for reinstatement must be accompanied by evidence demonstrating full compliance with the organic regulations. While under suspension, Ahimsa may not sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 27th
day of _____, 2022.

**BRUCE
SUMMERS**

Bruce Summers
Administrator
Agricultural Marketing Service

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