

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:	)	
Boliviana de Certificación	)	<b>Administrator's Decision</b>
La Paz, Bolivia	)	<b>APL-011-18</b>
	)	

This Decision responds to an appeal (APL-011-18) of a Notice of Proposed Suspension of Accreditation issued to Boliviana de Certificación by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). The certifier 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 organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the

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

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

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. Boliviana de Certificación (Bolicert), based in La Paz, Bolivia, has been a USDA-accredited certifying agent since March 13, 2003.
2. On January 19 – 20, 2017, the NOP conducted an onsite mid-term assessment audit of Bolicert.
3. On May 25, 2017, the NOP completed a Noncompliance Report detailing nine noncompliances resulting from the January 2017 on-site audit.
4. On June 9, 2017, the NOP issued a Notice of Noncompliance to Bolicert, listing the nine noncompliances identified during the January 2017 mid-term audit. The notice required that corrective actions, which indicate how the noncompliances will be corrected and how the management system will be modified to prevent a recurrence of the noncompliances, would need to be submitted within thirty days.
5. On July 11, 2017, Bolicert submitted corrective actions. NOP found them to be insufficient. The NOP requested clarification and provided additional time, until September 8, 2017, to provide sufficient corrective actions. Bolicert submitted additional corrective action information to the NOP on September 8, 2017.
6. On November 6, 2017, NOP issued a Notice of Proposed Suspension of Accreditation to Bolicert for two outstanding noncompliances. The unresolved noncompliances were related to Bolicert's failure to issue proposed adverse actions and notices of noncompliance to operations they certified, when issues were identified with the operations and/or when said

operations missed deadlines for submitting corrective actions or rebuttals.

7. The NOP's November 7, 2017 Assessment Report of Bolicert, which accompanied the Notice of Proposed Suspension of Accreditation, noted that seven of the nine noncompliances had been addressed and NOP had accepted Bolicert's corrective actions/rebuttals for those noncompliances. There were two remaining outstanding noncompliances.
8. On December 5, 2017, Bolicert filed an Appeal to the Notice of Proposed Suspension of Accreditation.

### **DISCUSSION**

The NOP proposed suspending Bolicert's accreditation for a period of one year. The Notice of Proposed Suspension of Accreditation ("Notice") stated that despite NOP giving Bolicert several opportunities to submit adequate corrective actions for nine previously-noted noncompliances, two of the noncompliances remain outstanding. The Notice referenced an Assessment Report, which detailed all nine noncompliances, noting the resolution of seven, and providing details on the two outstanding noncompliances upon which the proposed suspension of accreditation is based.

The first outstanding noncompliance is in reference to the USDA organic regulations at 7 C.F.R. § 205.662, Noncompliance procedure for certified operations, which states that, "(a) Notification. When an inspection, review, or investigation of a certified operation by a certifying agent or a State organic program's governing State official reveals any noncompliance with the Act or regulations in this part, a written notification of noncompliance shall be sent to the certified operation." NOP cited in the Assessment Report several cases in which Bolicert didn't

issue notices of noncompliance to the operations, despite being notified by inspectors of issues of concern with operations it certified.

The second outstanding noncompliance referred to USDA organic regulations at § 205.662 which states at paragraph (c), "Proposed suspension or revocation. When rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, the certifying agent of State organic program's governing State official shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to noncompliance..." NOP stated in the Assessment Report that Bolicert hasn't been issuing proposed adverse actions to their certified operations when said operations fail to meet deadlines for submitting corrective actions or rebuttals. NOP cited to a case where Bolicert merely de-certified an operation for not providing an annual update and payment of fees, rather than following the sequential noncompliance procedures provided in the USDA organic regulations. These procedures require a notice of noncompliance, before finalizing an adverse certification decision.

In the appeal, Bolicert states that it has addressed all nine noncompliances but admitted that it didn't explain the corrective actions well and didn't submit all requested documentation. Bolicert states it has corrected problems which led to the noncompliances and no longer makes such mistakes. Bolicert reports that it follows the USDA organic regulations, and that NOP will be able to "check all of this on the next audit."

Specifically addressing the first outstanding noncompliance noted by NOP, Bolicert states it has sent a notification of noncompliance to operator El Ceibo about three of their producers using prohibited substances. It hadn't done so previously because the three producers had already lost their organic status. Bolicert states that El Ceibo responded and informed

Bolicert that it conducted training for its producers on the use of prohibited substances, which Bolicert confirmed. Bolicert also claims it has provided training to its staff on the timely issuance of notices of adverse action, and a translator was present during the training to translate for the Spanish-speaking staff.

Regarding the second outstanding noncompliance, Bolicert states that it involved a new operator, Santa Teresa, which applied for certification in March 2015. Bolicert conducted the inspection, found one noncompliance, and Santa Teresa signed a 'commitment letter' to resolve the noncompliance. Based on this, Bolicert approved Santa Teresa for organic certification. However, the following year, Santa Teresa requested renewal of its certification, but failed to submit any updated documentation or the certification fee as required in the USDA organic regulations for continuation of certification. Bolicert states that it issued a noncompliance notification, and when Santa Teresa didn't respond in the stated thirty days, or to Bolicert's subsequent emails, Bolicert issued a proposed suspension of certification. Bolicert states Santa Teresa claimed not to know whom to send the requested information and fee, but their communication problems have been resolved. Bolicert states it has assigned one person, an administrative assistant, to track each document so the status of each operation can be easily determined, and they use 'visual exposure strategies,' specifically the NOP Noncompliance and Adverse Action Flowchart.

In its appeal, Bolicert submitted a December 2017 procedure manual entitled, "Certification System for Organic Operations," addressing such matters as conducting exit interviews with operations, providing the inspection report to operations, and retaining inspection and related records for ten years. The manual also has sections on procedures for addressing noncompliances of operations, the issuance of notices of noncompliances, and the

suspension or revocation of operations' certification. Additional documents submitted with the appeal include several letters to and from Bolicert, allegedly from and to operations; but all the documents are in Spanish and no translation was provided. Registers for staff training on April 21, 2017, and certification decision staff training on September 23, 2017, show the attendees of training on adverse actions.

The appeal admits fault in the handling of noncompliances discovered at operations certified by Bolicert, and the issuance of needed adverse action notifications. Further, although Bolicert issued a belated adverse action notification to operation El Ceibo, in response to an NOP finding of noncompliance, the NOP Assessment Report sent with the Notice of Proposed Suspension of Accreditation lists several examples of failures to issue notices of noncompliance and notices of proposed adverse action when these were warranted. Bolicert also discussed the Santa Teresa operation in its appeal, but has not clearly resolved the situation that led to the operation's certification being suspended for not providing an annual update or payment of fees without first issuing a notice of noncompliance. Bolicert merely stated that it has designated an administrative assistant to keep track of documentation and uses the NOP Noncompliance and Adverse Action Flowchart.

Bolicert has a long history of noncompliances. This includes incomplete, insufficient and delayed efforts to correct multiple noncompliances identified by the NOP and failing to uphold two settlement agreements with the NOP. Bolicert has repeatedly failed to correct the recurrent noncompliances and continues to have unresolved noncompliances. Bolicert's noncompliances are systemic; the repeated findings of noncompliance and insufficient corrective actions demonstrate an inability to implement the USDA organic regulations in practice.

These noncompliances date back to 2011. A review of NOP files shows that the 2011

mid-term accreditation assessment found Bolicert wasn't compliant with a number of accreditation requirements. After Bolicert was unable to submit acceptable corrective and preventive actions, NOP issued a Notice a Proposed Suspension of Accreditation on January 4, 2013. An accompanying proposed settlement agreement was executed on January 11, 2013. However, the 2014 accreditation renewal assessment found that two settlement terms were outstanding and there were eight new non-compliances. NOP issued a June 16, 2015 Notice of Proposed Suspension of Accreditation. NOP issued a Second Notice of Proposed Suspension on February 8, 2016, when Bolicert failed to successfully respond to a January 12, 2016 Notice of Noncompliance. Bolicert filed appeals to both notices (APL-026-15 and APL-010-16). On May 24, 2016, Bolicert and AMS entered into a settlement agreement to resolve both the notices of proposed suspension. However, Bolicert had failed to meet the terms of the settlement agreement by September 2, 2016, and hence, AMS pursued administrative action against Bolicert. The Administrator's Decision was issued October 7, 2016, (APL-026b-15) suspending Bolicert's accreditation for one year. Bolicert requested an administrative hearing on October 13, 2016; the hearing is still pending. This new decision does not address these prior actions, as they are being addressed through a separate administrative complaint process.

## **CONCLUSION**

As an accredited certifying agent, Bolicert must demonstrate the ability to fully comply with the requirements for accreditation set forth in the organic regulations. The record demonstrates that Bolicert has consistently failed to demonstrate compliance with the regulations, resulting in a succession of notices of noncompliance and notices of proposed

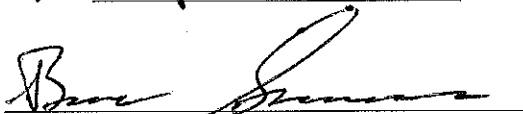
suspension of accreditation from the NOP. The NOP has attempted to work with Bolicert to become compliant and maintain compliance with the accreditation requirements; however, Bolicert has also breached settlement agreements entered into with NOP. Bolicert has demonstrated systemic and repeated violations of the organic regulations. Therefore, AMS finds that the NOP's November 6, 2017 Notice of Proposed Suspension of Accreditation was appropriate.

### DECISION

The appeal is denied and Bolicert's organic accreditation is to be suspended for one year. Attached to this formal Administrator's Decision is a Request for Hearing form. Bolicert has thirty days to request an administrative hearing before an Administrative Law Judge. If Bolicert does not request a hearing in that period, this Decision will be implemented and the NOP will suspend Bolicert's organic accreditation.

In accordance with §205.665(g)(1) of the USDA organic regulations, "A certifying agent whose accreditation is suspended by the Secretary under this section may at any time, unless otherwise stated in the notification of suspension, submit a request to the Secretary for reinstatement of its accreditation. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the regulations in this part."

Done at Washington, D.C., on this 4<sup>th</sup>  
day of September, 2018.



Bruce Summers  
Administrator  
Agricultural Marketing Service