

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Shalom Orchard and Winery)
) **Administrator’s Decision**
) **APL-052-23**
Franklin, Maine)
)

This Decision responds to an Appeal (APL-052-23) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Shalom Orchard and Winery (Shalom) of Franklin, Maine by USDA accredited certifying agent MOFGA Certification Services LLC (MOFGA). Shalom 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

INTRODUCTION

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 or NOP may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to §

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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

FINDINGS OF FACT

1. On February 1, 2005, Shalom was certified for crops and handling.
2. On December 14, 2020, MOFGA issued a Notice of Noncompliance to Shalom regarding recordkeeping noncompliances.
3. On February 3, 2022, MOFGA issued a Notice of Noncompliance and Proposed Suspension to Shalom regarding recordkeeping noncompliances.
4. On March 24, 2022, MOFGA accepted Shalom’s request for mediation, and the parties entered into a Settlement Agreement on May 3, 2022.
5. On June 21, 2023, MOFGA issued a Notice of Proposed Suspension, stating that Shalom had failed to comply with the first term of their prior settlement.
6. On July 19, 2023, Shalom filed an Appeal.
7. On August 2, 2023, Shalom and NOP entered into a Settlement Agreement.
8. On February 12, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action after MOFGA reported that Shalom had breached the NOP Settlement Agreement.

REGULATORY CITATIONS

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: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (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, “(a) The producer or handler of a production or handling operation ... must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent ... An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (3) A description of the monitoring practices and procedures to be performed and maintained ... (4) A description of the recordkeeping system implemented to comply with the requirements ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations ...”

The 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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation ...”

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

DISCUSSION

Shalom was certified organic for crops and handling on February 1, 2005, and is a producer of various stone fruit and berries, which are processed into various syrup, cider, and wine products. On November 13, 2020, MOFGA conducted an inspection of Shalom’s crop and handling operation at which several noncompliances were found. This resulted in MOFGA issuing a Notice of Noncompliance to Shalom on December 14, 2020, citing to recordkeeping noncompliances, specifically the failure to maintain records verifying the organic status of all organic ingredients; a Product Profile that doesn’t accurately identify all ingredients; and failure to contemporaneously inform MOFGA of changes in the operation.

Subsequently on December 23, 2021, MOFGA conducted the annual inspection of Shalom, and found that no records were available, despite repeated requests, to enable MOFGA to conduct successful traceability and mass balance exercises. Further, recordkeeping deficiencies found at the prior inspection hadn’t been resolved. MOFGA then issued a Notice of Noncompliance and Proposed Suspension on February 3, 2022, citing to the findings of the December 2021 inspection, and that the Notice of Noncompliance issued on December 14, 2020 was still not fully resolved despite repeated requests on January 21, 2021; February 5, 2021; May 13, 2021; and January 3, 2022. The notice cited to the recordkeeping noncompliances and the inability of the inspector to conduct successful traceback and mass balance exercises due to the lack of needed records.

MOFGA accepted Shalom's March 10, 2022 mediation request, and issued a Mediation Acceptance Notice on March 24, 2022 with an offered Settlement Agreement. Subsequently, Shalom and MOFGA entered into a Settlement Agreement on May 3, 2022, whereby Shalom would ensure adequate and complete records for all activities and transactions are available at each inspection; develop and implement a compliant recordkeeping system by May 21, 2022 which includes ingredient information and organic status of ingredients, along with production, field, sales, and inventory records; verify the status of a specific identified product by May 21, 2022; and submit a completed update and pay annual fees by the renewal date of May 21st every year that Shalom is certified. However, on June 21, 2023, MOFGA issued a Notice of Proposed Suspension stating that Shalom had failed to submit its annual update and certification fees that were due May 21, 2023. Shalom subsequently filed an Appeal on July 19, 2023.

Shalom stated that it has been trying to comply with recordkeeping requirements; however, the wife of the owner, who had done the paperwork in the past, has recently (b) (6). As the noncompliances are correctable, NOP offered Shalom a Settlement Agreement which was entered into by the parties on August 2, 2023. Pursuant to the agreement, Shalom agreed to respond to all certifier requests for documentation and information by the deadline; maintain current and accurate records disclosing all activities and transactions of the business; and submit its annual certification renewal including an updated Organic System Plan (OSP) and certification fees for 2023 within 60 days of execution of the agreement, and also submit its 2024 renewal documents and fees by the set deadline.

However, on January 30, 2024, MOFGA reported to NOP that Shalom had breached the Settlement Agreement, as there weren't sufficient records at Shalom's December 22, 2023 inspection to allow MOFGA to complete successful mass balance and traceability exercises on

anything beyond a single ingredient trace of harvested apples. Shalom also failed to maintain organic certificates of suppliers of purchased ingredients, or the purchase receipts. Therefore, NOP issued a Notice of Noncompliance and Request for Corrective Action to Shalom on February 12, 2024, reiterating the recordkeeping deficiencies cited by MOFGA and giving Shalom 30 days from receipt of the notice to submit all required and identified records.

Shalom contacted NOP on March 11, 2024, the day the requested records were due, and asked if it could appeal the noncompliance notice issued by NOP which reported a breach of the Settlement Agreement and set forth records needed to resolve the reported breach. NOP told Shalom that it had already appealed a proposed suspension, that the Settlement Agreement was entered into to resolve the proposed suspension, and that a report of a breach of the agreement and NOP's noncompliance notice aren't appealable. NOP followed up with Shalom on March 19, 2024 regarding the requested records, and granting an extension to March 22, 2024 for submission of the records. However, on March 23, 2024, Shalom emailed NOP stating it wasn't aware of any document requests. NOP replied that the documents had been identified in the Settlement Agreement and were specifically addressed in the Notice of Noncompliance and Request for Corrective Action. On March 25, 2024, Shalom emailed NOP stating it doesn't understand the records needed; NOP directed Shalom to contact MOFGA for the specifics of the needed records. On March 26, 2024, NOP granted another extension to April 5, 2024, due to the upcoming holiday. On March 29, 2024, MOFGA informed NOP that Shalom had stated it would submit the requested documents on April 5, 2024. While Shalom submitted some documentation to MOFGA, MOFGA stated on April 11, 2024, that the records were deficient in several regards, and that MOFGA can't verify the organic integrity of products. As Shalom had attempted to

submit requested records, a last extension was granted to April 25, 2024. However, as of April 30, 2024, no further documentation has been submitted to MOFGA by Shalom.

NOP and MOFGA have been patient with Shalom in their attempts to obtain requested and required documentation from Shalom. However, despite the issuance of the proposed suspension notice, and Shalom entering into a Settlement Agreement both with MOFGA and NOP, Shalom has failed to resolve the recordkeeping noncompliance. Shalom's statements that it wasn't aware of record requests and then that it doesn't understand the records needed, points to a fundamental inability to comply with recordkeeping obligations set forth in the organic regulations. Further, the Settlement Agreement in Term 4E states that, "Shalom agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against Shalom." Clause 3D of the Settlement Agreement states that, "Shalom 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 Shalom 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 Shalom on August 2, 2023 with the executed agreement also stated that, "... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, and AMS may pursue an administrative hearing process." Shalom has breached the August 2, 2023 Settlement Agreement with NOP; and may not remain certified.

CONCLUSION

Evidence substantiates that Shalom has violated the organic regulations at 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 maintain required records that would enable its certifier to conduct successful mass balance and traceability exercises along with other required records; failing to maintain records verifying the organic integrity of its products; and failing to implement a recordkeeping system to provide for complete and accurate records to ensure compliance with organic regulations. Shalom has breached its August 2, 2023 Settlement Agreement with NOP. Therefore, the June 21, 2023 Notice of Proposed Suspension is revived. Shalom can't remain certified at this time.

DECISION

Shalom's July 19, 2023 Appeal of the June 21, 2023 Notice of Proposed Suspension is denied, and Shalom's certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Shalom may apply for reinstatement at any time after it has implemented a sufficient recordkeeping system to provide for the maintenance of all required records and is able to submit the records identified above which resulted in the reported breach of the NOP Settlement Agreement. While under suspension, Shalom may not handle, sell, label, or represent any products as organic.

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

Done at Washington, D.C., on this 16th
day of May, 2024.

BRUCE SUMMERS Digitally signed by BRUCE
SUMMERS
Date: 2024.05.16 06:53:03 -04'00'
Bruce Summers
Administrator
Agricultural Marketing Service