

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Boliviana de Certificacion (Bolicert)) **Administrator's Decision**
La Paz, Bolivia) **APL-026b-15**

This Decision is in response to two appeals APL-026-15 and APL-010-16, filed by Boliviana de Certificacion (Bolicert), a U.S. Department of Agriculture (USDA)-accredited certifying agent. Bolicert appealed Notices of Proposed Suspension of Accreditation from the USDA, Agricultural Marketing Service (AMS), National Organic Program (NOP), which concluded that Bolicert was not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the USDA organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or 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 AMS Administrator, pursuant to §205.680 and §205.681 of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Bolicert is currently a USDA-accredited certifying agent, based in La Paz, Bolivia.
Bolicert was accredited as a USDA organic certifier on March 13, 2003.
2. On June 16, 2015, the NOP issued Bolicert a Notice of Proposed Suspension due to outstanding noncompliances identified at and following its accreditation renewal inspection. Bolicert appealed the Notice, and AMS accepted the appeal.
3. On February 8, 2016, the NOP issued Bolicert a Notice of Proposed Suspension due to a noncompliance related to annual reporting of certified operations. Bolicert appealed the Notice, and AMS accepted the appeal.
4. On May 24, 2016, Bolicert entered into a settlement agreement with AMS to resolve both Notices and appeals. The settlement included a number of terms that Bolicert agreed to meet; AMS, in turn, agreed not to pursue an administrative process to uphold the Proposed Suspensions. NOP counter-signed the settlement on May 26, 2016.

DISCUSSION

At Bolicert's 2011 mid-term accreditation assessment, required under the USDA organic regulations, the NOP found that Bolicert was not compliant with a number of accreditation requirements. Bolicert was unable to submit acceptable corrective and preventive actions, and on January 4, 2013, the NOP issued a Notice of Proposed Suspension of Accreditation. The Notice was accompanied by a proposed settlement agreement to resolve the Notice, which was executed on January 11, 2013.

Bolicert complied with the terms of the January 11, 2013 settlement agreement, submitting acceptable corrective actions to outstanding noncompliances within 45 days. However, at the 2014 accreditation renewal assessment, NOP noted that two settlement terms

were outstanding, and there were eight (8) new non-compliances. NOP also later identified an additional non-compliance related to an incomplete 2015 annual report submission. Given these outstanding items, the NOP issued a June 16, 2015 Notice of Proposed Suspension of Accreditation. Bolicert appealed this Notice, and AMS accepted the appeal.

NOP issued a second Notice of Proposed Suspension to Bolicert on February 8, 2016. This Notice was issued because Bolicert failed to successfully respond to a January 12, 2016 Notice of Noncompliance, which cited a violation to the USDA organic regulation requirement that each certifying agent submit a complete list of certified operations to the NOP by January 2. Bolicert appealed this Notice, and AMS accepted the appeal.

On May 24, 2016, Bolicert entered into a settlement agreement with AMS to resolve both the June 16, 2015 and February 8, 2016 Notices of Proposed Suspension. In this settlement, AMS agreed not to issue a formal Administrator's Decision charging Bolicert with alleged violations of the OFPA and the USDA organic regulations, if Bolicert agreed to a number of terms. Two of the terms, which Bolicert agreed to in signing the agreement, are as follows.

First, Bolicert agreed to submit corrective and preventive actions for the three outstanding noncompliances that NOP considered still outstanding from the 2014 Renewal Assessment. Bolicert agreed to provide these to NOP within 45 days of signing the agreement.

Second, Bolicert agreed to submit its annual list of certified operations through the Organic INTEGRITY Database, in accordance with NOP 2026 Instruction "Submitting Annual Lists of Certified Operations," no later than January 2 of each year. As subparts to this term, Bolicert further agreed that,

"until all other terms of this settlement are successfully cleared, Bolicert further agrees to add any new clients or changes to existing clients it certifies to the INTEGRITY Database on a monthly basis, beginning the first day of the month following settlement execution. Bolicert agrees that it will notify its Accreditation

Manager via email on the first day of each month when it has completed its monthly submission of new clients or existing clients it certifiers to the INTEGRITY database; OR Bolicert will notify its Accreditation Manager that it does not have any changes this month.”

As of September 2, 2016, Bolicert has met neither of these terms. In the 90 days since Bolicert signed the settlement agreement, Bolicert did not submit any corrective actions to NOP. Further, Bolicert has made no changes to the Organic Integrity Database, and has not informed its Accreditation Manager that it had or had no changes to its list of certified operations at the start of June, July, August, or September 2016 (4 months since signing the settlement).

CONCLUSION

In conclusion, Bolicert has failed to comply with terms in the settlement agreement it signed on June 24, 2016. As such, AMS is issuing this Administrator’s Decision denying Bolicert’s appeals of the June 16, 2015 and February 8, 2016 Notices of Proposed Suspension. This step is allowed for by the settlement agreement signed by Bolicert, which states: “If Bolicert breaks the settlement terms, Bolicert agrees that the USDA, AMS may thereafter pursue an administrative hearing process.” In breaking its settlement agreement with AMS, Bolicert has demonstrated an inability or unwillingness to comply with the requirements associated with serving as a USDA-accredited certifying agent.

DECISION

Bolicert’s organic accreditation is to be suspended in full for one (1) year. Attached to this formal Administrator’s Decision is a Request for Hearing form. Bolicert has 30 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 7th
day of October, 2016.



Elanor Starmer
Administrator