

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
The Ingredient Warehouse	)	
	)	<b>Administrator's Decision</b>
Pakenham, Victoria, Australia	)	<b>APL-001-21</b>
	)	

This Decision responds to an Appeal (APL-001-21) of a Notice of Proposed Suspension of National Organic Program (NOP) certification issued to The Ingredient Warehouse (TIW) of Pakenham, Victoria, Australia by ACO Certification Ltd. (ACO), an USDA-accredited certifying agent. The operation 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 (USDA) organic regulations.<sup>2</sup>

**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 such decision to the USDA Agricultural Marketing Service (AMS) pursuant to §205.680

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

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

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

### **FINDINGS OF FACT**

1. TIW was certified organic for handling on February 22, 2019.
2. On April 15, 2020, ACO issued a Corrective Action Report/Notice of Noncompliances to TIW.
3. On June 17, 2020, ACO issued a Notice of Proposed Suspension to TIW.
4. On June 23, 2020, TIW requested mediation, which ACO accepted on June 25, 2020.
5. On July 3, 2020, ACO and TIW entered into a Settlement Agreement.
6. On October 7, 2020, ACO issued a Notice of Proposed Suspension.
7. On October 8, 2020, TIW filed an Appeal.

### **DISCUSSION**

The USDA organic regulations at 7 CFR §205.102, Use of the term, “organic,” state that, “Any agricultural product that is sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” must be: ... (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 and all other applicable requirements of this part 205.”

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; (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. (c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the ... the certifying agent.”

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; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used, and documentation of commercial availability, as applicable; (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...; (5) A description of the management practices and physical barriers established to prevent commingling of organic and nonorganic products on a split operation and to prevent contact of organic production and handling operations and products with prohibited substances; and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §205.270, Organic handling requirements, state that, “(c) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic

(specified ingredients or food group(s)),” ... (1) Practices prohibited under paragraphs (e) and (f) of §205.105.”

The organic regulations at §205.272, Commingling and contact with prohibited substance prevention practice standard, state that, “(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances.”

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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent...; (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and office by the certifying agent...; (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the ...certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part...”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must ... 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.”

ACO issued a Notice of Proposed Suspension after finding numerous noncompliances which constituted a breach by TIW of the July 3, 2020 Settlement Agreement with ACO, which had arisen from mediation in response to a prior Notice of Proposed Suspension. TIW admitted fault for some of the noncompliances and stated that it has taken actions to correct the numerous noncompliances.

The evidence substantiates that TIW, which purchases and processes organic and non-organic products, including essential oils, has repeatedly violated the organic regulations since being certified organic on February 22, 2019 for the scope of handling. ACO issued a Corrective Action Report/Notice of Noncompliances to TIW on April 15, 2020, after a review of the February 6, 2020 annual inspection of TIW found numerous noncompliances. Specifically, the inspector found that TIW's flow chart wasn't representative of what actually occurs at the operation, and the Organic Handling Plan (OHP) didn't detail all procedures for the organic handling operation. The sales invoices didn't show a batch number; organic certificates weren't current for several suppliers of ingredients; purchase documents and packdown records weren't readily available; and transaction certificates for some sweet almond oil lots were missing. Additionally, staff training records and cleaning records weren't available at the inspection; and organic products weren't adequately identified or segregated in storage from non-organic products. Although ACO stated that labels for lavender Bulgarian oil and avocado virgin oil were missing information on the standard to which the product was certified, the organic regulations don't require such a statement on product labels.

After TIW failed to address all the noncompliances by the May 15, 2020 deadline, ACO issued a Notice of Proposed Suspension on June 17, 2020. ACO accepted TIW's June 23, 2020 request for mediation, which then resulted in the July 3, 2020 Settlement Agreement. Pursuant

to that agreement, TIW was to ensure that its OHP accurately detailed the actual practices of the operation and how TIW would ensure compliance with all organic regulations. Further, TIW agreed to detail in its OHP how it would ensure that records required for a successful input and output reconciliation and a successful traceability exercise would be maintained and available at inspections. TIW was also to provide details on an internal surveillance program to ensure updated procedures are effectively implemented, and that its staff are qualified and trained. TIW agreed to submit an updated OHP within 30 days of the agreement, and to also respond to all ACO requests within 30 days, and to also undergo an additional inspection by ACO though no timeframe was given.

However, at ACO's subsequent inspection of TIW's operation on September 16, 2020, numerous noncompliances were found, affecting several areas of TIW's operation. ACO issued a Notice of Proposed Suspension on October 7, 2020, which was sent to TIW along with a Corrective Action Report of the same date detailing the noncompliances. The inspection had found that TIW didn't follow procedures for the storage of organic and non-organic products, not adequately separating the products or marking the areas of storage for each, after TIW had agreed that there would be 2 layers of separation between organic and non-organic products on TIW's shelving. TIW also didn't clearly label all products; didn't have a transaction certificate for lavender Bulgarian oil; and had repacked and relabeled some products, such as Cyprus Oil, thereby breaking the 'organic chain' since the products were repacked by TIW's parent company which is not certified organic. TIW's OHP also didn't adequately describe all practices and procedures of the operation; reflect actual practices; or list all inputs to be used. TIW's records were not sufficient or readily understandable to allow the inspector to conduct a successful input and output reconciliation or a complete traceability exercise. TIW also was found not to be

following cleaning procedures; hadn't provided training to all staff in current procedures; and the results of its internal audit hadn't been verified by ACO.

ACO also stated in the October 7, 2020 Notice of Proposed Suspension that all the noncompliances found at the September 16, 2020 inspection constituted a breach of the Settlement Agreement entered into on July 3, 2020 between ACO and TIW. Comparing the provisions of the Settlement Agreement to the noncompliance findings noted in the Inspection Report of September 16, 2020, as well as the Corrective Action Report and the Notice of Proposed Suspension, both dated October 7, 2020, it is seen that TIW failed to comply with all the terms of the Settlement Agreement. Further, TIW had agreed in the Settlement Agreement that if, at any time, ACO determined TIW had breached the agreement, ACO could issue a notice proposing suspension or revocation of TIW's organic certification. Therefore, ACO's October 7, 2020 Notice of Proposed Suspension was justified.

TIW submitted an Appeal on October 8, 2020, stating that it was appealing, and sent numerous documents relating to the ACO allegations. These documents include an Organic Handling Plan dated November 5, 2020, along with an Organic Integrity Program document of November 4, 2020 stating that TIW purchases and processes organic and non-organic products. TIW submitted a Site Map/Organic Floor Plan, as well as a Downpacking/Warehouse Cleaning Procedure and a Storage Procedure of October 30, 2020. TIW stated in a Nonconformance Report – Internal Audit of November 4, 2020 that the failure to adequately separate organic and non-organic product occurred due to an increase in organic stock; and the new Storage Procedure and Site Map/Organic Floor Plan reflect the new storage requirements. Addressing the repacking of organic products by its uncertified parent company, TIW stated that its parent company would no longer do this and international purchases would be shipped directly from the

suppliers to TIW so that the ‘organic chain’ would be maintained. Addressing the lack of a transaction certificate for lavender Bulgarian oil, TIW stated it would no longer accept products without said documentation.

However, while TIW appears to have addressed many of the noncompliances cited by ACO, not all are addressed. Further, the submission by TIW of the numerous Nonconformance Reports corresponding to cited allegations by ACO, and prepared subsequent to the October 7, 2020 Notice of Proposed Suspension, is in effect an acknowledgment of the noncompliances and that these actions hadn’t been previously undertaken or maintained. As a certified operation, TIW is to ensure that it complies with the organic regulations and that the organic integrity of its products is maintained. This is especially crucial when considering that as TIW stated, only 10% of its business is organic, with the other 90% being non-organic, meaning that a comparatively large volume of non-organic products must be separated from organic products to ensure no co-mingling. Further, ACO had attempted to work with TIW on the various noncompliances, entering into a Settlement Agreement on July 3, 2020, via mediation after issuance of a prior Notice of Proposed Suspension on June 17, 2020. However, the subsequent inspection of September 16, 2020 again found many of the same noncompliances, including the failure to adequately separate organic and non-organic products. These noncompliances were a breach of the Settlement Agreement between ACO and TIW.

## **CONCLUSION**

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, the evidence substantiates that TIW has violated the organic regulations at 7 C.F.R. §205.102, Use



of the term, “organic;” 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.270, Organic handling requirements; 7 C.F.R. §205.272, Commingling and contact with prohibited substance prevention practice standard; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification; however, a violation of the regulations at 7 C.F.R. Subpart D on labeling requirements hasn’t been substantiated. TIW has failed to maintain adequate records to allow successful input-output reconciliations and traceability exercises; identify the organic status of products received; and clearly identify practices and procedures utilized by the operation which accurately reflect the operation. TIW has also failed to adequately separate and label organic and non-organic products in storage so as to eliminate the risk of co-mingling of the organic products; and has allowed repacking of products by an uncertified entity. TIW has failed to provide training to all staff on current organic procedures; describe internal surveillance conducted to ensure corrective actions are implemented; and keep its certifier informed of all changes in its procedures. These noncompliances are systemic and repeated, affecting numerous aspects of TIW’s operation. Therefore, TIW may not remain certified at this time.

## **DECISION**

The October 8, 2020 Appeal is denied, and the October 7, 2020 Notice of Proposed Suspension is affirmed. TIW’s handling certification is to be suspended. However, pursuant to 7 C.F.R. §205.662(f)(1), TIW may apply for reinstatement of its handling certification at any time. The request for reinstatement must be accompanied by evidence demonstrating correction

of the noncompliances found by ACO and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations.

Attached to this formal Administrator's Decision denying TIW's Appeal is a Request for Hearing form. TIW has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If TIW waives the hearing, this Administrator's Decision suspending TIW's handling certification will become final.

Done at Washington, D.C., on this 29th  
day of March, 2021.

**BRUCE  
SUMMERS**

Bruce Summers  
Administrator  
Agricultural Marketing Service

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