

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:)	
Mark Wickenhauser)	Administrator's Decision
Wicmar Dairy)	APL-009-18
Cologne, Minnesota)	
)	

This Decision responds to an appeal (APL-009-18) of a Notice of Proposed Suspension of National Organic Program certification issued to Mark Wickenhauser dba Wicmar Dairy of Cologne, Minnesota by Midwest Organic Services Association (MOSA). 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 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.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. MOSA is an accredited certifying agent under the USDA organic regulations. Wicmar Dairy is certified under USDA organic regulations for crops and livestock. Mark Wickenhauser is the owner/operator of Wicmar Dairy.
2. On July 15, 2016, MOSA issued a Notice of Noncompliance to Wicmar Dairy for failing to submit and make available organic sales records in order for MOSA to determine the appropriate certification fees (§ 205.103 Recordkeeping by certified operations). MOSA also included a detailed history of how Wicmar Dairy had either refused to report or misrepresented annual organic sales data to MOSA each year between 2010 and 2015. Additionally, MOSA cited incomplete and inaccurate records for grazing, pasture management and feed rations to verify compliance with livestock feed and pasture requirements, (§ 205.237 Livestock feed, § 205.240 Pasture practice standard).
3. On September 17, 2016 MOSA issued a Notice of Proposed Suspension to Wicmar Dairy for: (a) failing to provide sales records; (b) failing to provide a plan for the availability of complete and accurate livestock grazing and feed ration records; (c) discrepancies in pasture acreage; (d) missing information on feed rations for dry cows.
4. On October 26, 2016, Wicmar Dairy requested mediation with MOSA.
5. On January 23, 2017, Wicmar Dairy signed a Settlement Agreement with MOSA. Wicmar Dairy agreed to terms including: (1) submit sales data annually by April 1; (2) maintain clear and complete records on pasture and grazing; and (3) maintain complete feed rations for all types of livestock.

6. On September 21, 2017, MOSA issued a Notice of Proposed Suspension to Wicmar Dairy for failing to submit organic and conventional sales records according to the terms of the January 23, 2017 Settlement Agreement.
7. On October 16, 2017, Wicmar Dairy submitted an appeal to AMS.

DISCUSSION

MOSA proposed a suspension of Wicmar Dairy's organic certification, the effect of which would be to prohibit all sale, labeling, or representation of its products as organic. The reason for the proposed suspension is Wicmar Dairy's failure to provide complete and auditable sales records for the year 2016 to MOSA. The accurate reporting of organic sales has been an ongoing issue with Wicmar Dairy from 2010 to 2015.

In its appeal, Wicmar Dairy claims MOSA's request for sales and yields records is a violation of the Fourth Amendment and that this information will be shared and used to take "wealth" away from the operation. Wicmar Dairy states that there should be set rates for organic certification.

Wicmar Dairy's failure to provide receipts for organic sales transactions precluded MOSA from conducting an audit to determine compliance with USDA organic regulations and prevented MOSA from charging the appropriate service fees. Certifying agents are required to submit a fee schedule to the Administrator to identify the costs for certification, and provide a copy of the fee schedule to all applicants for certification (§ 205.642). It is common for certifying agents to establish, and for AMS to approve, a sliding scale for certification fees based on the volume of organic sales of the certified operation. Additionally, organic sales records are needed to verify that the quantity of organic product sold corresponds to the quantity of product produced.

The USDA organic regulations require that certified operations maintain records on the production, harvest and handling (which includes selling) of organic products (§ 205.103(a)), that these records, “fully disclose all activities and transactions in sufficient detail as to be readily understood and audited,” and are available for inspection by the certifying agent (§§ 205.103(b)(2) and (c)). Therefore, MOSA’s requests for organic sales records of Wicmar Dairy are supported by the USDA organic regulations and are a common means to properly assess certification fees and to verify compliance. Wicmar Dairy was informed of how MOSA assesses certification fees at the time of application and had the option not to pursue certification. Furthermore, certifying agents are required to maintain strict confidentiality regarding business-related information for their clients (§ 205.501(a)(10)). Therefore, Wicmar Dairy’s rationale that the operation’s sales records will be shared and used nefariously is unfounded.

CONCLUSION

The availability of operator records about organic production activities and sales to the certifying agent is a basic requirement in the USDA organic regulations (§205.103) and is essential for effective oversight. Wicmar Dairy’s repeated failure to provide complete and accurate records about the sales of organic products and the missing information about livestock grazing and feed rations indicates that the operation does not meet the requirements for organic certification.

DECISION

The appeal is denied and MOSA’s Notice of Proposed Suspension is upheld. Wicmar Dairy, operated by Mark Wickenhauser, is to be suspended.

Attached to this formal Administrator's Decision denying Wicmar Dairy's appeal is a Request for Hearing form. Wicmar Dairy has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Wicmar Dairy waives the hearing, the Agricultural Marketing Service will direct MOSA to issue a Notice of Suspension. The suspension will be effective for 30 days from the date of the hearing waiver. After the 30-day suspension period, the operation may, "...submit a request to the Secretary for reinstatement of its certification. 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 13th
day of April, 2018.



Bruce Summers
Acting Administrator
Agricultural Marketing Service