

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Calendula Farms) **Administrator’s Decision**
)
)
Giza, Egypt) **APL-034-21**
)

This Decision responds to an Appeal (APL-034-21) of a Notice of Denial of Certification to the National Organic Program (NOP) issued to Calendula Farms (CF) of Giza, Egypt by USDA-accredited certifying agent, Certification of Environmental Standards GmbH (CERES). 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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

FINDINGS OF FACT

1. On June 6, 2020, CF applied to CERES for organic crop certification.
2. On May 18, 2021, CERES issued a Notice of Denial of Certification.
3. On May 22, 2021, CF filed an Appeal.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.100, What has to be certified, state that, “(a) Except for operations exempt or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops ... that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part... (c) Any operation that: ... (2) Makes a false statement under the Act to the Secretary, a governing State official, or an accredited certifying agent shall be subject to all provisions of section 1001 of title 18, United States Code.”

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 as provided for in §205.200; (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified

production and handling areas, structures, and offices by the certifying agent as provided for in §205.403; ...”

The organic regulations at §205.403, On-site inspections, state that, “... (b) *Scheduling*. ... (2) All on-site inspections must be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation’s compliance with or capability to comply with the applicable provisions of subpart C of this part can be observed ... (c) *Verification of Information*. The on-site inspection of an operation must verify: (1) The operation’s compliance or capability to comply with the Act and the regulations in this part...”

The evidence substantiates that on June 6, 2020, CF applied to CERES for organic crop certification of its land located at El Wahat El Bahreia, Giza, Egypt. On June 25, 2020, CERES conducted its first inspection of CF when the land was still desert, as CERES was attempting to confirm that the land hadn’t been cultivated in the 3 prior years. Subsequently, on March 10, 2021, CERES conducted a second inspection of CF after the winter crops had been planted, at which time CERES states CF’s owner/manager, (b) (6), attempted to bribe the inspector in an effort to obtain organic certification. On May 18, 2021, CERES issued a Notice of Denial of Certification stating the denial was based on CF’s attempted bribery of the inspector at the March 10, 2021 inspection. After CF appealed, disputing CERES’ allegation, CERES stated in a May 25, 2021 email to CF that it had proof of the attempted bribery, specifically a recording. The inspector had stated in a May 24, 2021 email to CERES that he recorded the conversation with CF’s owner/manager. NOP requested that CERES submit the inspection report and a transcript of the inspector’s conversation with CF at the March 10, 2021 inspection.

The Inspection Report for the March 10, 2021, inspection states that CF falsely claimed that its operation was (b) (4) hectares, while it actually is only (b) (4) hectares, after finding that the information and map presented by CF didn't match on-site conditions. Further, the cultivated amount of product reported by CF was not compatible with the claimed area of the operation, leading the inspector to question if there was a 'hidden supplier' of product. The inspector also found that the operation has insufficient buffer zones, and no compost analysis was done. Further, the inspector found an unsealed/unlabeled conventional lot of product in close proximity to organic product, with both being in the same kind of bags. The Inspection Report doesn't mention the attempted bribery of the inspector. NOP requested that CERES and the inspector provide specifics on the alleged bribery attempt.

CERES' inspector stated in his Declaration of August 23, 2021, that he questioned CF on the discrepancy in the actual hectares of the operation and the claimed hectares, and CF stated that it had been told by consultants to claim the extra hectares. CF told the inspector that it needed a set quantity of crops for the operation and that CERES could have the remainder to sell, which the inspector interpreted as an attempted bribe. The inspector also stated that a friend of CF's representative also attempted to bribe him. CERES submitted documents supporting the claim of bribery, including transcriptions of a text message, WhatsApp messages, and a translation of an April 3, 2021, telephone call.

CF submitted an Appeal on May 22, 2021 to the Notice of Denial of Certification, stating the bribery allegation is 'false and unfounded.' CF also emailed CERES, repeatedly stating that it didn't attempt to bribe the inspector; however, CF hasn't submitted any documentation to rebut CERES' allegation. Although CF stated there were witnesses to a conversation with the inspector when the alleged bribery occurred, no information was provided on these possible

witnesses or statements from them. NOP wrote CF on May 24, 2021, acknowledging its Appeal and stating that CF was free to submit any documentation or information it felt would support its Appeal. NOP contacted CF again on August 27, 2021, asking that CF address several questions related to the attempted bribery. However, CF hasn't responded to NOP's inquiry and no documentation or information was submitted after the initial Appeal.

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. Specifically, the regulations at 7 C.F.R. §205.400 state that an operation seeking to become certified must comply with all the organic regulations. The regulations at 7 C.F.R. §205.402 state that the certifier must determine whether the applicant for certification appears to comply or may be able to comply with the regulations, and an on-site inspection will be conducted as part of the review. The regulations at 7 C.F.R. §205.403 require that the on-site inspection be conducted with an authorized representative of the applicant who is knowledgeable and able to demonstrate the operation is in compliance with, or able to comply with, the organic regulations.

CF misrepresented the area of its operation by claiming more hectares than actually existed. CF claimed it was told by its consultants to state a larger area of hectares; however, it was CF which submitted an application with purposely misstated information. Further, CF told CERES' inspector on more than one occasion that it needed a 'fixed quantity' of crops and that CERES could keep the 'extra crops.' It was reasonable for the inspector to conclude that this was an attempt at bribery. Further, CERES' observations during the application process

indicated that CF was not able to demonstrate ability to comply with the regulations, which is grounds for denial of certification.

CERES' Notice of Denial of Certification states that CF's application was denied due to the attempted bribery of the inspector. The organic regulations at 7 C.F.R. §205.405(g) state that, "if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this part, the certifying agent may deny certification pursuant to paragraph (c)(1)(ii) of this section without first issuing a notification of noncompliance." Further, the regulations at 7 C.F.R. §205.100 state that any operation that "makes a false statement under the Act to the Secretary ... or an accredited certifying agent shall be subject to the provisions of section 1001 of title 18, United States Code." CF's statements and misstatements, and the apparent and documented attempts to bribe CERES, shows a disregard for the integrity of organic certification and is contrary to demonstrating compliance with, or the ability to comply with, the regulations. Therefore, CF has violated the organic regulations at 7 C.F.R. § 205.100, What has to be certified; and 7 C.F.R. §205.400, General requirements for certification; and may not be certified organic. CERES was justified in issuing the Notice of Denial of Certification.

DECISION

CF's May 22, 2021 Appeal is denied, and the May 18, 2021 Notice of Denial of Certification is affirmed. CF is denied organic certification. However, pursuant to 7 C.F.R. §205.405(e), CF may apply again for certification at any time.

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

Done at Washington, D.C., on this _____
day of _____, 2022.

**BRUCE
SUMMERS**

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Bruce Summers
Administrator
Agricultural Marketing Service