

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Asociacion Agro Artesanal )  
de Produccion de Bienes, )  
Agricolas Pecuarios y Piscicolas )  
de Napo Kallari ) **Administrator's Decision**  
)  
Teno, Napo, Ecuador ) **APL-076-20**  
)

This Decision responds to an Appeal (APL-076-20) of a Notice of Noncompliance and Proposed Suspension of National Organic Program (NOP) certification issued to Asociacion Agro Artesanal de Produccion de Bienes, Agricolas Pecuarios y Piscicolas de Napo Kallari (Kallari) of Teno, Napo, Ecuador by Kiwa BCS Oko-Garantie GmbH (BCS), 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

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

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

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.

### **FINDINGS OF FACT**

1. Kallari was certified organic for crops and handling on November 22, 2018.
2. On March 18, 2019, BCS issued a Notice of Noncompliance.
3. On May 18, 2020, BCS issued a Notice of Noncompliance.
4. On June 15, 2020, BCS issued a Notice of Noncompliance and Proposed Suspension.
5. On June 29, 2020, Kallari requested mediation, which BCS denied on July 10, 2020.
6. On August 7, 2020, Kallari 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,” ... must be: (a) Produced in accordance with the requirements specified in §205.101 or §§205.202 through 205.207 ... and (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 ...” Further, the regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that ... the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603...” The regulations at §205.601, Synthetic substances allowed for use in organic crop production, specifically identifies the substances allowed. Those not listed are prohibited.

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 ... (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; ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part. (c) ... make such records available for inspection ...”

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... 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 ...; (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 §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must: (a) Have been managed in accordance with the provisions of §§205.203 through 205.206; (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years

immediately preceding harvest of the crop; and (c) Have distinct, defined boundaries and buffer zones ... to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.” Additionally, the organic regulations at §205.203, Soil fertility and crop nutrient management practice standard, state that, “... (c) The producer must manage plant and animal materials to maintain or improve soil organic matter content in a manner that does not contribute to contamination of crops ... by ... residues of prohibited substances ...” Further, the regulations at §205.204, Seeds and planting stock practice standard, state that, “(a) The producer must use organically grown seeds ... *Except, That,*” nonorganically produced, untreated seeds, as well as nonorganically produced seeds that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production, may be used ... when an equivalent organically produced or untreated variety is not commercially available.

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 ... (1) Practices prohibited under paragraphs (e) and (f) of §205.105.” Additionally, 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 §205.300, Use of the term, “organic,” state that, “(a) The term, “organic,” may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the regulations in this part...” Additionally, the organic regulations at §205.303, Packaged products labeled “100

percent organic” or “organic,” state that, “... (b) Agricultural products in packages described in §205.301(a) and (b) must: (1) For products labeled “organic,” identify each organic ingredient in the ingredient statement ...” The organic regulations at §205.311, USDA Seal, state that, “(a) The USDA seal ... may be used only for raw or processed agricultural products described in paragraphs (a), (b), (e)(1), and (e)(2) of §205.301...”

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 ... (d) Maintain all records ... and allow ... certifying agent access to such records ...” The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must ... submit ... (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.”

In summary, BCS issued a Notice of Noncompliance and Proposed Suspension after an inspection found several noncompliances, involving different aspects of Kallari’s organic operation. In its appeal, Kallari stated that it has taken actions to correct the numerous noncompliances or rebutted the noncompliances.

Specifically, the evidence substantiates that BCS conducted an inspection of Kallari’s operation on January 27, 2020, at which it found noncompliances across the operation. Kallari is a cooperative (or grower group) of approximately 850 producers of cacao, vanilla, and guayusa.

Kallari then handles/processes the commodities. BCS, citing to a number of noncompliances, issued a Notice of Noncompliance and Proposed Suspension on June 15, 2020. Pursuant to 7 C.F.R. §205.662(c), when a correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension may be combined in one notification. As seen below, some of the noncompliances are not correctable and therefore, BCS was justified in issuing a combined notice. Further, the evidence supports the BCS determination that the noncompliances are systemic throughout Kallari's operation.

BCS also issued a Notice of Noncompliance on March 18, 2019 because of Kallari's failure to maintain accurate and clear maps; and issued a Notice of Noncompliance on May 18, 2020 because of Kallari's failure to submit the annual update in a timely manner. The March 2019 noncompliance was cited again in the combined notice of June 15, 2020, after the January 27, 2020 inspection found that the maps hadn't been corrected.

BCS stated that Kallari's list of producers/farmers in its plans didn't match the actual producers for which there were records; and the total amount of cultivated areas on its list didn't match those declared in Kallari's internal inspection sheets and individual producer lists. For example, producer KSHU-01 is on Kallari's Plotlist line 748/449 and shows the producer as having 2 hectares, while the Internal Inspection Sheet for Kallari's inspection of KSHU-01, which identifies the producer as KSH-01, shows the producer as having 4.5 hectares. Kallari's Plotlist lists all producers by their identification code and name, amount of land, crops, and harvest information per crop, among other information. The estimated yield of crops to be harvested also increased, with no justification/explanation. BCS stated the inspection of Kallari's operation also found field registers weren't complete; field maps weren't accurate; and plots of several individual producers don't have defined borders, thereby not allowing production

plots/areas to be clearly verified. These problems demonstrate a failure to maintain proper records and update the Organic System Plan (OSP) to correctly and accurately describe the operation, including the member producers and their individual production areas.

BCS stated that Kallari's internal inspections were not sufficiently documented and that Kallari's review of these reports wasn't performed properly. Specifically, BCS stated that some Internal Inspection Sheets weren't filled out completely and/or the values stated in the sheets didn't match with the values reported on Kallari's Plotlist. For example, the Internal Inspection Sheet of producer KSHU-02 contains information that doesn't match with the entry for KSHU-02 on the Plotlist at line 800/491. The Internal Inspection Sheet of KSHU-03 and its listing in the Plotlist at line 801/492 also don't match, and the Internal Inspection Sheet doesn't list the acreage of the producer. The Internal Inspection Sheet of KPLC-01 doesn't list the acreage of the producer, who appears on the Plotlist at line 477/280 showing 5 hectares. Further, Kallari didn't identify the inspector who was responsible for changes in information seen on numerous sheets, and who was responsible for determining the status of farmer plots. BCS also found that Kallari's requirements for approval of new producers are not adequate; and Kallari approved producers for membership on incomplete information. As stated above, there are mismatched values with respect to producer hectares, and for at least one producer, there is no evidence related to the prior management of the land.

BCS's inspection also found that Kallari failed to maintain records to ensure an adequate traceability system at all levels of the operation. Kallari didn't inform BCS of relevant changes made in the operations, including the list of producers and list of internal inspectors. The sketches of processing units also didn't clearly describe the functions of each unit. Kallari also failed to maintain records on the cleaning of transport vehicles, creating a risk of co-mingling of

organic and conventional products during the receipt of raw materials and processing of products. Further, BCS found that Kallari used nonorganic seeds without providing any documentation to BCS to justify their use. Kallari stated that it has now obtained documentation on the use of these seeds, acknowledging the noncompliance.

BCS stated that it also found that Kallari's internal regulations and controls regarding its own inspection staff are not sufficient. Specifically, BCS stated that it found conflicts of interest with some of Kallari's internal inspectors performing internal inspections in the same regions where they provide training and technical assistance to producers, thereby not providing for the complete separation of technical assistance and internal inspection. A review of the Kallari's Report of Internal Inspections for 2020, dated October 2, 2020, lists producers inspected by each inspector, and the producers covered by each technical advisor, and doesn't show any producer inspected and technically advised by the same individual. However, BCS' inspection was conducted January 27, 2020, and reviewed inspections done in 2019. BCS also alleges that Kallari internal inspectors do not have a sufficient knowledge of organic regulations; this is supported by the noncompliances described above. Although Kallari submitted sign-in sheets for 3 training sessions with its Appeal, the trainings were held in June and August 2020, several months after BCS' inspection. Therefore, the fact that these trainings were held is an acknowledgment that the inspectors required additional training to be able to conduct complete and thorough inspections of Kallari's member producers and maintain complete and thorough records thereof.

BCS' inspection of Kallari's collection centers also revealed that the status of cacao, vanilla, and guayusa received as organic raw material isn't clear, as Kallari utilized the products of uncertified producers. Further, organic and conventional products are received post-harvest



and processed, with no clear identification of the measures taken to ensure separation of the products. For example, the areas of fermentation and homogenization of cacao, as well as the tools used for cacao removal, cleaning, and processing are not identified. The processing of guayusa also couldn't be verified. BCS didn't find any evidence to verify that equipment and materials are cleaned between organic and conventional processing; and couldn't clearly determine what substances were used in cleaning the collection centers. Kallari also didn't properly store the packaging used to transport organic products, creating a risk of contamination of the packaging by conventional products and substances. Kallari also failed to maintain records on the cleaning of transport vehicles.

BCS also noted the use of prohibited substances and the use of inputs which were not in Kallari's OSP or approved by BCS. Kallari conducted 528 internal inspections of its member producers in 2020, and BCS conducted inspections of 36 producers, representing 25% of Kallari's new farmers in conjunction with its January 27, 2020 inspection. BCS' inspections of producer/farmers found conventional crop plots within organic plots. For example, producer (b) (4) was found to be growing conventional malanga within organic cacao lots, and BCS also found Glyphosate, a prohibited substance, was applied to the conventional malanga, with both the location of the conventional malanga and the application of Glyphosate creating a risk of contamination of the organic crop by the prohibited substance. BCS submitted its Farm Inspection List for 2020 where (b) (4) is found on the last page. This producer is identified as KNJ-14 on Kallari's Plotlist at line 383/230, where Kallari states no prohibited substances were applied.

The BCS inspector also observed signs of herbicide application in organic plots, of which the inspector took photos, along with a photo of the herbicide labels for Cerillo Herbicida

Agricola, a defoliating desiccant herbicide, used by Kallari and found lying by organic plots. The label lists the composition as diclorura (diuron) and paraquat as well as other additives. The herbicide includes the ingredients Paraquat dichloride and Diuron. Diuron is a prohibited substance for which there is no EPA (Environmental Protection Agency) tolerance level for cacao, vanilla, or guayusa; and therefore, it can't be used in organic production. Paraquat is a prohibited substance with an EPA tolerance level of 0.05 ppm for cacao bean; though there is no tolerance level for vanilla or guayusa. While Kallari acknowledged the finding of the use of Glyphosate as discussed above, and the use of lime discussed below, Kallari didn't address the use of herbicide in its Appeal.

Additionally, Kallari stated in its OSP that it uses (b) (4) as an input on organic crops; however, Kallari hadn't submitted sufficient information on the product to determine whether it was allowed for organic crops. Research shows that (b) (4). While (b) (4) is an allowed synthetic substance in organic crop production for plant disease control under the organic regulations at 7 C.F.R. §205.601, its use must be monitored so that it does not accumulate in the soil. However, Kallari provided no documentation to show it had monitored its use. BCS also cited to a finding that (b) (4) had been applied to conventional crop plots within organic plots. However, although BCS stated that the components of (b) (4) are unknown, and it may contain prohibited substances, research shows that (b) (4) is an organic fertilizer and is OMRI-listed. Further, Kallari had identified (b) (4) in its OSP, Section 10. However, the inspector also found through interviews with several farmers that lime was used on organic crops, although this input wasn't in Kallari OSP. Although the organic regulations provide for a producer to manage crop nutrients and soil fertility, BCS stated that Kallari didn't present any

evidence of the need to apply mineral fertilizers to crops. Kallari stated in its Appeal that lime was only used on conventional plots, which conflicts with BCS' findings.

Kallari's Report of Internal Inspections for 2020, dated October 2, 2020, only identifies 1 producer as having used prohibited substances. Specifically, the report states that the (b) (4) farm used a prohibited substance on its organic land boundaries, and therefore, its status has changed to conventional. (b) (4) is owned by producer (b) (4), which BCS cited for the use of Glyphosate on conventional malanga located within the organic plot, though as noted above, Kallari's Plotlist states no prohibited substances were found for this producer. Further, the use of herbicide Cerillo Herbicida Agricola also wasn't mentioned in Kallari's report although BCS found evidence of its use on organic plots and took a picture of product labels found on organic land. These findings regarding prohibited substances constitute violations of the organic regulations and also point to a failure of Kallari to ensure that all the producers under its certification have organically managed their organic crops.

BCS also stated that Kallari didn't properly apply procedures for the handling of noncompliances by producers and issuance of corrective measures or sanctions. Specifically, BCS found that Kallari's procedures don't contain adequate penalties for producers with serious deficiencies, citing the findings discussed above involving (b) (4) farm, stating that proper action wasn't taken against the producer. However, Kallari submitted an April 15, 2020 letter it sent to that producer stating that it was found to have used prohibited substances, which is a 'grave infraction' and that it is suspended for 3 years from organic certification under Kallari. Therefore, Kallari did take proper action against this producer after BCS' inspection of January 27, 2020, which included inspecting this

specific producer, found the use of the prohibited substance on a conventional crop located within its organic crop. However, as stated above, Kallari's internal inspections didn't find the use of the prohibited herbicide cited by BCS and no sanctions were imposed on those producers.

BCS also found that Kallari's product labels were deficient, stating the list of ingredients on the labels of Chocolate Kallari 70%, Chocolate Kallari 75%, and Chocolate Kallari 85% bars didn't match the ingredients in the OSP. Comparing the ingredients listed on the labels submitted by Kallari to its OSP –2019-20, dated October 5, 2020, and submitted with its Appeal, the same ingredients appear in Section 6 Processing as appear on the labels. However, this OSP was completed 9 months after the January 27, 2020 inspection by BCS. Further, Kallari stated in its Appeal while submitting the labels, that they've been corrected, thereby acknowledging the labels were incorrect at the time of BCS's inspection. BCS also states that the names of the chocolates are different than those listed in the organic certificate. However, the organic certificate presented by Kallari doesn't even list the chocolate bars, but the labels state the chocolate bars are 'organic chocolate,' are certified organic by BCS; and contain the USDA organic seal. Therefore, Kallari improperly used the USDA organic seal and the term 'organic' on labels containing incorrect information about the products.

Kallari's chart submitted subsequent to its Appeal and dated October 5, 2020, identifies each noncompliance cited by BCS, and states actions purportedly taken by Kallari to correct the noncompliances, or rebuttals to the cited noncompliances. Some of these are discussed above in conjunction with citing to BCS' allegations. Kallari also submitted documents purporting to substantiate each corrective action taken, some of which are discussed above. However, the fact that Kallari states it has taken/is taking these actions is an acknowledgment, and substantiates, that these actions essential to organic management of an operation weren't previously taken.

Further, an Appeal is not the correct forum for a determination of the adequacy of any corrective actions purportedly taken.

## **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 Kallari 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. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.203, Soil fertility and crop nutrient management practice standard; 7 C.F.R. §205.204, Seeds and planting stock practice standard; 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. §205.300, Use of the term, “organic;” 7 C.F.R. §205.303, Packaged products labeled “100 percent organic” or “organic;” 7 C.F.R. §205.311, USDA Seal; 7 C.F.R. §205.400, General requirements for certification; 7 C.F.R. §205.406, Continuation of certification; and 7 C.F.R. §205.601, Synthetic substances allowed for use in organic crop production. As a certified operation, Kallari is to ensure that it and its producer members comply with the organic regulations and that the organic integrity of its products is maintained. However, Kallari’s noncompliances are many and systemic, affecting numerous aspects of the operation. Therefore, Kallari may not remain certified at this time.

## DECISION

The August 7, 2020 Appeal is denied, and the June 15, 2020 Notice of Noncompliance and Proposed Suspension is affirmed. Kallari's crop and handling certification is to be suspended. However, pursuant to 7 C.F.R. §205.662(f)(1), Kallari may apply for reinstatement of its crop and handling certification at any time. The request for reinstatement must be accompanied by evidence demonstrating correction of the noncompliances 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 Kallari's Appeal is a Request for Hearing form. Kallari has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Kallari waives the hearing, this Administrator's Decision suspending Kallari's crop and handling certification will become final.

Done at Washington, D.C., on this 16th  
day of April, 2021.

**BRUCE**  
**SUMMERS**  
Administrator  
Agricultural Marketing Service

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