

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Safe Herbs & Spices )  
 )  
El Fayoum, Egypt ) **Administrator’s Decision**  
 ) **APL-048-20 and APL-057-20**  
 )

This Decision responds to Appeals (APL-048-20 and APL-057-20) of a Notice of Noncompliance and Proposed Suspension of National Organic Program (NOP) crops and handling certification issued to Safe Herbs & Spices (Safe) of El Fayoum, Egypt, by Kiwa BCS Oko-Garantie GmbH (Kiwa) and a Notice of Noncompliance and Denial of Certification for crops issued by Certification of Environmental Standards GmbH (CERES). 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

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

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

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.

### **FINDINGS OF FACT**

1. Safe was initially certified organic for crops and handling by Kiwa on July 10, 2015.
2. On February 11, 2020, CERES certified Safe organic for handling.
3. On April 15, 2020, CERES issued Safe a Notice of Noncompliance and Denial of Certification for the crop scope of certification.
4. On April 23, 2020, Kiwa issued Safe a Notice of Noncompliance and Proposed Suspension of crops and handling certification.
5. On April 24, 2020, Safe filed an Appeal to Kiwa’s notice.
6. On May 7, 2020, CERES issued a Notice of Denial of Mediation regarding CERES’ April 15, 2020 notice.
7. On May 10, 2020, Safe filed an Appeal to CERES’ notice.

### **DISCUSSION**

The USDA organic regulations at 7 C.F.R. 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: (1) Be adapted to the particular business that the certified operation is conducting; (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.”

The organic regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” 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; (b) Nonsynthetic substances prohibited in §205.602 or §205.604...”

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, except as exempt or excluded under §205.101, intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” 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 system plan must meet the requirements set forth in this section for organic production or handling. 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,

including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; (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...”

The organic regulations at §205.203, Soil fertility and crop nutrient management practice standard, state that, “(a) The producer must select and implement tillage and cultivation practices that maintain or improve the physical, chemical, and biological condition of soil and minimize soil erosion. (b) The producer must manage crop nutrients and soil fertility through rotations, cover crops, and the application of plant and animal materials. (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, soil, or water by plant nutrients, pathogenic organisms, heavy metals, or residues of prohibited substances...(e) The producer must not use: (1) Any fertilizer or composted plant and animal material that contains a synthetic substance not included on the National List of synthetic substances allowed for use in organic crop production;...”

The organic regulations at §205.204, Seeds and planting stock practice standard, state that a producer must use organically grown seeds, annual seedlings, and planting stock, except in specified situations. The organic regulations at §205.205, Crop rotation practice standard, state that a producer must implement a crop rotation that maintains or improves soil organic matter content.

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 protected 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 in 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 offices 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...;
- (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation...”

The organic regulations at §205.403, On-site inspections, state that, a certifying agent must conduct an on-site inspection annually for each certified operation and that the inspection must verify “that prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.”

The organic regulations at §205.406, Continuation of certification, state that, (a) To continue certification, a certified operation must annually pay the certification fees and 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.

Certifier Kiwa states that inspections of Safe in August 2019 and December 2019 revealed that Safe has failed to implement corrective actions for numerous noncompliances previously identified to Safe and further states that Safe intimidated the inspector.

Certifier CERES states that Safe failed to provide information on the various noncompliances found by Kiwa, including prohibited substances found on location during Kiwa’s inspection, and that Safe had attempted to bribe Kiwa’s inspector, who now works for CERES.

In its Appeals, Safe contends that Kiwa’s actions are retaliatory after it learned that Safe was switching certifiers to CERES, and that Kiwa provided false information to CERES about

Safe. Safe also states that CERES didn't find noncompliances during its January 2020 crop inspections.

Documentation substantiates that Kiwa certified Safe organic for crops and handling on July 10, 2015, encompassing Safe's eight farms in El Fayoum, Egypt. Safe produces various crops including hibiscus, lemon grass, peppermint, sesame, and cotton. However, while Kiwa wrote Safe on June 22, 2018, granting renewal of Safe's certification, Kiwa detailed several noncompliances found at the prior inspection which Safe was told must be corrected. Kiwa cited the use of conventional cotton seeds without proof of the unavailability of organic seeds and stated that Safe had to submit receipts regarding the seed purchase and a confirmation that the cotton seed wasn't treated, or the respective plots would be converted back to a transitional phase. Kiwa also stated that Safe's crop rotation activities didn't meet the requirements, and that Safe must submit a new, diversified crop rotation plan for the next season before sowing/planting. Kiwa cited to a Safe product label which didn't meet requirements and instructed Safe to submit a corrected label to Kiwa for approval prior to its use. Kiwa gave Safe a deadline of October 31, 2018 to complete corrective actions. However, Kiwa states that Safe never responded to the request.

Kiwa also stated that a buffer zone between one of Safe's organic plots and a neighbor's plot treated with prohibited substances wasn't sufficient. Safe was given until October 31, 2018 to create a sufficient buffer zone to prevent the possibility of contamination of Safe's organic crops by prohibited substances applied to the neighbor's plot. Kiwa also noted that Safe's plot list didn't accurately correspond with the actual situation, as there was a discrepancy between the reported acreage of some crops and that observed by the inspector. Kiwa instructed Safe to update its plot list to reflect the actual fields, acreage, and crops. Kiwa also instructed Safe to

ensure that all inputs, products, ingredients, and processing aids comply with the organic regulations and to contact Kiwa if Safe is uncertain about any of these. In its notice, Kiwa stated that if Safe didn't correct the noncompliances by the stated deadlines and provide evidence of such measures, Kiwa would propose a suspension of Safe's certification. Kiwa also noted that implementation of corrective measures would be reviewed at the next inspection. However, Safe didn't respond to Kiwa's requests or submit any corrective actions. Kiwa subsequently further extended the deadline to June 30, 2019, for submitting and taking corrective actions.

Kiwa then conducted an unannounced inspection from August 28, 2019 through September 2, 2019 and found that several of the noncompliances hadn't been corrected, or the corrective actions were inadequate. Kiwa noted a risk of cross contamination during the transport of products and/or in the farm, as fields are located between other conventionally farmed fields. Kiwa also noted that while there was some improvement, there were still plots with insufficient buffer zones. Further, the buffer zone plan, which was found insufficient, needed to list each plot individually and explain measures taken. Kiwa also noted there were less than 8 meters between Safe's organic plots and conventional plots. Kiwa's inspection also found that Safe's plot list still wasn't clear: the plot list and the on-the-ground situation did not match. Kiwa provided specific instructions for specific crops and stated that crop rotation changes must be reported immediately in a new plot list. Additionally, Kiwa noted that the harvest of buffer zones wasn't well documented, and harvest records weren't complete for all crops. Kiwa set December 31, 2019 as the deadline for Safe to submit records, including the date of harvest, product harvested, quantity harvested, field/farm identity, and lot number.

Kiwa subsequently conducted a follow-up unannounced inspection on December 16, 2019. The resulting Review/Certification Report identified Safe as a "high risk" operation and



stated that the prior year's required corrective actions still hadn't been implemented. Kiwa found plots where buffer zones were still not sufficient, i.e. the buffer zone in the East was only 3 meters and the buffer zone between Safe and conventional neighboring farms was still less than 8 meters. The buffer zone plan also still didn't describe measures taken for each plot in detail. Kiwa required immediate correction of these noncompliances. Kiwa again found that Safe's plot list was not clear and didn't match the reality of Safe's plots observed by the inspector. Kiwa gave Safe until December 31, 2019 to provide an updated plot list. Kiwa also found that sales records and harvest records were not complete, and Safe's Organic System Plan (OSP) needed updating.

Additionally, Kiwa's inspector found that Safe was using a prohibited chemical fertilizer and conventional treated seeds and was using a chemical washing powder as a plant protection to avoid aphids in organic production areas. Kiwa specifically noted a high risk of potential contamination of organic products while in storage as there was no evidence that Safe had established protective measures, i.e. separation of organic and conventional products. Safe was told to immediately correct these noncompliances. Kiwa's inspector also noted that he was prevented from taking a sample of peppermint products in storage and was threatened by Safe's representative.

Kiwa's separate Inspection Report of the December 16, 2019 inspection, provides additional details and identified Safe's representatives – Abo Golayel and Yasser Golayel - as being present. The inspector stated that he found an empty new urea plastic bag, the inside of which was covered by urea residue powder, in the field of Safe's Al Shrouk farm. He also found containers of Modified Mono Phosphate fertilizer, manufactured in September 2019, and DAP Plant Green; and stated in the inspection report that the workers acknowledged using both

products. The inspector also found that Safe's eight farms totaling (b)(4), were actually less than half of the area identified by Safe the prior year, and conventional plots not owned by Safe were found among the certified fields. The inspector collected some samples for testing, however, Kiwa stated that the courier service used to transport samples in Egypt was unavailable for a long period of time, and when it became available, the samples could no longer be analyzed and were destroyed.

The inspector states he also asked Safe about the peppermint crop and was told there was none in storage; however, he found (b)(4) in the warehouse. The inspector reported that the operator did not allow him to collect samples and was told not to report that the peppermint was in the warehouse. The inspector recommended that the peppermint fields begin a 3-year conversion process. The report also noted many other noncompliances. The buffer zones noted as inadequate in 2018 were still not adequate; there were no records of adjacent land use; the plot list was still not clear; the sales documentation was still incomplete; the maps still weren't updated; the crop rotation plan was not updated and crop rotation was not adequate; and the OSP was still incomplete. The inspector found the separation between organic and conventional products in Safe's warehouse and in post-harvest handling was insufficient, risking cross-contamination. Finally, conventional products were found, which conflicted with Safe's claim that it was an organic-only operation.

The inspector noted that Safe explained the residue of prohibited substances found on peppermint exported to the European Union (EU) as being caused by the erroneous mixing of organic peppermint with conventional peppermint. On September 23, 2019, Kiwa had received an email from another client which reported that organic peppermint it imported to Germany was found to have residues of several prohibited substances. The peppermint shipment was

downgraded to conventional peppermint. Kiwa submitted multiple documents directly linking the affected peppermint back to Safe. This is what led to the inspector specifically asking Safe about the peppermint crop and attempting to collect a sample, which Safe didn't allow.

The inspector also found that Safe was using non-organic treated seeds without justification; chemical fertilizers and other inputs were not in compliance with the organic regulations, for which no justification was offered; Safe was using a chemical washing powder containing multiple prohibited substances; not all fertilizer inputs were documented, as only approved substances appeared on the input list; and Safe's pest management activities used unallowed substances. The report also stated that the post-harvest handling/processing activities did not comply with the organic regulations; cleaning measures weren't documented; documentation in general was incomplete; a traceability system had not been implemented; labels of finished products did not contain all required information; incoming/outgoing product records weren't complete; and the records of harvested amounts didn't match the amounts harvested from fields according to farmer records or the products sold or delivered.

Kiwa states that Safe subsequently failed to meet the December 31, 2019 deadline to submit various harvest records or an updated plot list. Based on this and the other findings of the 2019 inspections, Kiwa issued a Notice of Noncompliance and Proposed Suspension on April 23, 2020. Given that previous noncompliances had been provided, Kiwa did not need to issue the notice as a combined notice. Safe had been provided due process when given the prior opportunities to correct the noncompliances.

Safe's Appeal only stated that it had been certified by Kiwa for a couple years, and that Kiwa had issued a cancellation of its certification and annulment of their contract on January 14, 2020 as retaliation for its changing of certifiers to CERES. NOP confirmed that Kiwa did send a

letter on that date to Safe stating that their contractual relationship was terminated, and certification was cancelled. However, Kiwa stated to NOP on September 24, 2020, that they realized a termination of the contract wasn't NOP-compliant, and subsequently issued the April 23, 2020 Notice of Noncompliance and Proposed Suspension for the noncompliances found at the December 16, 2019 inspection after updating the Review/Certification Report on April 21, 2020.

Safe applied to CERES for crops and handling certification on January 13, 2020, stating that it was currently certified by Kiwa, but was considering a change in its certifier. Subsequent to CERES' January 27 and 28, 2020 inspections of Safe's 8 farms, CERES certified Safe for handling on February 11, 2020. However, CERES subsequently received the Kiwa inspection reports and states that it also learned of inappropriate behavior and statements by Safe at Kiwa's December 2019 inspection. Therefore, based on Kiwa's documentation, CERES issued a Notice of Noncompliance and Denial of Certification as to Safe's crops, on April 15, 2020. CERES stated in the adverse action notice that Safe failed to provide information on the noncompliances detected by Kiwa; used prohibited synthetic fertilizer and conventional treated seeds; and intimidated and threatened Kiwa's inspector by not allowing him to take samples and attempting to bribe him. Specifically, CERES noted the finding of products containing urea, superphosphate and DAP Plant-Green (diammonium phosphate) on Safe's farms, although the products couldn't be linked to specific plots/fields. Additionally, a chemical detergent used for plant protection was found on Safe's premises, though it couldn't be linked to a specific plot/field or crop. CERES stated that Safe claims to be an 'organic-only' operation and therefore, there is no logical explanation for the presence of these prohibited substances on Safe's premises.

CERES states it based its denial of crop certification on noncompliances and other information found in Kiwa inspection reports; however, CERES did inspect Safe's various farms on January 27 and 28, 2020, and also found several noncompliances documented in the CERES Inspection Reports. CERES and Kiwa are both USDA-accredited certifying agents and are allowed to share information on operations for the purposes of certification and decertification. Many of the noncompliances found by CERES mirrored those found by Kiwa, including inadequate training for workers, noncompliant labels, the use of conventional seeds, a crop rotation plan that wasn't implemented, missing farm diaries for 2019, the failure of some farms to maintain sales invoices, and insufficient traceability documents. The inspector concluded that the noncompliances needed to be corrected prior to Safe receiving crop certification.

Safe submitted a request for mediation to CERES' Notice of Noncompliance and Denial of Certification. Safe complained of Kiwa's unannounced inspection on December 16, 2019, that there was no Safe representative present, that the inspector stated there were no major noncompliances, and that Kiwa sent false information to CERES. CERES addressed Safe's statements and denied the request for mediation in a notice of May 7, 2020, stating that it can't account for the actions of another certifier. However, CERES didn't find Kiwa's information to be false. In fact, the inspector who had conducted Kiwa's December 16, 2019 inspection was subsequently hired by CERES. Also as stated above, Safe's representatives were present at the inspection.

Safe then filed an Appeal on May 10, 2020, again claiming that CERES hadn't found any noncompliances. Safe also stated that the CERES inspector took samples and no prohibited pesticides were found. CERES acknowledged this and submitted the laboratory reports for the testing of samples from sesame, bean, black cumin, hibiscus, and peppermint (plot 2) fields at

some of Safe's farms. However, Safe is producing several other crops; the laboratory reports don't show testing for prohibited herbicides, fungicides, fertilizers or other products; and CERES has stated that its actions were based on the findings of Kiwa's inspections. Further, containers of synthetic fertilizers were found on Safe's properties by Kiwa and the Kiwa inspector was not allowed to take samples from other peppermint crops. Safe states it had informed CERES that it was certified by Kiwa when applying to CERES, which is noted in Safe's CERES application. While CERES states it used Kiwa's inspection reports in issuing its adverse action notice, Kiwa states it didn't use CERES' inspection report for issuing its notice to Safe.

In conclusion, evidence substantiates that Safe's operation has systemic noncompliances that were noted in a June 22, 2018 letter to Safe by Kiwa and despite opportunities provided by Kiwa, with extensions of deadlines, were not corrected by Safe. Kiwa warned Safe on June 22, 2018 that if the October 31, 2018 deadline for making corrective actions wasn't met, further action could be taken against Safe including loss of certification. However, subsequent inspections by Kiwa revealed several noncompliances hadn't been corrected, and despite extending deadlines to June 30, 2019 and then to December 19, 2019, Safe still failed to take appropriate action. As stated in the organic regulations at 7 C.F.R. §205.662(c), when the correction of a noncompliance is not completed with the prescribed time period, the certifying agent shall send the certified operation a written notification of proposed suspension or revocation of certification of the entire operation or a portion of the operation, as applicable to the noncompliance. Therefore, Kiwa was justified in issuing the April 23, 2020 Notice of Noncompliance and Proposed Suspension.

Kiwa's inspection reports were shared with CERES, which found at its own inspections of Safe that the many noncompliances cited by Kiwa weren't corrected. CERES also found

additional noncompliances. Pursuant to 7 C.F.R. §205.405, when the correction of a noncompliance is not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The regulations additionally state that if a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposely misrepresented the applicant's operation or its compliance with the certification requirements, the certifier may deny certification without first issuing a notification of noncompliance. Therefore, CERES was justified in issuing the April 15, 2020 Notice of Noncompliance and Denial of Certification.

### **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, Safe violated the organic regulations at 7 C.F.R. §205.103; 7 C.F.R. §205.105; 7 C.F.R. §205.201; 7 C.F.R. §205.202; 7 C.F.R. §205.203; 7 C.F.R. §205.204; 7 C.F.R. §205.205; 7 C.F.R. §205.272; 7 C.F.R. §205.400; 7 C.F.R. §205.403; and 7 C.F.R. §205.406. Safe's multiple noncompliances constitute a systemic failure of Safe's overall organic system. Therefore, Safe may not remain certified.

### **DECISION**

The Appeals of April 24, 2020 and May 10, 2020 are denied. Kiwa's April 23, 2020 Notice of Noncompliance and Proposed Suspension of crop and handling certification, as well as CERES' April 15, 2020 Notice of Noncompliance and Denial of Certification of crops are

affirmed. Safe's crop and handling certification are to be suspended for one year, specifically Kiwa's certification for crops and handling, and CERES' certification for handling. Pursuant to 7 C.F.R. §205.662(f)(1), Safe may apply for reinstatement of its crop and/or handling certifications; however, due to the number, severity, and recurrence of the violations by Safe, it may not request reinstatement of certification for one year from the commencement date of suspension. Any future request for reinstatement must be accompanied by evidence demonstrating correction of each noncompliance found by Kiwa and CERES and fully demonstrate its compliance with the Act and the organic regulations. While its certification is suspended, Safe may not sell, represent, or label its agricultural products as organic.

Attached to this formal Administrator's Decision denying Safe's Appeals is a Request for Hearing form. Safe has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Safe waives the hearing, the Agricultural Marketing Service will direct Kiwa to issue a Notice of Suspension.

Done at Washington, D.C., on this 23rd  
day of November, 2020

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
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