

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

BEFORE THE ADMINISTRATOR

In re:
SRS Certification GmbH
Goettingen, Germany

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Administrator's Decision
APL-035-18

This Decision responds to an appeal (APL-035-18) of a Notice of Noncompliance and Denial of Accreditation issued to SRS Certification GmbH by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP). The certifier has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and handling operations pursuant to the USDA organic regulations (7 C.F.R. Part 205). Accreditation of certifying agents is done by the NOP, which also initiates compliance actions to enforce program requirements. Noncompliance procedures for certifying agents are set forth in §205.665 of the USDA organic regulations. Persons subject to the Act who believe that they are adversely affected by a noncompliance decision of the NOP may appeal such decision to the

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

AMS Administrator, pursuant to §205.680 Adverse Action Appeals Process – General, and §205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On July 3, 2017, SRS Certification GmbH (SRS) submitted its Application for Accreditation along with numerous documents, including its proposed personnel list and Standard Operating Procedure to be used as a certifier. SRS's main office is in Goettingen, Germany, with a planned office in Shanghai, China, from which SRS would seek to certify organic operations in China and surrounding countries.
2. The CEO of SRS was previously employed as the General Manager for Certification of Environmental Standards, GmbH (CERES) in Germany and was Account Manager of CERES' Shanghai office. She proposed using the inspection services of several CERES Shanghai employees who were to leave the employ of CERES and join SRS.
3. On January 17 – 20, 2018, NOP conducted an onsite pre-decisional audit of SRS in Germany, including witness audits at three facilities. The last witness audit was conducted on February 19, 2018. The Accreditation Assessment Checklist for the pre-decisional audit noted fourteen noncompliances. Of these, ten were eventually cleared and four remained outstanding pursuant to a March 6, 2018 Noncompliance Report/Assessment.
4. On March 12, 2018, NOP issued a Notice of Noncompliance which included a Noncompliance Report listing all fourteen noncompliances discovered during the onsite audit and the witness audits of the three facilities.

5. On March 26, 2018, SRS submitted corrective actions in response to the Noncompliance Report.
6. On May 4, 2018, NOP informed SRS that it was investigating a complaint involving SRS and hence, was not proceeding with the accreditation process until the complaint was resolved.
7. On June 15, 2018, NOP issued a Notice of Noncompliance and Denial of Accreditation to SRS pursuant to 7 CFR §205.507, stating that NOP determined that SRS is noncompliant with the USDA organic regulations at 7 CFR §205. The noncompliance described in this notice pertained to qualifications of seven SRS personnel. This noncompliance finding was new, and had not been included in the March 12, 2018 Notice of Noncompliance.
8. On June 26, 2018, AMS received SRS's Appeal, with a point-by-point response to the denial of accreditation.

DISCUSSION

The NOP denied SRS's accreditation application, stating in the Notice of Noncompliance and Denial of Accreditation that it determined that SRS is noncompliant with the USDA organic regulations at 7 CFR §205.501(a)(2)-(3) which state, "A private or governmental entity accredited as a certifying agent under this subpart must: Demonstrate the ability to fully comply with the requirements for accreditation set forth in this subpart; Carry out the provisions of the Act and the regulations in this part, including the provisions of §§205.402 through 205.406 and §205.670."

Specifically, NOP stated that a review of SRS's application for accreditation, along with accompanying documentation, including a document setting forth the roles and responsibilities

of each SRS staff member, revealed that eleven of the twelve total SRS personnel, including 100% of SRS management and all five SRS staff inspectors, are employees of CERES Shanghai, formally known as CERES (Shanghai) Certification Co., Ltd., CHINA. NOP stated it received evidence documenting significant deficiencies in personnel proficiency and substantial non-correctable, noncompliant activities conducted by seven SRS personnel who are also employees of CERES Shanghai. The documents that NOP reviewed included Corrective Action Reports, Corrective Action Audit Reports, and Witness and Check Audits covering 2010 to 2018 for CERES Shanghai.

Specifically, NOP found that five SRS personnel, including three responsibly connected persons – the Deputy CEO/Quality Manager, the Certification Department Manager, and the Technical Department Manager – and two Certification Department Staff Inspectors, produced inspection reports for CERES Shanghai that contained falsified compliance claims and omitted significant noncompliant practices, including prohibited synthetic chemical use, failure to disclose parallel production or grower group status, lack of product traceability, and the sale of conventional product as ‘organic,’ for NOP certified operations in China. NOP also reviewed witness audit reports and check audits of inspections performed by SRS personnel which showed significant inadequacies for four of five total CERES Shanghai inspectors, including failure to verify critical operation information, to take notes during inspections and to confirm traceability of products sold as ‘organic.’ These CERES Shanghai inspectors were identified by SRS as their Shanghai inspectors. Due to the significant number of SRS responsible leaders and staff associated with these documented noncompliances, the NOP considered them non-correctable.³

³ It is noted that CERES Shanghai was founded in 2005 as a joint venture between German-based CERES (which contributed 25% of the capital) and a Chinese company, Shanghai OLijin Environmental Technology Co. Ltd. (which contributed 75% of the capital). CERES holds the USDA accreditation. This appeal is not making a

NOP further noted that on April 4, 2018, the Chinese government issued an administrative civil penalty to CERES Shanghai due to fraudulent organic certification activities. The China National Certification and Accreditation Regulatory Commission revoked CERES Shanghai's accreditation as a certification body and revoked the certification qualifications of the individuals, previously with CERES' Shanghai staff, and identified as SRS Certification Department Manager (Gao Hong) and SRS Technical Department Manager (Yu Weijing), due to fraudulent organic certification conclusions. The organic certification of seven operations, certified by CERES Shanghai staff, were also revoked.

In the appeal, SRS's CEO stated that due to internal problems at CERES, many employees and contract inspectors were seeking new employment, and she and three other employees left CERES and started their own company, SRS. However, while SRS was registered in Germany on May 23, 2017, the four individuals didn't leave the employ of CERES until October 2017, and other individuals from CERES joined SRS over the following months.

Addressing the findings that a significant number of SRS responsible leaders and staff are associated with documented noncompliances while they were employed CERES, SRS contended that any professional deficiencies of the Shanghai inspectors developed and occurred under CERES, and SRS is not at fault. Further, SRS plans on doing all major tasks in the Germany office and is training the future SRS Shanghai inspectors by conducting workshops and utilizing the Socratic method, instead of merely giving lectures as CERES did. SRS acknowledged China as a "high risk" country and stated that it had strategies to manage this risk. SRS also stated that it would not use foreign inspectors in China because Chinese inspectors know the culture and speak the language and share the goals for organic production and certification.

determination regarding the actions of CERES Shanghai. The National Organic Program's Accreditation and International Activities Division is addressing CERES Shanghai activities separately.

SRS' CEO stated that initially, prior to the appeal, SRS had six employees in Germany and five contract inspectors in Shanghai, China, who were prior employees of CERES; however, she also stated that three of the inspectors (b) (6), (b) (7)(C) returned to CERES since SRS hasn't yet been accredited and thus, can't perform inspections and pay staff. Subsequent to submitting the appeal, SRS presented an updated Personnel List of June 21, 2018 showing six employees in Germany, six contract inspectors in Shanghai, and four staff members in Shanghai. The updated list showed that only three of the SRS employees were former CERES employees, which is fewer than prior staff lists.

SRS's CEO stated she doubts the competence and impartiality of those who conducted the CERES-imposed witness audits on the CERES Shanghai inspectors, but did not provide any evidence to support those contentions. Further, SRS states that three of those inspectors (identified above) are now working for CERES Shanghai again, casting doubt on the statements of CERES regarding the competency of those inspectors. SRS contends that CERES filed the complaint against SRS to reduce competition.

NOP has reviewed a voluminous amount of documentation supporting the Denial of Accreditation. The documentation substantiates the performance inadequacies and errors of several Shanghai inspectors who, among other things, produced inspection reports that contained falsified compliance claims and omitted significant noncompliant practices found during inspections of certification applicant operations. The Corrective Action Reports, warnings, Corrective Action Audits, and Notices of Noncompliances issued by CERES 'against' the CERES Shanghai office date back to 2010, and detail the performance inadequacies. While this occurred before SRS was registered as an entity in Germany, and SRS is not responsible for the deficiencies of another entity's personnel, SRS then chose several of the same CERES Shanghai

inspectors to be inspectors for SRS's Shanghai location. NOP noted in the June 15, 2018 Notice of Noncompliance/Denial of Accreditation that due to the significant number of SRS 'responsible leaders and staff' who were associated with documented noncompliances while they were employed by CERES, NOP considered them 'non-correctable.'

SRS's CEO was aware of the findings by CERES against the individual inspectors, given that she was the CERES Account Manager for the CERES Shanghai office. Although SRS revised its staff list at least twice prior to the issuance of the June 15, 2018 Notice of Noncompliance and Denial of Accreditation, it still contained individuals who were found to be complicit in noncompliant activities while with the CERES Shanghai office, with two being in managerial positions, both of whom had their certification qualifications revoked by the Chinese government. It was only after NOP issued the Denial of Accreditation that SRS presented an updated Personnel List showing only three CERES employees.

This appeal decision specifically considers the question of whether NOP made a correct determination in denying SRS's application for accreditation. It is acknowledged that SRS has presented training materials and an Audit and Training Plan for 2018, and has done extensive work in anticipation of becoming accredited, such as preparing various policies, procedures, manuals and guidance on conducting inspections, and completing an inspection report. The SRS Shanghai office also received certification on May 29, 2018, by the Chinese government, which had previously revoked the certification of the CERES Shanghai office. This information and documentation will be important if SRS reapplies for accreditation.

CONCLUSION

An accredited certifying agent must demonstrate the ability to fully comply with the requirements for accreditation set forth in the organic regulations. Specifically, an accredited certifying agent is required pursuant to 7 CFR 205.501, General requirements for accreditation, to “use a sufficient number of adequately trained personnel, including inspectors and certification review personnel...(and) ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.” Further, a certifying agent must “ensure that its responsibly connected persons, employees, and contractors with inspection, analysis, and decision-making responsibilities have sufficient expertise in organic production or handling techniques to successfully perform the duties assigned.”


Despite the presentation by SRS of an updated staff list showing that most of the former CERES Shanghai staff members will not be working for SRS as previously planned, the issuance of the Notice of Noncompliance and Denial of Accreditation was appropriate, based on the information available at that time and the number of CERES Shanghai inspectors, who had been found to be complicit in noncompliances, named as SRS Shanghai inspectors. The information which SRS submitted with its appeal, shows that now only three of sixteen staff are former CERES employees. However, given the repeated fluctuations in staff for SRS, planned and already onboard, a new application for accreditation would be the appropriate means to evaluate whether the noncompliances that appropriately led to the Denial of Accreditation have been resolved.

DECISION

The appeal is denied and SRS's application for accreditation is denied. Attached to this formal Administrator's Decision is a Request for Hearing form. SRS has thirty days to request an administrative hearing before an Administrative Law Judge. If SRS does not request a hearing in that period, this Decision will be implemented and the denial of SRS's July 3, 2017 accreditation application will become final.

However, in accordance with §205.507, Denial of accreditation, SRS may apply for accreditation again at any time in accordance with §205.502 of the organic regulations.

Done at Washington, D.C., on this 15th
day of February, 2019.



Bruce Summers
Administrator
Agricultural Marketing Service