

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Kegsafrut S.A. ) **Administrator's Decision**  
Machala, El Oro, Ecuador ) **APL-048-19**  
)

This Decision responds to an appeal (APL-048-19) of a Notice of Noncompliance and Proposed Suspension of National Organic Program certification issued to Kegsafrut S.A. (Kegsafrut) of Machala, El Oro, Ecuador, by Quality Certification Services (QCS). 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 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

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

<sup>2</sup> 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 March 15, 2019, QCS issued a Notice of Noncompliance and Proposed Suspension.
2. On April 12, 2019, Kegsafрут filed an Appeal to NOP.

### **DISCUSSION**

The USDA organic regulations at 7 C.F.R. 205.102, Use of the term, “organic,” state that, “Any agricultural product that is sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specific ingredients or food group(s))” must be: (a) Produced in accordance with the requirements specified in §205.101 or §§205.202 through 205.207 or §§205.236 through 205.240 and all other applicable requirements of part 205; and (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 and all other applicable requirements of this part 205.”

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 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;...(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.”

QCS proposed a suspension of Kegsafrut’s organic certification, which would prohibit the sale, labeling, or representation of its products as organic. QCS issued a Notice of Noncompliance and Proposed Suspension for Kegsafrut’s grower group after the December 19, 2018 inspection revealed numerous noncompliances. QCS states there is no evidence that Kegsafrut’s internal control system is operational; no annual reports of visits to producer members of the grower group; and no information or documentation on packing, harvesting, or post-harvest handling and sales made by the group members/farms. Further, Kegsafrut has no process for approving new producer member farms; no waste monitoring plan; and no plan to implement corrective actions or documentation to support closure of prior noncompliance findings. QCS also was unable to determine the origin of some fruit or conduct a traceback; and unknown inputs were seen on the fields of member farms, as well as empty sacks from Ammonium Nitrate, a prohibited substance.

In its Appeal, Kegsafrut didn’t address the noncompliance allegations specifically, but attributes the lack of information, as delineated by QCS, to some of its Producer Agreements having the wrong signatures. Kegsafrut then submitted Producer Agreements for each of its 8 grower group members, all signed June 9, 2018.

Kegsafrut is an organic grower group operation initially certified for crops, specifically bananas, on November 17, 2014. QCS identified several noncompliances regarding Kegsafrut’s lack of oversight of its 8 grower group members. These 8 members and their farms are identified in Kegsafrut’s Organic System Plan/Organic Grower Group Plan (OGGP) as: 1) [REDACTED]

[REDACTED] with the [REDACTED] and [REDACTED] farms; 2) [REDACTED]

with the [REDACTED] farm; 3) [REDACTED] with the [REDACTED] farm; 4) [REDACTED] with the [REDACTED], and [REDACTED] farms; 5) [REDACTED] with the [REDACTED] farm; 6) [REDACTED] with the [REDACTED] and [REDACTED] farms; 7) [REDACTED] with the [REDACTED] farm; and 8) [REDACTED] with the [REDACTED] farm.

However, Kegsafrut didn't respond to the specifically-identified noncompliances. Rather, Kegsafrut's response was the submission of the Producer Agreements for each of the 8 members, signed June 9, 2018. The producer members confirm by their signatures that their banana farms are organically managed and agree to comply with NOP organic regulations and all provisions set forth by Kegsafrut. Additionally, they agree to use only permitted inputs and 'handmade organic fertilizers, i.e. earthworm humus; avoid contamination of water sources; and not use any herbicides, chemical-synthetic fertilizers, or any input of chemical or synthetic origin. The members also agree to maintain updated documentation including field/crop registrations, input records and the purchase documents therefor, invoices and sales documentation, and harvest records. However, an agreement to abide by these terms is not substantiation that the terms have been met.

Despite these agreements, QCS's December 19, 2018 inspection, which occurred 6 months after the Producer Agreements were signed, revealed that Kegsafrut didn't properly oversee the member producer's compliance with the NOP regulations and the promises set forth in the Producer Agreements have not been upheld. Kegsafrut hasn't maintained annual reports of visits to member producer farms or inspection reports for all members, and the information presented doesn't include the date of the visit or the signature of Kegsafrut's inspector, the producer, or the management of Kegsafrut. Additionally, there is no information or last

inspection report of members [REDACTED] farm and [REDACTED] farm. There is no documentation or information supporting the sales of organic bananas made by each member producer. There are also no records or information on packing, harvesting, post-harvest handling, and sales made by member farms.

Pursuant to its Internal Control System Regulations, Kegsafrut is required to periodically visit each of the group farms to conduct visual monitoring, and to make a written report once a year verifying each farms' compliance with the organic standards. The Kegsafrut inspector is to review production and post-harvest records, fertilization records, and verify all crops. Pursuant to the OGGP, Kegsafrut is to ensure that all operations/member farms are compliant with the regulations; that each member is visited at least once per year to verify adherence to the OGGP; that members use only inputs approved in the OGGP; and that Kegsafrut has procedures for adverse actions to address noncompliant group members. The OGGP also requires Kegsafrut to ensure that adequate harvest and post-harvest records are maintained by the member farms. The Grower Group Inspection Checklist Report requires inspectors to "verify the functioning of the Internal Control System in accordance with the organic system plan and National Organic standards. The Kegsafrut inspector must visit each 'production unit' to verify ... the implementation of the organic system plan and the Internal Control System..." The inspection report must include the member's name, inspector's name, date of inspection, and member's representatives. As discussed above, Kegsafrut has failed to comply with these various oversight requirements.

QCS's December 19, 2018 inspection also found that Kegsafrut doesn't have any procedure for the approval of new member producers; no waste monitoring plan; and no procedures for implementing corrective actions or maintaining documentation supporting the

closure of findings from prior inspections. Kegsafrut must have a procedure enabling it to properly and adequately vet prospective new group members, to include the submission and review of applications by prospective members, inspection of the prospective members' farm(s), review of all relevant documentation, confirmation of the inputs used by member, and confirmation that adequate documentation is maintained to allow for successful traceback audits. Kegsafrut must also be able to efficiently and effectively resolve and document the resolution of noncompliances by itself and its members, including follow up inspections of members' farms.

During the inspection, QCS states that it also couldn't determine the origin of the bananas from the grower group sold in week #36 of 2018. The September 10, 2018 invoice of Kegsafrut to [REDACTED] doesn't identify the source of the bananas. Kegsafrut sells the fruit of its 8 member growers exclusively to [REDACTED], though [REDACTED] purchases fruit for exportation from numerous producers. Further, although the Packing List references the [REDACTED] farm of [REDACTED], one of Kegsafrut's grower group members, there is no documentation of traceability to substantiate this farm is the source of the bananas. QCS submitted several sales-related documents, including a [REDACTED] receipt for fruit from producer [REDACTED] and the [REDACTED] farm in week 36.

Lastly, QCS states it found unknown and/or prohibited substances at 3 member's farms. QCS states there were empty sacks labeled Ammonium Nitrate at the farm of [REDACTED]. This is a prohibited substance and no explanation was provided as to why the empty sacks were there. QCS states it also found white crystals in the fields of member [REDACTED]; and white and red crystals, along with green fertilizer in the fields of member [REDACTED]. QCS submitted a laboratory report of December 27, 2018 as documentation of the findings. However, the laboratory report doesn't identify the source of the

sample to which the report applies, what was sampled and tested, and doesn't clearly state the results, what substances were found, and the levels found. NOP asked QCS to provide lab reports for samples taken at the member farms cited by QCS – [REDACTED] [REDACTED] and [REDACTED], and to explain the results. QCS replied that the lab report applies to a mix of samples taken from all 3 cited farms but didn't explain the results. Kegsafrut holds an organic certificate for a grower group of 8 members, including the 3 cited member farms, and a finding of prohibited substances on any of the farms would affect Kegsafrut's certification and hence, all 8 member farms. However, QCS needs to be able to definitively state the lab results and the specific prohibited substance(s) found on any member farm for this to serve as definitive evidence supporting a suspension. Therefore, despite the field observations, QCS has failed to substantiate a finding of prohibited substances on Kegsafrut's member farms.

In conclusion, although QCS's allegation of the use of prohibited substances was not fully substantiated, documentation does substantiate that Kegsafrut and its grower group members have been unable to comply with the organic regulations and the specific terms of the Producer Agreements between Kegsafrut and the members. Further, Kegsafrut hasn't complied with its own Internal Control System Regulations, which require Kegsafrut to periodically visit each of the group farms to conduct visual monitoring, and to make a written report once a year verifying each farms' compliance with the organic standards, as well as review production and post-harvest records, fertilization records, and verify all crops. Kegsafrut also hasn't complied with its OGGP, which requires Kegsafrut to ensure that all operations/member farms are compliant with the regulations; that each member is visited at least once per year to verify adherence to the OGGP; and that Kegsafrut and the members maintain various records, as listed



above. Kegsafrut's failure to conduct yearly inspections of each of its 8 member growers and complete and maintain inspection reports on each member constitutes a systemic breakdown of Kegsafrut's internal controls. Inspections of its member growers is Kegsafrut's way to determine overall compliance with the organic regulations and ensure the integrity of the organic program and Kegsafrut's claim that the bananas of its grower group are organically produced. Kegsafrut's failure to conduct all required inspections and maintain inspection reports also threatens its ability to identify noncompliances by its grower members and ensure that all necessary corrective actions are taken.

Further, Kegsafrut's OGGP is also deficient because it doesn't have any procedure for the approval of new member producers; no waste monitoring plan; and no procedures for implementing corrective actions or maintaining documentation supporting the closure of findings from prior inspections. Therefore, even if inspections were conducted and reports maintained, Kegsafrut has not established a procedure for addressing noncompliances. While the cited recordkeeping noncompliance regarding the origin of fruit in week 36 hasn't been established, it is crucial for Kegsafrut to conduct the inspections of its grower members and ensure that all appropriate records are being maintained. Kegsafrut's OGGP also must have a procedure enabling it to properly and adequately vet prospective new group members, to include the submission and review of applications by prospective members, inspection of the prospective members' farm(s), review of all relevant documentation, confirmation of the inputs used by member, and confirmation that adequate documentation is maintained to allow for successful traceback audits.

## **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, Kegsafrut violated the organic regulations at 7 C.F.R. §205.102; 7 C.F.R. §205.103; 7 C.F.R. §205.105; and 7 C.F.R. §205.201. These noncompliances do not allow for continued certification. QCS's issuance of a combined Notice of Noncompliance and Proposed Suspension was justified because the scope of the noncompliances indicates there has been a noncorrectable, systemic failure of Kegsafrut's overall organic system.

## **DECISION**

The appeal is denied and Kegsafrut's organic certification is to be suspended. Attached to this formal Administrator's Decision denying Kegsafrut's appeal is a Request for Hearing form. Kegsafrut has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Kegsafrut waives the hearing, the Agricultural Marketing Service will direct QCS to issue a Notice of Suspension. At any time after suspension, Kegsafrut 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.” Kegsafrut may work with any certifier to complete a request for reinstatement.

Done at Washington, D.C., on this 27<sup>th</sup>  
day of November, 2019.

A handwritten signature in black ink, appearing to read "Bruce Summers", written over a horizontal line.

Bruce Summers  
Administrator  
Agricultural Marketing Service