

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) Docket No. 14-0027  
 )  
Kriegel, Inc., and Laurance Kriegel, )  
 )  
Petitioners ) **Decision and Order**

**PROCEDURAL HISTORY**

Kriegel, Inc., and Laurance Kriegel [hereinafter Petitioners] applied to the Texas Department of Agriculture for organic certification.<sup>1</sup> On April 2, 2013, the Texas Department of Agriculture denied Petitioners' application for organic certification. On May 2, 2013, pursuant to 7 C.F.R. § 205.681(a), Petitioners appealed the Texas Department of Agriculture's denial of their application for organic certification to the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator]. On October 22, 2013, the Administrator denied Petitioners' appeal.

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<sup>1</sup>The Texas Department of Agriculture is an entity accredited by the Secretary of Agriculture as a certifying agent for the purpose of certifying production or handling operations as certified production or handling operations which comply with the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501-6522) [hereinafter the Organic Foods Production Act], and the regulations issued under the Organic Foods Production Act (7 C.F.R. pt. 205).

On November 5, 2013, Petitioners filed a pleading with the Office of Administrative Law Judges, United States Department of Agriculture, requesting review of the Administrator's denial of their appeal. On December 4, 2013, Buren W. Kidd, Office of the General Counsel, United States Department of Agriculture,<sup>2</sup> filed a response to Petitioners' November 5, 2013, pleading contending the Office of Administrative Law Judges has no jurisdiction to consider Petitioners' November 5, 2013, request to review the Administrator's denial of their appeal.

On January 17, 2014, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued a Decision and Order Dismissing Petition for Appeal [hereinafter the ALJ's Decision and Order]: (1) concluding this proceeding is not yet ripe to be heard by the Office of Administrative Law Judges as no formal administrative proceeding to deny organic certification has been initiated by the United States Department of Agriculture, as required by 7 C.F.R. § 205.681(a)(2); (2) denying Petitioners' November 5, 2013, request for review of the Administrator's denial of Petitioners' appeal; and (3) dismissing the proceeding with prejudice.

On February 5, 2014, Petitioners appealed the ALJ's Decision and Order to the Judicial Officer. On February 20, 2014, the Agricultural Marketing Service filed a response to Petitioners' appeal petition. On February 26, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

### **DECISION**

The Organic Foods Production Act requires the Secretary of Agriculture to establish a procedure under which a person may appeal an adverse action under the Organic Foods Production

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<sup>2</sup>Mr. Kidd refers to himself as the "Agency Representative." Based upon the record, I infer Mr. Kidd represents the Agricultural Marketing Service, United States Department of Agriculture.

Act, as follows:

**§ 6520. Administrative appeal**

**(a) Expedited appeals procedure**

The Secretary shall establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this chapter that—

- (1) adversely affects such person; or
- (2) is inconsistent with the organic certification program established under this chapter.

7 U.S.C. § 6520(a). Pursuant to this requirement to establish an appeals procedure, the Secretary of Agriculture promulgated regulations which provide that an applicant for organic certification may appeal a certifying agent's denial of certification to the Administrator and which further provide that, if the Administrator denies the appeal, a formal administrative proceeding will be initiated to deny the certification, as follows:

**§ 205.681 Appeals.**

(a) *Certification appeals.* An applicant for certification may appeal a certifying agent's notice of denial of certification . . . to the Administrator[.]

....

(2) If the Administrator . . . denies an appeal, a formal administrative proceeding will be initiated to deny . . . the certification. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice. . . .

7 C.F.R. § 205.681(a), (a)(2). The regulations do not provide that an applicant may initiate a proceeding to review the Administrator's denial of the applicant's appeal, as Petitioners have done in this proceeding. Instead, the regulations provide that the United States Department of Agriculture will initiate a formal administrative proceeding to deny organic certification. Therefore, I agree with the ALJ's Decision and Order dismissing this proceeding with prejudice, and I conclude Petitioners' February 5, 2014, appeal to the Judicial Officer must be dismissed for lack of jurisdiction.

For the foregoing reasons, the following Order is issued.

**ORDER**

Petitioners' February 5, 2014, appeal to the Judicial Officer is dismissed. This Order shall be effective upon service on Petitioners.

Done at Washington, DC

March 6, 2014

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William G. Jenson  
Judicial Officer