

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
)	
Asica Farms S.A.C.)	Administrator's Decision
)	APL-035-22
Trujillo, La Libertad, Peru)	
)	

This Decision responds to an Appeal (APL-035-22) of a Notice of Noncompliance and Proposed Suspension under the National Organic Program (NOP) issued to Asica Farms S.A.C. (Asica) of Trujillo, La Libertad, Peru by Mayacert S.A. (Mayacert), a USDA accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (USDA) organic regulations.²

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

¹ 7 U.S.C. 6501-6522

² 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 June 17, 2019, Asica became certified for handling.
2. On September 8, 2020, Asica became certified for crops, specifically ginger, turmeric, and mango.
3. On March 6, 2021, the European Commission (EC) issued Organic Farming Information System (OFIS) alert 168-2021 DE arising out of a finding of prohibited substances on Asica-handled mangoes. This and the other OFIS alerts were sent to Mayacert, which informed Asica and the alerts and investigated the findings set forth in the alerts.
4. On March 19, 2021, the EC issued OFIS alert 177-2021 DE arising out of a finding of prohibited substances on Asica-handled mangoes.
5. On March 23, 2021, the EC issued OFIS alert 189-2021 DE arising out of a finding of prohibited substances on Asica-handled mangoes.
6. On March 24, 2021, Mayacert notified Asica of the OFIS alerts and that it would be conducting an investigation regarding the findings which resulted in the 3 prior alerts.
7. On March 30, 2021, the EC issued OFIS alert 202-2021 DE arising out of a finding of prohibited substances on Asica-handled mangoes.
8. On approximately March 30, 2021, the EC issued OFIS alert 204-2021 NL arising out of a finding of prohibited substances on Asica-handled mangoes.
9. On April 6, 2021, Mayacert notified Asica of the OFIS alerts and that it would be conducting an investigation regarding the findings which resulted in the recent 2 alerts.

10. On April 12, 2021, the EC issued OFIS alert 230-2021 DE arising out of a finding of prohibited substances on Asica-handled mangoes.
11. On April 30, 2021, Mayacert issued a Notice of Noncompliance and Proposed Suspension to Asica after finding the intentional application of prohibited substances to Asica's organic mango crops. Asica didn't file an Appeal or request mediation regarding this proposed suspension.
12. On May 31, 2021, Mayacert issued a Suspension Notice to Asica for its crop certification, suspending its mango production area known as Fundo Los Naturales; the ginger and turmeric crops weren't suspended.
13. On June 29, 2021, Asica Farms S.A.C.; Fundo Asica became certified for crops, specifically avocado.
14. On approximately January 28, 2022, the EC issued OFIS alert 168-2022 NL arising out of a finding of prohibited substances on Asica-handled mangoes.
15. On February 21, 2022, Mayacert issued a Notice of Noncompliance and Proposed Suspension regarding Asica's handling of mangoes and referencing the finding of prohibited substances that had resulted in the recent OFIS alert.
16. On March 16, 2022, Mayacert denied Asica's request for mediation due to the reoccurrence of complaints of contaminated Asica products.
17. On March 23, 2022, Asica filed an Appeal.
18. On June 2, 2022, Asica Sourcing S.A.C. became certified for handling/trading organic mango, ginger, and turmeric.

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 (specified ingredients or food group(s))” must be: (a) Produced in accordance with the requirements ... and (b) Handled in accordance with the requirements ...”

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 §205.270, Organic handling requirements, state that, “...(c) The handler of an organic handling operation must not use in or on agricultural products intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” or in or on any ingredients labeled as organic: (1) Practices prohibited under paragraphs (e) and (f) of §205.105...”

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 substance...”

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 ...
- (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...

Asica was certified organic for handling on June 17, 2019 by Mayacert and handles both organic and conventional fruit. On February 21, 2022, Mayacert issued a Notice of Noncompliance and Proposed Suspension to Asica after being informed of a finding of prohibited substances on mangoes handled, marketed, and exported by Asica. Mayacert was notified of this finding by the European Commission (EC) via an alert from the Organic Farming Information System (OFIS), specifically OFIS alert 168-2022 NL. The details of this finding/alert show that on January 25, 2022, Eurofins issued a laboratory analysis report on the testing of a sample of organic mango (Kent variety) at the request of (b) (4) on behalf of (b) (4), a client of Asica.

The testing of Lot ROTPA 17-02 from Asica, revealed prohibited substances Carbendazime and combined Carbendazime and Benomyl, both at 0.054 mg/kg. These substances do not have an Environmental Protection Agency (EPA) tolerance level, and therefore, their use is prohibited at any level in organic crop production and handling. The Asica Invoice of December 10, 2021 shows the sale by Asica of (b) (4) boxes ((b) (4) kg) of Kent variety organic mango to (b) (4), to be transported on Container No. (b) (4). The Sea-Waybill shows the shipment of the mangoes to (b) (4) of (b) (4) boxes ((b) (4) kg). The Inspection Certificate shows Asica as the exporter and (b) (4) as the importer of (b) (4) boxes ((b) (4) kg) of organic fresh mangoes in container no. (b) (4), which is also shown in the transport documents between (b) (4) and (b) (4).

Based on the above, Mayacert issued a combined Notice of Noncompliance and Proposed Suspension regarding Asica's handling certification. Although Mayacert hadn't issued a Notice of Noncompliance prior to the issuance of the combined notice, the finding of prohibited substances on the organic Kent mango sold by Asica to (b) (4) as Lot (b) (4), was the latest in a long line of prohibited substance findings on Asica mangoes/products. Specifically, OFIS alert 168-2022 NL was the 7th OFIS alert from the EC reporting contamination by prohibited substances involving Asica-handled mangoes. The additional OFIS alerts are discussed below, and cited above. While the OFIS alerts weren't sent to Asica, but rather only Mayacert, Mayacert notified Asica on March 24, 2021 of 3 OFIS alerts it had received that month and that it would be conducting an investigation into the findings of prohibited substances on Asica products which had resulted in the OFIS alerts. Subsequently, on April 6, 2021, after receiving 2 additional OFIS alerts regarding Asica, Mayacert notified Asica that it would also be conducting an investigation in the findings of prohibited substances on Asica products that had resulted in the 2 additional recent OFIS alerts.

Therefore, Asica had been informed on prior occasions of the numerous findings of prohibited substances on their products, hereby putting them on notice of noncompliance with the organic regulations. Hence, the issuance of a combined Notice of Noncompliance and Proposed Suspension was justified. Further, based on the OFIS notifications, Asica had approximately 1 year to put corrective actions in place to prevent the contamination of organic handled products, and/or the use of prohibited substances. However, another finding of prohibited substances resulted in issuance of the OFIS alert 168-2022 NL on approximately January 28, 2022.

Additionally, as discussed below, on April 30, 2021, Mayacert issued a Notice of Noncompliance and Proposed Suspension to Asica, for the intentional application of prohibited substances to its organic mango crop, after sampling and laboratory analysis showed several prohibited substances. Asica admitted at the April 8, 2021 inspection that it had applied prohibited substances to its organic mango crop. Asica didn't request mediation or appeal the notice, and Asica's organic mango crop area of Fundo Los Naturales was suspended effective May 31, 2021. Therefore, this documents that Asica was well aware of the concerns about prohibited substances on its handled products.

Mayacert reported to NOP that it had been warned by the EC about the increasing number of contaminated shipments from Asica. On July 22, 2021, the EC wrote Mayacert, stating there had been 9 OFIS alerts involving Mayacert-certified operations from January to April 2021, including mangoes from Peru, and that notifications involving Asica were recurrent. Seven of the 9 alerts were for Asica.

Mayacert submitted the documents for the various OFIS alerts involving (b) (4) tons of mango from Asica. For example, OFIS alert 168-2021 DE was a result of a finding by Agrolab Lufa of Phosphonic acid at 0.206 mg/kg and Fosetyl at 0.276 mg/kg on sampled Kent variety organic mangoes from Asica. The picture of the box of organic mangoes attached to the lab report show the exporter as Asica. A review of invoice documentation, Inspection Certificate, and a report from a European government Agricultural Department confirms the finding of prohibited substances in a shipment of (b) (4) boxes of organic mangoes from Asica.

The other EC alerts involving Asica-handled mangoes, for which Mayacert submitted the laboratory analysis reports, are OFIS alert 177-2021 DE which was a result of a finding of Imidacloprid at 0.037 mg/kg; OFIS alert 189-2021 DE which was a result of a finding of

Carbendazim at 0.062 mg/kg and in a second analysis Carbendazim at 0.036 mg/kg; OFIS alert 202-2021 DE which was a result of a finding of Imidacloprid at 0.014 mg/kg, Phosphonic acid at 0.075 mg/kg, and Fosetyl-Al at 0.101 mg/kg; OFIS alert 204-2021 NL which was a result of a finding of Imidacloprid at 0.015 mg/kg Phosphonic acid and Dithiocarbamates at <0.01; and OFIS alert 230-2021 DE which was a result of a finding of Omethoate at 0.011 mg/kg, Phosphonic acid at 0.428 mg/kg, and Fosetyl-Al at 0.574 mg/kg. The EPA tolerance level for Imidacloprid is 1.0 mg/kg, and therefore, the organic allowed 5% is 0.05. The Fosetyl-Al, Dithiocarbamate, and Omethoate do not have EPA tolerance levels, and are therefore, prohibited in organic crop production and handling. They are all synthetic pesticides/fungicides, are not identified as allowed synthetic inputs under 7 C.F.R. §205.601, and are therefore, prohibited. Additionally, the Fosetyl-Al is not registered with the EPA for use on mango crops. Mayacert also submitted the reports from a European country's Agricultural Department, email notifications to Mayacert by an EC-authorized inspection body; and other documents for all the shipments, which all show the tracing of the organic Kent mangoes handled, marketed, and exported by Asica.

Mayacert denied Asica's mediation request to the February 21, 2022 proposed suspension of its handling certification due to the reoccurrence of complaints of contaminated products from Asica. Asica filed an Appeal to the February 21, 2022 adverse action notice, stating that it purchases fruit from organic suppliers, which it then exports to its clients, and that its packer is certified organic by Mayacert for handling organic mango. Asica stated that it investigated the contamination of the organic mangoes associated with OFIS alert 168-2022 NL. Asica submitted an Invoice showing the reception and processing of (b) (4) boxes of organic mangoes, which shows Asica as the exporter, but which identifies a separate producer of the mangoes.

Asica also stated that it has adopted corrective measures which were attached to its Appeal, to prevent the situation in the future, including the establishment of an organic certification committee to ensure the organic integrity of products marketed by Asica; the supervision of all harvested lots; ceasing business with suppliers who don't comply with Asica's new procedures; and a multi-residue analysis on each batch of product, including an analysis for Fosetyl and Phosphonic acid, with sampling following Asica's sampling procedures. However, Asica didn't prepare the Corrective Action Plan until December 10, 2021, waiting approximately 9 months after the numerous OFIS alerts; and another OFIS alert was subsequently issued January 28, 2022. Asica also didn't offer an explanation for the finding of prohibited substances on the mangoes subject to OFIS alert 168-2022 NL.

AMS also has concerns regarding the certifications of related entities. As noted above, Asica's organic mango crop certification for the Fundo Los Naturales production area was suspended effective May 31, 2021, after Asica didn't request mediation or file an appeal to the Notice of Noncompliance and Proposed Suspension issued on April 30, 2021 by Mayacert. At the April 8, 2021 inspection, Asica admitted that it had applied prohibited substances to its organic mango production area known as Fundo Los Naturales. Analysis of mango leaf tissues sampled at the inspection revealed the presence of Clorphyryfos at 0.082 mg/kg; Dimethoate at 64.479 mg/kg; Imidacloprid at 98.313 mg/kg; and Omethoate at 3.126 mg/kg. However, it is noted that the suspension notice stated the suspension was for 12 months which conflicts with the organic regulations at 7 C.F.R. §205.202 which state that no prohibited substances can be applied to organic crops for 3 years prior to harvest. Therefore, the suspension period for the organic mango crop area at Fundo Los Naturales is 3 years, not 1 year, and it is suspended until

May 30, 2024. The turmeric and ginger crops which were certified effective June 29, 2021 under Asica's "Fundo Asica," were not affected by this suspension.

During the same time frame in which Asica's organic mango crop production area was being inspected and subsequently suspended due to the intentional application of prohibited substances, there were numerous OFIS alerts issued regarding mangos handled by Asica. Sampled leaf tissues taken at the April 2021 inspection had revealed the presence of prohibited substances Clorphyryfos; Dimethoate; Imidacloprid; and Omethoate. The OFIS alerts showed two of the same substances - Imidacloprid and Omethoate - were also found on Asica-handled mangoes, along with other prohibited substances. The Inspection Certificates corresponding to the OFIS alerts show that in most cases, Asica was the producer of the mangos it handled, possibly explaining the contamination. However, some of the certificates showed other producers. Therefore, the contamination of the mangoes under those certificates and subsequent OFIS alerts, as well as the mangoes under the recent OFIS alert, can't be explained by the contamination of Asica's mango crop, but rather points to contamination during Asica's handling processes.

AMS also notes that Asica Sourcing S.A.C. was certified for handling/trade effective June 2, 2022. The Asica Farms S.A.C. production areas of Fundo Los Naturales and Fundo Asica, as well as Asica Sourcing S.A.C. are located in the same building on a residential street, which was confirmed by Mayacert. Mayacert was asked about the relationship between the different entities; and was informed that they all have the same owner, Alfredo Jose Morales Fhon, who also manages all the operations. Further, while the organic mango crop of Asica Farms S.A.C. is suspended, the certification application of Asica Sourcing S.A.C., dated March 7, 2022, lists organic mango along with turmeric and ginger as the crops to be handled/traded.

CONCLUSION

Evidence substances that Asica has violated the organic regulations at 7 C.F.R. §205.102, Use of the term, “organic;” 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.270, Organic handling requirements; 7 C.F.R. §205.272, Commingling and contact with prohibited substance prevention practice standard; and 7 C.F.R. §205.400, General requirements for certification. The European Commission issued several OFIS alerts after findings of prohibited substances in organic Kent mangoes handled, marketed, and exported by Asica. The OFIS alert 168-2022 NL which led to the Notice of Noncompliance and Proposed Suspension of February 21, 2022, was the 7th alert regarding Asica in the past 1 ½ years. Mayacert had notified Asica of the prior OFIS alerts and conducted investigations into the contaminated products of Asica. Asica pointed to the organic certification of its supplier producer and packer; however, no explanation for the contamination was given. Asica is responsible for ensuring the organic integrity of products that it handles, markets, and exports. Further, Asica’s proposed corrective actions do not negate the finding of prohibited substances on organic Kent mangoes handled, marketed, and exported by Asica. Therefore, Asica may not remain certified for handling.

DECISION

Asica’s March 23, 2022 Appeal of the February 21, 2022 Notice of Noncompliance and Proposed Suspension is denied. Asica’s handling certification is to be suspended. Additionally, the crop and handling/trading certifications of operations Asica Farms S.A.C. – Fundo Asica, and Asica Sourcing S.A.C., which are owned and managed by the same person who owns and

manages appellant Asica Farms S.A.C., are also to be suspended. However, pursuant to 7 C.F.R. §205.662(f), Asica may apply for reinstatement of its handling certification after the suspension period ends, as may Asica Farms S.A.C. – Fundo Asica for its crop certification, and Asica Sourcing S.A.C. for its handling/trade certification. Asica’s crop certification for organic mangoes in the Fundo Los Naturales production area, suspended effective May 31, 2021, remains suspended until May 30, 2024. Any reinstatement request for any of the suspended operations must substantiate that all appropriate corrective measures have been taken to address the cited noncompliances.

Additionally, attached to this formal Administrator’s Decision denying Asica’s Appeal is a Request for Hearing form. Asica has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 8th day of September, 2022.

BRUCE SUMMERS

Digitally signed by BRUCE SUMMERS
Date: 2022.09.08 22:03:11 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service