

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
)	
)	
Sunshine Farms of)	Administrator's Decision
Martin County LLC)	
)	
)	APL-090-24
Palm City, Florida)	
)	

This Decision responds to an Appeal (APL-090-24) of a Notice of Noncompliance and Denial of Certification of a Portion of Operation, as well as a Notice of Noncompliance and Denial of Certification for Entire Operation under the National Organic Program (NOP) issued to Sunshine Farms of Martin County LLC (Sunshine) by Quality Certification Services (QCS), 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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. In April 2024, Sunshine applied to QCS for crop certification.
2. On June 17, 2024, QCS conducted an inspection of the applicant Sunshine.
3. On September 10, 2024, QCS issued a Notice of Noncompliance and Denial of Certification of a Portion of the Operation to Sunshine.
4. On September 27, 2024, QCS issued a Notice of Noncompliance and Denial of Certification for the Entire Operation to Sunshine.
5. On September 30, 2024, Sunshine submitted an Appeal to both adverse action notices.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §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 ... 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; ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... (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: ... (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 §205.204, Seeds and planting stock practice standard, state that, “(a) The producer must use organically grown seeds, annual seedlings, and planting stock: *Except*, That, (1) Nonorganically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available...”

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 ...”

DISCUSSION

Sunshine applied to QCS for crop certification in April 2024, specifically dragon fruit and mango trees, with dragon fruit in Zone I with (b) (4) acres and Zone 2 with (b) (4) acres, and the mango trees in Zone III with (b) (4) acres. QCS conducted an inspection on June 17, 2024, at which Sunshine requested to add Clonex Clone Solution (Clonex) as an input to its Organic System Plan (OSP). Clonex is a liquid solution used to promote growth in plant tissue, cells, and roots. The input wasn’t identified in Sunshine’s OSP at the time, nor had it been approved for use in Sunshine’s organic production. Subsequently, on July 22, 2024, Sunshine emailed QCS and stated that it had previously dipped the dragon fruit cuttings/planting stock in the Clonex on December 23 and 26, 2023 and then planted the dragon fruit planting stock in Zones 1 and 2 of its operation. However, QCS stated that the Clonex contained several prohibited substances that were not on the National List.

The QCS inspector also found that Sunshine hadn’t conducted a commercial availability search for organic planting stock of dragon fruit, and the planted dragon fruit planting stock was conventional untreated planting stock. The inspector identified an organic source in California which had organic dragon fruit planting stock, demonstrating its availability. Sunshine acknowledged this but hadn’t searched for or acquired organic dragon fruit from the California (or any other) operation. Therefore, QCS issued a Notice of Noncompliance and Denial of Certification as to a Portion of the Operation on September 10, 2024. Specifically, QCS found that Zone 1 of (b) (4) acres, and Zone 2 of (b) (4) acres, where the dragon fruit dipped in the Clonex

had been planted, were ineligible for certification, as was the dragon fruit itself. Further, the Clonex hadn't been on Sunshine's OSP nor approved for use prior to being used; and Sunshine hadn't conducted a commercial availability search for organic dragon fruit planting stock.

Subsequently, on September 27, 2024, QCS issued a Notice of Noncompliance and Denial of Certification as to the Entire Operation, finding that the mango trees and land where they were planted (Zone III), also weren't eligible for organic certification. QCS stated that on August 18, 2024, Sunshine had requested certification of dragon fruit in Zone III, which hadn't been included in the prior partial denial of certification. (In reality, it is mango trees that are in Zone III.)

QCS then states that on August 21, 2024, in regard the commercial availability search for organic dragon fruit planting stock, which was cited in the prior adverse action notice, Sunshine submitted a record of its search. The search showed it contacted 3 organic operations in Florida; however, 1 didn't produce planting stock and none of them produced organic dragon fruit. Sunshine stated that it had obtained the dragon fruit planting stock from an operation that had sourced it from the same California operation that QCS had informed Sunshine of during the previous inspection. From this, QCS concluded that Sunshine was aware that there was organic dragon fruit planting stock available.

QCS sent a Request for Information to Sunshine on September 10, 2024, for further information on its search for organic dragon fruit planting stock. Sunshine responded on September 18, 2024, stating that its prior email already documented its search for organic dragon fruit planting stock in Florida. QCS then gave Sunshine an extension of time in which to address the noncompliance, as it had previously determined that the search wasn't compliant with the regulations. Sunshine subsequently replied that as it had already informed QCS of its search in

Florida, it would “plant only conventional untreated planting stock available to me.” QCS concluded that Sunshine’s OSP didn’t comply with the organic regulations regarding seeds/seedlings/planting stock, and that despite being aware of a source for organic dragon fruit planting stock, Sunshine didn’t plan on obtaining organic product from that source.

QCS also stated in the September 27, 2024 notice that, after receiving the prior September 10, 2024 Notice of Noncompliance and Denial of Certification as to a Portion of the Operation, Sunshine replied on September 12, 2024, and addressed the failure to list all inputs in the OSP, including the Clonex, by stating, “So what if it was not listed on my OSP. If I had not listed an approved input would you hold it against me.” This demonstrates that the operation did not appear aware of the regulatory requirement that all inputs must be approved by the certifier.

QCS also stated that Sunshine didn’t have a compliant procedure to prevent organic fraud, as Sunshine had stated its intention to sell uncertified product as organic. Sunshine had stated to QCS in a September 11, 2024 email that, “I will advertise my produce, mangos and dragon fruit, certified organic by USDA organic, because I have fulfilled all the requirements of USDA organic. ... I expect QCS to consult with USDA Organic and grant me Certified Organic use for my whole farm.” QCS deemed Sunshine’s statement as a failure to maintain procedures to prevent fraud, and in effect, an intention to commit fraud by willfully violating the organic regulations. Therefore, QCS determined that Sunshine hadn’t demonstrated an ability to comply with the organic regulations and issued the Notice of Noncompliance and Denial of Certification as to the Entire Operation on September 27, 2024. QCS submitted several email exchanges it had with Sunshine; the communications included Sunshine’s threats to take legal action against QCS and file complaints with various governmental entities. The specifics of Zone III and the mango trees weren’t discussed in the September 27, 2024 adverse action notice,

however, they are in emails between QCS and Sunshine, where initially it was suggested that a 10 foot area between the dragon fruit in Zones I and II, and the mango trees in Zone III, may allow for the mango trees to be certified. However, QCS' concerns about Sunshine's ability to comply with the regulations resulted in a denial of certification for the entire operation.

Sunshine filed an Appeal on September 30, 2024 to the two notices of denial of certification. Sunshine argued that the Florida Department of Agriculture and Consumer Services stated the Clonex is allowed for agricultural use in Florida. However, the Florida representative merely stated in his email that, "the fertilizer source materials expressed within the derivation statement of the attached product label are recognized by the Florida Department of Agriculture ... as defined fertilizer source materials; said materials are allowed for distribution in Florida." The representative does not mention organic crop production, and the organic regulations place restrictions on the use of any input in organic production. Therefore, the statement by the Florida representative can't be taken to infer that the Clonex is allowed in organic crop production. The Clonex product label indicates it is a plant nutrient for root, tissue, and cell growth, made from a blend of minerals including nitrogen, phosphorus, potassium, soluble potash, and others; and is derived from such substances as potassium sulfate and phosphoric acid. These substances are prohibited in organic crop production.

Sunshine also stated that QCS didn't take a soil sample from Zone I or Zone II for testing; however, Sunshine had informed QCS that it had dipped the dragon fruit planting stock in Clonex prior to planting in Zones 1 and II. Soil sampling, however, is not a 'rule' in organic cases where the use of prohibited substances is at issue. The regulations at 7 C.F.R. §205.670, Inspection and testing of agricultural products to be sold or labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" only states that the

certifying agent “*may* (emphasis added) require preharvest or postharvest testing of any agricultural input used or agricultural product ... when there is reason to believe that the agricultural input or product has come into contact with a prohibited substance...” QCS chose not to conduct such sampling and testing, because Sunshine had admitted it had used the Clonex on organic dragon fruit planting stock.

Regarding the commercial availability search, Sunshine stated in its Appeal that the only organic source cited by QCS is in California, and the inspector stated there was no need for Sunshine go ‘out of state’ to find organic dragon fruit planting stock. Therefore, Sunshine states it used untreated conventional dragon fruit planting stock. However, QCS stated in the September 27, 2024 adverse action notice that Sunshine said its supplier obtained organic dragon fruit planting stock from the California operation referenced by QCS; and a statement from his supplier in Naples, Florida, confirms this. Therefore, QCS concludes that Sunshine was aware of an organic source for organic dragon fruit planting stock but still chose to use conventional untreated dragon fruit planting stock. Regardless of the source of the stock, Sunshine dipped the planting stock in the prohibited substance Clonex, and therefore, the dragon fruit planting stock and the land into which it was planted are both ineligible for certification, regardless of the organic status of the dragon fruit planting stock.

Regarding the denial of certification as to the entire operation, Sunshine argued that QCS had agreed to certify the mango trees in Zone III with (b) (4) acres. Sunshine stated that after QCS found the dragon fruit planting stock and the land into which it was planted to be ineligible, it continued to pursue certification for the mango trees. Sunshine stated there is 20 feet between the dragon fruit in Zones I and II, and the mango trees in Zone III; and QCS found that with a 10 foot ‘clear’ zone around the dragon fruit to separate it from the mango trees, the mango trees

could be certified. Sunshine states that QCS then reversed itself and issued the September 27, 2024 notice denying certification for the entire operation.

As stated above, QCS didn't address the mango trees in the adverse action notice. Instead, it focused on the further review of the noncompliance as to the commercial availability search after further communication with Sunshine on the noncompliance, citing to Sunshine's knowledge of an organic dragon fruit planting stock source, but refusal to source the product from the California operation. QCS also addressed Sunshine's dismissiveness of the failure to identify all inputs in its OSP and receive approval of said prior to use. Emails between QCS and Sunshine show their discussion about certification for the Zone III and the mango trees. However, the denial of certification as to the entire operation effectively denied certification to the mango trees in Zone III. Throughout its communication with QCS, Sunshine argued that QCS was violating its constitutional and due process rights by not granting certification.

AMS finds that QCS' issuance of the combined notices was justified. QCS issued a September 10, 2024 Notice of Noncompliance and Denial of Certification for a Portion of the Operation, followed by a September 27, 2024 Notice of Noncompliance and Denial of Certification as to the Entire Operation. The organic regulations at 7 C.F.R. §205.405(a) allow for the issuance of a combined notice of noncompliance and denial of certification when correction of a noncompliance is not possible. The dipping of the dragon fruit planting stock in the Clonex, and their planting in Zones I and II aren't correctable. Further, QCS had reason to believe that based on Sunshine's statements that they'd represent and market their dragon fruit and mango as certified organic, although they aren't certified. This demonstrates an inability and/or unwillingness to comply with the regulations.

AMS further finds Sunshine's contention that its constitutional and due process rights were violated to be meritless. QCS was accredited as a certifying agent by the NOP, and pursuant to the organic regulations, reviews applicants for organic certification, conducts inspections, identifies noncompliances, and determines whether applicants may be certified organic under NOP standards. QCS' actions were within the scope of its obligations to NOP and the organic regulations; and weren't a violation of Sunshine's constitutional or due process rights. QCS even attempted to gain clarity from Sunshine regarding its compliance with the regulations and only denied certification as to the entire operation after Sunshine made statements to QCS demonstrating its intention to represent and market its products as organic although Sunshine isn't certified.

CONCLUSION

AMS finds the evidence substantiates that Sunshine has violated the organic regulations at 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.204, Seeds and planting stock practice standard; and 7 C.F.R. §205.400, General requirements for certification. AMS finds that the evidence substantiates that Sunshine violated the organic regulations by intentionally dipping its dragon fruit planting stock in a product containing prohibited substances and then planting the dragon fruit planting stock in Zones I and II of its operation for which certification had been requested. Further, Sunshine violated the organic regulations as the input wasn't on its Organic System Plan or requested and approved for use prior to being used. Sunshine also failed to conduct an adequate commercial availability search for organic dragon fruit planting stock, and

when informed of an organic source for such, stated the intention not to utilize the source, but rather continue buying and planting conventional untreated dragon fruit planting stock.

Although Sunshine's mango trees in Zone III were considered for certification with a 10-foot separation between the zones with the dragon fruit and Zone III with the mango trees, Sunshine stated to certifier QCS that it would represent and market its dragon fruit and mango as USDA certified organic, despite not being certified, as Sunshine stated he had met the requirements.

AMS finds that based on such statements, Sunshine violated the regulations as it demonstrated an inability or unwillingness to comply with the organic regulations; and resulted in QCS denying certification as to the entire operation, after previously denying certification to Zones I and II. Therefore, Sunshine may not be certified organic.

DECISION

Sunshine's September 30, 2024 Appeal of the September 10, 2024 Notice of Noncompliance and Denial of Certification as to a Portion of the Operation, and the September 27, 2024 Notice of Noncompliance and Denial of Certification as to the Entire Operation is denied. Sunshine is ineligible for certification at this time. Pursuant to the organic regulations at 7 C.F.R. §205.405(e), Sunshine may reapply for organic certification of Zone III, mango trees, at any time, with any certifier, upon substantiating that it is able to fully comply with the organic regulations. However, Zones I and II aren't eligible for organic certification until December 25, 2026, which is 3 years after the dragon fruit planting stock had been dipped in a prohibited substance and planted in those zones.

Additionally, attached to this formal Administrator's Decision denying Sunshine's Appeal is a Request for Hearing form. Should it wish to further appeal this decision, Sunshine has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 20th
day of March, 2025.

BRUCE
SUMMERS
Bruce Summers
Administrator
Agricultural Marketing Service

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