

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
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Dialinspec S.A. ) **Administrator’s Decision**  
Machala, El Oro, Ecuador ) **APL-021-20**  
)

This Decision responds to an appeal (APL-021-20) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Dialinspec S.A. (Dialinspec) 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)<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 citing to numerous noncompliances.
2. On April 15, 2019, Dialinspec filed an Appeal.
3. On November 8, 2019, Dialinspec entered into a Settlement Agreement with NOP setting forth requirements to resolve the prior Notice of Noncompliance and Proposed Suspension.
4. On December 23, 2019, QCS issued a Notice of Proposed Suspension.
5. On January 7, 2020, QCS denied Dialinspec’s request for mediation.
6. On January 8, 2020, Dialinspec filed an Appeal.

### **DISCUSSION**

The USDA organic regulations at 7 CFR §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:... (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...”

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....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 production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained...; (2) A list of each substance to be used as a production or handling input...(3) A description of the monitoring practices and procedures to be performed and maintained...(4) A description of the recordkeeping system implemented to comply with the requirements...(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...”

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 commingling of organic and nonorganic products and protect organic products from contact with prohibited substances...”

Certifier QCS issued a Notice of Proposed Suspension after Dialinspec failed to comply with the terms of the November 8, 2019 Settlement Agreement between the operation and the USDA. Specifically, Dialinspec failed to submit a revised Organic System Plan (OSP) and related plans, i.e. Organic Trade Plan, as well as provide relevant details on all producers from which Dialinspec purchases fruit, and all subcontractors and collection centers it utilizes, within 30 days of the Settlement Agreement execution.

Dialinspec submitted an Appeal stating that it was unable to comply with the terms of the Settlement Agreement because QCS didn't respond to their December 12, 2019 request for updated formats of the organic marketing plan. Dialinspec states it submitted an updated OSP on December 24, 2019.

QCS previously issued Dialinspec a Notice of Noncompliance and Proposed Suspension on March 15, 2019 for various noncompliances. A review of QCS's adverse action notice, Dialinspec's Appeal in that case, and submitted documentation substantiated that Dialinspec's recordkeeping was not compliant with the organic regulations. QCS identified several other noncompliances including an incomplete OSP; lack of information on Dialinspec's fruit suppliers, subcontractors, and collection centers and failure to maintain copies of subcontractor contracts; failure to address the implementation of corrective actions or identify measures to reduce the risk of contamination or use of pest control measures by its producers; and the lack of records on inputs used by its producers. However, QCS failed to provide any details or evidence to substantiate these other allegations.

Therefore, NOP offered Dialinspec a Settlement Agreement whereby Dialinspec would correct the various noncompliances and be able to maintain its organic certification. Pursuant to the Agreement executed on November 8, 2019, Dialinspec agreed:

- 1.) To respond to all QCS's requests for information and documentation by the deadline set by QCS;
- 2.) That within 30 days of execution of the Settlement Agreement, Dialinspec would update and revise its OSP and all related plans, i.e. Organic Trade Plan, to identify and provide relevant details on all producers from which Dialinspec purchases fruit, and all subcontractors and collection centers it utilizes;
- 3.) Within 60 days of execution of the Settlement Agreement, Dialinspec would provide to QCS fully executed written contracts between Dialinspec and its subcontractors which delineate the services provided by the subcontractors;

- 4.) To maintain documentation substantiating the origin of all purchased fruit, including documentation necessary for QCS to conduct a successful traceability exercise;
- 5.) Within 60 days of execution of the Settlement Agreement, Dialinspec would revise its OSP to address how corrective actions would be implemented and what documentation would be used to support a closing of QCS findings; identify pest control measures and measures to reduce the risk of contamination in subcontractor and collection centers it utilizes; and establish tests to determine if producers have used pesticides, as well as maintain records on inputs utilized by producers from which it purchases fruit.
- 6.) To undergo an unannounced inspection by QCS, to include all subcontractor sites, within 1-year of executing the Settlement Agreement, at Dialinspec's expense.

However, as QCS stated in its December 23, 2019 Notice of Proposed Suspension, Dialinspec breached the Settlement Agreement by failing to submit a revised OSP and related plans, i.e. Organic Trade Plan, as well as provide relevant details on all producers from which Dialinspec purchases fruit, and all its subcontractors and collection centers, within 30 days of the agreement execution, which was December 8, 2019. These were the first 2 terms of the Settlement Agreement. QCS stated in the Notice of Proposed Suspension that as of December 23, 2019, it hadn't received the updated OSP or any of the other listed documentation. Dialinspec argued that it couldn't comply with the terms of the Settlement Agreement because QCS didn't respond to their December 12, 2019 request for updated formats of the organic marketing plan. However, the documentation listed in the Notice of Proposed Suspension was identified in Term 4B of the Settlement Agreement and was due by December 8, 2019, prior to Dialinspec's email. Although Dialinspec subsequently submitted an updated OSP on December

24, 2019, this was after the agreed upon deadline. Further, QCS states that Dialinspec named new suppliers in the updated OSP but didn't provide complete information on the suppliers or their organic certificates.

Additionally, Dialinspec has not met other terms of the Settlement Agreement, which require submission of all contracts between Dialinspec and its subcontractors delineating the services provided by the subcontractors; maintaining documentation substantiating the origin of all purchased fruit; revision its OSP to address how corrective actions would be implemented and what documentation would be used to support a closing of QCS findings including identifying pest control measures and measures to reduce the risk of contamination in subcontractor and collection centers it utilizes; and establishing tests to determine if producers have used pesticides, as well as maintaining records on inputs utilized by producers from which it purchases fruit. These are terms 3, 4, and 5 of the Agreement and were to have been met by January 8 2020. As Dialinspec failed to comply with all the above-listed terms, it wasn't necessary for QCS to conduct the agreed-to unannounced inspection.

Clause 3D of the November 8, 2019 Settlement Agreement states that, "Dialinspec withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the settlement agreement shall automatically void paragraph 2 above." Paragraph 2 states, "USDA, AMS agrees not to issue a formal Administrator's Decision charging Dialinspec with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." The Settlement Agreement was entered into in resolution of the March 15, 2019 Notice of Noncompliance and Proposed Suspension issued to Dialinspec by QCS, and Dialinspec's April 15, 2019 Appeal thereto.

## **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. As evidence substantiates that Dialinspec breached the terms 1 – 5 of the Settlement Agreement, paragraph 2 of the agreement is voided. The March 15, 2019 Notice of Noncompliance and Proposed Suspension is ‘revived,’ and Dialinspec is found to have violated the organic regulations at 7 CFR §205.103; 7 CFR §205.201; and 7 CFR §205.272. Therefore, Dialinspec can’t remain certified at this time.

## **DECISION**

Dialinspec’s January 8, 2020 Appeal is denied and the December 23, 2019 Notice of Proposed Suspension is affirmed. Due to Dialinspec’s breach of the NOP Settlement Agreement, the original March 15, 2019 Notice of Noncompliance and Proposed Suspension is revived and is also affirmed. Dialinspec’s certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Dialinspec may apply for reinstatement at any time. The request for reinstatement 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. While suspended, Dialinspec may not sell, label, or represent any product as organic. Pursuant to 7 CFR §205.100(c), “Any operation that: (1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in §3.91(b)(1) of this title per violation.”

Attached to this formal Administrator's Decision denying Dialinspec's appeal is a Request for Hearing form. Dialinspec has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Dialinspec waives the hearing, the Agricultural Marketing Service will direct QCS to issue a suspension notice to Dialinspec.

Done at Washington, D.C., on this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service