

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Tad Ellinghuysen d/b/a) **Administrator's Decision**
2 Creeks Farm) **APL-019-15**

This Decision is in response to an appeal (APL-019-15) of a Notice of Proposed Suspension issued by the Midwest Organic Services Association (MOSA) to Tad Ellinghuysen, doing business as 2 Creeks Farm (Ellinghuysen). The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the 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 U.S. Department of Agriculture (USDA) organic regulations (7 C.F.R. Part 205). Certifying agents initiate compliance actions to enforce program requirements, as described in §205.662, Noncompliance procedure for certified operations. The Act authorizes the National Organic Program (NOP) to enforce the USDA organic regulations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision, such as a Notice of Proposed Suspension, may appeal such decision to the Agricultural Marketing Service (AMS) Administrator pursuant to §205.680, Adverse Action Appeal Process, General, of the USDA organic regulations.

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

FINDINGS OF FACT

1. Midwest Organic Services Association (MOSA) is a USDA-accredited certifying agent, first accredited on April 29, 2002. Tad Ellinghuysen, d/b/a 2 Creeks Farm (Ellinghuysen), is a certified organic crop and livestock producer operating in Minnesota, first certified on February 22, 2010.
2. On January 12, 2015, MOSA issued Ellinghuysen a Notice of Noncompliance for one violation to multiple standards, §205.237(c)(2), Livestock feed; §205.239(a)(2), Livestock living conditions; and §205.240, Pasture practice standard. Ellinghuysen responded to this Notice.
3. On March 4, 2015, MOSA issued Ellinghuysen a Notice of Proposed Suspension for the livestock portion of the operation because MOSA did not consider Ellinghuysen's response to the Notice of Noncompliance acceptable.
4. On April 6, 2015, Ellinghuysen requested mediation with MOSA, which MOSA rejected on May 5, 2015.
5. On June 4, 2015, AMS received Ellinghuysen's appeal request, which was accepted as timely.

DISCUSSION

MOSA has conducted four annual certification cycles of Ellinghuysen's crop and livestock operation since Ellinghuysen's initial certification in February 2010. The operation has been certified for organic slaughter stock goats, milkers for organic goat milk, and crop production of feed stuffs and pasture. Over these four annual cycles, Ellinghuysen has not demonstrated compliance with the pasture practice standard of the USDA organic regulations, specifically regarding providing ruminant animals, like goats, with 30% Dry Matter Intake (DMI) from pasture over at least a 120-day grazing season.

MOSA's January 23, 2015 Notice of Noncompliance to Ellinghuysen cited only this issue as a noncompliance; all other areas of livestock and crop production were in compliance. MOSA's Notice of Noncompliance first detailed, year-by-year, the quantities of DMI pasture fed to each group of goats in production – (b) (4) – since certification began. In all years, Ellinghuysen attempted to improve his system to meet the DMI requirements; however, these attempts were unsuccessful each year.

MOSA's Notice of Noncompliance requested that Ellinghuysen respond in five areas that would show how the operation would comply with pasture requirements in the next production year. Ellinghuysen provided responses to MOSA's request; however, after review, MOSA determined that the responses would not be sufficient for Ellinghuysen to achieve compliance in the next certification year. This led to the Notice of Proposed Suspension under appeal.

Ellinghuysen's appeal states that the pasture regulation for ruminants "has been a great hardship for dairy goat producers in the U.S." He does not deny that his livestock operation has not achieved compliance with the USDA organic pasture requirements, specifically regarding DMI, since his initial certification. Ellinghuysen's appeal focused on the difficulties goat farmers and goat milk producers experience in meeting the organic pasture requirements for ruminant animals, which he believes was designed for the large bovine animal, not "browsers" such as small ruminants, like goats. Ellinghuysen believes that NOP information resources about pasture compliance, such as the Dry Matter Demand (DMD) tables, are not broad enough to include the type of animals in his operation.

Reporting from USDA accredited certifying agents indicates that the 30% DMI pasture requirement for goats is a challenge for a number of certified goat operations. Despite this, there are certified operations that are compliant. While the management practices themselves are time-consuming and more extensive than those required for bovine ruminant operations, they do exist.

CONCLUSION

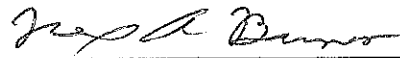
The current USDA organic regulations do not provide a different set of rules for one type of ruminant verses another. Producers of ruminants produced for organic slaughter stock or milk must provide a minimum of 30% Dry Matter Intake fed from pasture over a minimum 120-day grazing season.

The evidence supports MOSA's findings in its March 4, 2015 Notice of Proposed Suspension. Ellinghuysen does not deny the livestock portion of his operation has not met the USDA organic regulations regarding Dry Matter Intake requirements, on a systemic basis for the past four certification years. In addition, Ellinghuysen's appeal did not demonstrate that MOSA acted inappropriately or out of accordance with USDA organic regulations, policies or procedures.

DECISION

The appeal is denied. Tad Ellinghuysen's livestock certification shall be suspended; Ellinghuysen's organic crop certification remains valid.

Done at Washington, D.C., on this 9
day of NOVEMBER, 2015.



Rex A. Barnes

Associate Administrator