

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Evans Cattle Company, Inc.)
and)
Evans Organics LLC)
) **Administrator’s Decision**
) **APL-028-21 and APL-049-22**
New Carlisle, Ohio)
)

This Decision responds to Appeals (APL-028-21 and APL-049-22) of three notices under the National Organic Program (NOP) issued to Evans Cattle Company, Inc. (ECCI) and Evans Organics LLC (EOL), of New Carlisle, Ohio and hereinafter referred to as ECCI/EOL. The notices are a Notice of Proposed Suspension issued by then-USDA accredited certifying agent Ecocert ICO (ICO) to ECCI; a Notice of Noncompliance and Denial of Certification issued by USDA-accredited certifying agent Ohio Ecological Food and Farm Association (OEFFA) to ECCI; and a Notice of Noncompliance and Proposed Revocation issued by NOP jointly to ECCI and EOL. Due to overlapping noncompliances and common ownership, detailed below, the appeals are addressed together. ECCI/EOL 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

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

INTRODUCTION

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 or NOP may appeal 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. On March 17, 2015, ICO certified ECCI for crops, livestock, and handling.
2. On June 30, 2020, USDA-accredited certifying agent Organic Certifiers (OC) certified EOL for crops.
3. On July 13, 2020, ECCI surrendered its handling certification from ICO.
4. On August 19, 2020, OEFFA certified EOL for handling and livestock.
5. On December 1, 2020, ICO notified ECCI that it was surrendering accreditation effective January 31, 2021. This was later extended to April 1, 2021.
6. On December 10, 2020, ECCI applied to OEFFA for crop and livestock certification.
7. On March 2, 2021, ICO issued a Notice of Noncompliance to ECCI citing to noncompliances related to ECCI's livestock certification.
8. On March 29, 2021, ICO issued a Notice of Proposed Suspension to ECCI citing livestock noncompliances.

9. On April 15, 2021, as ICO had surrendered accreditation two days after issuing the Notice of Proposed Suspension, ECCI requested that NOP conduct mediation, which NOP denied.
10. On April 23, 2021, ECCI submitted an Appeal to ICO's proposed suspension.
11. On August 31, 2021, OEFFA issued a Notice of Noncompliance and Request for Information to ECCI regarding ECCI's application for certification.
12. On November 8, 2021, OEFFA issued a Notice of Noncompliance and Denial of Certification to ECCI's application for crops and livestock certification.
13. On December 16, 2021, OEFFA issued a notice denying ECCI's December 7, 2021 mediation request.
14. On January 14, 2022, ECCI submitted an Appeal to OEFFA's denial of certification.
15. On March 9, 2022, NOP issued a Notice of Noncompliance and Proposed Revocation jointly to ECCI and EOL, covering all scopes of certification.
16. On April 29, 2022, ECCI and EOL submitted a joint Appeal to NOP's proposed revocation.
17. On December 31, 2022, EOL notified OEFFA of the surrender of its handling certification, which also applies to the livestock certification, as EOL was only certified for livestock as it related to handling.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §205.100, What has to be certified, state that, “(a) Except for operations exempt or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles

crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.”

The regulations at §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: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part. (c) The certified operation must make such records available for inspection and copying during normal business hours by authorized representatives of the Secretary, the applicable State program’s governing State official, and the certifying agent.”

The 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; ... (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 regulations at §205.236, Origin of livestock, then in effect, state that, “(a) Livestock products that are to be sold, labeled, or represented as organic must be from livestock under continuous organic management from the last third of gestation or hatching ... (b) The following are prohibited: (1) Livestock or edible livestock products that are removed from an organic operation and subsequently managed on a nonorganic operation may be not (sic) sold, labeled, or represented as organically produced ... (c) The producer of an organic livestock operation must maintain records sufficient to preserve the identity of all organically managed animals and edible and nonedible animal products produced on the operation.”

The 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 of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program’s governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part ... (f) Immediately notify the certifying agent concerning any: ... (2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.”

The regulations at §205.406, Continuation of certification, state that, “To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan which includes: (i) A summary statement, supported by documentation, detailing any deviations from, changes to, modifications to , or other amendments made to the previous year’s organic system plan ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.

BACKGROUND

Evans Cattle Company, Inc. (ECCI) was certified organic for crops and livestock by USDA then-accredited certifier, Ecocert ICO (ICO). ICO informed ECCI on December 1, 2020 that it would surrender its accreditation effective January 31, 2021; this was subsequently extended to April 1, 2021. On January 29, 2021, ICO conducted an unannounced inspection of ECCI. This inspection resulted in issuance of a Notice of Noncompliance on March 2, 2021, and eventual Notice of Proposed Suspension for crops and livestock on March 29, 2021, which reiterated the statements made in the noncompliance notice. ECCI filed an Appeal on April 23, 2021. Given ICO’s pending surrender, ECCI applied to USDA accredited certifier Ohio Ecological Food and Farm Association (OEFFA) for crops and livestock certification on or about December 10, 2020. OEFFA conducted an inspection on July 27, 2021. It subsequently issued a Notice of Noncompliance and Request for Information on August 31, 2021, and a Notice of Noncompliance and Denial of Certification to ECCI on November 8, 2021, stating that ECCI is ineligible for crop and livestock certification and citing to willful violations of the regulations. ECCI appealed OEFFA’s denial on January 14, 2022. ECCI had surrendered its handling

certification under ICO on July 13, 2020 and became certified for livestock and handling by OEFFA on August 19, 2020 under the name of Evans Organics LLC (EOL). Therefore, ECCI didn't apply for handling certification under OEFFA.

Concurrent to the ICO and OEFFA actions, NOP was investigating ECCI, and subsequently EOL, after receiving complaints alleging the purchase and sale of nonorganic livestock as organic, involving ECCI, EOL, and several client entities. NOP issued a joint Notice of Noncompliance and Proposed Revocation to ECCI and EOL on March 9, 2022, also citing to "willful violations of OFPA and the USDA organic regulations." ECCI and EOL jointly appealed NOP's notice on April 29, 2022.

ICO, OEFFA, and NOP all cited to numerous violations of the organic regulations. ICO stated that ECCI's Organic System Plan (OSP) didn't adequately describe its livestock production system, including the total number of livestock and livestock purchase information; and couldn't substantiate the origin and organic integrity of purchased livestock. OEFFA stated that ECCI is ineligible for certification as it willfully purged all records regarding its handling activities, and OEFFA found additional noncompliances. NOP proposed to revoke the certification of both ECCI and EOL due to willful violations of the Act and organic regulations. Specifically, NOP stated that ECCI/EOL failed to maintain sufficient records to substantiate the origin and organic integrity of livestock; failed to maintain records which fully disclose all activities and transactions in sufficient detail as to be readily understood and audited; engaged in organic livestock transactions with uncertified operations; sourced livestock represented as organic from uncertified operations; sold nonorganic cattle as organic eligible slaughter; engaged in organic transactions during a period when neither ECCI nor EOL were certified for handling; provided false statements to a certifier and NOP; failed to disclose business and records with an

uncertified entity; sold cattle for organic eligible slaughter without animal identification; and willfully destroyed the handling records of ECCI sometime between August of 2020 and August of 2021, after ECCI surrendered its handling certification and EOL became certified for handling. The two adverse actions by ICO and OEFFA against ECCI were consolidated under APL-028-21; and the NOP action against ECCI and EOL are under APL-049-22. However, due to overlapping noncompliances and common ownership and management, APL-028-21 and APL-049-22 are being addressed together.

OPERATION OWNERSHIP

Prior to addressing the adverse action notices, cited noncompliances, and the appeals, it is important to document the evidence substantiating that ECCI and EOL are the same operation. ECCI was initially certified organic for crops, livestock, and handling by ICO; however, it surrendered its handling certification on July 13, 2020. EOL became certified for livestock and handling by OEFFA on August 19, 2020. ECCI and EOL have the same owner, Edgar Evans; the same headquarter/ mailing address of 10201 New Carlisle Pike, New Carlisle, Ohio 37398, which appears on numerous ECCI and EOL documents as well as the 'joint letterhead' of ECCI and EOL; and at least some of the same management personnel completed documents for both ECCI and EOL. Documentation related to suppliers and trucking companies also support the fact that EOL is the continuation of the handling operation of ECCI under a different name. The names ECCI and EOL are used interchangeably, further evidencing they are the same operation, with EOL being the 'successor in name.' A successor is a person or thing that succeeds another, and in business relations, is a business that directly replaces an old one. In this situation, EOL is

carrying out the handling activities previously conducted under the handling certification of ECCI. The documentation referenced in this paragraph is discussed below in other contexts.

Additional documentation substantiates that ECCI, its owner, and its management consultant intended for EOL to be the successor to ECCI's handling operation. The consultant stated in a May 11, 2020 email to ICO that, "A couple of months ago I had emailed (ICO) about Evans CC creating a new legal entity to handle the organic handling portion of our program, Evan Organics LLC...Once that entity achieves certification we will surrender Evans CC. There will be no change to management or location as our office will still be in the same location in New Carlisle, OH." The consultant also emailed ICO on June 16, 2020, regarding the prior request to change the name of the handling scope from ECCI to EOL; and stated, "Our management of the handling program, SOP's ... are not changing from Evans CC to Evans Organics LLC, as the only thing that will change is Evans Organics LLC will only handle certified organic livestock." On June 19, 2020, the consultant stated that there were no changes to the ECCI OSP for handling, as only the named entity has changed (to EOL).

These and other communications reveal the intent of ECCI to continue its same handling operation, just under a different name. The finding that ECCI and EOL are the same handling operation is important to show the continuation of organic livestock transactions by ECCI under the name EOL and is significant to the destruction of ECCI handling records discussed below. The documentation submitted by ECCI, discussed below, includes ECCI Tag Verification forms for the sale and transport of livestock after ECCI had surrendered its handling certification, and for transactions under EOL, as the consultant states that they were using up the stock of these existing ECCI forms.

Further, in an April 9, 2021 letter submitted in a separate appeal of a different company that engaged in transactions with ECCI, discussed below, the consultant stated that ECCI and EOL are both owned by Edgar Evans and that all handling activity of livestock, including the buying and selling of livestock, is certified under EOL as of August 2020; and prior to that time, handling activity was certified under ECCI. The letterhead jointly shows “Evans Cattle Co Inc./Evans Organics LLC.” Finally, to address questions from its certifier about organic transactions with ECCI after ECCI had surrendered its handling certification, a separate company involved with ECCI and EOL submitted the organic certificate of EOL to OC on February 25, 2021, after ECCI had surrendered its handling certification. In summary, ECCI and EOL are the same operation, and are referred to hereafter as ECCI/EOL except when referring to activities involving only ECCI prior to EOL’s certification.

NONCOMPLIANCES RELATED TO THE ORIGIN OF LIVESTOCK

A documentation review substantiates that ECCI/EOL has failed to substantiate the origin and organic integrity of livestock that it represented as organic in numerous transactions in violation of the organic regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236. Further, evidence substantiates the ECCI/EOL represented and sold livestock as organic eligible slaughter to certified organic slaughter operations when the livestock were sourced from uncertified operations.

Transactions with Uncertified Legacy Meats

ECCI/EOL signed an Organic Certification/Right of First Refusal Agreement with Ben Elliot of Elliot Ranch (Elliot), who also owns Legacy Meats (Legacy), both in LaSalle, Colorado. Elliot Ranch was certified organic for crops and livestock by ICO effective September 25, 2019;

however, Legacy is not and has never been certified organic. The agreement stated that Elliot would sell 'claimed' organic cattle to ECCI/EOL first; and in exchange, ECCI/EOL would help Elliot with the administrative activities needed to obtain and maintain its own certification. First, a review of documentation for transactions with Elliot shows a conflict on who is responsible for the livestock ID tags associated with the transactions. Documentation submitted to NOP shows that Elliot changed the animal identification for the cattle sold to ECCI/EOL from Elliot to ECCI/EOL tags, prior to loading and shipping the cattle to organic slaughter facilities. However, the ECCI/EOL Organic Tracking and Traceability SOP states that it was ECCI/EOL that was responsible for tracking and maintaining documentation for all cattle purchased and sold by ECCI/EOL. This includes cattle purchased from Elliot. An ECCI/EOL representative signed ECCI/EOL Tag Verification lists, which listed each individual animal's ID tag intended for slaughter, and also identified the cattle purchased from Elliot as originating from ECCI/EOL in Colorado. However, it is Elliot and the uncertified Legacy whose operations are in LaSalle, Colorado. As discussed below, although ECCI had sites in Colorado, as well as Texas and Illinois, listed on their organic certificate, these sites are/were actually ECCI/EOL's suppliers. Therefore, evidence substantiates that the origin and organic integrity of the transacted livestock can't be verified.

Additionally, ICO alleged that livestock purchased by ECCI/EOL was actually from the uncertified Legacy, and not Elliot. ECCI/EOL denied this allegation, stating the livestock were purchased from the certified Elliot and Legacy only conducts billing for Elliot; and ECCI/EOL owner, Edgar Evans, stated in an Unsworn Declaration that the livestock were purchased from Elliot. However, a review of all evidence doesn't substantiate the origin and organic integrity of the livestock allegedly purchased from Elliot, thereby violating the organic regulations at 7

C.F.R. §205.236. ICO's Notice of Proposed Suspension to Elliot on March 29, 2021, cited to the matter of billing in the name of Legacy, and also cited to insufficient records on the origin of livestock. Ben Elliot stated in an Unsworn Declaration submitted with his Appeal (APL-029-21), that Legacy "never owns, possesses, handles or has any interest of any kind in the cows themselves." However, Ben Elliot stated in a Legacy Meats 2020 Grass Fed Organic Beef Affidavit in regard to another livestock operation that, "I, Ben Elliot, certify that the beef cattle I am selling to Legacy Meats LLC have been raised" in accordance with organic standards. This statement that organic beef cattle are being sold to Legacy by Elliot conflicts with Ben Elliot's statement that Legacy has no interest in organic livestock. Further, the purchase invoices for ECCI/EOL transactions, and submitted by ECCI/EOL, identify Legacy as the seller of livestock to ECCI/EOL, not Elliot.

Further, evidence from several certified organic slaughter facilities substantiates that Legacy, which is uncertified, engaged in transactions of organic cattle, and was involved in ECCI/EOL transactions, contrary to ECCI/EOL's statements. Documentation shows that ECCI/EOL's compliance manager/consultant and owner Edgar Evans knew about uncertified Legacy's involvement. For example, in 2020, ECCI/EOL provided affidavits, under Edgar Evans' name, to (b) (4), using Legacy forms, stating that the beef cattle had been raised following organic standards. ECCI/EOL also provided (b) (4) with accompanying ECCI/EOL tag verification lists identifying all the cattle as organic. The cattle were then shipped to (b) (4) under the Legacy brand and processed as eligible for organic slaughter, and Legacy labels displaying the term "organic," and the USDA organic seal were affixed to the packaged products. Additional documentation shows that ECCI/EOL sold cattle for slaughter to (b) (4) a certified

organic slaughter operation, whose records show the cattle were received and slaughtered under the Legacy label as organic.

However, as noted above, Legacy isn't certified organic. Therefore, evidence substantiates that ECCI/EOL violated the organic regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236, which state that only livestock from a certified organic operation may be sold, labeled, or represented organic. Evidence substantiates that ECCI/EOL sold and represented livestock as eligible for organic slaughter despite not only the origin and organic integrity of the livestock not being substantiated, but with the knowledge that an uncertified entity, Legacy, was being used.

ECCI/EOL owner Edgar Evans stated in an Unsworn Declaration of April 23, 2021 that he and the consultant are authorized responsible agents for Elliot, whose owner also owns Legacy, and they are identified as such in Elliot's OSP. Evans and the consultant are also seen on Elliot's 2020 Application for Certification, where they are listed as contacts for Elliot. Edgar Evans and the consultant both discussed their involvement with Elliot in Unsworn Declarations signed on April 8, 2022 and submitted with Elliot's reply to a NOP Notice of Noncompliance. Ben Elliot also states in his Unsworn Declaration of April 23, 2021 that, "(ECCI) and (consultant) are in charge of our certification and processes." Therefore, as responsible agents of Elliot, Evans and the consultant were familiar with Legacy as it relates to Elliot and knew that Legacy wasn't certified. Further, none of Legacy's invoices identified the involved animals as organic and Colorado brand inspection reports for 2020 show that Elliot and Legacy purchased and sold large amounts of conventional cattle. It is noted that Legacy is a separate business entity registered in the State of Colorado, and is licensed to buy and sell livestock, for which it uses the same LaSalle, Colorado lot as Elliot to unload, load, and ship its cattle for slaughter, as seen on the Colorado brand inspection reports.

AMS has argued above that ECCI and EOL are the same organization, and the discussion above treated them as a single entity accordingly. However, even if it were determined that ECCI and EOL were separate entities, these violations occurred under each one during its unique period of operation, and EOL engaged in transactions using ECCI documentation. As such, both entities individually violated the regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236.

Transactions with Uncertified ECDS-Beyer

In addition to finding that ECCI/EOL engaged in organic transactions with the uncertified Legacy, evidence substantiates that ECCI/EOL also sourced livestock from Erath County Dairy Sales (ECDS)-Jim Beyer (Beyer), hereinafter ECDS-Beyer, after ECDS-Beyer had surrendered its livestock and handling certification effective November 13, 2020. This violates the organic regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236, which state that only livestock from a certified organic operation may be sold or represented as eligible for organic slaughter.

ECCI/EOL also had signed an Organic Certification/Right of First Refusal Agreement with Jim Beyer (Beyer) who owns ECDS and a property known as Beyer's Ranch, both located in Texas. The agreement stated that ECDS-Beyer would sell 'claimed' organic cattle to ECCI/EOL first; and in exchange, ECCI/EOL would help ECDS-Beyer with the administrative activities needed to obtain and maintain their own certification. ECDS was certified for crops, handling, and livestock on September 27, 2019 by ICO; but surrendered the livestock and handling certification effective November 13, 2020. However, documentation from certified organic slaughter facilities Open Range Beef (ORB) of Gordon, Nebraska, and (b) (4), substantiate numerous transactions wherein ECCI/EOL sourced cattle from ECDS-Beyer after ECDS-Beyer had surrendered its livestock and handling

certification, with the livestock then being sold to ORB and (b) (4) as organic eligible slaughter livestock.

At OEFFA's January 6, 2022 inspection, EOL stated that it had stopped sourcing cattle from ECDS-Beyer after ECDS-Beyer surrendered its livestock and handling certification; however, evidence shows ECCI/EOL continued to do so. (It is noted that even just using Beyer's ranch location for livestock pick-up is in violation of the regulations, as this second location wasn't and isn't certified for livestock and handling. This is discussed further below in the discussion of the Appeal.) OEFFA conducted a mass balance exercise and found that from August 19, 2020 when EOL became certified, through December 30, 2020, it had sourced (b) (4) head of cattle from ECDS-Beyer, out of which (b) (4) were sourced and shipped for organic slaughter after ECDS-Beyer's surrender of livestock and handling certification effective November 13, 2020. While OEFFA didn't request invoices for transactions with ECDS-Beyer at ECCI/EOL's January 2022 inspection, ECCI/EOL didn't disclose to OEFFA the (b) (4) in payments it made to ECDS-Beyer for cattle which were shipped from ECDS-Beyer to several slaughter facilities as organic eligible slaughter, some of which occurred after ECDS-Beyer's surrender. ECCI/EOL only disclosed this information months later after specific requests from NOP; and submitted the ECDS-Beyer invoices and payment ledger for cattle sourced from ECDS-Beyer from August 3, 2020 to December 31, 2020.

A review of documentation for transactions with ECDS-Beyer, like that with Elliot, also shows a conflict on who is responsible for the livestock ID tags associated with the transactions. Documentation submitted to NOP shows that ECDS-Beyer changed the animal identification for the cattle sold to ECCI/EOL from ECDS-Beyer tags to ECCI/EOL tags, prior to loading and shipping the cattle to organic slaughter facilities. However, the ECCI/EOL Organic Tracking

and Traceability SOP states that it was ECCI/EOL that was responsible for tracking and maintaining documentation for all cattle purchased and sold by ECCI/EOL. This includes cattle purchased from ECDS-Beyer. An ECCI/EOL representative signed ECCI/EOL Tag Verification lists, which listed each individual animal's ID tag intended for slaughter, and also identified the cattle purchased from ECDS-Beyer as originating from ECCI/EOL in Texas. However, it is ECDS-Beyer which is located in Texas. As discussed above, although ECCI had sites in Colorado, Texas, and Illinois listed on their organic certificate, these sites are/were actually ECCI/EOL's suppliers. Therefore, evidence substantiates that the origin and organic integrity of the transacted livestock can't be verified.

As stated above, AMS has argued that ECCI and EOL are the same organization, and the discussion above treated them as a single entity accordingly. However, even if it were determined that ECCI and EOL were separate entities, these violations occurred under each one during its unique period of operation, and EOL engaged in transactions using ECCI documentation. As such, both entities individually violated the regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236.

NONCOMPLIANCES RELATED TO TRANSACTIONS WITHOUT CERTIFICATION

Evidence also substantiates that ECCI/EOL engaged in transactions that represented livestock as organic, when neither ECCI nor EOL was certified. This violates the organic regulations at 7 C.F.R. §205.100, which requires each production or handling operation that produces or handles livestock to be certified and meet all other applicable requirements. While AMS finds that ECCI/EOL are the same handling operation, ECCI surrendered its handling

certification on July 13, 2020, and EOL didn't become certified for handling until August 19, 2020. However, ECCI/EOL continued to broker and handle livestock for organic slaughter during the gap period of July 14, 2020 to August 18, 2020, when neither was certified. These transactions include the sale and handling of livestock to ORB, discussed above, which are documented through Purchase Orders (POs) and ECCI Tag Verification sheets that show ECCI/EOL's sale and handling of livestock during the 'gap period.'

ECCI/EOL's Operations Manager also continued to sign ECCI Tag Verification forms dated after ECCI's surrender of its certification and prior to EOL's certification. Further, a sample of records from other businesses show (b) (4) transactions during this 'gap period,' showing that ECCI sold cattle as organic slaughter eligible. These findings contradict the email of ECCI/EOL's consultant to ICO on November 24, 2020, stating that ECCI/EOL hadn't brokered any transactions under ECCI after the surrender of its handling certification on July 13, 2020. The concealing of transactions occurring during the gap period represents a willful violation of the organic regulations.

Additionally, ECCI/EOL misrepresented the source of livestock for transactions occurring during the gap period. ECCI's initial certification listed locations in California, Texas, and Illinois; while the EOL's certificate and EOL's prior application for certification to ICO, only list the New Carlisle, Ohio location. However, the California, Texas, and Illinois sites previously listed on the ECCI certificate from ICO aren't/weren't actually sites belonging to ECCI. These locations are/were ECCI/EOL suppliers. For example, Texas is ECDS-Beyer; and Illinois is Eric Strine. Further, after ECDS-Beyer and Eric Strine obtained their own certification from ICO on September 27, 2019 and November 6, 2019, respectively, they and their sites were removed from the ECCI certificate. While ECDS-Beyer and Eric Strine subsequently

surrendered their livestock certification, both were certified at the time of the transactions involved. OEFFA noted in the Inspection Report for the July 31, 2020 inspection of EOL, that multiple sites certified by ICO were used for staging/weighing livestock; and the organic certificates of ECCI; ECDS-Beyer; and Eric Strine were attached to the report.

However, at the time of the inspection, ECCI had already surrendered its handling certification. Therefore, regardless of the livestock certifications of ECDS-Beyer and Eric Strine still being active at the time, transactions occurred during the gap period when neither ECCI nor EOL were certified; and afterward when only EOL was certified. Further, ECCI/EOL didn't sell the livestock under the certification of these other entities, but rather dozens of ECC Tag Verification forms submitted by ECCI/EOL regarding the transactions, erroneously show the livestock as having originated from ECCI-TX and ECCI-IL, when neither ECCI nor EOL had sites in those locations. Therefore, not only was ECCI/EOL not certified, but ECCI/EOL also didn't accurately state the origin/source of the livestock. Although ECCI only surrendered its handling certification on July 13, 2020, and maintained its livestock certification, the ECCI livestock certification is limited to cattle born and raised at the New Carlisle, Ohio location, and also wouldn't cover any sites elsewhere.

As stated above, AMS has argued that ECCI and EOL are the same organization, and the discussion above treated them as a single entity accordingly. However, there was a period when neither ECCI nor EOL was certified. Even if it were determined that ECCI and EOL were separate entities, the violations discussed immediately above occurred when neither was certified and constitute a violation of the regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236.

NONCOMPLIANCES RELATED TO RECORDKEEPING

Failure to Maintain Compliant Animal Identification Tags

In addition to violations of the organic regulations regarding numerous transactions with entities identified above, a review of the documentation from certified slaughterhouses substantiates that ECCI/EOL violated the organic regulations at 7 C.F.R. §205.236, by the failure to maintain records sufficient to preserve the identity of all organically managed animals. A kill sheet submitted by (b) (4) shows that (b) (4) head of cattle listed therein were missing individual tags for animal identification purposes. NOP also found that (b) (4) cattle sold by ECCI/EOL to (b) (4) were missing individual ID tags. As the identity of each animal shipped for slaughter wasn't fully disclosed, this is further evidence that the origin of the animals can't be traced to verify their organic eligibility for slaughter. ECCI/EOL stated that every head of cattle leaving its possession had an ID tag when it left; that they never knowingly delivered organic cattle to (b) (4) or (b) (4) without an ID tag; that it corrected the original hauling record for (b) (4) when some entries were missing ID tag numbers; and any missing ID tags would most likely have occurred in transit. However, the fact remains that independent documentation obtained from (b) (4) and (b) (4) substantiates that cattle received from ECCI/EOL were missing ID tags.

Further, the reviewed records discussed above show numerous discrepancies including the number of livestock involved in each transaction, and some documentation showing the same animal appearing on more than one purchase order. These discrepancies in records substantiate a violation of the regulations at 7 C.F.R. §205.236, which require ECCI/EOL to maintain records sufficient to preserve the identity of all organically managed animals and maintain records that

fully disclose all activities and transactions in sufficient detail as to be readily understood and audited, required by 7 C.F.R. §205.103.

Failure to Maintain Accurate Organic System Plan

ECCI/EOL also violated the organic regulations at 7 C.F.R. §205.103 which require certified operations to maintain records that fully disclose all activities and transactions in sufficient detail as to be readily understood and audited. Further, evidence also substantiates that ECCI/EOL violated the organic regulations at 7 C.F.R. §205.201, Organic production and handling system plan. ECCI/EOL didn't identify Legacy as a supplier in their separate OSPs of December 17, 2020 and June 25, 2020, respectively, or on EOL's Producer List of June 11, 2021, and didn't inform ICO of its business transactions with the uncertified Legacy.

ECCI/EOL's concealment of its business transactions with Legacy represents a willful violation of the organic regulations.

ICO also found that ECCI's OSP didn't adequately describe the livestock production system. ICO cited to the L2R – Livestock Operation Profile form, which contains tables in which ECCI stated "varies" under the number of livestock; and the L3R Origin of Animals form, which needed to be completed to address the purchase information for livestock. ECCI disputed ICO's allegations and stated that while it originally provided the number of livestock as 'varies,' it subsequently identified a range of (b) (4) animals. Further, ECCI alleged that ICO accepted 'varies' in the past. While the February 1, 2021 email of ICO's inspector stated that 'varies' was acceptable in regard to the L3R form, a range was needed for the L2R. ECCI did subsequently provide a revised L2R with the (b) (4) range. However, ICO also stated that ECCI's records do not fully disclose all activities and transactions in sufficient detail as to be readily understood and

audited; and purchase invoices provided by ECCI regarding the purchase of livestock by ECCI, show that the livestock purchases were actually from an uncertified operation.

WILLFUL VIOLATION OF THE ORGANIC REGULATIONS – DESTRUCTION OF HANDLING RECORDS

Evidence also substantiates that ECCI/EOL violated the organic regulations at 7 C.F.R. §205.103 and 7 C.F.R. §205.236 by destroying ECCI handling records. As stated above, ECCI applied to OEFFA on or about December 10, 2020, for crop and livestock certification after being notified of ICO's intended surrender of its accreditation. ECCI didn't apply for handling certification by OEFFA, as it had surrendered its handling certification on July 13, 2020 and had become certified for handling and livestock by OEFFA under its successor in name, EOL, on August 19, 2020. The most-emphasized noncompliance in OEFFA's November 8, 2021 Notice of Noncompliance and Denial of Certification issued to ECCI and accompanying Corrective Action Report (CAR) was the purging/destruction of all ECCI handling records. OEFFA stated that while ECCI claimed to have destroyed the electronic handling records due to concerns that a prior employee had tampered with/alterd them, the hard copy records were also destroyed, despite the organic regulations requiring that operations maintain records that fully disclose all activities and transactions of the certified operation for 5 years beyond their date of creation.

OEFFA had, as part of its review of ECCI's application, issued an August 31, 2021 Notice of Noncompliance and Request for Information, to ECCI requesting ECCI's 2020 handling records. However, ECCI/EOL replied on September 21, 2021 that it had developed a Standard Operation Procedure for purging records that are over 5 years old and records for surrendered scopes and locations. Therefore, all records related to ECCI's handling scope were

destroyed sometime after ECCI surrendered that scope's certification on July 13, 2020. Finding that the destruction of the ECCI handling records was uncorrectable and represents a willful violation of the regulations, OEFFA denied the application for crop and livestock certification.

AMS has argued that ECCI and EOL are the same organization, and the discussions above treated them as a single entity accordingly. However, even if it were determined that ECCI and EOL were separate entities, the destruction of the ECCI handling records represents a willful violation of the regulations. ECCI was required to maintain the records, and EOL assumed the handling operation of ECCI; therefore, the records were relevant to both. As such, both entities individually violated the regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236.

ECCI/EOL APPEALS

ECCI/EOL stated in their Appeals that the recordkeeping noncompliances cited by ICO are correctable; and that it provided the requested information and documents to ICO, which didn't consider its rebuttal and documentation prior to issuing the proposed suspension. ECCI/EOL contends that the handling records it purged aren't relevant to its application for crop and livestock certification to certifier OEFFA, as ECCI surrendered its handling certification on July 13, 2020; and the other identified noncompliances were or will be corrected. In reply to NOP's proposed revocation, ECCI/EOL argues that it didn't sell nonorganic cattle as organic eligible slaughter; that its organic cattle transactions were only with certified operations; that EOL was allowed to engage in handling activities prior to becoming certified for handling; that the destroyed records aren't relevant to ECCI's application for crops and livestock certification; and that all cattle leaving its premises have the required ID tags.

Allegations Concerning ECDS-BEYER

ECCI/EOL denies in its Appeal to the NOP proposed revocation that non-organic cattle were purchased from ECDS-Beyer and sold as organic eligible slaughter; and denies that ECDS-Beyer surrendered its livestock and handling certification. First, ECCI/EOL states that ECCI (itself) never handled any cattle of ECDS-Beyer's during the time period November and December 2020, as the handling operation was under EOL at that time. However, as stated above, AMS finds that ECCI/EOL are the same operation, and further, ECCI ID tag verification lists were used in some of the transactions. The cattle were shown to be sourced from the uncertified ECDS-Beyer. ECCI/EOL further argues that ICO erroneously found that ECDS-Beyer had surrendered its livestock and handling certification. ECCI/EOL states that Jim Beyer maintained two locations for livestock activities – ECDS in Dublin, Texas, and his ranch in Stephenville, Texas; that both had previously been under the certification of ECCI before Beyer obtained his own certification under ECDS by ICO; and Beyer's application for certification clearly identified the ranch as the location for the livestock activities.

ECCI/EOL states that Beyer only surrendered the ECDS portion of its certification, and ICO's errors started when ECDS-Beyer was first certified in 2019, when ICO failed to list the ranch on the ECDS certificate, though it was subsequently added. Subsequently, on November 5, 2020, the ECCI/EOL consultant emailed ICO the handwritten surrender of Jim Beyer which stated, "I am surrendering the Erath County Dairy Sales portion of my certification (holding pens) effective 11/6/20..." ECCI/EOL states that it reiterated in a November 12, 2020 conversation with ICO that only the ECDS portion of the certification had been surrendered. However, ICO replied in an email stating that as the livestock and handling scopes had been surrendered, the ECDS-certification was terminated. ICO also confirmed the surrender as being

effective November 13, 2020. ECCI/EOL states that it attempted on numerous occasions to rectify this (alleged) error by ICO.

However, evidence substantiates, as stated by ICO in an email to ECCI/EOL, that Beyer's ranch location wasn't certified separately from ECDS. ICO informed ECCI/EOL of this in a November 23, 2020 email, stating that, "Jim Beyer Ranch and Erath County Dairy Sales do not hold separate certifications. Certification of activities at both sites are under (ECDS)...This operation has not been certified for the management of livestock aside from 'cull cattle collection point, short term holding pen.' Additionally, there are no other livestock related activities requested or reflected in this operation's Organic System Plan. As such, the surrender received on 11/6/20 has been applied to the certified Handler/Livestock activities of this operation, previously represented on the organic certificate as "Livestock: Live cattle, other Cull Cattle Collection Point, Short Term Holding Pen." This was reiterated by ICO in an email of December 31, 2020. ICO's Certificate issued to ECDS shows the second location under the ECDS certification; and the ECDS Application for Certification shows the two locations. However, as stated by ICO, the second location/ranch didn't hold a separate certification for livestock or handling. Further, as Beyer never listed livestock information or included a livestock inventory list for the separate Beyer's Ranch, ICO never inspected the ranch for livestock and handling nor billed ECDS-Beyer for any livestock certification at the ranch. ICO told ECCI/EOL that Jim Beyer would need to submit a new application if he wished to be certified for livestock. Therefore, the surrender of the ECDS certification meant that Beyer also surrendered his livestock and handling certification; and hence, evidence substantiates that ECCI/EOL sourced livestock it identified as organic and sold as organic eligible slaughter to

certified slaughterhouses, from an uncertified source in violation of the organic regulations at 7 C.F.R. §205.236.

AMS also finds that ECCI/EOL's contention that it didn't "have full knowledge" of any surrender of livestock certification by ECDS-Beyer, is without merit. Per the agreement with ECDS-Beyer, ECCI/EOL managed ECDS-Beyer's certification, and ECCI/EOL's consultant had sent ECDS-Beyer's surrender notice to ICO. Further, Edgar Evans is listed as a representative for ECDS on its certification application materials. At OEFFA's January 6, 2022 inspection, ECCI/EOL told OEFFA that it hadn't sourced any cattle from ECDS-Beyer since ECDS-Beyer's surrender, which acknowledges the surrender. Further, if ECCI/EOL believed that ECDS-Beyer was still certified for livestock, ECCI/EOL could have provided the inspectors with records showing their purchase of cattle from ECDS-Beyer, and not claim that they were just using ECDS-Beyer's ranch for loading cattle. Instead ECCI/EOL provided organic producer affidavits to show that ECCI/EOL had actually sourced all the cattle that were shipped from ECDS-Beyer's ranch to organic slaughter. Therefore, evidence substantiates that ECCI/EOL was aware that ECDS-Beyer had surrendered its livestock certification, and yet continued to conduct business with ECDS-Beyer and sold nonorganic cattle as eligible for organic slaughter. These actions constitute a willful violation of the organic regulations.

Allegations Concerning Legacy Meats

ECCI/EOL stated that it purchased the livestock in question from the certified Elliot, who had raised the livestock, and not Legacy. ECCI/EOL stated that it provided ICO with a list of livestock including the animals' tag numbers and age; ECCI Tag Verification forms documenting the shipment of cattle; and a List of Livestock Tags for animals purchased from Elliot on March 18, 2020. ECCI/EOL owner, Edgar Evans, also stated in an Unsworn

Declaration that the livestock were purchased from Elliot. Addressing the Legacy invoices, ECCI/EOL contends that Elliot merely requests that payment for organic livestock be made to Legacy, which doesn't need to be certified to conduct Elliot's billing. ECCI/EOL countered ICO's allegation, stating that the inspector was able to conduct a successful traceability exercise, with documentation showing the livestock traced back to Elliot.

However, as discussed above, a review of all evidence doesn't substantiate the origin and organic integrity of the livestock allegedly purchased from Elliot, thereby violating the organic regulations at 7 C.F.R. §205.236. While ECCI/EOL contends that the livestock were purchased from Elliot, and Legacy only performed billing services for Elliot, the purchase invoices for ECCI/EOL transactions, and submitted by ECCI/EOL, identify Legacy as the seller of livestock to ECCI/EOL, not Elliot. Further, contrary to the Unsworn Declaration of Ben Elliot that Legacy "never owns, possess, handles or has any interest" in the organic livestock, evidence from several certified organic slaughter facilities, discussed above, substantiates that Legacy, which is uncertified, engaged in transactions of organic cattle, and was involved in ECCI/EOL transactions. Therefore, evidence substantiates that ECCI/EOL sourced livestock it identified as organic and sold as organic eligible slaughter to certified slaughterhouses, from an uncertified source in violation of the organic regulations at 7 C.F.R. §205.236.

Allegations Related to Transactions While Uncertified

Addressing allegations regarding transactions occurring during the gap period of July 14, 2020, after ECCI surrendered its handling certification, and August 18, 2020, before EOL became certified for handling, ECCI/EOL contends that even though EOL wasn't certified for handling until August 19, 2020, EOL was acting prior to certification as an "uncertified broker/transporter as expressly permitted under NOP 5031: Guidance - Certification

Requirements for Handling Unpackaged Organic Products,” which identifies allowed actions as including moving organic livestock from organic farms to organic slaughter facilities.

ECCI/EOL further contends that NOP itself acknowledged that the current regulations wouldn’t govern EOL’s activities; to support this claim, ECCI/EOL points to regulations which were undergoing rulemaking at the time of the Appeal, and an undated NOP memo which addressed a regulatory gap, stating that some certifiers had allowed operations to process or handle organic products without independent certification. ECCI/EOL further contends that even if ECCI is deemed the handler during the ‘gap period,’ it had the same right to act uncertified as EOL.

However, ECCI/EOL’s reliance on NOP 5031 for transactions occurring in the gap period is misplaced. For every transaction in this gap period, ECCI/EOL provided the organic slaughter facilities with the ECCI organic certificate and ear tag verification list. If ECCI/EOL had used the organic certification of the supplier(s) from which it had sourced cattle during that gap period, NOP 5031 might apply. However, the ECCI handling certificate had been surrendered. ECCI/EOL wasn’t just brokering cattle during the gap period; it was handling them, including sourcing, collecting, sorting, tagging, and then shipping the cattle for organic eligible slaughter when neither ECCI nor EOL were certified, thereby violating the organic regulations at 7 C.F.R. §205.100.

Allegations Related to the Destruction of Records

ECCI/EOL stated in its Appeals, that in January/February of 2020, it had reason to believe that its electronic handling records for livestock purchased and sold by ECCI as handler had been tampered with by a former employee, and that information concerning the traceability of the livestock had been altered. The electronic and hard copy records were destroyed.

ECCI/EOL’s contention was reiterated in the December 7, 2021 and January 11, 2022 Unsworn

Declarations of the ECCI/EOL consultant, who also stated that the ECCI successor, EOL, has its own handling records. ECCI/EOL also questioned why, since ECCI's handling certification was surrendered on July 13, 2020, that OEFFA didn't request handling records for ECCI until August 31, 2021. However, OEFFA stated that while it certified EOL for livestock and handling certification effective August 19, 2020, it wasn't aware of ECCI's handling certification at the time of EOL's application review and certification. Therefore, not being aware of the records, the ECCI handling records weren't requested until OEFFA was considering the crop and livestock application of ECCI.

ECCI/EOL further argued that the requested and destroyed handling records are irrelevant to its application for crop and livestock certification by OEFFA; and OEFFA has offered no legitimate need for the records. ECCI/EOL stated that as part of its July 27, 2021 inspection of ECCI, OEFFA only completed "two scope-specific inspection reports: Producer Inspection Report and Livestock & Poultry Inspection Report;" that neither report required handling records; and no handling inspection report was completed. ECCI/EOL states the only traceability records that no longer exist are those records covering exclusively livestock purchased and sold by ECCI solely as a handler; and the application for livestock certification by OEFFA doesn't extend to cattle that ECCI purchased and sold. Therefore, ECCI/EOL contends that since the purged records only cover those specific actions, they are irrelevant; and even if it had maintained the ECCI handling records, they were unreliable due to the actions of a former employee.

ECCI/EOL also states that the organic regulations have set up the crop, livestock, and handling scopes of certification as "separate, apart and unique." ECCI/EOL states a 'certified operation' is defined as, "A crop *or* livestock production, wild-crop harvesting, *or* handling

operation, *or* (emphasis added) portion of such operation that is certified ...” (7 C.F.R. §205.2). ECCI/EOL contests OEFFA’s application of the recordkeeping requirements in 7 C.F.R. § 205.103 to a certified entity as a whole, thereby requiring an operation, once certified, to maintain all production and handling records for 5 years. ECCI/EOL states that the regulations as written do not require an operation to retain records for a surrendered scope, even when certification is retained for another scope. Lastly, ECCI/EOL argues that it is the responsibility of “the certifier, and ultimately NOP” to retain records for non-active certifications; and once ICO surrendered its accreditation, it was to transfer the handling records in question to NOP. However, despite any requirements related to records that relate to the certifier, the operation is required to maintain records for the required time period.

AMS finds that OEFFA’s request for the livestock handling records for ECCI prior to its surrender of its handling certification, was reasonable. A certifier must audit the movement of organic cattle when conducting a review or inspection and would therefore, need the operation’s records maintained for both its livestock and handling certification. Further, a certifier needs to review the records that overlap or affect other scopes of certification. While ECCI itself surrendered its handling certification on July 13, 2020, it hasn’t ceased its handling operation and is now operating under the name of EOL. ECCI/EOL still has a livestock handling operation, and livestock transactions continued without interruption from prior to ECCI surrendering its handling certification, through and after the handling certification of EOL on August 19, 2019, and during the gap period between those two events when neither was certified, with the same sources/suppliers, customers, and trucking companies. Therefore, the destroyed ECCI-specific handling records are relevant to its successor EOL’s certification for handling and livestock. OEFFA was obligated to ensure compliance with the organic regulations for crops and livestock,

and for the already-certified handling and livestock operation under the EOL name. ECCI/EOL may not circumvent the recordkeeping requirements of the organic regulations by arguing that it had only applied to OEFFA for only crop and livestock certification. The organic regulations require an operation to maintain all its records for a minimum of 5 years, and don't provide for the destruction of any records while an operation is still certified, even if it surrenders part of its certification.

Further, AMS finds ECCI/EOL's contention that the destroyed records weren't reliable due to alleged tampering, to be unpersuasive. Organic operations are responsible for the actions of their employees and need to have appropriate measures in place to detect noncompliances, such as the falsification of records. The destruction of the records prevented OEFFA from verifying the compliance of ECCI/EOL's previous handling activities and full compliance for livestock and crop certification, as well as the validity of ECCI/EOL's statements regarding the reliability of the records. The destruction of the ECCI-specific electronic and hard copy handling records violated the organic regulations at 7 C.F.R. §205.103 and 7 C.F.R. §205.236.

Procedural Arguments in Appeals

ECCI/EOL also argued several procedural points in its Appeals to the adverse action notices issued by ICO, OEFFA, and NOP. ECCI/EOL stated that it was denied substantive and procedural due process by ICO's actions in the last months of its accreditation; alluded to a 'rushed' inspection by ICO, and that ICO hadn't considered its submission of materials prior to issuance of the Notice of Proposed Suspension. Further, the appeals contend that issuance of the proposed suspension two days prior to ICO's surrender of accreditation prevented ECCI/EOL from being able to mediate the cited noncompliances. ECCI/EOL therefore contends that ICO's Notice of Proposed Suspension is void. However, AMS finds there was no 'rush to judgment'

by ICO. The allegations/noncompliances cited by ICO were substantiated; ECCI/EOL was certified by ICO when the Notice of Proposed Suspension was issued, and ICO was still accredited as a certifier. Therefore, ECCI/EOL's argument is without merit.

ECCI/EOL also took issue with OEFFA's denial of its mediation request and stated that OEFFA didn't respond to its arguments or offer to 'seek resolution.' However, while the organic regulations provide for mediation, certifiers are not obligated to grant and engage in mediation with operations to which the certifier issued adverse action notices. As stated in 7 C.F.R. §205.663, "Any dispute with respect to denial of certification or proposed suspension or revocation of certification under this part *may* (emphasis added) be mediated at the request of the applicant for certification or certified operation and *with acceptance* (emphasis added) by the certifying agent." ECCI/EOL also argued that NOP has failed to "engage in an open and ongoing dialogue ...regarding any areas of concern." However, ECCI/EOL noncompliances represent uncorrectable and willful violations of the regulations, which can't be reversed or resolved through mediation.

ECCI/EOL also argued that ICO erred when it stated that ECCI/EOL only had 10 days to apply to a new certifier. The December 1, 2020 email from ICO stated that ECCI/EOL had 10 days to notify ICO as to whether it would surrender certification or apply to a new certifier. Ultimately, ECCI/EOL applied to OEFFA on December 10, 2020 for crop and livestock certification and NOP hasn't issued any adverse action regarding a delay or failure to submit an application to a new certifier for crops and livestock. Therefore, while ICO may have erred in its note concerning the timeframe, there was no negative impact to the operation.

ECCI/EOL also contends that the issuance by NOP of the Notice of Noncompliance and Proposed Revocation on March 9, 2022, when the Appeals to the ICO and OEFFA adverse

action notices are still pending, nullifies ECCI/EOL's due process rights. However, there is no 'double jeopardy' type restriction on NOP from investigating ECCI/EOL and issuing an adverse action notice on additional, new allegations linked to the same cited noncompliances.

ECCI/EOL also had, and exercised, the same right to file an appeal to the NOP notice as it did, and exercised, in regard to the certifiers' notices. ECCI/EOL cited to 7 C.F.R. §205.662(e)(2), which states, "A certifying agent or State organic program's governing State official must not send a notification of suspension or revocation to a certified operation that has requested mediation ... or filed an appeal ... while final resolution of either is pending."

However, ECCI/EOL's reference to this provision is misplaced, as it doesn't bar NOP from issuing a *proposed* (emphasis added) adverse action when an appeal is pending on a certifier notice. Further, contrary to ECCI/EOL's contention, the issuance by NOP of its adverse action while appeals are pending to the ICO and OEFFA actions, doesn't create a lack of objectivity in the appeals process. NOP's investigation resulted in some of the same findings cited by the certifiers; however, whether NOP cited to the same or similar noncompliances doesn't automatically equate to a substantiation of those certifier noncompliances. The findings of the certifiers and NOP stand on their own. Further, any decision issued by the USDA/AMS Administrator that resulted from an NOP adverse action notice, is reviewed by a party outside of NOP.

Lastly, ECCI/EOL takes issue with NOP proposing revocation of the ECCI/EOL certifications based in part on the same allegations cited by OEFFA in its denial of certification to ECCI, namely the destruction of handling records. However, NOP has the authority to issue a proposed revocation on that same information if it feels a revocation is warranted. Further, AMS finds that ECCI/EOL's contentions that NOP, OEFFA, and ICO "overstepped their investigatory

power” and violated the due process rights of ECCI/EOL, and that ICO and NOP have waged a “years’ long campaign against” ECCI, are without merit. USDA-accredited certifiers have the obligation to maintain oversight of certified operations, investigate operations seeking certification, and ensure that they are in compliance with the organic regulations. ICO, having discovered noncompliances by ECCI, issued the Notice of Proposed Suspension, after having issued a Notice of Noncompliance. Further, due to complaints it received about the operation of ECCI/EOL, NOP initiated an investigation, which revealed the many noncompliances cited above. Contrary to ECCI/EOL’s statement that “no meaningful noncompliances or issues of organic integrity” have been uncovered, AMS finds the evidence substantiates that ECCI/EOL engaged in many transactions for which the origin and the organic integrity of the involved livestock can’t be substantiated.

ECCI/EOL also alleged that NOP improperly disclosed confidential information about ECCI/EOL when it copied Ecocert S.A. on the NOP March 9, 2022 Notice of Noncompliance and Proposed Revocation. This claim cites 7 C.F.R. §205.501(a)(10), which states that, a certifier must “maintain strict confidentiality with respect to its clients ... and not disclose to third parties (with the exception of the Secretary ...) any business-related information concerning any client...” However, this provision clearly applies to certifiers, not the Secretary/USDA/AMS/NOP. NOP is authorized under the Act (7 U.S.C. § 6519(b)(3)) to share information that is relevant to an investigation with certifiers. Also, 7 U.S.C. §6519(b)(1) and (2) state that, “The Secretary may take such investigative actions as the Secretary considers to be necessary-(A) to verify the accuracy of any information reported or made available under this chapter; and (B) to determine whether a person covered by this chapter has committed a violation of any provision of this chapter...” The specific investigatory powers listed include

taking evidence and requiring the production of any records required to be maintained under the chapter. NOP is authorized to provide a copy of an adverse action notice to a certifier that may have information about the alleged violations and may be able to assist NOP in its investigation. Ecocert S.A. was the parent company of ICO and may hold information relevant to NOP. Additionally, as acknowledged by ECCI/EOL in its Appeal to the NOP notice, both Elliot and Beyer applied to Ecocert S.A. for certification. As these other operations have engaged in livestock transactions with ECCI/EOL and were being considered for certification by Ecocert S.A., it is reasonable that NOP provided relevant information to Ecocert S.A.

ECCI/EOL cited to prior Administrator's Decisions stating that USDA has given operations the opportunity to comply with recordkeeping requirements before proceeding to a suspension or denial of certification. However, in this case, we find there were systemic and willful violations of the regulations, with the destruction of records. ECCI/EOL also argues that since the cited noncompliances are in regard to livestock and handling certification, the proposed suspension and revocation of certification shouldn't apply to the crop certification of ECCI/EOL. ECCI/EOL cited to two Administrator's Decisions with different outcomes for different certification scopes. However, again due to the systemic violations and records destruction, the crop certification of EOL is not 'exempted' from the treatment of ECCI/EOL. It is noted that on December 31, 2022, ECCI/EOL notified OEFFA that it was surrendering the handling certification of EOL. However, operations may not circumvent adverse actions by surrendering certification, and ECCI is still certified for crops and livestock, and EOL is still certified for crops. The surrender of the OEFFA-issued handling certification of EOL also resulted in the surrender of EOL's livestock certification since EOL had only been certified for livestock as it related to handling.

CONCLUSION

Evidence substantiates the ECCI/EOL violated the organic regulations at 7 C.F.R. §205.100, What has to be certified; 7 C.F.R. §205.102, Use of the term, “organic’;” 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.236, Origin of livestock; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification.

Evidence substantiates that ECCI/EOL handled livestock from uncertified operations; and represented and sold nonorganic livestock as organic; including selling livestock through an uncertified operation to operations certified for organic eligible slaughter. Evidence further substantiates that ECCI/EOL, its owner, and its consultant were aware that certain entities from which cattle were purchased, and sent to organic eligible slaughter, weren’t certified organic, and failed to disclose these transactions and the associated records to its certifier.

Evidence substantiates that ECCI/EOL’s records failed to fully disclose all activities and transactions in sufficient detail as to be readily understood and audited; and ECCI/EOL’s OSP doesn’t accurately reflect the activities of the operation(s), including transactions with uncertified operations. Evidence substantiates that ECCI/EOL failed to maintain records sufficient to preserve the identity of all organically managed animals; and ensure that all livestock handled, represented, and sold as organic and sent for organic eligible slaughter were actually organic.

Evidence substantiates that ECCI/EOL failed to maintain records concerning the handling of livestock under ECCI for the required 5 years from date of creation, and instead destroyed said records even though livestock handling activities continued under a new name, EOL. Evidence substantiates that ECCI and EOL are the same operation. However, even if it were

determined that ECCI and EOL were separate entities, the violations occurred under each one during its unique period of operation and constitute a violation of the regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236. Further, evidence substantiates that ECCI/EOL engaged in handling activities while neither was certified, during the gap period between ECCI's surrender of handling certification, and EOL's certification for handling.

Evidence also substantiates that ECCI/EOL's violations of the organic regulations are intentional and willful, demonstrated by the destruction of livestock handling records when the livestock handling activities were continuing. Evidence substantiates that these numerous violations also show ECCI/EOL's inability to comply with the organic regulations. The willful violations and numerous other serious noncompliances which are systemic through the ECCI/EOL operation, justify a revocation of the certification(s) of ECCI/EOL in its entirety.


DECISION

ECCI/EOL's Appeals of April 23, 2021, January 14, 2022, and April 29, 2022 are denied. The March 29, 2021 Notice of Proposed Suspension issued by ICO; the November 8, 2021 Notice of Noncompliance and Denial of Certification issued by OEFFA; and the March 9, 2022 Notice of Noncompliance and Proposed Revocation issued by NOP are affirmed. ECCI/EOL's organic certifications are revoked in their entirety for a period of 5 years. The affected certifications are the ICO certification of ECCI for crops and livestock; the OEFFA certification of EOL for livestock and handling (noting that EOL notified OEFFA on December 31 2022 that it was surrendering said certification); and the OC certification of EOL for crops. If finalized, ECCI/EOL is ineligible for certification until 5 years after the revocation date.

Attached to this formal Administrator's Decision denying ECCI/EOL's Appeals is a Request for Hearing form. Should it wish to further appeal this Decision, ECCI/EOL has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 21st
day of March, 2023.

**BRUCE
SUMMERS**

 Digitally signed by BRUCE
SUMMERS
Date: 2023.03.21 14:46:44 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service