

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Jim Beyer)
)
) **Administrator's Decision**
) **APL-084-22**
New Carlisle, Ohio)
)

This Decision responds to an Appeal (APL-084-22) of a Notice of Denial of Certification under the National Organic Program (NOP) issued to Jim Beyer (Beyer) of New Carlisle, Ohio by USDA accredited certifying agent Organic Certifiers (OC). Beyer 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

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 §

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

205.680 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. On September 27, 2019, Beyer was certified for crops, livestock, and handling under the name of Erath County Dairy Sales (ECDS) by former USDA accredited certifying agent Ecocert ICO (ICO).
2. On November 6, 2020, Beyer-ECDS notified ICO that it was surrendering its livestock and handling certification. Therefore, only the crop certification remained after this point for ECDS, which changed its name to ‘Jim Beyer.’
3. On December 1, 2020, ICO notified Beyer that it was surrendering accreditation effective January 31, 2021. This was later extended to April 1, 2021.
4. On July 15, 2021, Beyer withdrew its certification application from USDA accredited certifying agent Ecocert S.A. (Ecocert) to which it had applied for crop and livestock certification on December 11, 2020.
5. On June 16, 2021, Beyer applied to OC for crop and livestock certification under the name ‘Jim Beyer.’
6. On March 22, 2022, OC issued a Notice of Noncompliance to Beyer.
7. On July 18, 2022, OC issued a Notice of Denial of Certification to Beyer.
8. On August 23, 2022, OC denied Beyer’s mediation request of August 16, 2022.
9. On September 22, 2022, Beyer filed an Appeal.

10. On January 5, 2023, NOP issued a Notice of Warning to Beyer for the continued handling of livestock after Beyer had surrendered the ECDS livestock and handling certification.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §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 ...”

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; ... (3) A description of the monitoring practices and procedures to be

performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (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 §205.237, Livestock feed, state that, “(a) The producer of an organic livestock operation must provide livestock with a total feed ration comprised of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP ... (b) The producer of an organic operation must not: ... (2) Provide feed supplements or additives in amounts above those needed for adequate nutrition and health maintenance for the species at its specific stage of life; ... (c) During the grazing season, producers shall: (1) Provide not more than an average of 70 percent of a ruminant’s dry matter demand from dry matter fed ... This shall be calculated as an average over the entire grazing season for each type and class of animal ... (2) Provide pasture of a sufficient quality and quantity to graze throughout the grazing season and to provide all ruminants under the organic

system plan with an average of not less than 30 percent of their dry matter intake from grazing through the grazing season: Except, That, (i) Ruminant animals denied pasture in accordance with §§205.239(b)(1) through (8), and §§205.239(c)(1) through (3), shall be provided with an average of not less than 30 percent of their dry matter intake from grazing throughout the periods that they are on pasture during the grazing season ... (d) Ruminant livestock producers shall: (1) Describe the total feed ration for each type and class of animal. The description must include: (i) All feed produced on-farm; (ii) All feed purchased from off-farm sources; (iii) The percentage of each feed type, including pasture, in the total ration; and (iv) A list of all feed supplements and additives...”

The regulations at §205.238, Livestock health care practice standard, state that, “(a) The producer must establish and maintain preventative livestock health care practices, including: (1) Selection of species and types of livestock with regard to suitability for site-specific conditions and resistance to prevalent disease and parasites; (2) Provision of a feed ration sufficient to meet nutritional requirements, including vitamins, minerals, protein and/or amino acids, fatty acids, energy sources, and fiber (ruminants); (3) Establishment of appropriate housing, pasture conditions, and sanitation practices to minimize the occurrence and spread of disease and parasites; (4) Provisions of conditions which allow for exercise, freedom of movement, and reduction of stress appropriate to the species; Performance of physical alterations as needed to promote the animal’s welfare and in a manner that minimizes pain and stress; and (6) Administration of vaccines and other veterinary biologics... (c) The producer of an organic livestock operation must not: (7) Withhold medical treatment from a sick animal in an effort to preserve its organic status...”

The regulations at §205.239, Livestock living conditions, state that, “(a) The producer of an organic livestock operation must establish and maintain year-round livestock living conditions which accommodate the health and natural behavior of animals, including: (1) Year-round access for all animals to the outdoors, shade, shelter, exercise areas ... Except, that, animals may be temporarily denied access to the outdoors in accordance with §§205.239(b) and (c)... (2) For all ruminants, management on pasture and daily grazing through the grazing season(s) to meet the requirements of §205.237, except as provided for in paragraphs (b), (c), and (d) of this section... (b) The producer of an organic livestock operation may provide temporary confinement or shelter for an animal because of: (1) Inclement weather; ... (6) Sorting or shipping animals and livestock sales ...

The regulations at §205.240, Pasture practice standard, state that, “The producer of an organic livestock operation must, for all ruminant livestock on the operation, demonstrate through auditable records in the organic system plan, a functioning management plan for pasture... (c) A pasture plan must be included in the producer’s organic system plan, and be updated annually ... The pasture plan shall include a description of the: (1) Types of pasture provided to ensure that the feed requirements of §205.237 are being met. (2) Cultural and management practices to be used to ensure pasture of a sufficient quality and quantity ... (3) Grazing season for the livestock operation’s regional location. (4) Location and size of pastures, including maps giving each pasture its own identification. (5) The types of grazing methods to be used in the pasture system...”

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 ...”

BACKGROUND

Jim Beyer (Beyer) was previously certified for crops, livestock, and handling under the name of Erath County Dairy Sales (ECDS), located in Dublin, Texas. This certification through then-USDA accredited certifier Ecocert ICO (ICO) was effective September 27, 2019. In addition to the Dublin, Texas location, the certification included Beyer Ranch (referred to as the ranch below), located in Stephenville, Texas, which is approximately 18 miles from Dublin, Texas. On November 6, 2020, ECDS notified ICO that it was surrendering the livestock and handling portion of its certification. On November 13, 2020, ICO confirmed to ECDS that the livestock and handling certification was surrendered. ECDS’ then-consultants responded to ICO that ECDS didn’t surrender the livestock certification for the ranch in Stephenville, Texas. However, Beyer’s ranch location wasn’t certified separately for livestock and handling from ECDS; never held its own certification and was only certified as a part of ECDS; and hadn’t been inspected for livestock and handling. Therefore, it was found that the livestock and handling surrender also applied to activities at the ranch. However, allegations that Beyer continued to conduct handling and livestock activities at the ranch location after November 13, 2020, is not at issue here because it wasn’t discussed by OC in its denial notice. As such, the above is provided as background information. The crops, located at the ranch location in Stephenville, Texas, which had been inspected and was specifically identified on the ECDS certificate, remained certified, though the name was changed from ECDS to ‘Jim Beyer.’

On December 1, 2020, ICO informed ECDS that it was surrendering its accreditation as a certifying agent, effective January 31, 2021, though it was later extended to April 1, 2021.

USDA accredited certifier, Ecocert S.A. (Ecocert), the parent company of ICO, informed Beyer that it would need to apply for livestock and handling certification at the ranch location; and provide all relevant livestock information and documentation. Beyer subsequently applied to Ecocert on December 11, 2020 for crop and livestock certification for one location - the ranch; but subsequently withdrew that application on July 15, 2021.

However, on June 16, 2021, Beyer applied to Organic Certifiers (OC) for crop and livestock certification at the Stephenville, Texas ranch location, under the name of 'Jim Beyer', however, the mailing address provided on the certification application is New Carlisle, Ohio. Beyer stated that it would act as a collection point for organic livestock received from another certified operation, holding the livestock for one to seven days until enough head were collected for a full load, and then load the livestock for transportation to slaughter. Beyer stated it wouldn't own the livestock, and also wouldn't arrange for the transport to slaughter. OC reviewed Beyer's Livestock and Crop Organic System Plans (OSP), received July 15, 2021, and subsequent updates to each OSP regarding the activities on the (b) (4) acre ranch. However, OC didn't conduct an inspection of Beyer, stating to NOP that Beyer's application for certification didn't 'move' into the inspection phase. This is because OC couldn't successfully verify Beyer's compliance with the organic regulations at the application review.

Therefore, on March 22, 2022, OC issued a Notice of Noncompliance to Beyer, stating that despite numerous requests to Beyer over several months to determine its eligibility for certification, Beyer has not provided the necessary information and required documentation. OC cited to deficiencies in Beyer's Livestock OSP involving such matters as health care practices,

the use of prohibited substances, and grazing season; as well as missing or incomplete records, including a Livestock Offsite Location Affidavit, DMI (dry matter intake) Calculations, and a Pasture Management Plan. Beyer submitted a Response to the Notice of Noncompliance on May 5, 2022, stating that it was unclear on what the cited noncompliances were based. Beyer provided a response to each cited noncompliance/point in the Notice of Noncompliance. OC replied to Beyer's Response on May 11, 2022, stating that it evaluated Beyer's responses, along with the OSPs and supporting documents, against the regulatory requirements to verify compliance. However, despite numerous attempts, OC stated that sufficient information hasn't been received to verify compliance by Beyer.

Subsequently, on July 18, 2022, OC issued a Notice of Denial of Certification to Beyer, delineating the noncompliances which were the basis for the denial. Beyer requested mediation on August 16, 2022, which OC denied on August 23, 2022. Beyer filed an Appeal on September 22, 2022, after being granted an extension by NOP.

RELATIONSHIP WITH ECCI-EOL AND NONCOMPLIANCE REGARDING LIVESTOCK OFFSITE LOCATION AFFIDAVIT

OC stated in its Notice of Noncompliance that Beyer stated the livestock cattle on his operation would be owned by Evans Organics LLC (EOL) of New Carlisle, Ohio and had submitted the EOL certificate. Therefore, OC had asked Beyer to submit a completed Livestock Offsite Location Affidavit to document the relationship between Beyer and EOL. Beyer replied that the Affidavit wasn't applicable to their operation, as Beyer doesn't operate an offsite location. However, OC had informed Beyer that although the Affidavit may not 'seem' applicable, it is necessary for OC to understand the relationship between the parties. The prior

handling and livestock activities of ECDS at the Dublin, Texas, and Stephenville, Texas locations had been under the organic certification of Evans Cattle Company, Inc. (ECCI) of New Carlisle, Ohio, with Beyer's Texas locations identified on the ECCI certificate. It is not a best practice for a certifier to allow this, as separate locations should have their own certification. ECCI and Jim Beyer had signed an Organic Certification/Right of First Refusal Agreement, whereby ECDS-Beyer would sell 'claimed' organic cattle to ECCI first; and in exchange, ECCI would provide administrative assistance to ECDS-Beyer to obtain and maintain their own certification. Subsequently, at the direction of ICO and NOP, Beyer obtained its own certification as ECDS on September 27, 2019.

Also, around this time, the handling activities of ECCI were placed under EOL, which had obtained certification, though AMS contends that EOL is the same operation as ECCI under a new/successor name. Despite obtaining its own certification, ECDS continued engaging in livestock transactions with ECCI and then EOL; and Beyer stated that the livestock on its operation for which it applied to OC for certification, would be owned by EOL. As stated above, Beyer's application to OC gave its mailing address as the address of ECCI at 10201 New Carlisle Pike, New Carlisle, Ohio, 45344.

Beyer stated in an attachment to its Livestock OSP updated on May 24, 2022, that a certified operation may use another certified location for animal grazing and/or management; and that as previously explained to OC, EOL uses Beyer's ranch for animal grazing and management. However, while Beyer stated that the requested Livestock Offsite Location Affidavit was attached to the OSP, OC stated it was never actually submitted to OC. Beyer stated that Edgar Evans, manager of EOL, is responsible for the transport of animals to and from Beyer and is also the responsible person for making decisions about feed purchases, feed

supplements, additives, providing supplemental feed, and the purchase and administration of healthcare materials. Beyer also stated that Evans is responsible for making decisions regarding the housing and living conditions of the livestock. Further, the OSP provides that any sick or injured animals shall be provided with medical treatment as needed and then sent to the conventional market if treated with a prohibited substance. Such animals will be identified, with records being maintained; and Beyer will notify EOL as well as OC of such animals.

However, OC stated in the denial notice that Beyer had failed to properly complete the Affidavit, and specifically noted the ‘declaration’ regarding the incidence of prohibited substance usage on livestock, and signature by all responsible parties. Due to the close relationship between ECCI/EOL and Beyer, and that all cattle coming to Beyer’s ranch are allegedly sourced from and owned by ECCI/EOL, with Beyer never having ownership of the cattle, AMS finds OC’s requirements are reasonable. The regulations at 7 C.F.R. §205.103, provide that certified operations maintain records that fully disclose all activities and transactions in sufficient detail as to be readily understood and audited. As Beyer was previously certified under ECDS by another certifier, it should be aware that a certifier needs to understand the workings of the operation, including relationships with other entities linked to the operation; and additionally, 7 C.F.R. §205.201 requires an OSP include any additional information deemed necessary by a certifier to evaluate compliance with the regulations. Further, although the livestock are owned by ECCI/EOL, which also makes decisions concerning the livestock as discussed above, the livestock are managed by Beyer, which manages its own operation and is responsible for carrying out the decisions of ECCI/EOL and feeding and caring for the livestock. Therefore, all practices and procedures engaged in by Beyer must be described in Beyer’s OSP, as well as the sources and suppliers of feed, feed supplements, and healthcare materials, as Beyer is responsible

for maintaining the organic status of the livestock under its management. That was not done, and therefore, OC's denial was appropriate.

DEFICIENCIES IN BEYER'S LIVESTOCK OSP

OC stated in the Notice of Denial of Certification that Beyer's updated Livestock OSP didn't include any preventative health care practices to be used as required by the regulations at 7 C.F.R. §205.238, and only states what would happen if an animal was sick or injured. Further, the updated OSP failed to address any animal health monitoring practices done on the operation, as required by 7 C.F.R. §205.201. OC referenced Sections 8, 13, 22, and 24 of the OSP as being insufficient, and therefore, not compliant with 7 C.F.R. §205.201. These same deficiencies had been identified in the prior Notice of Noncompliance.

Beyer stated in the May 5, 2022 Response to the Notice of Noncompliance, that it had already provided answers in the cited sections and questioned what additional information was needed. Beyer stated in its subsequent May 24, 2022 Attachment to an updated Livestock OSP that as livestock are held on the ranch for such a short time frame, between one and seven days, there hasn't been a need, to date, to treat any animals for sickness; and further, no prohibited substances are kept on-site. However, in the event there is a sick or injured animal, Beyer stated there is a plan in the OSP which complies with 7 C.F.R. §205.238, and states that a veterinarian will be contacted, or the sick or injured animal shall be provided with medical treatment as needed and directed to the conventional market if a prohibited substance is used, with records being maintained to document this. Beyer stated further in the Attachment that livestock are monitored daily for any visible signs of sickness or injury; and if any are identified, the treatment plan will be followed. Beyer reiterated its statements in the August 16, 2022 Request for

Mediation, and argued in its Appeal that it has worked with OC in attempts to submit all requested information. AMS reviewed all the documentation, notices, and submitted OSP forms and updates in regard to each section in the Livestock OSP cited by OC as insufficient; and addresses each section below.

Noncompliance: Section 8 of Livestock OSP: Prohibited Substances

Beyer answered Section 8 of the Livestock OSP, which only requires a ‘yes’ or ‘no’ response to whether prohibited substances are stored at the operation’s site. It is unclear if OC was trying to obtain more information on prohibited substances, but barring an inspection where it could be visually verified, AMS finds that Beyer answered the question, as asked by OC, for this specific section of the OSP.

Section 12 of Livestock OSP: Rations

Although OC didn’t address a noncompliance in regard to Section 12 of the Livestock OSP, AMS finds that Beyer’s response to this section is insufficient. Beyer stated the following in the Attachment to the OSP updated on May 24, 2022, addressing rations: “(b) (4)

[REDACTED]

[REDACTED].” Beyer hadn’t provided any reply in this section in its initially-submitted Livestock OSP. However, pursuant to the organic regulations at 7 C.F.R. §205.237, any feed fed, which includes hay, would be considered part or all of the animal’s rations and needs to be identified in the OSP with the estimated dry matter (DM) amounts fed. The OSP would also have to state how Beyer intends to maintain its feed records. Therefore, Beyer’s statement that the feed fed hay is not a ration, and not stating how

feed records will be documented and maintained, represents a deficiency in Beyer's Livestock OSP. Therefore, Section 12 of the Livestock OSP is not sufficient.

Noncompliance: Section 13 of Livestock OSP: Health Care Practices

Section 13 of the Livestock OSP asks for 'general preventative and diagnostic practices,' and Beyer provided a response. However, what Beyer stated in the updated OSP of May 24, 2022, wasn't a description of its general preventative or diagnostic practices for animal health care. Beyer only stated that if there was a sick or injured animal, ECCI/EOL would be notified. It didn't include any practices or inputs be used to care for a sick animal. Beyer stated in the OSP Attachment that "any sick or injured animals shall be provided with medical treatment as needed and diverted to the conventional market if treated with a prohibited substance. Records will be kept of the animals diverted by tag number..." However, then Beyer stated that either a veterinarian will be contacted, or those animals treated with a prohibited substance will be diverted. Further, Beyer's response to the Notice of Noncompliance contradicts with what was stated in the Livestock OSP, and states instead that medical treatment *would* (emphasis added) be provided to sick animals.

However, the organic regulations at 7 C.F.R. §205.238 require that preventative livestock health practices be established and maintained and list several items to be addressed in the practices. Health practices and health treatments, which would need to be approved by the certifier, weren't described by Beyer. Removing a sick animal from the organic herd is not a health care practice and doesn't constitute treatment. An operation must also state what medicines and inputs it will use in the treatment of animals, and how the medicines and inputs will be used. Typically, producers that only keep animals for 24 hours or less wouldn't have

health practices or health treatments and inputs in an OSP. However, even then the OSP would typically include the name and contact information for a veterinarian. As Beyer stated that it keeps animals for up to seven days and hasn't described health practices, health inputs, and veterinarian information, AMS finds OC had cause for finding Section 13 of Beyer's OSP insufficient.

Noncompliance: Section 22 of Livestock OSP: Monitoring

Regarding Section 22 of the Livestock OSP, OC stated in the Notice of Denial of Certification, that the updated OSP of May 24, 2022, failed to address any animal health monitoring practices that are done on the operation. When asked in Section 22 to describe the monitoring, Beyer stated, "annual monitoring of OSP during annual renewal. If we determine there is a change needed we would notify (OC) ..." Beyer stated in the attachment to the OSP that, "the livestock are monitored daily by Beyer Ranch employees to determine if there are any visible signs of sickness or injury ... to the extent such animals are identified by visual inspection, then the animals will be treated ..." Beyer stated in its Mediation Request that Section 22, per a conversation with OC, required a description of how Beyer would monitor the implementation of the OSP itself, which it provided in its initial response to Section 22. Beyer further stated that after OC indicated that more information was needed, the attachment to their OSP provided detail.

However, Beyer hasn't described any specific procedures on how it would monitor animal health care practices, who would be doing the monitoring, or address the specific items needed for a health care practice. Therefore, Beyer has failed to comply with the regulations at 7 C.F.R. §205.201, which require that the OSP contain a "description of the monitoring practices

and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented.” Beyer also failed to comply with 7 C.F.R. §205.238 which requires that a livestock health care practice address several items, which include provision of a feed ration sufficient to meet nutritional needs; establishment of appropriate housing, pasture and sanitation practices; and administration of vaccines and other veterinary biologics. Therefore, AMS finds that Beyer has failed to provide sufficient information for Section 22 of the Livestock OSP.

Noncompliance: Section 24 of Livestock OSP: Records Retention

OC stated in both the Notice of Noncompliance and the Notice of Denial of Certification that Beyer had failed to sufficiently address Section 24 of the Livestock OSP. However, this section requires only a ‘yes’ or ‘no’ response to the question: “Does this operation a policy of keeping records for 5 years?” Beyer answered ‘yes’ in both its initial Livestock OSP and the updated OSP of May 24, 2022. AMS finds that Beyer answered the question, as asked by OC, for this specific section of the OSP.

NONCOMPLIANCE REGARDING RUMINANT ATTACHMENT, ITEMS #3 – DMI CALCULATIONS AND #4 – PASTURE MANAGEMENT PLAN

OC stated in the Notice of Denial of Certification that Beyer didn’t provide enough information or documentation in Ruminant Attachment #4: Pasture Management Plan, and Ruminant Attachment #3: DMI Calculations, to determine if Beyer is in compliance with the organic regulations at 7 C.F.R. §205.240, Pasture practice standard, and 7 C.F.R. §205.237, Livestock feed. Ruminant Attachment forms were attached to Beyer’s initial and updated

Livestock OSPs. Beyer had stated in its Application to OC that, “We have certified organic pasture and produce hay for livestock feed and have holding pens for livestock being moved to slaughter.” Beyer reiterated this in the initial Livestock OSP of June 17, 2021, also stating that it doesn’t own the cattle which it “pastures” for slaughter. Beyer only identified the animals as beef, of various breeds, with the feed and feed supplements identified as on-farm grazing with pasture/hay, and the livestock being on pasture 100% of the time, except when they are moved to holding pens for loading for transport to the slaughter facility, and that the owner of the livestock provides the transportation. Beyer answered in reply to #3 of the Ruminant Attachment regarding DMI, “Not applicable. Hay produced on farm is only fed in the winter months,” and didn’t provide any information in the DMI worksheet. Beyer also didn’t provide any information in #4 of the Ruminant Attachment regarding pasture management and dry matter availability.

Therefore, OC issued a Notice of Noncompliance on March 22, 2022, stating that despite attempts to obtain the needed information, including telephone calls with Beyer, the responses for #3 and #4 of the Ruminant Attachment are not sufficient. Beyer stated in its Response to the noncompliance notice, that its OSP included a Ruminant Management Plan and asked OC to clarify ‘with specificity’ what information was needed, as Beyer believed its submission complied with 7 C.F.R. §205.237. Addressing DMI calculations, Beyer stated that the regulation speaks of DMI within an entire ‘grazing season,’ while the organic livestock at Beyer’s ranch are only onsite between one and seven days, and therefore, section 205.237 isn’t directly applicable. Further, Beyer contended that as the goal is to ensure that the organic livestock have access to pasture for grazing, it satisfies this requirement. Beyer subsequently submitted an updated Livestock OSP on May 24, 2022, reiterating that it doesn’t own the livestock, but merely

pastures/holds them “temporarily” while on their way to slaughter. Beyer stated it had approximately (b) (4) head of cattle at a time; and that the cattle are on pasture 100% of the time, and are only provided hay and/or silage as needed, i.e. winter or in a drought situation. Beyer again stated that the livestock are only temporarily confined when moved to holding pens for loading onto the truck; though the OSP doesn’t identify any records that would document this. DMI information was added to the Ruminant Attachment #3 submitted with the OSP update, and #4 stated that the livestock are on pasture the entire time at Beyer’s ranch (two to seven days), and there is no rotation plan since “this is a short term placement during transport to slaughter.”

Beyer stated in the Attachment to the updated OSP, in regard to #3 and #4, that, pursuant to 7 C.F.R. §205.239(b)(6), the livestock are “held in temporary confinement by Beyer Ranch, in order to collect enough head for a full load to ship to slaughter, and during the time at Beyer Ranch, are maintained under continuous organic management,” given access to irrigated organic pasture of high quality forages the entire time at the ranch. Beyer contends in a Supplemental Document provided by EOL on Beyer’s behalf, that section 205.239 expressly permits the temporary confinement of animals for sorting and shipping animals and livestock sales, provided the animals are maintained under continuous organic management; and grazing isn’t required, though Beyer provides pasture access. Beyer stated in the OSP Attachment that each animal’s temporary confinement period will be documented per records listing each animal’s tag number, which will show the date the animal arrived at the ranch and the date it was shipped for slaughter. Beyer references these dates as being the temporary confinement period.

However, this conflicts with Beyer’s statements that the animals are only temporarily confined for up to one day in holding pens while being sorted and loaded for transport. AMS finds that it is only this one day, or part thereof, which is the temporary confinement period, as

the animals are on pasture the remaining time they are at the ranch, as stated numerous times by Beyer.

Beyer also argued in the updated OSP Attachment that since the livestock are only onsite “for temporary confinement for a short period and not for a ‘grazing season’ as defined” in the regulations, no DMI calculation is required, but pointed to the OSP Ruminant form showing 100% of the DMI is from grazing organic pastures or eating supplement organic hay or silage during the few days the livestock are at the ranch. Beyer also states via the EOL-provided Supplement that since the DMI worksheet requires that the total days for which information is to be provided be at least 120, but livestock are only at the ranch for a maximum of seven days under the temporary confinement exception, the DMI worksheet isn’t applicable. Beyer therefore concludes that as the issues with the pasture plan were limited to the DMI calculation question, the pasture plan issue should be resolved.

However, while acknowledging Beyer’s submissions subsequent to the Notice of Noncompliance, OC issued the Notice of Denial of Certification, stating that due to the failure to provide enough information or documentation in Ruminant Attachment #4: Pasture Management Plan, and Ruminant Attachment #3: DMI Calculations, it couldn’t determine if Beyer is in compliance with the organic regulations at 7 C.F.R. §205.240, Pasture practice standard, and 7 C.F.R. §205.237, Livestock feed. OC cited to Beyer’s updated Livestock OSP and Attachment which indicate that the operation plans to use their pasture as a temporary holding site for organic dairy animals until enough were collected for a full load. OC also acknowledged Beyer’s assertions that while being held, the animals will receive 100% of feed directly from pasture and that organic hay and silage may be fed during the non-grazing season or periods of drought as needed. However, AMS finds it is inconsistent to state that the animals receive 100%

of DMI from pasture, and then state that hay or silage is sometimes used as a supplement. If the animals are fed hay or silage as a supplement, they aren't getting 100% of their DMI from pasture.

Further, specifically, in regard to #4, OC also acknowledged that 7 C.F.R. §205.239(b)(6) allows operations to provide temporary confinement or shelter to livestock due to the sorting or shipping of animals. This is an exception to the requirement in section 205.239(a)(1) that all animals be provided year-round access to the outdoors; and the requirement in section 205.239(a)(2) that for all ruminants, the operation provide management on pasture and daily grazing throughout the grazing season to meet the requirements of 7 C.F.R. §205.237, Livestock feed. However, OC then stated that since the animals at Beyer's ranch are kept "directly on" and allowed to "graze" pasture, the temporary confinement exception isn't applicable to Beyer. OC states that the exemption from providing year-round outdoor access is only granted for temporary confinement or shelter during sorting and shipping during "times off pasture."

Reviewing all the evidence, AMS finds, as stated above, that the animals are only temporarily confined for up to one day during sorting and loading for transport to slaughter and therefore, it is only that time that constitutes the temporary confinement period for Beyer under 7 C.F.R. §205.239(b)(6). Hence, this is the only time during which Beyer is not subject to the DMI requirements of 7 C.F.R. §205.237(c). Beyer has stated numerous times that the livestock are on pasture 100% of the time while at the ranch. Therefore, the livestock are not temporarily confined during the one to seven days at the ranch, prior to being in holding pens for sorting and loading for transport. Beyer can't claim that the animals are temporarily confined when they're on pasture. Therefore, as the livestock are on pasture, Beyer is subject to the DMI requirements, and must calculate DMI and DMD (dry matter demand) and identify a grazing period. It isn't

relevant that the livestock are only on pasture for one to seven days and not an entire grazing season such as April to October. Beyer must meet the DMI requirements for the period of time the livestock are on pasture.

Additionally, regarding #3, as stated above, Beyer must meet the DMI requirements of 7 C.F.R. §205.237(c). However, OC states that Beyer hasn't submitted sufficient information in this regard as the DMI sheet was incomplete. The cited regulation requires that during the grazing season, ruminants be provided with pasture of a sufficient quality and quantity to graze throughout the grazing season and to provide all ruminants with an average of not less than 30% of their DMI from grazing throughout the grazing season. For ruminants denied pasture pursuant to exceptions in 7 C.F.R. §205.239, they shall be provided with an average of not less than 30% of their DMI from grazing throughout the periods that they are on pasture during the grazing season.

Therefore, AMS finds that while Beyer isn't required to meet the DMI requirement when the livestock are in the holding pens for sorting and loading, which by Beyer's own statement is only up to one day, the DMI requirement must be met while the livestock are on pasture the rest of the time they are at Beyer's ranch, which is anywhere from one to seven days. Beyer has made a conflicting argument by stating that the livestock are temporarily confined per section 205.239(b)(6) during the time they are at the ranch – one to seven days – and therefore, Beyer doesn't need to meet the DMI requirement under section 205.237, but then states that the livestock are on pasture 100% of the time at the ranch, which means they aren't temporarily confined, and therefore, section 205.239 isn't applicable, and Beyer must comply with the DMI requirements at section 205.237. AMS finds that OC is correct, and since the livestock are held directly on pasture and allowed to graze pasture 100% of the time at the ranch, section 205.239

isn't applicable; and therefore, Beyer must meet the requirements set forth in 7 C.F.R.

§205.237(c). However, as the DMI worksheet wasn't complete, Beyer can't demonstrate how the DMI requirements of section 205.237(c) are met.

Beyer contends in the Mediation Request of August 16, 2022, which was referenced in the Appeal, that the regulations at 7 C.F.R. §205.103 acknowledge that not all operations are the same when stating that records must be *adapted* (emphasis added) to the particular business. Beyer contends it has done its best to provide requested information; however, the Ruminant form's format has prevented Beyer from being able to prove that it has substantively complied with the organic regulations. Beyer argues it is in compliance with the livestock-related regulations including requirements that livestock have access to daily grazing and receive at least 30% of DMI through grazing, as well as other pasture and living condition requirements. Beyer states that regardless of whether the livestock are at Beyer's operation for a period of time that could be considered the "grazing season" or long enough for 7 C.F.R. §205.237(c) to apply, the DMI requirements are being met. However, as stated above, this hasn't been substantiated. There are also inconsistencies in what Beyer considers the 'grazing season,' as Beyer stated to #2 in the Ruminant Attachment form attached to the updated Livestock OSP of May 24, 2022, that the grazing season starts in April and ends in October, but Beyer also states in the Attachment to the updated OSP that, "organic pastures can be lush during December and scant during May." Further, in arguing, as seen above, that the animals are temporarily confined while at the ranch, and hence, aren't subject to the DMI requirements, Beyer has contended there isn't even a 'grazing season.' Therefore, Beyer's understanding of grazing seasons is questioned.

AMS finds that in regard to the Ruminant form #4, Beyer is correct in that it provided a reply to the question of whether the pasture is irrigated, responding 'yes.' However, as the

livestock are on pasture while at the ranch, Beyer's OSP must demonstrate how the requirements of 7 C.F.R. §205.240(b) and (c) will be met, which as OC states, it has failed to do. Beyer hasn't provided a pasture plan or stated how pasture requirements will be met, the grazing season for the operation's regional location, types of grazing methods to be used, or information on the pasture, along with other specific information required under section 205.240. Further, Ruminant form #4 asks for a description of the pasture management and rotation plan, along with a DMI evaluation and worksheet. While Beyer stated it doesn't rotate pastures, no specific pasture practices were stated, i.e., mowing fields to control weeds, reseeding, type of forage available. The organic regulations at 7 C.F.R. §205.240(a) state that, "Land used for the production of annual crops for ruminant grazing must be managed in full compliance with §§205.202 through 205.206." The crop regulations cited to address land requirements, and standards addressing soil fertility and crop nutrient management practice; seeds and planting stock practice; crop rotation practice; and crop pest, weed, and disease management practice. However, Beyer hasn't provided information or described its practices in these areas. Further, while Beyer answered that its pasture is irrigated, Beyer also stated in the Attachment to the updated OSP that, "organic pastures can be ... scant during May," thereby bringing into question the sufficiency of the pasture during the 'grazing season.'

As to #3 of the Ruminant form, as stated above, AMS finds that Beyer's DMD/DMI calculations aren't sufficient. By Beyer's own admission, it provides hay and silage to the livestock during the grazing season due to drought in the summer and during the winter, though Beyer also stated that no supplemental feed is fed during the grazing season. AMS find that this represents an inconsistency in statements made in the Livestock OSP. Beyer didn't identify all feed supplement rations in the DMD/DMI calculations for both the operation's grazing season

and the nongrazing season. Instead, Beyer stated in its OSP that the DM fed rations from pasture is 100% during the grazing season. AMS finds that no operation's ruminants can obtain 100% of DMI from pasture when supplemental feed is provided. Further, failing to maintain actual feed records to include all the supplemental feeding is a violation of the regulations at section 205.237(d).

NONCOMPLIANCE REGARDING SECTION 23 OF LIVESTOCK OSP - RECORDS

As to Section 23, the Notice of Noncompliance didn't detail the noncompliance. However, Beyer stated in its Response to the Notice of Noncompliance that Section 23 asked for a description of the operation's recordkeeping system, and that it had provided numerous documents to OC verifying the traceability of the livestock. Beyer stated in its updated Livestock OSP of May 24, 2022, that livestock are purchased by Ed Evans, who maintains ownership and hauls the livestock to Beyer, which tags the livestock with Evans' tags (both in and out tags, which are recorded), and the livestock are subsequently shipped for slaughter, with Evans arranging for the transport. The OSP Attachment references the various documents used in these activities. Section 23 wasn't mentioned by Beyer in its Mediation Request or Appeal, though a Supplement to the Livestock OSP submitted to OC by EOL on Beyer's behalf, addressed it.

EOL stated that contrary to OC's allegation that Beyer's records don't show a clear chain of custody and traceability of cattle while at Beyer's operation, and that the submitted records don't appear to show how the transactions relate to Beyers, the records do show the transactions are related to Beyer. EOL discussed the relationship between EOL and Beyer; and discussed the documentation used to track/trace the livestock, including the Cattle Origin Tracking spreadsheet

and Tag Verification forms. EOL stated that Producer Affidavits for every purchase identify the supplier, slaughter eligibility, tag numbers, date and location of dispatch; and that the Load Tracking spreadsheet is a weekly document that identifies every load in the week by purchase order, trucking ID, load date, origin, destination, organic status, head count, trucking company, and driver.

However, while OC didn't include Section 23 in the denial notice, AMS finds that OC was correct in citing to it in the Notice of Noncompliance, finds that the matter of traceability has not been resolved, and therefore supports OC's ultimate decision to deny certification. The records that Beyer referenced in its Response to the notice and listed in the updated Livestock OSP are all forms that ECCI/EOL and Beyer create on their own. Beyer did not include any records in the OSP, updated OSP, or in the Response to the Notice of Noncompliance that would have been created from other operations/businesses related to the activities concerning the sales/purchase and transportation of livestock that are received at Beyer's ranch. Specifically, Beyer didn't include as part of its OSP, the maintenance of original bills of sale or purchase receipts for the incoming cattle received at the ranch which would in turn allow the certifier to verify the actual origin and organic eligibility of the animals; nor did Beyer include the maintenance of original transport records such as a bill of lading with a date and signature from the trucking company showing the actual movement of the cattle from their original location (origin) to Beyer's operation. Neither of these record types are marked off in the OSP, updated OSP, or noted in the Attachment to the updated OSP, or in the Supplement provided by EOL on behalf of Beyer. Additionally, health certificates are required (pursuant to Animal and Plant Health Inspection Service (APHIS) regulations) for any cattle being transported interstate and not going directly to slaughter. However, Beyer only submitted a blank truck affidavit to show

transport of the cattle, which is filled out and completed by ECCI/EOL staff. Given the distances involved in the inter-state transport of cattle sourced from a multitude of suppliers that ECCI/EOL allegedly uses to ship cattle to Beyer's ranch, the records Beyer has referred to in its various submissions would not be sufficient to verify the actual origin and movement of any incoming cattle to the ranch. When asked by NOP about Section 23, OC stated that although Section 23 wasn't cited in the denial notice, it still has concerns about the specific information on documents provided, and if Beyer's application had progressed to the inspection stage, the matter would have been further reviewed.

CONCURRENT NOP INVESTIGATION AND ISSUANCE OF NOTICE OF WARNING

Additionally, concurrent to the above activities, NOP's Compliance and Enforcement Division was conducting an investigation into allegations raised in regard to Beyer transactions. The findings of the investigation led to the issuance by NOP of a Notice of Warning to Beyer on January 5, 2023. NOP stated in the notice that a review of records and transactions, occurring from November 13, 2020 through November 22, 2022, reveals that Beyer is handling livestock as organic without being certified. This finding is related to Beyer's surrender of its livestock and handling certification held under the name of ECDS, noted above.

NOP requested that Beyer submit a written response describing its corrective actions within 15 working days of receipt of the warning notice. Beyer responded to the NOP notice on January 19, 2023, stating that, "the issue of certification is currently on appeal with the National Organic Program ... Any issues pertaining to certification should be addressed in that appeal." Beyer also stated that "as of January 1, 2023, (it) is no longer accepting or handling any livestock for or on behalf of Evans Livestock, including mature organic dairy cows, and Beyer Ranch does

not intend to handle any mature organic dairy cows or otherwise handle organic livestock in the future.” However, this wouldn’t negate Beyer’s prior actions.

Beyer didn’t provide any response to the specific noncompliances and transactions occurring during the timeframe referenced by NOP in its warning notice and didn’t provide any supporting documentation. Further, the “issue of certification” currently on appeal and addressed in this decision, is regarding OC’s issuance of a Notice of Denial of Certification. OC didn’t address any specific transactions or cite to the noncompliances cited by NOP. OC, as stated above, denied certification based on the insufficiency of Beyer’s OSP and other documents. OC didn’t address livestock transactions by Beyer after it had surrendered the ECDS livestock and handling certification.

However, as Beyer has ‘opened the door’ by stating that the matter is currently on appeal, AMS has addressed the surrender above, initially to provide historical background regarding Beyer, and has addressed the insufficiency of Beyer’s response to Section 23 of the Livestock OSP and failure to provide adequate documentation to provide full traceability of the livestock received at and managed at the ranch location. AMS is not making any finding on the allegations of NOP, since they weren’t addressed in OC’s denial notice, which is the subject of the appeal. However, the statement by OC that documentation submitted by Beyer for Section 23 causes concerns regarding traceability, along with other findings above, allude to a potential violation of the regulations at 7 C.F.R. §205.236, Origin of livestock, as published as the time of the notice. NOP’s investigative findings do support OC’s determination to deny certification, which is the subject of the appeal; therefore, it is appropriate to include this supporting information.

BEYER APPEAL

Beyer states in its Appeal that it has “steadfastly tried to better understand” OC’s position; addressed all items cited by OC in the Notice of Noncompliance, which are discussed in detail above; and has responded to all requests for additional documentation and information. Beyer states it has asked OC to provide a specific list of what is needed to address OC’s concerns; however, OC has not provided the requested details.

However, as seen above, OC worked with Beyer to obtain the additional needed information and completed documentation; and identified in the Notice of Noncompliance, the relevant sections of the organic regulations for which sufficient documentation was needed, and also delineated the numerous contacts with Beyer in its attempts to obtain said documentation. The denial notice also cited to the specific regulations and provided further information on what documentation/information was lacking. Also, Beyer’s updated Livestock OSP and other documents were considered prior to issuance of the Notice of Denial of Certification. However, as discussed above, AMS finds that several sections of the Livestock OSP are still not sufficient to allow Beyer to be certified.

Beyer also argued several procedural points in its Appeal. Beyer contends that OC denied its request for mediation which would be an “ideal venue to resolve this impasse;” providing Beyer with detail on what is needed to comply and allowing Beyer to successfully address OC’s concerns. 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.” As stated above, OC worked with Beyer in attempts to resolve the insufficiencies of Beyer’s application, prior to issuing the denial notice, and was not required to grant Beyer’s mediation request.

Beyer also argued in the Appeal that NOP’s records request should be stayed pending the outcome of the Appeal. Beyer referenced the numerous record requests of NOP, which included addressing the allegations discussed above, specifically the livestock transactions with ECCI/EOL, the inability to provide full traceability for these transactions, and engaging in transactions after Beyer had surrendered livestock and handling certification under ECDS. Beyer had supplied some documentation in response to NOP requests, and the Appeal doesn’t specifically address what request Beyer wants stayed but appears to address any future requests by NOP. However, there is no ‘double jeopardy’ type restriction on NOP from investigating Beyer and issuing records requests, while Beyer’s Appeal to OC’s denial of certification is pending.

Further, as stated above, OC’s denial notice didn’t cite to the noncompliances alleged by NOP in issuance of the Notice of Warning, and the records requests are related to the subsequently issued warning. The organic regulations prohibit issuance of a final suspension or revocation notice when an appeal to the associated proposed suspension or revocation is pending. The regulations do not prohibit issuance of a separate adverse action notice, or requests for records, while an appeal to an adverse action notice is pending, especially when the appealed adverse action notice doesn’t address the subject of the other actions. The basis for OC’s denial of certification stands apart and on its own, separate from NOP’s record requests.

CONCLUSION

Evidence substantiates that at the time of its application to OC, Beyer was not compliant with the organic regulations at 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. §205.237, Livestock feed; 7 C.F.R. §205.238, Livestock health care practice standard; 7 C.F.R. §205.239, Livestock living conditions; and 7 C.F.R. §205.400, General requirements for certification. Evidence substantiates that Beyer failed to maintain and submit documentation and information to sufficiently complete the Livestock OSP, and specific cited sections therein, as well as the Ruminant Attachment form.

Beyer failed to sufficiently address, and in some cases, address at all, such matters as health care practices and treatments, including how sick or injured animals will be treated; preventative health care practices, including the administration of vaccines and other veterinary biologics; and animal health monitoring practices. Further, Beyer failed to sufficiently address the grazing season on the ranch; DMI and DMD Calculations to ensure requirements are being met, including feed records to include actual feed fed records to include all supplemental feed; and a detailed Pasture Management Plan.

All certified operations and applicants for certification must ensure their OSPs accurately describe the operation and all practices and procedures; and maintain records that fully disclose all activities and transactions of the operation in sufficient detail as to be readily understood and audited. Beyer's failure to submit sufficient information and documentation didn't allow OC to confirm that Beyer was in compliance with the organic regulations. Therefore, OC was justified in denying certification to Beyer.

DECISION

Beyer's Appeal of September 22, 2022 is denied. The July 18, 2022 Notice of Denial of Certification is affirmed. Beyer is denied organic certification as applied for with OC. Pursuant to 7 C.F.R. §205.405(e), Beyer may apply again for certification any time and with submission of proof that all needed corrective actions have been taken and noncompliances resolved.

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

Done at Washington, D.C., on this 11th
day of April, 2023.

BRUCE SUMMERS Digitally signed by BRUCE
SUMMERS
Date: 2023.04.11 08:37:14 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service