

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Lariat Cattle Company)
) **Administrator's Decision**
) **APL-056-21**
Gordon, Nebraska)
)

This Decision responds to Appeals (APL-056-21) of two Notices of Proposed Suspension issued to Lariat Cattle Company (Lariat) of Gordon, Nebraska by USDA-accredited certifying agent OneCert, Inc. (OneCert) under the National Organic Program (NOP). Lariat has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (USDA) organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent or NOP

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

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 February 18, 2021, OneCert issued a Notice of Noncompliance citing to various noncompliances related to Lariat’s livestock certification.
2. On March 18, 2021, OneCert issued a Notice of Proposed Suspension citing livestock noncompliances.
3. On April 16, 2021, Lariat requested mediation.
4. On July 26, 2021, OneCert denied Lariat’s mediation request.
5. On July 26, 2021, OneCert issued a Notice of Noncompliance regarding certification renewal updates and fees, which was subsequently resolved with no further adverse action being issued.
6. On August 24, 2021, Lariat submitted an Appeal to the March 18, 2021 Notice of Proposed Suspension.
7. On December 9, 2021, OneCert issued a Notice of Noncompliance regarding continuing livestock noncompliances.
8. On February 25, 2022, OneCert issued a Notice of Proposed Suspension regarding continued noncompliances.
9. On March 25, 2022, Lariat requested mediation.
10. On April 5, 2022, OneCert denied Lariat’s mediation request.

11. On May 5, 2022, Lariat submitted an Appeal to the February 25, 2022 Notice of Proposed Suspension.

DISCUSSION

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 §205.100(c) state that, “Any operation that (1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in §3.91(b)(1) of this title per violation...”

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, 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.

The evidence substantiates that OneCert granted organic certification to Lariat on November 17, 2014 for livestock, and on September 22, 2014 for crops. Lariat is owned by Open Range Beef (ORB) which is certified for handling by Oregon Tilth Certified Organic (OTCO). At all relevant times, Lariat was comprised of a certified (b) (4)-acre plot and a certified (b) (4)-acre plot.

Core to this case is the description of Lariat's activities in its Organic System Plan (OSP) when compared to the activities actually conducted on site. Lariat's organic certificate issued on

April 23, 2019, states that Lariat is only certified for ‘custom grazing and feeding’ of livestock; as such, a very limited set of livestock management activities were included in the OSP. For example, Lariat stated in its Livestock OSP of January 2, 2020, which was also resubmitted to OneCert on December 23, 2020 that, “Cattle are held for a maximum of 72 hours if needed awaiting slaughter.” The livestock is purchased and owned by ORB; and held and grazed by Lariat on land it manages until slaughter by ORB. However, OneCert found that in practice, Lariat was holding cattle past the documented self-imposed 72 hour period, and was raising livestock, for which it wasn’t certified. Lariat conducted several livestock management activities without informing or receiving approval from OneCert.

On October 20, 2020, OneCert conducted an inspection of Lariat, at which the inspector confirmed in the Inspection Report that ORB “purchases all of the livestock that are run through (Lariat);” that ORB slaughters the livestock at the facility adjacent to Lariat; and that ORB maintains ownership of all cattle throughout this process. OneCert noted in the Inspection Report that the maximum hold time for livestock at Lariat’s operation is 72 hours, as Lariat stated in its OSP. However, OneCert states that Lariat informed the inspector that it was acting outside its OSP, because it was holding organic cows past the 72 hour period when cows calved in the holding pens, and then placed the cows on pasture with the calves until the calves were weaned. After that time, the organic cows were sent to organic slaughter by ORB.

OneCert also found other noncompliances at the October 2020 inspection: Lariat failed to submit records sufficient to demonstrate compliance with the organic regulations, including records to determine the organic status of livestock, and records on the management and feeding of the livestock; and Lariat provided conflicting statements related to organic livestock management and recordkeeping. However, Lariat responded that it maintained records sufficient

to allow for documenting the origin of livestock and their organic status; that doesn't own the livestock held past the 72 hour holding period, but rather only manages the land/holding pen; and therefore, it isn't required to maintain livestock records.

The evidence substantiates that Lariat has violated the organic regulations at 7 C.F.R. §205.103 and 7 C.F.R. §205.201, which require that certified operations maintain records that fully disclose all activities and transactions of the operation in sufficient detail to be readily understood and audited; and describe all practices and procedures to be performed and maintained by the operation in its OSP. While Lariat acknowledged it was holding and raising livestock past the 72-hour 'custom grazing' period for which it was certified, those practices were not stated in Lariat's Livestock OSP nor its Crop OSP. Further, contrary to its subsequent assertion that these practices ceased in January 2021, OneCert found the practice continued, as discussed below.

Subsequent to the October 2020 inspection, OneCert followed up with additional questions regarding the raising of livestock and questions regarding discrepancies in Lariat's records which didn't allow for adequate tracing of organic livestock and documentation of the organic status of the livestock. OneCert stated in a January 13, 2021 email to Lariat, "I would like to verify/clarify that in addition to the custom grazing of cattle (livestock only staying on the property about 72 hours) that you are also raising livestock for beef. In previous years, the listing on your organic certificate shows "Custom grazing and feeding of cattle" however it appears actual amounts of livestock should also be listed on your organic certificate."

After receiving an amended livestock list, OneCert again emailed Lariat on January 14, 2021, stating Lariat needed to complete the entire document and OSP sections regarding the raising of livestock. OneCert also asked Lariat to submit a plan for the calves born of cows

which were held past 72 hours. After finding Lariat failed to adequately address the concerns, OneCert issued a February 18, 2021 Notice of Noncompliance. Lariat submitted numerous documents in response to the noncompliance notice; however, OneCert determined the noncompliances weren't resolved, and subsequently issued the March 18, 2021 Notice of Proposed Suspension, which Lariat appealed after mediation was denied.

Lariat stated in its August 24, 2021 Appeal that it grazed organic cows on an organic pasture consistent with its OSP. However, Lariat acknowledged the OSP doesn't include the raising of calves. Lariat also specifically stated in its January 2, 2020 Livestock OSP that it only "grazed organic cattle owned at all relevant times by ORB" and that Lariat is a "holding pasture for ORB," which maintained a list of the cows and calves for tracing purposes. Lariat further stated that it informed the Nebraska Department of Agriculture of its specific practices.

However, AMS finds that whether ORB purchased and owned the livestock, and maintained such records on cow/calve pairings; or whether Lariat communicated its practices with the state agriculture department, is irrelevant to Lariat's failure to include and describe the practice of holding and raising livestock in its Livestock OSP. Since Lariat stated that it and ORB are separate legal entities, and they have separate organic certifications, ORB's actions are irrelevant to Lariat's failure to inform OneCert of its practices. Each party is responsible for ensuring that its OSPs accurately describe its operation and practices. Because Lariat held the organic cows and their calves without informing its certifier, OneCert wasn't able to determine if Lariat was abiding by health care, feed, living conditions, and pasture practice regulations for the livestock.

Lariat also stated that on January 18, 2021, it stopped the practice of holding cows and raising their calves past the 72 hour period, and emailed OneCert on February 4, 2021 outlining

its changes to its livestock management practices and stating it will no longer continue the process of ‘raising’ calves.... OneCert’s inspector confirmed in the October 20, 2020 Inspection Report that if the animals are certified organic, the USDA allows the operation to turn the cow out onto organic pasture and raise the calf to weaning weight.

On March 29, 2021, Lariat revised its OSP – Crops to state that it is “a (b) (4) acre holding pasture for Open Range Beef which is adjacent;” and there is “limited grazing” on its land. On August 13, 2021, Lariat told OneCert that it is no longer feeding cattle and hasn’t done so since the end of 2020. However, this does not negate Lariat’s prior practices that violated the regulations at 7 C.F.R. §205.103 and 7 C.F.R. §205.201, which require that certified operations maintain records that fully disclose all activities and transactions of the operation in sufficient detail to be readily understood and audited; and describe all practices and procedures to be performed and maintained by the operation in its OSP.

Further, at an unannounced inspection on October 26, 2021, OneCert found over (b) (4) head of Holstein cattle, owned by ORB, onsite at Lariat’s operation on the (b) (4) -acre plot and feeding from a bale feeder, contradicting Lariat’s prior statements. Lariat informed the inspector that it was no longer managing its own operation; and cited an agreement between Lariat and ORB. Therefore, on December 9, 2021, OneCert issued another Notice of Noncompliance to Lariat citing violations of the organic regulations for failing to notify OneCert of a change in the certified operation; failing to update its crops and livestock OSP regarding the changes in operation management; and the finding of livestock being on-site and feeding, outside the reported scope of the OSP and after Lariat had specifically stated that it stopped the practice.

Specifically, OneCert stated that Lariat’s OSP doesn’t include an accurate description of the overall management of the operation; the agreement between Lariat and ORB conflicts with

what was stated at the inspection; the agreement is not disclosed in the OSP; and further, the agreement appears to be merely an agreement that ORB can use Lariat's land. Lariat also failed to provide access to records for livestock that the inspector found on-site, stating that the documentation on the organic status of the livestock is under ORB's certification and that Lariat need not provide such documentation. Further, as Lariat alleged it no longer manages its own operation and that records are under ORB's certification, OneCert couldn't determine if the operation was managed in accordance with the organic regulations. Lastly, OneCert found that Lariat had failed to manage pasture in compliance with the regulations, specifically, the (b) (4)-acre holding pen was overgrazed due to the number of cattle being allowed on the land, and an area of standing water had been trampled into mud, while the (b) (4)-acre pasture was unused.

Lariat submitted a response to the noncompliance notice, stating that it has operated in conjunction with ORB since its inception and is owned by ORB, but it is a separate legal entity. Lariat stated that it has never owned any livestock but rather manages the land; and it is ORB which owns and handles the cattle on Lariat's land. Lariat contends, therefore, that OneCert's inquiries into the handling of livestock by ORB are inappropriate and that a third-party may not challenge the agreement between Lariat and ORB. However, Lariat acknowledges that ORB isn't certified for livestock, as it is a slaughter operation, and states that livestock doesn't stay at its operation past 72 hours, though if the livestock can't be slaughtered right away and are held for any appreciable amount of time, they must be fed or given water, which ORB's certifier OTCO approved. Lariat submitted ORB purchase orders for organic feed. Lariat maintains that its OSP has been updated to provide additional detail and clarification, and is accurate for its operation; and further, OneCert only needs information on the management of the land/holding pens, not the livestock held there. Lariat also contests the finding that the holding pen is

overgrazed, stating that it is not a pasture and isn't intended for grazing. Lariat stated that the standing water was a one-time event due to a recent rainstorm.

OneCert found that Lariat's reply was insufficient to address and/or resolve the cited noncompliances, and issued a second Notice of Proposed Suspension on February 25, 2022. OneCert had confirmed through ORB's certifier OTCO that ORB's scope of certification doesn't include managing and feeding livestock, and ORB doesn't have any holding pens or pasture areas identified in their OSP. Further, although Lariat claimed that it had updated its OSP, the overall management of Lariat's operation wasn't described, and documentation submitted by Lariat with its reply was incomplete, as it doesn't substantiate the organic status of incoming livestock and the number of incoming livestock doesn't match the number slaughtered. OneCert also stated that the OSP doesn't show that the organic livestock are organically fed during transport, though AMS notes that the organic regulations do not require that livestock be fed during transport.

OneCert also stated that Lariat had failed to explain why over (b) (4) head of livestock were on-site, feeding, during the unannounced inspection on October 26, 2021; and concluded that because ORB's certification doesn't include managing and feeding livestock, Lariat is unable to correct cited noncompliances, since Lariat 'defers' responsibility for recordkeeping to ORB. Finally, OneCert noted that the OSP doesn't accurately describe the holding pen, doesn't accurately represent the operation, and Lariat presented no corrective action to prevent the standing water in the pasture.

Lariat filed an Appeal on May 5, 2022 to the February 25, 2022 proposed suspension after OneCert denied Lariat's mediation request. Lariat reiterates the arguments it advanced in its reply to the December 9, 2021 Notice of Noncompliance; contends it "has always been and is

in compliance with both the spirit and the letter of the NOP regulations;” the alleged noncompliances aren’t substantive so as to impact organic integrity; and there are no serious allegations of traceability noncompliances. Lariat reiterates it has a (b) (4)-acre holding pen which isn’t pasture, next to ORB’s slaughter facility, which is used as a temporary holding pen for cattle owned by ORB immediately prior to slaughter; as well as a separate adjacent (b) (4)-acre pasture. Lariat also stated it is considering removing the holding pens from its OSP and seeking to have them certified under ORB’s certification, followed by transfer and certification of the (b) (4)-acre plot. Lariat submitted its OSP for Crops which was revised December 16, 2021 to state that Lariat is a (b) (4)-acre Ante Mortem holding pen for Open Range Beef, and includes a (b) (4) acre pasture.” Lariat also submitted its Livestock OSP revised January 15, 2022; which doesn’t provide the specifics of its practice, but states it has ruminant livestock which are grazed.

It is noted that subsequently, on May 16, 2022, Lariat reported it has moved the (b) (4) acre holding pens to ORB, and ORB’s OSP with OTCO was revised to include the holding pens. OTCO confirmed that on September 28, 2022, it added the holding pens to ORB’s certification. However, this doesn’t negate the violations of the organic regulations by Lariat. Lariat subsequently surrendered its livestock and crop certification effective December 13, 2022; however, this surrender also does not void the violations.

A review of the evidence substantiates that Lariat has violated the organic regulations at 7 C.F.R. §205.103 and 7 C.F.R. §205.201, by initially failing to disclose to its certifier and in its records and OSP that it was raising livestock/calves, as it was holding cows and their calves until the calves were weaned, at which time the cows were sent for organic slaughter. Further, after Lariat claimed to have stopped this practice, an unannounced inspection found (b) (4) head of Holstein cattle onsite at Lariat which were being fed. Further, while ORB Carcass Reports show

organic Holsteins were delivered to Lariat's on October 24, 2021, and slaughtered on October 26, 2021, the date of the inspection, the records are not complete and there are discrepancies. In addition to the imbalance between the total head of livestock on the Brand Inspection Certificates and the total head on the ORB Carcass Reports, which Lariat addressed stating that inspection certificates only show the number inspected, some of the trucking invoices don't have the same total head of livestock as either of the other documents. Additionally, there is no original tag list or invoice for any of the livestock to determine from whom they were purchased, and therefore, one can't determine if the livestock purchased are the same livestock that were slaughtered. Even if the livestock documentation submitted with the second Appeal were sufficient to show the organic status of the livestock found on site, and were sufficient for traceability of the livestock, they do not negate Lariat's holding and raising of livestock as previously found by OneCert.

Further, both OneCert and NOP have the right to ask Lariat for records on the livestock it holds. While Lariat states that ORB is responsible for such records as ORB owns the livestock, Lariat can't simply defer to ORB. Lariat has stated that it and ORB are separate legal entities, and they have separate organic certifications also under separate certifiers. Lariat is responsible for maintaining such records and must present them to OneCert upon request. Further, since Lariat references an agreement with ORB, OneCert and NOP may inquire into that agreement. Lariat told OneCert that it can't challenge the Agreement between Lariat and ORB. However, as Lariat and ORB are both certified operations, and must comply with the organic regulations, any agreement between the two entities can be reviewed by OneCert and NOP to determine the relationship between and obligations of the two entities. Further, a review by NOP concluded

that the Agreement is not sufficient to address Lariat's practices nor its holding and raising of livestock.

Evidence also substantiates that Lariat has violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operation; and 7 C.F.R. §205.236, Origin of livestock; by failing to maintain records sufficient to verify the origin of the livestock and preserve the identity of all organically managed animals in order to verify organic integrity. Specifically, Lariat has failed to demonstrate the organic status of incoming livestock and allow full tracing of the livestock transfer from ORB to Lariat to transfer back to ORB for subsequent slaughter and sale. OneCert stated in the March 18, 2021 Notice of Proposed Suspension, that Lariat submitted documentation showing its supplier of livestock as Evans Cattle Company, Inc. (ECCI), but the associated organic certificate was for Evans Organic, LLC (EOL). The ECCI documentation shows livestock was received from sites in California and Texas; however, ECCI has no certified operations in those States; rather, the locations are of other ECCI suppliers. Further, OneCert states that ECCI was only certified for livestock brokering until July 13, 2020, yet Lariat received a load of livestock identified as coming from ECCI on September 9, 2020. It is noted that ECCI and EOL are the same operation, with EOL being the successor and having become certified for handling and livestock on August 19, 2020. However, EOL only has a certified location in Ohio. Further, there is also a 'gap period' from July 14, 2020 through August 18, 2020, when neither ECCI nor EOL were certified, during which time Lariat received numerous loads of livestock from ECCI.

There were also further discrepancies between documents regarding the number of livestock, and the ear tag numbers of the livestock, which prevent the tracing of all livestock. These discrepancies were seen on documentation for livestock received from several sources.

Lariat has failed to provide documentation that substantiates the traceability, origin, and organic status of livestock held on the land and in holding pens managed by Lariat.

Evidence substantiates that OneCert attempted to obtain clarifying information and an explanation for the discrepancies in records it found before finally issuing the Notice of Proposed Suspension. OneCert stated in a January 14, 2021 email to Lariat that it was waiting on the documentation showing how Lariat “will track Cows/Cow ID from sale/transfer to Open Range Beef back to the original /incoming/purchase documentation.” Follow-up emails were sent on least 4 subsequent occasions. OneCert specifically addressed the duplication of tag numbers on POs, emailing Lariat on January 27, 2021, stating that it “sees Ear tag number 454 with a PO number 13100 on your Livestock List but then see the Cow Tag #454 on the ECCI verification document which shows PO 14340. Can you explain this?” This inquiry was repeated to Lariat on February 3, 2021.

Lariat responded to OneCert on February 4, 2021, stating that, “ORB maintained a list of tag numbers for the calves and cows. The cow tags can be traced back to the original purchase order/and paperwork see attached documents. In a given situation tag numbers from different loads or lots of cattle will be duplicated. To maintain traceability each load or lot is assigned a unique PO number to keep segregation i.e. PO #1500 & cow tag #400 is different from PO #1505 cow tag #400.” Lariat attached to its email a tag list for cows and calves; receiving paperwork for livestock with tags #437, #454, and #981; and “slaughter results” for cows that gave birth under those tag numbers. Lariat contends that “despite there being some overlapping numbers between these two POs from different origin points five months apart, (Lariat) clearly demonstrated traceability.”

Lariat further argued in its Appeal that, “To the extent that OneCert now takes any position that (Lariat’s) records were insufficient, (Lariat) includes here the traceback records for every cow that was part of the cow/calf pairs ... each original PO shows an organic source for that cattle shipment and includes the paper back tag number for each cow in the shipment, though the paper tags do not hold up as they were designed for use over the 72 hours of holding.” Therefore, Lariat issued new tags with new numbers to cows that had calved and were weaning the calves.

However, Lariat’s explanation allows the same cow to be on two separate purchase orders, which is not compliant. Further, this is the first time that Lariat mentions the issuance of new numbers to cows when their tags were damaged. Lariat’s explanation that, “In a given situation tag numbers from different loads or lots of cattle will be duplicated,” goes to the heart of the traceability noncompliance. Having the same tag/cow on two separate POs results in the inability to actually trace the origin of that cow. OneCert must be able to trace each tag/cow from dispatch by the producer to receipt by ORB and also to transmittal to and from Lariat. Further, Lariat submitted a tracking sheet showing the original tag/cow number for livestock under various POs, along with newly assigned harvest (slaughter) numbers for those same livestock. While almost all the listed livestock received new tag/cow numbers prior to harvest, tag/cows number 454, 437, and 981, discussed herein, maintained their same numbers. Therefore, Lariat’s statement regarding issuing new tags with new numbers, as set forth above, doesn’t explain the reason for tag/cow 454 being on more than one PO.

Evidence also substantiates that Lariat violated the organic regulations at 7 C.F.R. §205.100 and 7 C.F.R. §205.236, by receiving and grazing/managing as organic, livestock from uncertified operations that were intended for organic slaughter. Further, documentation

regarding the transactions failed to explain the relationship of parties identified in some documentation, which also contains discrepancies, thereby preventing a determination on the origin and organic integrity of the involved livestock, and a full tracing of the livestock. While ORB purchased the livestock involved, the livestock were ‘custom grazed’ at Lariat’s operation. Furthermore, livestock were received from operations not identified by Lariat to OneCert as suppliers of organic livestock; and although Lariat stated in its response to OneCert’s denial of mediation that it only “grazed organic cattle owned at all relevant times by ORB” and that Lariat is a “holding pasture for ORB,” Lariat’s supplier list doesn’t match that of ORB, which also doesn’t list all the operations identified in livestock documentation.

Lariat argued that it is “substantively in full compliance with NOP regulations” as only paperwork noncompliances are alleged which do not “impact organic integrity,” and there is “no serious allegation of traceability of organic livestock, nor is there any contention that any product sold was not organic.” However, contrary to Lariat’s arguments, the duplication of tag/cow numbers on more than one PO represents more than a recordkeeping noncompliance, as may conflicts involving the identity of the livestock producer, the location of the producers and dispatch locations, and the failure to substantiate relationships between entities appearing together on documentation. These affect the traceability of livestock and may hide and enable the receiving and subsequent selling of conventional livestock as organic.

Lariat also contends that OneCert accepted its explanation regarding the duplicate tag numbers by not raising it as a noncompliance finding in the March 18, 2021 proposed suspension. However, the Notice of Proposed Suspension does allege that Lariat maintained inadequate records to enable the tracing of livestock, which is related to and encompasses the duplication of tag numbers. Lariat also alleged that the March 18, 2021 proposed suspension

notice identifies noncompliances not previously identified in the February 18, 2021 Notice of Noncompliance; however, the cited noncompliances are either the same or are extensions of the previously cited noncompliances, as the submission of documentation and responses by Lariat raised additional questions as discussed above. Lariat also questioned why OneCert only initially requested information on tags/cows 437, 454, and 981. However, OneCert is within its rights to question specific transactions and to later broaden its review when discrepancies were found, as is the case here.

Lariat also alleges that OneCert denied its mediation requests for “no valid reason,” and therefore, has caused Lariat the “unnecessary time and expense” of an appeal. Lariat states that it proposed a resolution in its second mediation request, whereby it would move the (b) (4) acres of holding pens to ORB’s certification followed by transfer of the (b) (4) -acre plot; however, OneCert refused to discuss the matter. However, certifiers aren’t mandated to conduct mediation. The regulations at 7 C.F.R. §205.663 state that a proposed suspension “may be mediated at the request of the ... certified operation and with *acceptance by* (emphasis added) the certifying agent.” If a certifier rejects a mediation request, the certifier “shall provide written notification to the ... certified operation ... (and) advise the ... certified operation of the right to request an appeal.” Lariat availed itself of the right to file an appeal for both proposed suspension notices. Further, as seen above, OneCert had already attempted on numerous occasions to obtain adequate information and a clarifying explanation for Lariat’s actions and document discrepancies.

CONCLUSION

The evidence substantiates that Lariat violated the organic regulations at 7 C.F.R. §205.100, What has to be certified; 7 C.F.R. §205.103, Recordkeeping by certified operation; 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. Lariat made a significant change to its OSP and certification scope, without informing or receiving approval from OneCert, and subsequently made a change in the management of its operation, again not informing OneCert. Lariat failed to describe in its OSP several practices, including keeping organic calving cows intended for organic slaughter past the approved 72 hour 'custom grazing' period, putting the organic cows and their calves out to pasture and raising them until the calves are weaned.

Further, after this undocumented practice was found at the October 20, 2020 inspection, Lariat told OneCert on February 4, 2021 that it had ceased the practice on January 18, 2021. However, at an unannounced inspection on October 26, 2021, OneCert found over (b) (4) head of Holstein cattle being held for ORB, Lariat's owner, and being fed by Lariat. Further, changing and conflicting statements were made by and between Lariat and ORB. Lariat stated at the October 26, 2021 inspection that the documentation on the organic status of the livestock is under ORB's certification, and that Lariat is only responsible for maintaining records on the holding pasture/pen. This conflicts with the OSP and the agreement between Lariat and ORB; and neither Lariat's nor ORB's OSP described the practice of holding and raising livestock.

Lariat claims it is a separate legal entity from ORB, and it has a separate certification with a different certifier than ORB. As such, Lariat must maintain all required livestock records for livestock it holds and raises, and other livestock held for any appreciable amount of time and

managed by Lariat. Lariat deflects responsibility for the livestock found at the unannounced inspection by stating that ORB manages and feeds the livestock, with the approval of ORB's certifier OTCO; however, ORB isn't certified for this activity.

Evidence also substantiates that Lariat has failed to maintain records sufficient to demonstrate the organic status of incoming livestock and allow full tracing of the livestock from the livestock supplier to the receipt by ORB and transfer to Lariat to transfer back to ORB for subsequent slaughter and sale. Lariat's records on incoming livestock contain discrepancies and conflicts as to the producer, dispatch location, and number of livestock; and there are occurrences of duplicate tag/cow numbers with the same number appearing on more than one purchase order. Evidence also substantiates that Lariat received livestock from uncertified operations and uncertified dispatch locations; and documentation also failed to explain the relationship of parties identified in some documentation. Lariat states it only "grazed organic cattle owned at all relevant times by ORB." As such, Lariat's organic livestock supplier list should match that of ORB, but it doesn't.

Additionally, Lariat failed to maintain records related to the practice of holding livestock past the 72 hour 'custom grazing' period and the raising of calves, including the records on livestock feed, health care practices, living conditions, and pasture practices regarding the cow/calve pairs. Therefore, it can't be determined if Lariat violated the regulations at 7 C.F.R. §205.237, Livestock feed; 7 C.F.R. §205.238, Livestock health care practice standard; and 7 C.F.R. §205.239, Livestock living conditions; in regard to the cow/calve pairs. However, evidence substantiates that Lariat violated the regulations at 7 C.F.R. §205.240, Pasture practice standard, as it was seen at the unannounced October 26, 2021 inspection that the (b) (4) acre holding pasture/pen is overgrazed, and no corrective action was presented for dealing with standing

water. Additionally, Lariat's proposal to transfer its (b) (4)-acre holding pens and (b) (4)-acre pasture to the certification of ORB won't negate the noncompliances.

The violations of the above-cited regulations also constitute a violation of the organic regulations at 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification, as evidence substantiates that Lariat has failed to comply with the organic regulations; update its OSP to reflect actual operations and practices, detailing any deviations from the prior year's OSP; and maintain all records applicable to the organic operation and provide access to those records at inspections. Lariat failed to maintain records which fully disclose all activities and transactions of the operation in sufficient detail as to be readily understood and audited. Lariat has failed to demonstrate compliance with the organic regulations. Therefore, Lariat may not remain certified.

DECISION

Lariat's Appeals of August 24, 2021 and May 5, 2022 are denied. The Notices of Proposed Suspension issued by OneCert on March 18, 2021 and February 25, 2022 are both affirmed. The suspension is to be issued despite Lariat's subsequent surrender of its certification on December 13, 2022. However, pursuant to the organic regulations at 7 C.F.R. § 205.662(f), Lariat may request reinstatement of its certification after completion of the suspension. Said reinstatement request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations, including ensuring the organic integrity of livestock and records sufficient to allow complete traceability of said livestock.

Additionally, attached to this formal Administrator's Decision denying Lariat's Appeals is a Request for Hearing form. Lariat has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this 13th
day of February, 2023.

BRUCE SUMMERS Digitally signed by BRUCE
SUMMERS
Date: 2023.02.13 20:52:32 -05'00'
Bruce Summers
Administrator
Agricultural Marketing Service