

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
)
Elliot Ranch)
)
) **Administrator's Decision**
) **APL-029-21**
LaSalle, Colorado)
)
)

This Decision responds to an Appeal (APL-029-21) of a Notice of Proposed Suspension issued to Elliot Ranch (Elliot) of LaSalle, Colorado, by former USDA-accredited certifier Ecocert ICO (ICO) under the National Organic Program (NOP). Elliot 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 25, 2019, ICO certified Elliot for crops and livestock, including ‘slaughter-eligible livestock.’
2. On December 1, 2020, ICO notified Elliot that it was surrendering accreditation effective January 31, 2021. This was later extended to April 1, 2021.
3. On or about December 10, 2020, Elliot applied to USDA-accredited certifier Ecocert SA, the parent of ICO, for certification. Elliot withdrew this application on July 14, 2021 and subsequently applied to USDA-accredited certifier Organic Certifiers under the name ‘Ben Elliot.’ Elliot subsequently withdrew the Organic Certifiers application on July 1, 2022.
4. On March 2, 2021, ICO issued a Notice of Noncompliance to Elliot.
5. On March 29, 2021, ICO issued a Notice of Proposed Suspension to Elliot.
6. On April 15, 2021, as ICO had surrendered accreditation two days after issuing the Notice of Proposed Suspension, Elliot requested that NOP conduct mediation, which was denied
7. On April 23, 2021, Elliot submitted an Appeal to ICO’s Notice of Proposed Suspension.
8. On February 6, 2023, NOP issued a Notice of Noncompliance to Elliot for its failure to obtain certification by a new certifier, having been in ‘transition’ since April 1, 2021 when ICO surrendered its accreditation.

9. On February 9, 2023, Elliot emailed NOP that it was surrendering its certification effective immediately.

REGULATORY CITATIONS

The USDA organic regulations at 7 C.F.R. §205.100, What has to be certified, state that, “(a) Except for operations exempt or excluded in §205.101, each production or handling operation or specified portion of a production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part.”

The regulations at §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)). (b) Such records must: (1) Be adapted to the particular business that the certified operation is conducting; (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.” The records must be available for inspection by the operation’s certifier.

The regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... intending to sell, label, or

represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent. An organic system plan must meet the requirements set forth in this section for organic production or handling. An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations...”

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

The regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent ... (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production or handling

areas ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the applicable State organic program's governing State official, and the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part ... (f) Immediately notify the certifying agent concerning any: ... (2) Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this part.”

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

BACKGROUND

Evidence substantiates that Elliot Ranch (Elliot), which is owned by Ben Elliot, and located in LaSalle, Colorado, was previously certified organic for crops and livestock under the certification of Evans Cattle Company, LLC (ECCI), of New Carlisle, Ohio. However, it was not a best practice for a certifier to allow this; the organic standards indicate that individual sites should have their own certification. Therefore, after instruction by ICO and NOP, Elliot subsequently obtained its own certification for crops and livestock from ICO on September 25, 2019; it is this certification that is the subject of this case. Ben Elliot also owns Legacy Meats,

LLC (Legacy), a retail and wholesale operation that purchases and sells conventional cattle, and is also located in LaSalle, Colorado. Legacy isn't certified organic and is a separate business entity registered with the State of Colorado. Legacy uses the same lot as Elliot in LaSalle, Colorado to unload, load, and ship cattle for slaughter. Elliot is not licensed by the Colorado Department of Agriculture to do business as a livestock dealer in Colorado.

Evidence substantiates that ICO informed Elliot on December 1, 2020 that it would surrender its accreditation effective January 31, 2021; this was later extended to April 1, 2021. Prior to the surrender, ICO conducted an unannounced inspection of Elliot on January 28, 2021. ICO found that Elliot's records didn't fully disclose all activities and transactions in sufficient detail as to be readily understood and audited or demonstrate compliance with the organic regulations. ICO noted that Elliot was using ECCI's Tag Verification Sheets after Elliot received its own certification. ICO also noted that Elliot was invoicing/billing the buyer of alleged organic livestock on invoices identifying the seller as the uncertified Legacy, rather than Elliot, bringing into question the actual source and the organic integrity of the livestock. Finally, ICO noted that Elliot's livestock register was not current or complete; there were missing or insufficient documentation on livestock; and there were discrepancies between the Tag List (Animal Identification List) and ECCI Tag Verification documents (ID Tag List).

Elliot subsequently submitted to ICO numerous documents and an animal ID tag list, including invoices under the name of Legacy that Elliot sent to its buyer. Elliot stated that the livestock originated from its operation, not Legacy. However, finding Elliot's submission insufficient to address the cited noncompliances, ICO issued a Notice of Noncompliance on March 2, 2021, reiterating that it appeared Elliot was conducting organic transactions under and through the uncertified Legacy. The notice also cited deficiencies in livestock records regarding

the number of livestock and the source of Elliot's beef cattle; and asked Elliot to explain the discrepancy in the number of cattle and submit records on animal sales, shipping, slaughter, and mortality.

On March 16, 2021, Elliot submitted a reply/rebuttal to the Notice of Noncompliance, stating that it only uses Legacy for billing; and that Legacy doesn't produce or handle crops, livestock, livestock products or other agricultural products. Elliot stated that the head count changes daily as calves are born, livestock dies, and livestock are sold, and different forms aren't always completed at the same time. However, Elliot didn't specifically explain the difference cited by ICO or provide a list of the animals by ID number or identify the source of the cattle. Therefore, finding that Elliot's rebuttal doesn't "provide evidence that the operation is in compliance with the regulations," ICO issued a Notice of Proposed Suspension on March 29, 2021, reiterating statements it made in the noncompliance notice. Specifically, ICO stated that while Elliot had obtained certification under the name of Elliot Ranch, it is conducting business through Legacy. Further, Elliot's operation has missing or insufficient records on the origin, dates of arrival/exit, conversion period and/or identification marks of the livestock; and the Organic System Plan (OSP) is deficient in certain livestock information.

NONCOMPLIANCES REGARDING USE OF UNCERTIFIED LEGACY MEATS AND THE ORIGIN OF LIVESTOCK

As stated above, Ben Elliot owns both Elliot and Legacy, both located in LaSalle, Colorado. Ben Elliot stated in an Unsworn Declaration of April 23, 2021, that Legacy "never owns, possesses, handles or has any interest of any kind in the cows themselves." Elliot's customer, ECCI, also stated that the purchased cows were from Elliot, not Legacy. Elliot

contends that Legacy doesn't need to be certified organic when it is only conducting billing for Elliot. However, Ben Elliot stated in a Legacy Meats 2020 Grass Fed Organic Beef Affidavit for a transaction with another livestock operation, that, "I, Ben Elliot, certify that the beef cattle I am selling to Legacy Meats LLC have been raised" in accordance with organic standards. Legacy is listed as the vendor on the document. Elliot's statement that organic beef cattle are being sold to Legacy conflicts with the statement of Ben Elliot cited above. Further, evidence substantiates that the relationship and transactions between Elliot and Legacy extend beyond billing.

Evidence substantiates that Elliot, in violation of the organic regulations at 7 C.F.R. §205.100; 7 C.F.R. §205.102; and 7 C.F.R. §205.236, engaged in transactions with certified operations through the uncertified Legacy, representing and selling livestock as organic, with livestock being sent to certified organic slaughter operations, despite Legacy not being certified. Evidence from several certified organic slaughter facilities substantiates that the uncertified Legacy does have an interest in organic cattle. As a result of other investigations, NOP received several invoices for cattle, showing the Legacy name, for shipment to other entities. A review of the invoices from Legacy, dated from June 30, 2020 to December 30, 2020, reference the sale of beef cattle, with no reference to the beef cattle being organic. However, cattle purchased were subsequently sent as organic slaughter-eligible to certified organic slaughter operations.

Evidence further substantiates that livestock were processed under the Legacy label as organic. For example, records related to another business, (b) (4), show livestock were sold under the Legacy brand and processed as eligible for organic slaughter, even though Legacy isn't certified organic. The (b) (4) records range from April 1, 2020 to October 31, 2020, and the Legacy retail and nonretail labels which (b) (4) affixed to the organic meat products produced in 2020 display the term "organic," the USDA organic seal, and

the “certified organic by QAI” statement. Kill sheets from (b) (4) and Invoices from (b) (4) to Legacy also show the cattle were labeled as organic under Legacy’s brand. As stated above, Legacy is a registered business entity in Colorado and a livestock dealer licensed by the Colorado Department of Agriculture to buy and sell its own cattle for slaughter. However, this wasn’t disclosed to Elliot’s certifier; and Colorado brand inspection reports show that Legacy bought and sold cattle using the same LaSalle, Colorado site as Elliot. Elliot’s failure to inform its certifier and fully disclose the transactions using the uncertified Legacy in its records, including its OSP, also violates the organic regulations at 7 C.F.R. §205.103; and 7 C.F.R. §205.201. Ben Elliot owns both Elliot and Legacy and knows Legacy isn’t certified organic.

NONCOMPLIANCES REGARDING RECORDKEEPING

AND THE ORIGIN OF LIVESTOCK

Evidence also substantiates that Elliot violated the organic regulations at 7 C.F.R. §205.236 by failing to maintain records showing the origin of the livestock and maintaining records sufficient to preserve the identity of all organically managed animals, thereby failing to substantiate the organic integrity of the livestock. As stated above, ECCI was invoiced for livestock allegedly sourced from Elliot, on Legacy invoices, although Legacy is uncertified; and the invoices didn’t identify whether the livestock were organic. Further, no transportation/shipment records were provided showing the transport of the livestock from Elliot’s operation to the certified slaughter facilities - (b) (4) - identified in the Legacy transactions and ECCI ear tags.

As discussed below, Elliot has operation sites in three different states. However, Elliot didn't show through its records how many cattle it maintains at each operation site or when the cattle are moved from the different ranches. Further, no inventory lists or other records were submitted to show from when and where cattle were moved to the LaSalle, Colorado location to ultimately be loaded and shipped for slaughter. Additionally, the brand inspection records showed that both Elliot and Legacy bought and sold conventional cattle for slaughter, using the LaSalle, Colorado location. Elliot didn't provide records or information for its and Legacy's nonorganic cattle sales to verify that nonorganic cattle weren't used in shipments of cattle for organic slaughter. Therefore, it can't be verified that the animals shipped to the organic slaughter facilities actually originated at Elliot's operation and not Legacy. As such, the origin and the organic integrity of the livestock can't be verified.

Additionally, regarding the animal ID tags, documentation submitted by Elliot shows that Elliot would change the animal identification for the cattle sold to ECCI, from Elliot tags to ECCI tags prior to loading and shipping the cattle to slaughter facilities. However, ECCI's Organic Tracking and Traceability SOP states that ECCI was responsible for tracking and maintaining documentation for all cattle purchased and sold by ECCI, which includes cattle purchased from Elliot. Elliot didn't explain this conflicting information. Further, animal identification procedures in Elliot's OSP don't describe the procedures for tagging animals or how Elliot maintains records to keep an inventory of the tagging of its animals. There is also no description for the color system for tagging animals that is identified in some of the records provided by Elliot. For most of these records, there are not sufficient ID transfer records to show the original ranch tags assigned to each of the animals which were retagged and sold to ECCI as referenced on Legacy invoices. Further, Elliot provided only limited dam information within the

animal ID records. The birth information wasn't complete, including the birth date and identity of the ranch where the animal was born. There should be birth records with the corresponding tag numbers for animals produced at Elliot's operation, to verify the inventory of the herd. The insufficient records don't allow for a determination of the origin of the cattle to verify its organic status.

**NONCOMPLIANCES REGARDING FAILURE TO MAINTAIN ACCURATE
INVENTORY COUNTS: RECORDKEEPING AND ORIGIN OF LIVESTOCK
REGULATIONS**

Elliot also failed to maintain accurate inventory counts, which was cited by ICO in its notices. Elliot and its organic consultant stated that Elliot operates and grazes livestock on approximately (b) (4) acres in Montana, Wyoming, and Colorado; and the "only way that a full accurate count can be performed is to survey all (b) (4) acres using ATVs. The best time of year is during the fall roundup." The consultant stated that she calculates the number of livestock for any specific day by pulling the tag list for that day; and that the number (b) (4) is consistent with the count she provided to ICO by email on December 29, 2020. She further stated that, "For an operation the physical size of Elliot ranch, the 20-cow difference listed on page one and two (of the L2R form) is consistent with the possible fluctuations in total cattle numbers due to natural occurrences and the timing of counting."

Elliot's organic certificate issued January 17, 2020, and ICO's January 28, 2021 Audit Findings document confirms that Elliot has four properties in Montana, Wyoming, and Colorado. While (b) (4) acres is a very large area, for Elliot to sell a specific number of organic livestock as organic, it is required to have procedures and documentation to ensure that those counts truly are

organic (7 C.F.R. §205.103; 7 C.F.R. §205.201; and 7 C.F.R. §205.236). Elliot's records don't reflect on which ranch livestock were born or maintained or show the dates the livestock were moved to LaSalle, Colorado for loading for slaughter. Further, brand inspection and health inspection records were not produced to show transport between Elliot's ranches in Wyoming and Montana to the ranch in LaSalle, Colorado. Health inspections would have been required for interstate movement of livestock between states. To sell the number of cattle that Elliot has sold, as evidenced by Legacy invoices, Elliot would need to have compliant inventory records. Further, Elliot reduced his ranches/acreage from (b) (4) acres in 2019 to (b) (4) acres in 2021, yet the records don't reflect a clear inventory of cattle per ranch and movement of cattle to different ranches as acreage was reduced.

NOP's review of records from organic slaughter facilities, transportation documents, and brand inspection records from the Colorado Department of Agriculture show that in 2020, Elliot sold (b) (4) head of cattle as eligible for organic slaughter. A Livestock List included in Elliot's April 23, 2021 Appeal to ICO's Notice of Proposed Suspension, showed that in addition to the (b) (4) head of cattle Elliot sold as organic eligible slaughter in 2020, Elliot also sold (b) (4) animals more as eligible for organic slaughter on March 18, 2020. Also, a review of brand inspection records from the Colorado Department of Agriculture reveals that in 2020, Elliot sold over (b) (4) head of conventional cattle; and that Legacy also purchased and sold large amounts of conventional cattle.

However, the update to Elliot's 2020 OSP, submitted on January 28, 2021, didn't provide the number of conventional livestock owned by Elliot. Due to these findings, the inventory of Elliot's organic and nonorganic cattle for 2020 couldn't be verified. Further, while Elliot subsequently stated to NOP that it had obtained between (b) (4) and (b) (4) head of organic cattle

from ECCI, which it states were the organic cattle sold in 2020, Elliot also stated that it had accidentally failed to include those cattle when updating its OSP in 2019. Elliot's 2019 OSP update only listed (b) (4) head of cattle. Therefore, it is unclear if Elliot actually had sufficient inventory in 2020 to account for the large number of cattle it sold as eligible for organic slaughter. Further, as stated above, the Legacy invoices to ECCI didn't identify the livestock as organic, and there is no supporting documentation to show the livestock were actually organic, though they were represented as organic under the Legacy brand.

Specifically addressing the (b) (4) animals Elliot sold on March 18, 2020, NOP also found the origin of these animals sold as eligible for organic slaughter couldn't be verified, as the Livestock List didn't include any birth information for the (b) (4) cattle, only providing a range of the animals' ages, between 4 to 6 years. Since Elliot wasn't certified organic until September 25, 2019, the (b) (4) head of cattle were not under the ownership or management of Elliot at the time the animals were born, and therefore, their origin couldn't be verified.

Elliot further stated in communication to NOP that it erred in providing a complete inventory of cattle when updating the OSP in 2019 ((b) (4) head) and 2020 ((b) (4) head). Explaining this error, Elliot stated that it only accounted in the OSP for the cow/calf pairs that were rounded up in the Fall, and that for the total inventory, it was defaulting to the (b) (4) head of cattle identified in the initial application with ICO and stated to inspectors in the 2019 Fall inspection. However, Elliot's reliance on the (b) (4) head count for the 2018 application and the 2019 Fall inspection does not comply with the need for auditable records in the USDA organic regulations. This further calls into question how Elliot substantiated the status of the livestock as organic when representing them as such to buyers.

It is also noted that while Elliot stated at the ICO October 3, 2019 inspection that there were (b) (4) head of cattle, Elliot further stated that (b) (4) of them were at Three Forks Ranch. However, the inspection report documents that Elliot told the inspectors it didn't want them going there, as the ranch owner was cancelling Elliot's lease. This violates the organic regulations at 7 C.F.R. §205.400(c), which requires an operation to permit on-site inspections with complete access to the production or handling operation. In correspondence to NOP, Elliot didn't acknowledge the prior statement about the (b) (4) cattle at Three Forks Ranch. There was subsequent confusion by ICO inspectors, who noted there were (b) (4) head of cattle; and ICO's reviewer then erroneously added the (b) (4) number to the (b) (4) number resulting in (b) (4) head of cattle being noted as a finding. However, Elliot never provided sufficient records to show that it actually owned (b) (4) head of cattle, or exactly how many cattle were sold from this inventory from 2018 to 2020. This is a fundamental failure of the organic recordkeeping system. Further, while Elliot claims to have assumed ownership of all ECCI cattle in 2019, as discussed above, Elliot never provided the inventory and other records for these cattle to verify the cattle's origin. Therefore, Elliot was unable to demonstrate their origin or organic status.

Therefore, the available evidence substantiates that inventory records provided by Elliot are not sufficient and not auditable as required by the organic regulations at 7 C.F.R. §205.103. The records don't provide sale dates for the animals identified as "sold;" there are duplicate tag ID numbers for several of the cattle; and insufficient information prevents NOP from determining if the specific cattle were born organic, which is required for animals being slaughtered for organic meat. Further, Elliot stated in an April 8, 2022 communication to the NOP and an Unsworn Declaration of that date that the animal ID numbers range from (b) (4)

using multiple colors; however, a review of available documents show many cattle with numbers exceeding (b) (4). The available documents also don't account for the (b) (4) plus head of alleged organic cattle Elliot sold to ECCI in 2020, though Elliot also said it assumed all ECCI cattle in 2019. Further, kill sheets from certified organic slaughter operations shows that not all transported livestock had animal identification tags. Lastly, Elliot states that the conventional cattle aren't always kept in separate pens from the organic cattle when sorting for shipment to slaughter, which is a violation of the organic regulations.

ELLIOT APPEAL

Elliot argued in its April 23, 2021 Appeal, that the recordkeeping noncompliances are correctable and that it was the seller of the livestock, not Legacy; had raised the livestock; and has merely used Legacy to conduct its billing for the past 6 years. However, while recordkeeping noncompliances may be correctable, Elliot's noncompliances go to the heart of the organic integrity of the livestock in the transactions. As discussed above, evidence substantiates that Elliot engaged in transactions with certified operations through the uncertified Legacy, representing and selling livestock as organic, with livestock being sent to certified organic slaughter operations, despite Legacy not being certified. Evidence from several certified organic slaughter facilities substantiates that the uncertified Legacy does have an interest in organic cattle; and livestock were processed under the Legacy label as organic. Elliot also failed to maintain accurate inventory records and records showing the movement of livestock between different Elliot sites, as well as other records necessary to documenting the origin of livestock such as birth records.

Procedural Arguments in Appeal

Elliot also argued procedural points in its Appeal to ICO's March 29, 2021 Notice of Proposed Suspension. Elliot stated it was denied substantive and procedural due process by ICO's rushed inspection and issuance of the Notice of Proposed Suspension two days prior to ICO's surrender of accreditation, thereby also denying Elliot the ability to request and engage in mediation. However, 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." Further, there wasn't any 'rush to judgment,' as ICO was still Elliot's accredited certifier at the times it conducted the inspection and issued the adverse action. ICO's allegations were substantiated as discussed herein. Therefore, Elliot's argument that ICO's certification activities and adverse action notice are void and must be dismissed, is without merit.

Elliot also contends that ICO erred when it stated that Elliot only had 10 days to apply to a new certifier. The December 1, 2020 email from ICO to Elliot stated that Elliot had 10 days to notify ICO as to whether Elliot would surrender certification or apply to a new certifier. Elliot submitted applications for certification to other certifiers, which it subsequently withdrew. Subsequently, NOP issued a Notice of Noncompliance to Elliot on February 6, 2023 for its failure to obtain certification by a new certifier after ICO surrendered accreditation effective April 1, 2021. Elliot's certification has been identified as 'transitioning' since April 1, 2021. Therefore, while ICO may have erred in its note concerning the timeframe, Elliot had almost two years to obtain a new certifier before being put on official notice by the NOP. It is noted that

NOP was informed in June of 2022 that Elliot *intended (emphasis added)* to surrender its crop and livestock certification on or about July 5, 2022. However, Elliot didn't actually surrender certification until February 9, 2023, after receipt of the NOP Notice of Noncompliance. At that time, it stated that its surrender was effective immediately.

CONCLUSION

The evidence substantiates that Elliot violated the organic regulations at 7 C.F.R. §205.100, What has to be certified; 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.236, Origin of livestock; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. Evidence substantiates that Elliot failed to demonstrate the origin and organic integrity of the livestock it sold; failed to maintain records sufficient to preserve the identity of all organically managed animals; and failed to ensure that all livestock handled, represented, and sold as organic and subsequently sent for organic eligible slaughter were actually organic. Elliot used an uncertified operation, Legacy, to provide livestock for eventual organic eligible slaughter by organic certified slaughter facilities, through and under the Legacy brand name, despite Elliot's contention that Legacy "never owns, possesses, handles or has any interest of any kind in the cows themselves" and only conducts billing for Elliot. There is no evidence to substantiate that the animals sold by Elliot as indicated by Legacy invoices, actually came from Elliot.

Evidence substantiates that Elliot failed to maintain records that fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; and that are sufficient to demonstrate compliance with the organic regulations. Further, Elliot's OSP doesn't adequately describe the practices and procedures to be

performed and maintained at the operation, including the procedures for tagging livestock and retagging livestock. Elliot has failed to maintain adequate birth records, animal identification lists, inventory list, and tag verification forms; as well as records on the sales, shipping, slaughter and mortality of livestock. Evidence substantiates that Elliot's records do not allow for the successful tracing of organic livestock from birth/purchase, tagging/retagging, sale, and transport. As there are no records showing the transport of livestock from Elliot's operation to the slaughter facilities identified in the Legacy transactions and ECCI ID tags, it can't be verified that the animals shipped to the organic slaughter facilities actually originated at Elliot's operation and not Legacy's. Documentation shows Elliot shipped all its cattle for organic slaughter from LaSalle, Colorado, which is the same operation site used by the uncertified Legacy. Further, evidence substantiates that both Elliot and Legacy bought and sold large amounts of conventional cattle for slaughter, using the LaSalle, Colorado location. However, Elliot didn't provide records or information for its and Legacy's nonorganic cattle sales to verify that nonorganic cattle weren't used in shipments of cattle for organic slaughter.

While recordkeeping noncompliances may be correctable, Elliot's noncompliances go to the heart of the organic integrity of the livestock. Elliot used an uncertified operation in transactions involving livestock, which were represented as organic, and which were sold as organic eligible to certified slaughter operations. AMS finds that due to these systemic and serious noncompliances, Elliot may not remain certified for livestock. While ICO proposed a suspension of all Elliot operations, no noncompliances are noted for Elliot's crop operation and therefore, it wouldn't be affected by the suspension. However, Elliot surrendered its certification in its entirety effective February 9, 2023.

DECISION

Elliot's Appeal of April 23, 2021 is denied. The March 29, 2021 Notice of Proposed Suspension issued by ICO is affirmed and Elliot's livestock certification is suspended. Pursuant to the organic regulations at 7 C.F.R. §205.662(f), Elliot may apply for reinstatement of its certification at any time. However, Elliot must submit evidence demonstrating correction of each noncompliance and corrective actions taken to fully comply with and remain in compliance with the organic regulations.

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

Done at Washington, D.C., on this 15th
day of March, 2023.

BRUCE SUMMERS

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SUMMERS
Date: 2023.03.15 09:57:22 -04'00'

Bruce Summers
Administrator
Agricultural Marketing Service