

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
Jordan Creek Dairy )  
Monroe, Wisconsin )  
 ) **Administrator's Decision**  
 ) **APL-006-22**  
 )  
 )

This Decision responds to an Appeal (APL-006-22) of a Notice of Noncompliance and Proposed Suspension under the National Organic Program (NOP) issued to Jordan Creek Dairy (Jordan) of Monroe, Wisconsin by USDA accredited certifying agent Nature's International Certification Services (NICS). Jordan has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**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

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 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 October 24, 2007, Jordan was certified for crops and livestock – ruminant and dairy.
2. On August 28, 2019, NICS issued a Notice of Noncompliance citing to recordkeeping and livestock violations of the organic regulations.
3. On October 15, 2019, NICS issued a Notice of Proposed Suspension stating that Jordan had failed to resolve the noncompliances cited in the prior noncompliance notice.
4. On June 26, 2020, NICS accepted Jordan’s mediation request of October 25, 2019.
5. On July 31, 2020, Jordan and NICS entered into a Settlement Agreement to address the livestock and recordkeeping noncompliances.
6. On August 27, 2020, NICS issued a Resolution Certification Determination Letter granting the renewal of Jordan’s certification and setting forth requirements for continued certification.
7. On October 16, 2020, NICS conducted an inspection of Jordan finding numerous noncompliances.
8. On December 7, 2020, NICS conducted an unannounced inspection of Jordan again finding numerous noncompliances.
9. On July 28, 2021, NICS issued a Notice of Noncompliance and Proposed Suspension citing to findings of noncompliances at the two prior inspections, which NICS contends constitutes a breach of the prior Jordan-NICS Settlement Agreement.
10. On September 8, 2021, NICS issued a Rejection of Mediation Notice.

11. On September 21, 2021, NICS issued a Notice of Noncompliance citing to specific records that Jordan failed to maintain and/or have available at the inspection.
12. On October 6, 2021, Jordan filed an Appeal to the July 28, 2021 combined notice.
13. On November 10, 2021, NICS issued a Resolution Notice regarding the September 21, 2021 Notice of Noncompliance, and granted Jordan renewal of its certification.
14. On March 14, 2022, Jordan and NOP entered into a Settlement Agreement to address the noncompliances cited in the July 28, 2021 Notice of Noncompliance and Proposed Suspension.
15. On February 21, 2024, NICS reported to NOP that Jordan had breached the NOP Settlement Agreement.
16. On March 4, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action to Jordan.

### **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 organic regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... 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 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 ... (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations ...”

The organic 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 ... (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 organic 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 ... (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. Ruminant animals must be grazed throughout the entire grazing season for the geographical region, which shall be not less than 120 days per calendar year... (d) Ruminant livestock producers shall: (1) Describe the total feed ration for each type and class of anima...

(3) Ruminant livestock producers shall document changes that are made to all rations throughout the year in response to seasonal grazing changes...”

The organic 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); ... (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 (1) Sell, label, or represent as organic any animal or product derived from any animal treated with antibiotics, any substance that contains a synthetic substance not allowed under §205.603 of this part, or any substance that contains a non-synthetic substance prohibited in §205.604 of this part ...” and during the associated withdrawal periods the milk must not be sold, labeled, or represented as organic.

The organic 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; ... (c)(1) The producer of an organic livestock operation may temporarily deny a ruminant animal pasture or outdoor access under the following conditions ...

The organic 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 ...”

The organic regulations at §205.406, Continuation of certification, state that, “(a) 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 ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

## **DISCUSSION**

On October 24, 2007, Jordan was certified for crops and livestock – ruminant and dairy. On August 28, 2019, NICS issued a Notice of Noncompliance citing to recordkeeping and livestock violations of the organic regulations. After Jordan failed to resolve the noncompliances, NICS issued a Notice of Proposed Suspension on October 15, 2019. On June 26, 2020, NICS accepted Jordan’s mediation request of October 25, 2019; and on July 31, 2020, Jordan and

NICS entered into a Settlement Agreement to address the livestock and recordkeeping noncompliances. Subsequently, on August 27, 2020, NICS issued a Resolution Certification Determination Letter, granting the renewal of Jordan's certification and stating specific requirements to be met before any subsequent certification renewal. Specifically, Jordan must abide by specific usage restrictions on inputs and maintain purchase records for inputs; maintain a current Materials Input List; maintain a Pest Management Plan; maintain records documenting the organic identity of livestock, including a Livestock List; fully disclose all activities including egg and crop sales records; maintain documentation on seed searches and purchases of seeds; take measures to prevent the commingling of organic product with nonorganic products and/or prohibited substances; and maintain clean out records.

Subsequently, on October 16, 2020, NICS conducted the annual inspection of Jordan and found that Jordan had treated a heifer with (b) (4) but didn't document the specific animal treated or the withholding of milk from the animal. The inspector, however, acknowledged that Jordan stated it had withheld the milk for 6 days when only 4 days was required, and the vet's invoice showed the animal treated. NICS also found that Jordan had grazed its animals in 2 groups – alternating days – and therefore none of the lactating dairy animals received the minimum 30% DMI from pasture for a minimum of 120 days, though the inspector noted that NICS may want to recalculate the DMI. Jordan was also found to have begun providing supplemental feed to a heifer group on pasture on or around August 29, 2020, without documenting the change in feed. The inspector also saw 7 to 9 young heifers without outdoor access or pasture access, though one of the animals was over 7 months old, which is just 1 month past the time it should have been out. NICS said Jordan also hadn't consistently maintained temporary confinement records. However, the inspector noted that Jordan was

working on its barn facility and access points. The inspector also noted a 'very noticeable improvement in recordkeeping' in all areas including access records and health records and had 'good livestock records.' The inspector also stated the animals were in good or excellent condition and looked healthy.

On December 7, 2020, NICS conducted an unannounced inspection and found that all animals over 6 months of age were provided with outdoor access and nearly all the cows were out of the barn; Jordan had placed a fence in the pasture and that all pastures were being utilized; and that Jordan had asked about the use of a specific treatment for animals.

However, subsequently, on July 28, 2021, NICS issued a Notice of Noncompliance and Proposed Suspension citing to findings of noncompliances at the prior two inspections which constitute a breach of the prior Jordan-NICS Settlement Agreement. Specifically, NICS found that Jordan hadn't documented the use of a synthetic substance on an animal; didn't withhold milk from cows treated with synthetic substances for the appropriate number of days; failed to document the use of supplemental feed and the date it was used; failed to provide outdoor access or pasture access to young heifers; and the dairy cows didn't receive the required 30% of DMI from pasture.

After NICS issued a Rejection of Mediation Notice on September 8, 2021, Jordan filed an Appeal on October 6, 2021. The Appeal didn't specifically address any cited noncompliances. NOP contacted Jordan, who stated that the treated animal referenced in the October 2020 inspection was cow 724, and that its milk was withheld though they did not document it. The treated animal on the December 2020 inspection was cow 920, who was treated October 22, 2020, and its milk was withheld till October 26, 2020. However, this also hadn't been documented in records. Jordan stated that it hasn't used the (b) (4) since the Fall of



2020. Jordan stated it grazes all livestock every day – not alternating days. However, it divides the animals into 2 groups and one group is turned out after the evening milking at 7:00 p.m. and grazes all night until 5:00 a.m. when it comes in for the morning milking. Then, the second group is turned out for grazing and grazes until the evening milking when it comes in. Jordan stated it is trying to get more dry pasture for the livestock to graze on. Jordan also acknowledged the need to document better and noted his son has begun working on the operation and is working on forms.

NOP and Jordan subsequently entered into a Settlement Agreement on March 14, 2022, whereby Jordan agreed to numerous terms including timely responding to all requests by its certifier; maintaining all records to fully disclose all activities and transactions of the operation; maintaining said records for 5 years from the date of creation; ensuring that its livestock receives at least 30% of its DMI from pasture; not using any input on animals that hasn't been approved; and maintaining herd health records. Although NICS had found noncompliances at the 2 prior inspections in the Fall of 2020, NOP acknowledged that the inspections only found noncompliances in regard to the withholding of milk from 2 cows which wasn't documented.

However, Jordan's operation has over (b) (4) livestock. Per Jordan's 2021 OSP, there are (b) (4)

(b) (4)

Further, the milk from the 2 affected cows was withheld from collection over the required number of days.

Between NICS' issuance of the combined notice on July 28, 2021 and Jordan's October 6, 2021 appeal, NICS also issued a Notice of Noncompliance on September 21, 2021, citing to specific records that were needed. However, on November 10, 2021, NICS issued a Resolution

Notice regarding the September 21, 2021 Notice of Noncompliance, and granted Jordan renewal of its certification.

On February 21, 2024, NICS reported to NOP that Jordan had breached the NOP Settlement Agreement, and detailed numerous specific instances of Jordan's breach of the Settlement Agreement. The noncompliances include failure to respond to specific requests by the certifier; failure to maintain all required documentation and have it available for inspection, including seed purchase records, crop and livestock sales records, field history and map records, DMI records, and grazing and confinement records; and the use of several livestock inputs that aren't allowed in organic operations and/or hadn't been approved by its certifier. Due to the deficiency of records, NICS was unable to conduct successful mass balance and traceability exercises.

Therefore, on March 4, 2024, NOP issued a Notice of Noncompliance and Request for Corrective Action to Jordan, setting forth NICS' allegations regarding Jordan's breach of the Settlement Agreement. NOP gave Jordan 45 days in which to submit the required and requested documentation. Jordan submitted numerous documents to NICS in response to the NOP notice, including ration and feeding records. Jordan also contacted NICS several times to discuss the noncompliances, asking about the use of certain inputs, and how to comply with the Settlement Agreement. However, NICS provided NOP with a detailed analysis of Jordan's noncompliances and how Jordan has continued to operate in a manner not in compliance with the requirements set forth in the Settlement Agreement. NICS stated that Jordan is "unable to analyze their system and make changes," and continues to demonstrate it is not capable of maintaining compliant records.

NOP and NICS have been patient with Jordan in their attempts to obtain requested and required documentation from Jordan. However, despite the issuance of numerous adverse actions, and Jordan entering into Settlement Agreements with both NICS and NOP, Jordan has been unable to resolve the numerous recordkeeping and other noncompliances. Jordan has demonstrated systemic deficiencies by its inability to completely come into compliance and to then remain in compliance with the organic regulations. As detailed above, Jordan has failed to comply with the specific terms of the March 14, 2022 NOP Settlement Agreement. The NOP agreement states that if its terms are met, the July 28, 2021 Notice of Noncompliance and Proposed Suspension will be considered resolved and closed 18 months after execution of the agreement. The 18 months was at approximately the end of January 2023. While this time frame has passed, the noncompliances cited above occurred while the agreement was still in force. As the terms haven't been met, the underlying combined notice is unresolved.

The Settlement Agreement in Term 4I states that, "Jordan agrees that the failure to abide by the terms of paragraphs immediately above shall result in USDA, AMS possibly pursuing administrative action against Jordan." Clause 3D of the Settlement Agreement states that, "Jordan withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above." Paragraph 2 states, "USDA, AMS agrees not to issue a formal Administrator's Decision charging Jordan with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement." A closure letter sent to Jordan on March 14, 2022 with the executed agreement also stated that, "... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, and AMS may pursue

an administrative hearing process.” Jordan has breached the March 14, 2022 Settlement Agreement with NOP; and may not remain certified.

### **CONCLUSION**

Evidence substantiates that Jordan has violated the organic regulations at 7 C.F.R. §205.103; 7 C.F.R. §205.201; 7 C.F.R. §205.236; 7 C.F.R. §205.237; 7 C.F.R. §205.238; 7 C.F.R. §205.239; 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by, among other violations, failing to maintain required records that would enable its certifier to conduct successful mass balance and traceability exercises, as well as a complete and accurate Organic System Plan; failing to maintain records verifying the organic integrity of its products and the origin of its livestock; failing to maintain proper grazing, confinement, feed, and ration records; and failing to implement a recordkeeping system to provide for complete and accurate records to ensure compliance with organic regulations. Jordan has breached its March 14, 2022 Settlement Agreement with NOP. Therefore, the July 28, 2021 Notice of Noncompliance and Proposed Suspension is revived. Jordan can’t remain certified at this time.

### **DECISION**

Jordan’s October 6, 2021 Appeal of the July 28, 2021 Notice of Noncompliance and Proposed Suspension is denied, and Jordan’s certification is suspended. Pursuant to the organic regulations at 7 CFR §205.662(f), Jordan may apply for reinstatement at any time after it has implemented a sufficient recordkeeping system to provide for the maintenance of all required records and is able to submit the records identified above which resulted in the reported breach

of the NOP Settlement Agreement. While under suspension, Jordan may not sell, label, or represent any product as organic.

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

Done at Washington, D.C., on this 15th  
day of May, 2024.

**BRUCE SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service