

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)	
Tad Ellinghuysen,)	Administrator's Decision
2 Creeks Farm)	APL-019-17
Peterson, Minnesota)	
)	

This Decision responds to an appeal (APL-019-17) of a Notice of Proposed Suspension issued by the Midwest Organic Services Association (MOSA) to Tad Ellinghuysen, doing business as 2 Creeks Farm (Ellinghuysen). The operation 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 CFR. 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 may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

¹ 7 U.S.C. 6501-6522

² 7 CFR Part 205

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

FINDINGS OF FACT

1. Midwest Organic Services Association (MOSA) is an accredited certifying agent under the USDA organic regulations. Tad Ellinghuysen, d/b/a 2 Creeks Farm (Ellinghuysen), of Peterson, Minnesota, is certified under the USDA organic regulations for crops and livestock.
2. On March 4, 2015, MOSA issued a Notice of Proposed Suspension to Ellinghuysen for unresolved noncompliances related to the pasture practice standard of the USDA organic regulations (§ 205.240).
3. On November 9, 2015, the Administrator rendered a Decision denying the appeal filed by Ellinghuysen. Ellinghuysen subsequently requested a Hearing before an Administrative Law Judge; this proceeding is pending.
4. On July 27, 2016, MOSA issued a Notice of Noncompliance to Ellinghuysen for continued noncompliances with the pasture practice standard (§ 205.240), specifically for not providing a minimum of 30 percent of a ruminant's dry matter intake from pasture.
5. On October 27, 2016, MOSA inspected 2 Creeks Farm. The inspector reported that Ellingshuysen was unable to provide the dry matter demand for the goats.
6. On January 30, 2017, MOSA issued a Notice of Proposed Suspension to Ellinghuysen for the livestock portion of the operation. The Notice of Proposed Suspension stated that Ellinghuysen did not provide sufficient information to address the Notice of Noncompliance.

7. On February 7, 2017, Ellinghuysen submitted an appeal of the January 30, 2017

Notice of Proposed Suspension, which was accepted as timely.

DISCUSSION

Ellinghuysen's operation is certified for the production of organic slaughter stock goats, milkers for organic goat milk, feed stuffs (corn, soybeans) and pasture. MOSA proposed to suspend Ellinghuysen's organic certification for the livestock portion of the operation. The effect of suspension would prohibit all sale, labeling or representation of its livestock and livestock products as organic.

This is the second proposed suspension that MOSA has issued to Ellinghuysen for noncompliance related to the livestock feed requirements for ruminants (§ 205.237). These require that during the grazing season, producers provide ruminants a maximum of 70 percent of dry matter demand, on average, from dry matter fed; at least 30 percent of the dry matter intake must come from grazing. Further, the producer must describe the percentage of each feed type, including pasture, in the total ration and the method for calculating dry matter demand and dry matter intake.

MOSA's Notice of Proposed Suspension stated that Ellinghuysen provided the quantity of feed fed and the approximate quantity consumed, but not the dry matter demand for the animals. MOSA concluded that without the dry matter demand stated, calculations to show that goats are consuming 30 percent of dry matter demand from pasture during the grazing season cannot be completed.

MOSA also noted that during the October 27, 2016 inspection, Ellinghuysen explained to the inspector that DMD values in literature or in MOSA reference charts are not applicable to his herd of extremely high-yielding dairy animals and that he has worked hard to determine an

accurate dry matter demand, but has been unsuccessful. The inspector observed that pastures were in good condition, but could not affirm that they would provide 30 percent dry matter intake for the herd.

CONCLUSION

The USDA organic regulations have clear livestock feed and grazing requirements for all ruminants. Demonstrating compliance with the 30 percent dry matter intake requirement is recognized to be more challenging for goat operations than bovine ruminant operations. However, there are a number of certified organic operations raising goats in compliance with the USDA organic regulations.

The record in this case supports MOSA's findings of noncompliance and justification for a proposed suspension. Ellinghuysen did not rebut MOSA's findings, nor did the appeal indicate that MOSA acted inappropriately or contrary to USDA organic regulations, policies or procedures.

DECISION

The appeal is denied and MOSA's Notice of Proposed Suspension is upheld. Tad Ellinghuysen's organic livestock certification is to be suspended. The crop certification remains valid.

Attached to this formal Administrator's Decision denying Ellinghuysen's appeal is a Request for Hearing form. Ellinghuysen has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

If Ellinghuysen waives the hearing, the Agricultural Marketing Service will direct MOSA to issue a Notice of Suspension. At any time during suspension, the operation may, "...submit a request to the Secretary for reinstatement of its certification. The 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 regulations in this part.”

Done at Washington, D.C., on this 11th
day of September, 2017.



Bruce Summers
Acting Administrator
Agricultural Marketing Service