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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	OFPA Docket No. 03-0001
	)	
Massachusetts Independent	)	
Certification, Inc.,	)	
	)	
Petitioner	)	<b>Order Dismissing Petitioner's Appeal</b>

**PROCEDURAL HISTORY**

On February 26, 2003, Massachusetts Independent Certification, Inc. [hereinafter Petitioner], instituted this proceeding by filing a "Complaint" against Ann Veneman, Secretary, United States Department of Agriculture [hereinafter the Secretary], and A. J. Yates, Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator]. Petitioner instituted the proceeding under the Organic Foods Production Act of 1990, as amended (7 U.S.C. §§ 6501-6522) [hereinafter the Organic Foods Production Act]; the regulations issued under the Organic Foods Production Act (7 C.F.R. pt. 205) [hereinafter the National Organic Program]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Petitioner: (1) alleges that it is a Massachusetts nonprofit corporation which operates the NOFA/Mass Organic Certification Program, a “certifying agent” under the Organic Foods Production Act and the National Organic Program;<sup>1</sup> (2) alleges that on or about July 15, 2002, The Country Hen filed an application for organic certification as an

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<sup>1</sup>Section 2103(3) of the Organic Foods Production Act defines the term “certifying agent” as follows:

**§ 6502. Definitions**

As used in this chapter:

....

**(3) Certifying agent**

The term “certifying agent” means the chief executive officer of a State or, in the case of a State that provides for the Statewide election of an official to be responsible solely for the administration of the agricultural operations of the State, such official, and any person (including private entities) who is accredited by the Secretary as a certifying agent for the purpose of certifying a farm or handling operation as a certified organic farm or handling operation in accordance with this chapter.

7 U.S.C. § 6502(3).

Section 205.2 of the National Organic Program defines the term “certifying agent” as follows:

**§ 205.2 Terms defined.**

....

*Certifying agent.* Any entity accredited by the Secretary as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

7 C.F.R. § 205.2

egg producer with Petitioner; (3) alleges that in October 2002, Petitioner denied The Country Hen's application for organic certification; (4) alleges that, on October 22, 2002, The Country Hen appealed Petitioner's denial of organic certification to the Administrator; (5) alleges that the Administrator sustained The Country Hen's appeal and directed Petitioner to grant organic certification to The Country Hen retroactive to October 21, 2002; and (6) seeks reversal of the Administrator's decision and reinstatement of Petitioner's denial of The Country Hen's application for organic certification (Compl. ¶¶ II(1), (2); V(26), (75), (76), (78), (88), (89), (93); VII(A)).

On March 14, 2003, the Administrator filed a "Motion to Dismiss Complaint." The Administrator seeks dismissal of Petitioner's Complaint on the grounds that the Office of Administrative Law Judges lacks subject matter jurisdiction in this proceeding and, under the Organic Foods Production Act and the National Organic Program, Petitioner cannot appeal the Administrator's decision to sustain The Country Hen's appeal of Petitioner's denial of The Country Hen's application for organic certification.

On November 4, 2003, after the parties filed additional documents addressing the issues in the Administrator's Motion to Dismiss Complaint, Administrative Law Judge Jill S. Clifton issued an "Order Dismissing 'Complaint'" in which she concluded that the Office of Administrative Law Judges lacks subject matter jurisdiction and dismissed Petitioner's Complaint.

On December 12, 2003, Petitioner filed an "Appeal Petition"; on January 30, 2004, the Secretary and the Administrator filed "Respondents' Opposition and Brief in Support Thereof, to Petitioner's Appeal Petition"; and on February 18, 2004, Petitioner filed "Petitioner's Request for Permission to File Reply Brief" and a "Reply Brief."<sup>2</sup> On February 23, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

### CONCLUSION BY THE JUDICIAL OFFICER

I have thoroughly reviewed the parties' filings, the Organic Foods Production Act, the National Organic Program, and the Secretary's delegations of authority to the Judicial Officer.<sup>3</sup> The parties do not cite any law, regulation, or delegation of authority which provides the Judicial Officer with jurisdiction in this proceeding. Moreover, neither the Organic Foods Production Act, the National Organic Program, nor the Secretary's delegations of authority to the Judicial Officer provide the Judicial Officer with jurisdiction in this proceeding.

For the foregoing reasons, the following Order should be issued.

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<sup>2</sup>Petitioner's request for permission to file a reply brief is granted.

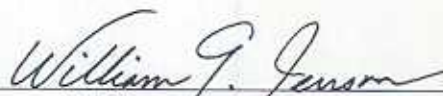
<sup>3</sup>The Act of April 4, 1940, as amended (7 U.S.C. §§ 450c-450g), also called the Schwellenbach Act, authorizes the Secretary to delegate regulatory functions to an employee of the United States Department of Agriculture. Pursuant to the Schwellenbach Act, the Secretary established the position of Judicial Officer and delegated authority to the Judicial Officer to act in lieu of the Secretary in certain regulatory matters. The specific delegations of authority are set forth in 7 C.F.R. § 2.35.

**ORDER**

Petitioner's appeal is dismissed.

Done at Washington, DC

April 27, 2004

A handwritten signature in cursive script, reading "William G. Jenson", written over a horizontal line.

William G. Jenson  
Judicial Officer