

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
)  
Moss Ranch LLC )  
) **Administrator’s Decision**  
) **APL-077-22**  
Bonanza, Oregon )  
)

This Decision responds to an Appeal (APL-077-22) of a Notice of Denial of Certification under the National Organic Program (NOP) issued to Moss Ranch LLC (Moss) of Bonanza, Oregon by USDA accredited certifying agent Where Food Comes From (WFCF). Moss 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 may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to §

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

<sup>2</sup> 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 February 19, 2019, Moss was certified for crops and livestock.
2. On December 18, 2020, Moss' former certifier International Certification Services (ICS) notified Moss that it was surrendering its accreditation.
3. On January 6, 2022, Moss applied to WFCF for certification.
4. On April 29, 2022, Moss' former certifier ICS surrendered accreditation.
5. On June 15, 2022, WFCF issued a Notice of Noncompliance to Moss citing to noncompliances found at the April 9, 2022 inspection.
6. On August 8, 2022, WFCF issued a Notice of Denial of Certification.
7. On September 1, 2022, Moss filed an Appeal.

### **REGULATORY CITATIONS**

The USDA organic regulations at 7 C.F.R. §205.201, Organic production and handling system plan, states, “(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 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; ... (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify

that the plan is effectively implemented; ... (6) Additional information deemed necessary by the certifying agent to evaluation compliance with the regulations...”

The regulations at §205.205, Crop rotation practice standard, states, “The producer must implement a crop rotation including but not limited to sod, cover crops, green manure crops, and catch crops that provide the following functions that are applicable to the operation: (a) Maintain or improve soil organic matter content ...”

The regulations at §205.236, Origin of livestock, states, “(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, including whether they are transitioned animals, and edible and nonedible animal products produced on the operation.”

The regulations at §205.237, Livestock feed, states, “(a) The producer of an organic livestock operation must provide livestock with a total feed ration composed of agricultural products, including pasture and forage, that are organically produced and handled by operations certified to the NOP ... (d) Ruminant livestock producers shall: (1) Describe the total feed ration for each type and class of animal ... (2) Document the amount of each type of feed actually fed to each type and class of animal ...”

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 and handling areas, structures, and offices by the certifying agent ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow ... 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 ...”

## **DISCUSSION**

Moss was certified organic for crops and livestock on February 19, 2019 by former accredited certifying agent ICS. After being notified of ICS’ impending surrender of accreditation, Moss applied for certification to WFCF on January 6, 2022. WFCF conducted an inspection of Moss’ operation on April 9, 2022, where numerous noncompliances were found. WFCF issued Moss a Notice of Noncompliance on June 15, 2022, setting forth the numerous noncompliances involving several provisions of the organic regulations. These included insufficient recordkeeping, an incomplete Organic System Plan (OSP), and incomplete information on determining if livestock feed is sufficient, animal healthcare practices, grazing practices, as well as incomplete herd lists, missing breeder stock management records, and missing livestock sales records. WFCF also noted that records on non-grazing feed rations were missing, as well as grazing records that demonstrate which animals or groups of animals were grazed on which pastures during the grazing season; daily feeding records showing amounts and types of feeding for each cattle type; and transport records showing the movement of animals or groups of animals between Oregon and California locations. Lastly, WFCF stated that Moss failed to explain how its practices for Bonanza Field 11 and other identified Bonanza fields meet crop rotation standards.

Moss responded to the noncompliance notice and resolved some of the cited noncompliances. Therefore, on July 29, 2022, WFCF sent Moss a revised Notice of Noncompliance, showing the resolved noncompliances and those still unresolved. WFCF stated that it discussed the noncompliances with Moss throughout this period. Subsequently, WFCF issued a Notice of Denial of Certification on August 8, 2022, after Moss failed to resolve the remaining noncompliances. Specifically, WFCF stated that Moss resolved the noncompliances regarding management practices for animals that are managed as breeder stock; verified how feed ration is sufficient to meet nutritional requirements; and partially resolved the noncompliance regarding grazing practices. However, Moss didn't submit a thorough description for verifying treatment administered by a veterinarian. Moss submitted planting and harvest logs for Bonanza Field 11, but didn't explain its rotation plan nor were rotation plans practiced in other Bonanza Fields. Moss supplied herd lists for 2020 – 2022, including cows and calves, as well as sales records for calves sold in 2021, but didn't provide documentation tracing cattle lists to kill sheets. WFCF found that Moss resolved noncompliances regarding non-grazing feed rations, the dates and locations of animals grazed by herd sizes, feeding records showing amounts and types of feeding for each cattle type, and transport documents for cows and steers in 2021. However, as with the Notice of Noncompliance, WFCF found that Moss' registration with the California Department of Food and Agriculture (CDFA) had expired on January 1, 2020, and Moss hadn't provided an updated registration.

Moss submitted an Appeal, stating that it has resolved some of the noncompliances and has attempted to resolve the others, but WFCF hasn't been willing to work with Moss. Moss stated the only livestock supplement it uses is plain salt, and that it gave the label to the inspector, and also sent it to ICS on two subsequent occasions. Moss stated it hasn't needed to

call a veterinarian in the last two years, and that it would sell come cattle to reduce the pressure on the pasture and/or purchase organic hay. Moss stated it has started using new numbers for its livestock in November 2022; that kill sheets weren't maintained until June 23, 2022; and there were no kills before the April 9, 2022 inspection. As to crop rotation, Moss stated that the Bonanza Fields identified have no water and are farmed dry land, with planting in the Fall and cutting in mid-June. Then cattle are grazed, after which the stubble and cow manure are turned over. Moss stated everything is organic, but they're limited in what they can plant when they dry farm. Moss also questioned the abilities of the inspector, who alleged told Moss that it was his first inspection.

It is noted that the Inspection Report stated that Moss' recordkeeping had improved in detail; the organic livestock were fed organic pasture or hay; there were no medications used to treat the livestock except approved vaccinations; and while 2021 calving dates were missing, they were maintained for 2022. The inspector noted in the Exit Interview that Moss was to keep up on tagging calves with corresponding cow tags and maintain sales invoices for the sale of livestock.

Regarding the CDFA registration, Moss had stated in the Appeal that its registration was current through January 1, 2023, and submitted the registration certificate. NOP contacted CDFA to determine if the registration has since been renewed. CDFA stated that Moss hasn't renewed its registration. CDFA sent Moss a Notice of Expiration of Organic Registration on February 21, 2023; and on April 12, 2023 issued a Final Notice of Expiration of Organic Registration. Therefore, even though Moss remains certified organic by NOP, as Moss has not surrendered or been suspended or revoked, it can't sell any product as organic in California.

As Moss had resolved numerous of the noncompliances cited in the initial Notice of Noncompliance, and the inspector noted improved recordkeeping during the inspection, NOP offered Moss a Settlement Agreement. Per the agreement, Moss would be given one year in which to successfully resolve its noncompliances and complete the certification application process with WFCF or any other certifier of its choosing. The Settlement Agreement required Moss to maintain numerous records that had been identified by WFCF as being incomplete or missing. Though the agreement wasn't a guarantee of certification, it would allow Moss' certification to continue during the process of transitioning its certification to a new certifier. However, Moss didn't respond to the April 24, 2023 settlement offer, or the reminders sent to Moss on May 3, 2023; May 9, 2023; May 15, 2023; and May 17, 2023. Therefore, Moss is deemed to have rejected the settlement offer.

## **CONCLUSION**

Evidence substantiates that Moss has violated the organic regulations at 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.205, Crop rotation practice standard; 7 C.F.R. §205.236, Origin of livestock; 7 C.F.R. §205.237, Livestock feed; and 7 C.F.R. §205.400, General requirements for certification. Specifically, Moss failed to fully describe grazing practices as there was no explanation of adjustments that would be made to the grazing season if drought or other circumstances arose. Further, although Moss claims it hasn't had to contact a veterinarian in two years, it didn't provide a description of how it would verify treatment of livestock if it would need to contact a veterinarian. Although Moss stated that there were no kills prior to the April 9, 2022 inspection, which could explain why kill records weren't maintained until June 23, 2022, the cow lists were missing required elements to show

traceability. Moss also didn't adequately explain its rotation plan for Bonanza Field 11 and didn't appear to rotate other fields as required. The failure to address these last outstanding noncompliances, which are violations of the organic regulations, resulted in a denial of certification by WFCF.

### DECISION

Moss' Appeal of September 1, 2022 is denied. The August 8, 2022 Notice of Denial of Certification is affirmed. Moss is denied organic certification. However, pursuant to the organic regulations at 7 C.F.R. §205.405(e), Moss may apply again for certification at any time and with any certifier, though such an application must resolve the noncompliances which were the basis for the current denial of certification.

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

Done at Washington, D.C., on this 25th  
day of May, 2023.

**BRUCE**  
**SUMMERS**  
Bruce Summers  
Administrator  
Agricultural Marketing Service

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