



2 of 22 DOCUMENTS

NEW JERSEY REGISTER

Copyright © 2009 by the New Jersey Office of Administrative Law

VOLUME 41, ISSUE 11

ISSUE DATE: JUNE 1, 2009

RULE PROPOSALS

**AGRICULTURE
DIVISION OF MARKETING AND DEVELOPMENT**

41 N.J.R. 2165(a)

Proposed Amendments: N.J.A.C. 2:78-4.1 and 4.2

[Click here to view Interested Persons Statement](#)

New Jersey Organic Certification Program

Authorized By: State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:1-11.1, 4:10-14, 4:10-15 and 4:10-79.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-160.

Submit comments by July 31, 2009 to:

Alfred Murray, Director
Division of Marketing and Development
New Jersey Department of Agriculture
PO Box 330
Trenton, New Jersey 08625-0330

The agency proposal follows:

Summary

Amendments to the New Jersey Department of Agriculture's organic certification rules are proposed to remove the references in N.J.A.C. 2:78-4.2(d) and (e) to the National Organic Program (NOP) in relation to the "Transitional

Sustainable" mark; to remove the reference to "registered" entities in N.J.A.C. 2:78-4.1(d), which incorporates NOP non-compliance procedures and to add new subsections in N.J.A.C. 2:78-4.1 and 4.2 to clarify penalties and hearing procedures. These amendments correct the original rules language to more clearly delineate the relationship of the rules to the NOP, respond to the August 2008 audit and provide a means of preventing the misuse of the "NJDA Certified Organic" and "Transitional Sustainable" marks.

An audit of the New Jersey organic program was conducted by the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Audit, Review, and Compliance (ARC) Branch in August 2008. The audit found that the rule codified at N.J.A.C. 2:78-4.2 provides for the use of a Transitional Sustainable certification mark and incorporates the non-compliance procedure in 7 CFR 205.660 through 205.665 as the penalty for the improper use of this mark. Because Transitional Sustainable is not subject to the NOP non-compliance procedures, the audit identified the change in the New Jersey rules that is necessary to maintain the certification program. The amendments at N.J.A.C. 2:78-4.2 make this change.

The Department also reviewed the rules for clarity, as well as monetary penalty and hearing procedures that were inadvertently omitted in the original rule. The amendments to N.J.A.C. 2:78-4.1 and 4.2 incorporate these changes.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments will protect consumers, producers, handlers and retailers of organic agricultural products by providing a means to ensure that products labeled as organic are produced and processed according to uniform standards, which are consistent with national standards. This will give consumers an added measure of protection that the organic products they are buying meet the requirements for organic products established by the NOP and reduce the amount of mislabeled products. In addition, the proposed amendments provide protection to any entity aggrieved by a determination of the Department by providing hearing procedures. Therefore, the proposed amendments will have a positive social impact.

Economic Impact

The proposed amendments protect consumers, producers, handlers and retailers of organic agricultural products by providing a means for the Department to assess monetary penalties when misuse of the "NJDA Certified Organic" and "Transitional Sustainable" marks are found. There is no increased cost to the Department of Agriculture by these proposed amendments. Therefore, these proposed amendments will have a positive economic impact on the State of New Jersey.

Federal Standards Statement

A Federal standards analysis is not required because these proposed amendments do not exceed any Federal standards or requirements.

Jobs Impact

The Department does not anticipate any creation or loss of jobs as a result of the proposed amendments.

Agriculture Industry Impact

Organic foods continue to be one of the fastest growing and most profitable sectors of local, national and international agriculture. These amendments provide a means of preventing the misuse of the "NJDA Certified Organic"

and "Transitional Sustainable" marks, providing a more level playing field for industry members, enabling fair competition and assuring the integrity of the label. For the reasons, and those set forth in the Social and Economic Impact statements above, the NJDA believes that there will be a positive impact on the agriculture industry as a result of these proposed amendments.

Regulatory Flexibility Analysis

The Department has determined that, since the proposed amendments are part of a voluntary program, they do not impose compliance, recordkeeping or reporting requirements on either large or small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-17.

[page=2166] **Smart Growth Impact**

The Department does not anticipate that the proposed amendments will have any impact on the achievement of smart growth or the implementation of the State's Development and Redevelopment Plan.

Housing Affordability Impact

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments set forth means of preventing the misuse of the "NJDA Certified Organic" and "Transitional Sustainable" marks.

Smart Growth Development Impact

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or with designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments set forth means of preventing the misuse of the "NJDA Certified Organic" and "Transitional Sustainable" marks.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

2:78-4.1 Organic certification mark

(a)-(c) (No change.)

(d) Any certified producer or handler[, or any registered producer, handler, dealer] or certifying agent improperly using the certification mark set forth in (b) above shall be subject to the noncompliance procedure in 7 CFR 205.660 through 205.665.

(e) (No change.)

(f) Anyone improperly using the certification mark set forth in (b) above shall be subject to a penalty of not more than \$ 50.00 for the first offense and not more than \$ 100.00 for each subsequent offense. Each day the person or business remains noncompliant will constitute a new and separate offense.

(g) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (f) above, upon written request as provided below, shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Written requests for hearings must be sent to:

**Director, Division of Marketing and Development
NJ Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330**

2. Written request for hearings must be transmitted to the Department within 20 days of the penalty notice.

(h) Orders for penalties or to enjoin continuing violations may be enforced by the filing of a summary proceeding brought in the name of the Department in Superior Court or Municipal Court.

2:78-4.2 Transitional sustainable certification mark

(a)-(c) (No change.)

(d) [Any certified producer or handler, or any registered producer,] **Anyone** improperly using the certification mark[s] set forth in (b) above shall be subject to [the noncompliance procedure in 7 CFR 205.660 through 205.665.] **a penalty of not more than \$ 50.00 for the first offense and not more than \$ 100.00 for each subsequent offense. Each day the person or business remains noncompliant will constitute a new and separate offense.**

[(e) Penalties for knowingly selling or labeling a product as organic, except in compliance with the NOP or this chapter are those set forth in 7 CFR 205.100(c)(1).]

(e) Any applicant who is aggrieved by the determination of the Division of Marketing and Development pursuant to (f) above, upon written request as provided below, shall be afforded the opportunity for a hearing thereon in the manner provided for contested cases pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

1. Written requests for hearings must be sent to:

**Director, Division of Marketing and Development
NJ Department of Agriculture
P.O. Box 330
Trenton, New Jersey 08625-0330**

2. Written request for hearings must be transmitted to the Department within 20 days of the penalty notice.

(f) Orders for penalties or to enjoin continuing violations may be enforced by the filing of a summary proceeding brought in the name of the Department in Superior Court or Municipal Court.