250-RICR-40-20-9

# TITLE 250-DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## CHAPTER 40-AGRICULTURE

## SUBCHAPTER 20

PART 9 - Rules Related to Cultural Practices for Branding Products of the Farm

## 9.1 Purpose

The purpose of these rules and regulations is to ensure that agricultural products labeled as organic or transitional have been produced, handled, or processed according to organic standards.

## 9.2 Authority

These Rules and Regulations are adopted pursuant to R.I. Gen. Laws Chapter 42-17.1, Environmental Management, Chapter 21-20, in accordance with 42-35, Administrative Procedures; and The Organic Foods Production Act of 1990, 7 U.S.C. § 6501 *et seq*.

## 9.3 Administrative Findings

These rules and regulations establish the National Organic Program, 7 C.F.R. § 205 (2000), as standards for organically labeled products of the farm in Rhode Island, and authorize the Department of Environmental Management to apply to the USDA for status as an accredited certifier or State organic program under 7 C.F.R. § 205.

## 9.4 Application

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department to effectuate the purposes of state law, goals, and policies.

## 9.5 Incorporated Materials

These regulations hereby adopt and incorporate the National Organic Program, 7 C.F.R. § 205 (2000) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

## 9.6 Definitions

A. For the purposes of these regulations, the following terms shall have the following meanings:

1. "Administrator" means the Administrator for the Agricultural Marketing Service, United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

2. "Department" means the Rhode Island Department of Environmental Management.

3. "Division" means the Rhode Island Department of Environmental Management, Division of Agriculture.

4. "Organic advisory board" means an advisory board comprised of individuals appointed by the Director.

5. "Rhode Island certified organic" means any raw or processed agricultural product offered for sale or distribution that has been produced upon a Rhode Island farm designated as a Rhode Island Certified Organic Farm by the Rhode Island Division of Agriculture and Resource Marketing, Department of Environmental Management. Farm Designation is based upon the Act and the regulations in this Part.

6. "Rhode Island certified organic farm" means a farm that meets the requirements of the Act and the regulations in this Part for organic certification and has been inspected and issued a certificate by the Division of Agriculture and Resource Marketing.

7. "Rhode Island certified organic handler" means a handler of organic product that meets the requirements of the Act and the regulations in this Part and has been inspected and issued a certificate by the Division of Agriculture and Resource Marketing.

8. "Rhode Island certified transitional" means any raw or processed agricultural product offered for sale or distribution that has been produced upon a Rhode Island farm designated as a Rhode Island Certified Transitional Farm by the Department. Farm Designation is based upon R.I. Gen. Laws Chapter 21-20 and the regulations in this Part.

9. "Rhode Island certified transitional farm" means a farm that meets the requirements of R.I. Gen. Laws Chapter 21-20 and the regulations in this Part for transitional certification and has been inspected and issued a certificate by the Division of Agriculture and Resource Marketing.

10. "The Act" means The Organic Foods Production Act of 1990, 7 U.S.C. § 6501 *et seq*.

11. "Transition" means the act of establishing organic management practices in accordance with R.I. Gen. Laws Chapter 21-20 and these regulations.

12. "Transition period" means the time between the start of organic management and certification of an operation or portion of an operation as organic.

13. "Transitional product" means a product from an operation or portion of an operation which has completed one or more years of the transition period towards becoming a certified organic operation and is certified by the Department in accordance with R.I. Gen. Laws Chapter 21-20 and these regulations.

## 9.7 Organic Advisory Board - Appointment of Members

A. There is hereby created an organic advisory board.

B. The board shall consist of five members appointed for terms as indicated:

1. The president, or an officer or member designated by the president, of the Rhode Island Northeast Organic Farming Association (one year).

2. One producer of organic crops appointed by the Director of the Department of Environmental Management (three years).

3. One producer of organic livestock appointed by the Director of the Department of Environmental Management (three years).

4. One handler of organic products appointed by the Director of the Department of Environmental Management (three years).

5. One at large member who is knowledgeable in the production or marketing of organic products appointed by the Director of the Department of Environmental Management (one year).

C. The initial terms of those members appointed for three years shall be staggered so as to ensure that no more than one third of these members will be appointed during a given year. Members shall serve without compensation.

## 9.8 Organic Advisory Board - Duties

A. The board shall serve in an advisory capacity to the Director of Environmental Management in all aspects of the production, handling, marketing, and promotion of organic products.

B. The organic advisory board shall meet with the Director of the Department of Environmental Management biannually and at any other times as requested by the Director.

C. The organic advisory board shall make an annual recommendation on the fees for certification to the Director of the Department of Environmental Management as requested by the Director.

## 9.9 Administrative Policies and Procedures

A. A person seeking to receive or maintain organic certification under the regulations in this Part must:

1. Comply with the Act, 7 C.F.R. § 205 (2000), incorporated above at § 9.5 of this Part, and applicable organic production and handling regulations of this Part;

2. Establish, implement, and update annually an organic production or handling system plan that is submitted to the Department as provided for in 7 C.F.R. § 205.200 *et seq.*;

3. Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the Department as provided for in 7 C.F.R. § 205.403;

4. Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow authorized representatives of the Secretary, the Department access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this Part, as provided for in 7 C.F.R. § 205.104;

5. Submit to the Department fees as follows:

a. Fees stated in § 9.9(A)(5)(b) and (c) of this Part below may be reduced on an annual basis by the Director of the Department of Environmental Management according to program costs;

b. $300.00 for organic producer certification, with nonrefundable $150.00 due with the organic production system plan and the balance of $150.00 due prior to inspection of the operation;

c. Nonrefundable $550.00 for organic handler certification due with the organic handling system plan; and,

6. Immediately notify the Department concerning any:

a. Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation; and,

b. Change in a certified operation or any portion of a certified operation that may affect its compliance with the Act and the regulations in this Part.

B. Application for Certification.

1. Persons seeking to receive or maintain organic or transitional certification under these regulations must submit an application to the Department. All applications/plans for certification shall be submitted on forms developed by the Department, except that an applicant may substitute an application/plan prepared to meet the requirements of another federal, state or local regulatory program, provided that the application/plan meets all of the requirements of the Act and 7 C.F.R. § 205, Subpart C - Organic Production and Handling Requirements.

2. Applicants must submit any other information necessary to determine compliance with the Act and the regulations in this Part.

C. Review of application.

1. Upon acceptance of an application for certification, the Director will:

a. Review the application to ensure completeness pursuant to 7 C.F.R. § 205.401;

b. Determine by a review of the application materials whether the applicant appears to comply or may be able to comply with the applicable requirements of 7 C.F.R. § 205, Subpart C - Organic Production and Handling Requirements;

c. Verify that an applicant who previously applied to another certifying agent and received a notification of noncompliance or denial of certification, pursuant to 7 C.F.R. § 205.405, has submitted documentation to support the correction of any noncompliances identified in the notification of noncompliance or denial of certification, as required in 7 C.F.R. § 205.405(e); and,

d. Schedule an on-site inspection of the operation to determine whether the applicant qualifies for certification if the review of application materials reveals that the production or handling operation may be in compliance with the applicable requirements of 7 C.F.R. § 205, Subpart C - Organic Production and Handling Requirements.

2. The Department will within a reasonable time:

a. Review the application materials received and communicate its findings to the applicant;

b. Provide the applicant with a copy of the on-site inspection report, as approved by the certifying agent, for any on-site inspection performed; and,

c. Provide the applicant with a copy of the test results for any samples taken by an inspector.

d. The applicant may withdraw its application at any time. Such withdrawal shall be made in writing to the RI DEM Division of Agriculture and Resource Marketing. An applicant who withdraws its application shall be liable for the costs of services provided up to the time of withdrawal of its application. An applicant that voluntarily withdrew its application prior to the issuance of a notice of noncompliance will not be issued a notice of noncompliance. Similarly, an applicant that voluntarily withdrew its application prior to the issuance of a notice of certification denial will not be issued a notice of certification denial.

D. On-site inspections.

1. On-site inspections.

a. The Department will conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

b. The Department may conduct additional on-site inspections of applicants for certification and certified operations to determine compliance with the Act and the regulations in this Part.

c. The Administrator may require that additional inspections be performed by the Department for the purpose of determining compliance with the Act and the regulations in this Part.

d. Additional inspections may be announced or unannounced at the discretion of the Department or as required by the Administrator.

2. Scheduling.

a. The initial on-site inspection will be conducted within a reasonable time following a determination that the applicant appears to comply or may be able to comply with the requirements of 7 C.F.R. § 205, Subpart C: Except, that, the initial inspection may be delayed for up to 6 months to comply with the requirement that the inspection be conducted when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed.

b. All on-site inspections will be conducted when an authorized representative of the operation who is knowledgeable about the operation is present and at a time when land, facilities, and activities that demonstrate the operation's compliance with or capability to comply with the applicable provisions of 7 C.F.R. § 205, Subpart C can be observed, except that this requirement does not apply to unannounced on-site inspections.

c. All initial and annual on-site inspections for producers requesting certification must be conducted no later than September 1 of the year in which certification is requested.

3. Verification of information. The on-site inspection of an operation will verify:

a. The operation's compliance or capability to comply with the Act and the regulations in this Part;

b. That the information, including the organic production or handling system plan, provided in accordance with 7 C.F.R. §§ 205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation;

c. That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the Department, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.

4. Exit interview. The inspector must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the on-site inspection. The inspector will also address the need for any additional information as well as any issues of concern.

5. Documents to the inspected operation.

a. At the time of the inspection, the inspector will provide the operation's authorized representative with a receipt for any samples taken by the inspector. There shall be no charge to the inspector for the samples taken.

b. A copy of the on-site inspection report and any test results will be sent to the inspected operation by the Department.

E. Granting certification.

1. Within a reasonable time after completion of the initial on-site inspection, the Department will review the on-site inspection report, the results of any analyses for substances conducted, and any additional information requested from or supplied by the applicant. If the Department determines that the organic system plan and all procedures and activities of the applicant's operation are in compliance with the requirements of this Part and that the applicant is able to conduct operations in accordance with the plan, the Department shall grant certification. The certification may include requirements for the correction of minor noncompliances within a specified time period as a condition of continued certification.

2. The Department will issue a certificate of organic operation which specifies the:

a. Name and address of the certified operation;

b. Effective date of certification;

c. Categories of organic operation, including crops, wild crops, livestock, or processed products produced by the certified operation; and,

d. Name, address, and telephone number of the certifying agent.

3. Once certified, a production or handling operation's organic certification continues in effect until surrendered by the organic operation or suspended or revoked by the Department, or the Administrator.

4. The decision to certify will be made by a person different from those who conducted the review of documents and on-site inspection.

F. Denial of certification.

1. When the Department has reason to believe, based on a review of the information specified in 7 C.F.R. § 205.402 or § 205.404, that an applicant for certification is not able to comply or is not in compliance with the requirements of this Part, the Department will provide a written notification of noncompliance to the applicant. When correction of a noncompliance is

not possible, a notification of noncompliance and a notification of denial of certification may be combined in one notification. The notification of noncompliance will provide:

a. A description of each noncompliance;

b. The facts upon which the notification of noncompliance is based; and,

c. The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

2. Upon receipt of such notification of noncompliance, the applicant may:

a. Correct noncompliances and submit a description of the corrective actions taken with supporting documentation to the Department;

b. Correct noncompliances and submit a new application to another certifying agent: Provided, that, the applicant must include a complete application, the notification of noncompliance received from the Department, and a description of the corrective actions taken with supporting documentation; or,

c. Submit written information to the Department to rebut the noncompliance described in the notification of noncompliance.

3. After issuance of a notification of noncompliance, the Department will:

a. Evaluate the applicant's corrective actions taken and supporting documentation submitted or the written rebuttal, conduct an on-site inspection if necessary, and,

(1) When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, issue the applicant an approval of certification pursuant to 7 C.F.R. § 205.404; or,

(2) When the corrective action or rebuttal is not sufficient for the applicant to qualify for certification, issue the applicant a written notice of denial of certification.

b. Issue a written notice of denial of certification to an applicant who fails to respond to the notification of noncompliance.

c. Provide notice of approval or denial to the Administrator, pursuant to 7 C.F.R. § 205.501(a)(14).

4. A notice of denial of certification must state the reason(s) for denial and the applicant's right to:

a. Reapply for certification pursuant to 7 C.F.R. §§ 205.401 and 205.405(e);

b. Request mediation pursuant to 7 C.F.R. § 205.663 or, if applicable, pursuant to a State organic program; or,

c. File an appeal of the denial of certification pursuant to 7 C.F.R. § 205.681 or, if applicable, pursuant to a State organic program.

5. An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification may apply for certification again at any time with any certifying agent, in accordance with 7 C.F.R. §§ 205.401 and 205.405(e). When such applicant submits a new application to a certifying agent other than the agent who issued the notification of noncompliance or notice of denial of certification, the applicant for certification must include a copy of the notification of noncompliance or notice of denial of certification and a description of the actions taken, with supporting documentation, to correct the noncompliances noted in the notification of noncompliance.

6. If the Department receives a new application for certification, which includes a notification of noncompliance or a notice of denial of certification, it will treat the application as a new application and begin a new application process pursuant to 7 C.F.R. § 205.402.

7. Notwithstanding paragraph (a) of 7 C.F.R. § 205.405, if the Department has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant's operation or its compliance with the certification requirements pursuant to this Part, the Department may deny certification pursuant to paragraph (c)(1)(ii) of 7 C.F.R. § 205.405 without first issuing a notification of noncompliance.

G. Continuation of certification.

1. To continue certification, a certified operation must annually submit to the Department an updated organic production or handling system plan on forms developed by the Department, and continuation fees as follows:

a. Fees stated in § 9.9(G)(1)(b) and (c) of this Part below may be reduced on an annual basis by the Director of the Department of Environmental Management according to program costs;

b. $300.00 for organic producer certification, with nonrefundable $150.00 due with the organic production system plan and the balance of $150.00 due prior to inspection of the operation;

c. Nonrefundable $550.00 for organic handler certification due with the organic handling system plan;

2. Certified Operations must submit any other information necessary to determine compliance with the Act and the regulations in this Part.

3. Following the receipt of the information specified in paragraph (1) of 7 C.F.R. § 205.406, the Department will within a reasonable time arrange and conduct an on-site inspection of the certified operation pursuant to 7 C.F.R. § 205.403: Except, that, when it is impossible for the Department to conduct the annual on-site inspection following receipt of the certified operation's annual update of information, the Department will allow continuation of certification and issue an updated certificate of organic operation on the basis of the information submitted and the most recent on-site inspection conducted during the previous 12 months: Provided, that, the annual on-site inspection, required pursuant to 7 C.F.R. § 205.403, is conducted within the first 6 months following the certified operation's scheduled date of annual update.

4. All annual on-site inspections for producers requesting continuation of certification must be conducted no later than September 1 of the year in which certification is requested.

5. If the Department has reason to believe, based on the on-site inspection and a review of the information specified in 7 C.F.R. § 205.404, that a certified operation is not complying with the requirements of the Act and the regulations in this Part, the Department will provide a written notification of noncompliance to the operation in accordance with 7 C.F.R. § 205.662.

6. If the certifying agent determines that the certified operation is complying with the Act and the regulations in this Part and that any of the information specified on the certificate of organic operation has changed, the Department will issue an updated certificate of organic operation pursuant to 7 C.F.R. § 205.404(b).

H. Emergency pest or disease treatment

1. Immediately Following any Federal or State, or municipal emergency pest or disease treatment with a prohibited substance in the State of Rhode Island, the Department will inspect all certified operations within the area treated and within the range of drift of the treatment. If crops are determined to have been contacted by the prohibited substance, the

operation will be notified that the affected crops cannot be sold, labeled, or represented as organically produced.

2. When a prohibited substance is applied to a certified operation due to a Federal or State emergency pest or disease treatment program and the certified operation otherwise meets the requirements of this Part, the certification status of the operation shall not be affected as a result of the application of the prohibited substance: Provided, that:

a. Any harvested crop or plant part to be harvested that has contact with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program cannot be sold, labeled, or represented as organically produced; and,

b. Any livestock that are treated with a prohibited substance applied as the result of a Federal or State emergency pest or disease treatment program or product derived from such treated livestock cannot be sold, labeled, or represented as organically produced: Except, that:

(1) Milk or milk products may be sold, labeled, or represented as organically produced beginning 12 months following the last date that the dairy animal was treated with the prohibited substance; and,

(2) The offspring of gestating mammalian breeder stock treated with a prohibited substance may be considered organic: Provided, that, the breeder stock was not in the last third of gestation on the date that the breeder stock was treated with the prohibited substance.

## 9.10 Transitional Certification

A. Products of farms in transition to organic certification may be labeled or represented as "certified transitional" or "transitional" after 12 months of production using organic methods which comply with the Act and the regulations in this Part.

B. In order to market products as "certified transitional" or "transitional" an operation must maintain records as set forth in 7 C.F.R. § 205.103 and develop an organic production plan as set forth in 7 C.F.R. § 205.201.

C. At least one inspection must occur prior to harvest of a transitional crop in order for the crop to be labeled or represented as "certified transitional" or "transitional".

D. Transitional status may only be granted where the applicant can provide evidence of:

1. At least 12 months active organic management prior to harvest; or,

2. Twelve (12) months with no application of prohibited materials prior to planting and organic management of any area of the farm that is or will be used for transitional crop production.

E. "Transitional" and "certified transitional" products must not:

1. Be labeled or represented as "organic" or "transition to organic";

2. Be used as organic ingredients in the formulation of products labeled as "100% organic," "organic," or "made with organic (specified ingredients or food group(s))";

3. Use the USDA organic seal; or,

4. Use the certified organic seal of the Department, unless that seal is specifically designed for transitional products and is clearly distinguishable from the Department's seal used on organic products.

## 9.11 Transfer of Logo Material Upon Termination of Certification

In the event that a certified operation dissolves or loses or surrenders its certification, any unused certified organic logo materials issued to that operation by the Department shall be returned to the Department.

## 9.12 Enforcement

These Rules and Regulations shall be enforced in accordance with the applicable General Laws of the State of Rhode Island and regulations of the Director of the Department of Environmental Management. For the purpose of the enforcement of these regulations, all civil penalties imposed for violations of these regulations, including 7 C.F.R. § 205.662(g)(1) shall be computed in accordance with R.I. Gen. Laws § 42-17.6 and the Department's Rules and Regulations for the Assessment of Administrative Penalties. All sanctions imposed in accordance with 7 C.F.R. § 205.662(g)(2) shall be levied in accordance with R.I. Gen. Laws § 21-20-6.

## 9.13 Prohibitions

Products of the farm offered for sale as graded, marked, labeled, packed or branded as conforming to the term "Rhode Island Certified Organic" or "Rhode Island Certified Transitional" must in fact so conform.

## ~~9.14 Severability~~

~~If any provisions of these Rules and Regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules and Regulations shall not be affected thereby.~~

**250-RICR-40-20-9**

# TITLE 250 - DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

## CHAPTER 40 - AGRICULTURE AND RESOURCE MARKETING

## SUBCHAPTER 20 - MARKETING

PART 9 - RULES RELATED TO CULTURAL PRACTICES FOR BRANDING PRODUCTS OF THE FARM (250-RICR-40-20-9)

Type of Filing: Repeal

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