USDA

CERTIFICATE OF ACCREDITATION

# United States Department of Agriculture

Agricultural Marketing Service

National Organic Program

## *New Jersey Department of Agriculture*

**Trenton, New Jersey, USA**

meets all the requirements prescribed in the National Organic Program Regulations

7 CFR Part 205

(Updated March 15, 2012)

**as an Accredited Certifying Agent**

for the scope of

**Crops, Wild Crops, Livestock and Handling Operations**

This certificate is receivable by all officers of all courts of the United States as prima facie evidence of the truth of the statements therein contained. This certificate does not excuse failure to comply with any of the regulatory laws enforced by the U.S. Department of Agriculture .

Status of this accreditation may be verified at **http://www.ams.usda.gov**

Certificate No: NP2142ACA
Effective Date: April 14, 2012
Expiration Date: April 14, 2017

**Miles V. McEvoy**
**Deputy Administrator**
**National Organic Program**

USDA ORGANIC

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USDA Agricultural Marketing Service

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# NATIONAL ORGANIC PROGRAM: CORRECTIVE ACTION REPORT

## AUDIT AND REVIEW PROCESS

The National Organic Program (NOP) conducted an on-site compliance assessment of New Jersey Department of Agriculture (NJDA). An onsite audit was conducted to determine NJDA's conformance to the terms of a 2013 Settlement Agreement and compliance to the USDA organic regulations. This report provides the results of the compliance assessment and review of NJDA's corrective actions.

## GENERAL INFORMATION

| | |
|---|---|
| **Applicant Name** | New Jersey Department of Agriculture (NJDA) |
| **Physical Address** | 369 South Warren Street, Trenton, NJ 08625 |
| **Mailing Address** | P.O. Box 330, Trenton, NJ 08625 |
| **Contact & Title** | Erich Bremer, Supervisor, Organic Certification Program |
| **E-mail Address** | Erich.bremer@ag.state.nj.us |
| **Phone Number** | 609-984-2225 |
| **Reviewer(s) & Auditor(s)** | Robert Yang, NOP Reviewer; Lars Crail, Onsite Auditor |
| **Program** | USDA National Organic Program (NOP) |
| **Review & Audit Date(s)** | Review of Corrective Actions Dates: September 5, October 9, and October 23, 2014;<br>Onsite Audit Dates: May 1 – 2, 2014 |
| **Audit Identifier** | AIA14121LMC |
| **Action Required** | None |
| **Audit & Review Type** | Compliance Assessment |
| **Audit Objective** | To evaluate the conformance to the audit criteria; and to verify the implementation and effectiveness of NJDA's certification system. |
| **Audit & Determination Criteria** | *7 CFR Part 205, National Organic Program as amended* |
| **Audit & Review Scope** | Review of corrective actions submitted on August 8, September 25, and October 23, 2014 for noncompliances resulting from the compliance assessment. |

NJDA is a state government agency that was accredited as an USDA organic certifying agent on April 12, 2007. NJDA is approved to certify operations to the following scopes: crops, wild crops, livestock, and handling. The NJDA Organic Certification Program currently certifies 86 operations, consisting of 63 crops, 2 wild crops, 5 livestock, and 23 handlers (22 processors and 1 distributor). All certified operations are located in the states of New Jersey and Pennsylvania.

The NJDA organic certification staff consists of the Secretary of Agriculture, a supervisor, a program manager, an administrative assistant, two NJDA consultants, and six contract (independent) inspectors.

**NOP DETERMINATION:**

NOP reviewed the onsite audit results to determine whether NJDA's corrective actions adequately addressed previous noncompliances. NOP also reviewed any corrective actions submitted as a result of noncompliances issued from Findings identified during the onsite audit.

**Non-compliances from Prior Assessments**

Any noncompliance labeled as "**Cleared**," indicates that the corrective actions for the noncompliance are determined to be implemented and working effectively. Any noncompliance labeled as "**Outstanding**" indicates that either the auditor could not verify implementation of the corrective actions or that records reviewed and audit observations did not demonstrate compliance.

**From 2012 Renewal Assessment:**

**NP8217OOA.NC4 – Cleared**
**NP8217OOA.NC5 – Cleared**
**NP2142ACA.NC1 – Cleared**
**NP2142ACA.NC2 – Cleared**
**NP2142ACA.NC3 – Cleared**
**NP2142ACA.NC4 – Cleared**
**NP2142ACA.NC5 – Cleared**

**Non-compliances Identified during the Current Assessment**

Any noncompliance labeled as "**Accepted**," indicates that the corrective actions for the noncompliance are accepted by the NOP and will be verified for implementation and effectiveness during the next onsite audit.

**From 2012 Renewal Assessment:**

**NP8217OOA.NC3 – Accepted.** NOP §205.501(a)(6) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Conduct an annual performance evaluation of all persons who review applications for certification, perform on-site inspections, review certification documents, evaluate

qualifications for certification, make recommendations concerning certification, or make certification decisions and implement measures to correct any deficiencies in certification services." *Annual performance evaluations have not been conducted within the last year for the inspectors.*

**Corrective Actions (2009):** NJDA has conducted the annual performance evaluations for 2007 for the inspectors. These were submitted for review and it was verified that all were satisfactorily performing their duties.

**Verification of Corrective Action (May 2012):** Records reviewed indicated that seven of eleven personnel had no current performance evaluations on file.

**Corrective Action (January 2013):** NJDA has added an additional part-time staff person to assist with the workload. The Supervisor has completed evaluations for all inspectors used during 2011; NJDA provided copies of the evaluations to the NOP. NJDA plans to complete inspector evaluations in January/February going forward. In order to ensure the completion of evaluations, NJDA updated its General Procedures to state that contractors will be evaluated at least once annually. Evaluations shall include notes made during inspection report compliance reviews, evaluation survey cards given to clients during inspection, and any communication received from clients. The Program Manager has established reminders in his calendar system to ensure that the task is completed by the end of February annually.

**Verification of Corrective Action (May 2014):** The auditor reviewed contract inspector performance evaluations that were completed in 2013. Those evaluations are based on inspected operation feedback and NJDA evaluator comments (e.g. timeliness of reporting, report completeness, and report writing ability, etc…). However, no field evaluations of inspectors were conducted as recommended in NOP 2027, *Personnel Performance Evaluations*. When the auditor requested to review the state employed NJDA certification staff performance evaluations, his request was denied due to NJDA's restrictive access policy. The NJDA Human Resource Manager did provide the auditor a letter stating that three of the four certification staff had received satisfactory evaluation ratings. The missing staff evaluation result was that of the New Jersey Secretary of Agriculture, the final certification decision maker. Since the auditor was unable to verify that the performance evaluations of state employed NJDA certification staff was based on USDA organic certification activities and since inspector field reviews were not conducted in 2013, this corrective measure cannot be cleared.

**Corrective Action (September 2014):** NJDA submitted records of completed performance evaluations, including the performance criteria, for all certification staff. (See NP2142ACA.NC6 for corrective action regarding performance evaluation of the New Jersey Secretary of Agriculture.) Additionally, NJDA began conducting field evaluations of its inspectors in 2014. NJDA submitted its revised NJDA General Procedures for Organic Production Certification manual, which states that NJDA will perform annual field evaluations of independent organic inspectors per NOP 2027 Personnel Performance Evaluations instructions.

**NP2142ACA.NC6 – Accepted**. NOP §205.510(a)(4) states, "An accredited certifying agent must submit annually to the Administrator, on or before the anniversary date of the issuance of

the notification of accreditation, the following reports…: The results of the most recent performance evaluations and annual program review and a description of adjustments to the certifying agent's operation and procedures implemented or to be implemented in response to the performance evaluations and program review." *Records reviewed indicated that seven of eleven personnel had no current performance evaluations on file. None of the results of performance evaluations were recorded as submitted to the Administrator as part of an Annual report. An annual program review was conducted by an outside party during 2009; however, no annual program review has been conducted since and submitted to the Administrator as part of an Annual report.*

**Corrective Action (October 2012):** Performance evaluations for all inspectors used during the 2011 season as explained in NP8217OOA.NC3. Corrective actions concerning conducting the annual program review are addressed in NP8217OOA.NC4.

**Verification of Corrective Action (May 2014):** This noncompliance remains outstanding since NJDA provided a letter indicating the performance evaluation results for three of the four certification staff. The New Jersey Secretary of Agriculture, the certification decision maker, performance evaluation results were not listed and thus does not constitute a listing of all certification staff performance results. The auditor reviewed the detailed 2013 internal review report conducted by a contractor and found it comprehensive and well done. The auditor also interviewed the NJDA employee that will conduct the 2014 internal review.

**Corrective Action (September 2014): (**See NP8217OOA.NC3 for corrective action regarding certification staff performance evaluations.) In response to NOP's requirement to conduct annual personnel evaluations of all personnel making certification decisions, including the New Jersey Secretary of Agriculture, NJDA amended its certification decision making process. All final certification decisions are made by the Organic Program Manager based on the recommendation of the Supervisor. The Secretary of Agriculture's only duty within the certification process is to sign the organic certificate. NJDA revised its NJDA General Procedures for Organic Production Certification manual and Recommendation for Certification form accordingly.

**From 2014 Compliance Assessment:**

**AIA14121LMC.NC1– Accepted.** NOP §205.501(a)(9) states that certifiers must "maintain all records pursuant to § 205.510(b) and make all such records available for inspection and copying during normal business hours by authorized representatives of the Secretary and the applicable State organic program's governing State official;.." *When the NOP auditor asked to review the performance evaluations for NJDA staff involved in certification activities, his request was denied due to NJDA's access policy and on the basis of confidentiality. The NJDA Human Resource manager did provide the auditor a letter stating that three of the four certification staff (NJDA employees) had received satisfactory evaluation ratings. The letter was not sufficient for the auditor to verify that performance reviews of NJDA certification staff are evaluated on their organic certification responsibilities and activities.*

**Corrective Action:** NJDA revised its NJDA General Procedures for Organic Production Certification manual to include a policy that NJDA must make copies of performance evaluations for staff working with organic certification available for inspection and copying

during normal business hours for authorized representatives of the Secretary.

**AIA14121LMC.NC2– Accepted.** NOP §205.670(d) states that "a certifying agent must, on an annual basis, sample and test from a minimum of five percent of the operations it certifies, rounded to the nearest whole number." *NJDA did not conduct pesticide residue sampling or testing of operations during 2013.*

**Corrective Action:** NJDA conducted pesticide residue sampling of two operations in June and one operation in August, and plans to conduct sampling of at least two more operations by the end of this year in order to meet the 5% minimum requirement. NJDA submitted analysis reports for both operations and its revised NJDA General Procedures for Organic Production Certification manual, which states that NJDA will sample and test from a minimum of 5% of the operations it certifies on an annual basis.

**AIA14121LMC.NC3– Accepted.** NOP §205.642 states that "fees charged by a certifying agent must be reasonable, and a certifying agent shall charge applicants for certification and certified production and handling operations only those fees and charges that it has filed with the Administrator." Furthermore, NOP 2609, Unannounced Inspections, section 4.1.12, states that "certifying agents may charge an operation for unannounced inspections as long as the fees are clearly disclosed to all certified operations. Fees charged must be filed with the Administrator in accordance with § 205.642." *NJDA indicated that they charge operations for unannounced inspections; however, NJDA's fee schedule does not clearly indicate this policy and charge to operations.*

**Corrective Action:** NJDA submitted its revised producer and handler fee schedules, which state that clients will not be charged for unannounced inspections or for residue testing.

**AIA14121LMC.NC4– Accepted.** NOP §205.662 (c) states that "the notification of proposed suspension or revocation of certification shall state:

(1) The reasons for the proposed suspension or revocation;
(2) The proposed effective date of such suspension or revocation;
(3) The impact of a suspension or revocation on future eligibility for certification; and
(4) The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to §205.681."

*NJDA is issuing notices of proposed suspension indicating that operations have the option of submitting corrective actions or rebuttals for issued noncompliances which is not an option according to §205.662 (c).*

**Corrective Action:** NJDA submitted its revised Notice of Proposed Suspension, which no longer includes the option to submit corrective actions or rebuttals.

**AIA14121LMC.NC5– Accepted.** NOP §205.504 (b) (1) states that "a copy of the procedures to be used to evaluate certification applicants, make certification decisions, and issue certification certificates…." *NJDA does not have written procedures in their program manual describing its material review process and the forms used.*

**Corrective Action:** NJDA added procedures for reviewing materials to its NJDA General Procedures for Organic Production Certification manual.

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## AUDIT INFORMATION

| | |
|---|---|
| **Applicant Name:** | New Jersey Department of Agriculture (NJDA) |
| **Est. Number:** | N/A |
| **Physical Address:** | 369 South Warren Street, Trenton, NJ 08625 |
| **Mailing Address:** | P.O. Box 330, Trenton, NJ 08625 |
| **Contact & Title:** | Erich Bremer, Supervisor, Organic Certification Program |
| **E-mail Address:** | Erich.bremer@ag.state.nj.us |
| **Phone Number:** | 609-984-2225 |
| **Auditor(s):** | Julie Hartley, Accreditation Manager |
| **Program:** | USDA National Organic Program (NOP) |
| **Audit Date(s):** | June 25-27, 2013 |
| **Audit Identifier:** | NP2142ACA |
| **Action Required:** | No |
| **Audit Type:** | Corrective Action Audit |
| **Audit Objective:** | To verify, review and approve corrective actions addressing outstanding noncompliances identified during the 2008 Initial Assessment and 2012 |
| **Audit Criteria:** | *7 CFR Part 205, National Organic Program, Final Rule,* dated December 21, 2000; updated March 15, 2012. |
| **Audit Scope:** | Proposed corrective actions |
| **Location(s) Audited:** | Desk |

## GENERAL INFORMATION

The New Jersey Department of Agriculture (NJDA) is a state government that was accredited as a certifying agent on April 12, 2007 to the National Organic Program (NOP) for crops, wild crops, livestock, and handling operations. The NJDA Organic Certification Program currently includes 82 operations certified to the NOP, consisting of 50 crops, 3 wild crop, 3 livestock, and 21 handlers (20 processors and 1 distributor). All certified operations are located in the United States in the states of New Jersey and Pennsylvania.

Representatives of the NOP conducted an accreditation assessment of the NJDA Organic Certification Program from May 21-25, 2012. On July 16, 2012, the NOP issued a Notice of Noncompliance to NJDA for findings from the assessment report. NJDA submitted proposed corrective actions to the NOP on August 16, 2012. The NOP requested additional information for NP2142ACA .NC1, NP2142ACA .NC2, and NP2142ACA .NC5 on October 25, 2012. New Jersey provided additional information on November 13, 2012. On December 12, 2012, the NOP Accreditation Committee met to review NJDA's submitted

corrective actions and voted to defer a recommendation on accreditation pending additional information on NP8217OOA.NC3, NP8217OOA.NC4, NP2142ACA.NC2, and NP2142ACA.NC5. Additional corrective actions were submitted by NJDA on January 4 and January 28, 2013. The NOP Accreditation Committee reviewed this information on February 27, 2013 and voted to recommend a proposed suspension of NJDA's accreditation.

On April 5, 2013, the NOP issued a Notice of Proposed Suspension as corrective actions submitted for the outstanding noncompliance NP8217OOA.NC4 and noncompliance NP2142ACA.NC5(a) were not sufficient to demonstrate compliance with the USDA organic regulations. NJDA submitted proposed corrective actions to the NOP on April 30, 2013. The NOP requested additional information for NP2142ACA.NC5(a) which were submitted by NJDA on June 20, 2013.

**FINDINGS**

Seven corrective actions for noncompliances identified during the 2008 Initial Assessment and 2012 Renewal Assessment were accepted by the NOP on April 5, 2013. Corrective actions for an outstanding noncompliance from the 2008 Initial Assessment and a noncompliance from the 2012 Renewal Assessment were reviewed by the NOP on June 25-27, 2013, and were found to be adequately addressed. All corrective actions will be verified during the next on-site assessment.

**NP8217OOA.NC3 – Accepted**
**NP8217OOA.NC5 – Accepted**
**NP2142ACA.NC1 – Accepted**
**NP2142ACA.NC2 – Accepted**
**NP2142ACA.NC3 – Accepted**
**NP2142ACA.NC4 – Accepted**
**NP2142ACA.NC6 – Accepted**

**NP8217OOA.NC4 – Accepted.** NOP §205.501(a)(7) states, "A private or governmental entity accredited as a certifying agent under this subpart must: Have an annual program review of its certification activities conducted by the certifying agent's staff, an outside auditor, or a consultant who has expertise to conduct such reviews and implement measures to correct any non-compliances with the Act and the regulations in this part that are identified in the evaluation." *There is no procedure for conducting a program review. An annual program review has not been conducted.* **Corrective Action (2009):** NJDA General Procedures for Organic Certification has been revised to include an annual program review procedure. The program review may be performed by NJDA staff or a contracted auditor. Currently, NJDA is in the process of acquiring the services of a third party to complete the first internal program review. NJDA has been provided with a cost estimate and plans from the third party and plans to have the audit in August of 2009. **Verification of Corrective Action (May 2012):** *An annual program review was conducted by an outside party during 2009; however, no annual program review has been conducted since.* **Corrective Action (January 2013):** NJDA updated its procedures to state that an annual internal audit shall be conducted in accordance with USDA organic regulations. In August 2012, NJDA solicited quotes from three qualified parties for internal auditing services. NJDA subsequently identified the contractor to be used for the upcoming internal audit; however, the date of the audit has yet to be determined. NJDA staff will shadow the contractor during the

process in order to learn how to perform annual program reviews, with the intent of using internal staff to complete this task in future years. At present, NJDA has not conducted internal program reviews for 2010, 2011 or 2012. **Corrective Action (April 2013):** NJDA started the process of an internal program review using an outside auditor who conducted a desk review of documents. An on-site internal program review audit was conducted in May 2013. NJDA is training a staff member to conduct future internal program reviews.

**NP2142ACA.NC5 – Accepted.** NOP §205.402(a)(2) states, "Upon acceptance of an application for certification, a certifying agent must: 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 subpart C of this part." *Two of four labels reviewed did not comply with regulatory requirements:*

a) *A single ingredient product was incorrectly labeled as "95% organic," which is not in compliance with §205.303(a)(2). This percentage is not possible as it listed only a single ingredient.*
b) *An "organic" product label had the "Certified organic by * * *" statement to the left of the distributor name, which is not in compliance with §205.303(b)(2).*

*In addition, the files did not record whether the labels had been approved by NJDA.* **Corrective Actions (January 2013):**

a) NJDA stated that the document in question was not a label but rather a shipping insert. Because of this, NJDA did not consider the document a formal label for approval and did not record the process used to evaluate or approve it. The program supervisor could not verify the information submitted by the client or explain the process used to evaluate the product composition and labeling category. In January 2013, NJDA told the client that the 95% label was not accurate and could not be used any longer, stating that "there is no label claim in the Rule for '95% organic.'" However, this statement contradicts § 205.303 (a)(1).
b) NJDA has reviewed NOP *Policy Memo 12-2, "Placement of the Certified Organic By ***" Statement.* This policy was forwarded to NJDA certified clients via e-mail on September 27, 2012 with the following instructions: "Please pay extra attention to the notice on the 'certified organic by ***" statement.' This [memo] changes previous determinations, and many NJDA clients will have to make changes to and re-submit their labels by 2014 to be in compliance with the labeling requirements." NJDA will address labels with individual clients during the completion of the 2012 and 2013 updates to ensure all clients' labels are properly revised before the deadline date of January 1, 2014.

**Corrective Action (June and July 2013):**

a) As NJDA stated that the document in question was a shipping insert, NJDA reviewed the document under § 205.307 as a label for nonretail containers used for shipping and submitted it as evidence to show that the product was listed only as "organic." To facilitate the label review process, NJDA developed a new form to document the review process for each label and a template to track all labels submitted by producers; and revised its "General Procedures for NJDA Organic Certification" to indicate the implementation of the new documents. NJDA also submitted agendas and certificates, and noted several training modules or meetings which staff attended as evidence of completion of organic labeling regulation reviews in order to prevent a reoccurrence of the noncompliance.