
N.J.A.C. 2:78

NEW JERSEY ADMINISTRATIVE CODE
Copyright (c) 2015 by the New Jersey Office of Administrative Law

*** This file includes all Regulations adopted and published through the ***
*** New Jersey Register, Vol. 47, No. 13, July 6, 2015 ***

TITLE 2. AGRICULTURE
CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM

N.J.A.C. 2:78 (2015)

Title 2, Chapter 78 -- Chapter Notes

NOTES:

CHAPTER AUTHORITY:

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

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: September 30, 2013.

See: 45 N.J.R. 2384(a).

CHAPTER EXPIRATION DATE:

Chapter 78, New Jersey Organic Certification Program, expires on September 30, 2020.

CHAPTER HISTORICAL NOTE:

Chapter 78, New Jersey Organic Certification Program, was readopted as R.2006 d.413, effective December 4, 2006. See: 38 N.J.R. 1899(a), 38 N.J.R. 4998(a)..

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 78, New Jersey Organic Certification Program, was scheduled to expire on December 4, 2013. See: 43 N.J.R. 1203(a).

Chapter 78, New Jersey Organic Certification Program, was readopted, effective September 30, 2013. See: Source and Effective Date.

TITLE 2. AGRICULTURE
CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM
SUBCHAPTER 1. GENERAL PROVISIONS

§ 2:78-1.1 Purpose, scope and authority

(a) This chapter is promulgated pursuant to N.J.S.A. 4:10-79, which authorizes the New Jersey Department of Agriculture (NJDA) to adopt rules for the proper administration of a New Jersey Organic Certification Program including, but not limited to, promulgating certification procedures for "NJDA Certified Organic" and "Transitional Sustainable" products, designing an appropriate label for

such products, and charging fees to cover reasonable costs associated with implementation of this program.

(b) These rules will become effective and the certification marks identified in N.J.A.C. 2:78-4.1 and 4.2 will become available for use only after the Department becomes accredited by the USDA, as a certifying agent pursuant to the 7 CFR 205, Subpart F, as amended and supplemented.

§ 2:78-1.2 Adoption of the National Organic program Standards

(a) The NJDA hereby adopts and incorporates by reference the following parts of the National Organic Program, 7 CFR 205, effective April 21, 2001, as amended and supplemented, as the official rules and procedures by which it shall act as a certifying agent for operations producing or handling organic crops, livestock, wild crops and processed food products:

1. Subpart A -- Definitions, all sections;
2. Subpart B -- Applicability, all sections;
3. Subpart C -- Organic Production and Handling Requirements, all sections;
4. Subpart D -- Labels, Labeling, and Market Information, all sections;
5. Subpart E -- Certification, all sections; and
6. Subpart G -- Administrative, the following sections only:
 - i. Sections 205.600 -- 205.607 (National List of Allowed and Prohibited Substances);
 - ii. Sections 205.660 -- 205.663 (Compliance);
 - iii. Sections 205.670 -- 205.672 (Inspecting and Testing, Reporting and Exclusions from Sale); and
 - iv. Sections 205.680 -- 205.681 (Adverse Action Appeal Process).

(b) A copy of the NOP may be obtained:

1. By contacting National Organic Program Administrator, USDA-AMS-TMP-NOP, Room 4008-South Building, 1400 Independence Avenue, SW, Washington, DC 20250-0020;
2. By contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625; or
3. Online at: <http://www.ams.usda.gov/nop/NOP/standards/FullRegTextOnly.html>.

§ 2:78-1.3 Definitions

(a) For purposes of this chapter, the following words, terms, and phrases shall have the following meanings unless the context clearly indicates otherwise:

"Dealer" means any person who sells or distributes certified organic agricultural products either at wholesale or at retail.

"Director" means the Director, Division of Marketing and Development, New Jersey Department of Agriculture or his or her designee.

"Facility" means any premises, including, but not limited to, any plant, establishment, facility and the appurtenances thereto, in whole or in part, where organic food is prepared, handled, or

processed in any manner for resale or distribution to retail outlets, restaurants and any such other facility selling or distributing to the ultimate consumer.

"NJDA" means the New Jersey Department of Agriculture.

"NOP" means the National Organic Program, 7 CFR 205.1 et seq., as amended and supplemented.

"Organic certification number" means the identification number listed on the organic certification certificate issued to the organic producer or handler.

"Organic production areas" means the field, greenhouse, room, facility or other location where organic crops, wildcrops or livestock are produced.

"Secretary-NJDA" means the Secretary of the New Jersey Department of Agriculture or his designee.

"Transitional Sustainable" means any agricultural commodity (fruits, vegetables or grains) other than livestock that meets all of the NOP's requirements for 100 percent organic, except that the organic production areas have not been free of prohibited substances for 36 months. Use of prohibited substances in the organic production areas must have ceased for at least 12 months prior to the harvest of a "transitional" crop.

"USDA" means the United States Department of Agriculture.

(b) Whenever, in describing or referring to any person, party, matter or thing, any word importing the singular number is used, the same shall be understood to include and to apply to several persons or parties as well as to one person or party, and to bodies corporate as well as individuals, and to several matters and things as well as one matter or thing.

(c) The words, terms and phrases set forth in (a) above are to be used in addition to and in conjunction with the words, terms and phrases set forth in 7 CFR 205.2, as amended and supplemented.

(d) Words of art not defined in (a) above or in 7 CFR 205.2 shall have the meaning attributed to them by trade usage or general usage as reflected by its definition in a standard English dictionary, such as Merriam-Webster Unabridged Dictionary.

§ 2:78-1.4 Confidentiality

The NJDA will hold confidential any information obtained while implementing the rules set forth in this chapter that constitutes proprietary commercial or financial information, or is otherwise protected from disclosure under 7 CFR Part 205.101 and 205.504, as amended and supplemented, or the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., subject to the limitations set forth therein.

TITLE 2. AGRICULTURE

CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM

SUBCHAPTER 2. APPLICATION PROCEDURE, REGISTRATION AND FEE SCHEDULES

N.J.A.C. 2:78-2.1 (2015)

§ 2:78-2.1 Application for certification

(a) Any producer seeking certification of their operations as certified organic or "Transitional Sustainable," shall comply with the following requirements:

1. Producers seeking certification by the NJDA must file an application package for certification of

their operations as certified organic or "Transitional Sustainable," along with the necessary fees set forth in N.J.A.C. 2:78-2.2.

- i. All applications must be made in writing, upon forms provided by the NJDA for this purpose. Producers can be certified for crops, livestock and/or wildcrafting. When requesting an application package from the NJDA, the producer must specify the category of organic certification sought (crops, wildcrops, livestock, processor).
- ii. The application must identify the name, address, commodities for which the user is seeking certification, and other such information as is deemed necessary for the NJDA to determine whether the producer has complied with the NOP and this chapter.
- iii. The NJDA will assign a filing deadline for the submission of the required annual update for all following years, which shall be the first day of the ninth month after certification was granted.
- iv. Initial certification fees shall be based on the projected 12 months gross income from certified organic production areas, livestock or facilities and gross revenues received from services rendered in connection with certified organic products. Additional fees may apply as set forth in N.J.A.C. 2:78-2.2(e).

2. Producers receiving certification must file an annual update no later than the date assigned pursuant to (a)1iii above.

- i. The annual update must be made in writing, upon a form provided by the NJDA for this purpose.
- ii. The application must identify the name, address, organic certification number of the user, commodities for which the user is seeking an annual certification update and other such information as is deemed necessary for the NJDA to determine whether the producer has complied with the NOP and this chapter.
- iii. Certification fees for annual updates shall be based on the previous 12 months gross income from certified organic production areas, livestock or facilities, and gross revenues received from services rendered in connection with certified organic products. Additional fees may apply as set forth in N.J.A.C. 2:78-2.2(e).
- iv. Annual update applications postmarked after the due date set forth in (a)1 above may be assessed a late fee of \$ 75.00.

3. All producers must submit with the application or annual certification update, the following certification, signed by a person authorized to act on behalf of the applicant that shall appear on the application or annual update:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

4. All producers seeking initial certification and annual certification updates shall be subject to an inspection of their premises.

5. All producers must comply with the certification requirements set forth in Subpart E of the NOP (7 CFR 205.400 through 205.406), as amended and supplemented.

6. Applications for certification or annual updates may be rejected if:

- i. The filed application package is substantially incomplete;

- ii. The application demonstrates noncompliance with organic standards established by the NOP or this chapter;
- iii. The producer seeks certification in a category of organic certification which NJDA is not accredited to certify;
- iv. The application package was not accompanied by the appropriate certification fee as set forth in N.J.A.C. 2:78-2.2; or
- v. The producer has otherwise failed to comply with the requirements of the NOP or this chapter.

(b) Any handler seeking certification from the NJDA, must comply with the following requirements:

1. Handlers seeking certification by the NJDA must file an application package for certification of their operations as certified organic or "Transitional Sustainable" along with the necessary fees set forth in N.J.A.C. 2:78-2.3.

i. All applications must be made in writing, upon forms provided by the NJDA for this purpose. When requesting an application package from the NJDA, the handler must specify the category of organic certification sought (crops, wildcrops, livestock or processor).

ii. The application must identify the name, address, the commodities and/or activity for which the user is seeking certification and other such information as is deemed necessary for the NJDA to determine whether the handler has complied with the NOP and this chapter.

iii. The NJDA will assign a filing deadline for the submission of the required annual update for all following years, which shall be the first day of the ninth month after certification was granted.

iv. Initial certification fees shall be based on projected 12 months gross sales of certified organic products and gross revenues received from services rendered in connection with certified organic products. Additional fees may apply as set forth in N.J.A.C. 2:78-2.3(f).

2. Handlers receiving certification must file an annual update no later than the date assigned pursuant to (a)1iii above.

i. The annual certification update must be made in writing, upon a form provided by the NJDA for this purpose.

ii. The application must identify the name, address, organic certification number of the user, commodities and/or activity for which the user is seeking an annual certification update, and other such information as is deemed necessary for the NJDA to determine whether the handler has complied with the NOP and this chapter.

iii. Certification fees for annual updates shall be based on the previous 12 months gross sales of certified organic products and gross revenues received from services rendered in connection with certified organic products. Additional fees may apply as set forth in N.J.A.C. 2:78-2.3(f).

iv. Annual update applications postmarked after the due date set forth in (a)1 above may be assessed a late fee of \$ 75.00.

3. All handlers must submit with the application or annual update, the following certification, signed by a person authorized to act on behalf of the applicant that shall appear on the application or annual update:

"I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment for submitting false, inaccurate or incomplete information or information which I do not believe to be

true."

4. All handlers seeking initial certification and annual certification updates shall be subject to an inspection of their premises.

5. All handlers must comply with the certification requirements set forth in this chapter and in Subpart E of the NOP (7 CFR 205.400 through 205.406), as amended and supplemented.

6. Applications for certification or annual updates may be rejected if:

i. The filed application package is substantially incomplete;

ii. The application demonstrates noncompliance with organic standards established by the NOP and this chapter;

iii. The handler seeks certification in a category of organic certification that NJDA is not accredited to certify;

iv. The application package was not accompanied by the appropriate certification fee as set forth in N.J.A.C. 2:78-2.3; or

v. The handler has otherwise failed to comply with the requirements of the NOP or this chapter.

(c) All applicants have a continuing obligation to inform the NJDA of any changes in information contained in a certification application or annual certification update application and to provide any additional information required by the NJDA. NJDA may require the applicant, certified producer or certified handler to provide additional documentation to verify all representations made to the NJDA.

(d) Incidents involving false swearing or false reporting in the documents required by these rules may be referred by the NJDA for prosecution. Penalties for false swearing are set forth in 7 CFR 205.100(c)(2).

(e) Certification applications or annual certification update applications filed pursuant to (a) or (b) above may be voluntarily withdrawn at any time. Notice of withdrawal must be given to NJDA in writing. Producers or handlers who voluntarily withdraw their applications will be liable for the costs of incurred by NJDA up to the time of withdrawal of its application.

§ 2:78-2.2 Producer fee schedule

(a) The following fee schedule shall apply to producer applications for certification:

1. First time applicants

Projected Gross Organic Income (from organic products or services)	Certification Fee
\$ 0-\$ 4,999	\$ 285
\$ 5,000-\$ 9,999	\$ 385
\$ 10,000-\$ 24,999	\$ 410
\$ 25,000-\$ 49,999	\$ 435
\$ 50,000-\$ 99,999	\$ 460
\$ 100,000-\$ 149,999	\$ 510
\$ 150,000-\$ 199,999	\$ 560
\$ 200,000-\$ 249,999	\$ 635
\$ 250,000-\$ 299,999	\$ 710
\$ 300,000-\$ 399,999	\$ 785

\$ 400,000-\$ 499,999	\$ 885
\$ 500,000-\$ 749,999	\$ 1,010
\$ 750,000-\$ 999,999	\$ 1,210
Over \$ 999,999	\$ 1,210 + .25 percent (.0025) of gross organic sales over \$ 999,999

2. Annual Certification Update

Actual Gross Organic Income (from organic products or services)	Certification Fee
\$ 0-\$ 4,999	\$ 235
\$ 5,000-\$ 9,999	\$ 335
\$ 10,000-\$ 24,999	\$ 360
\$ 25,000-\$ 49,999	\$ 385
\$ 50,000-\$ 99,999	\$ 410
\$ 100,000-\$ 149,999	\$ 460
\$ 150,000-\$ 199,999	\$ 510
\$ 200,000-\$ 249,999	\$ 585
\$ 250,000-\$ 299,999	\$ 660
\$ 300,000-\$ 399,999	\$ 735
\$ 400,000-\$ 499,999	\$ 835
\$ 500,000-\$ 749,999	\$ 960
\$ 750,000-\$ 999,999	\$ 1,160
Over \$ 999,999	\$ 1,160 + .25 percent (.0025) of gross organic sales over \$ 999,999

(b) Fees for the first inspection (or first annual update) are included in the certification fees set forth in (a)1 and 2 above, except for re-inspection fees as set forth in (d)7 below.

(c) There shall be no refunds except to correct a clerical error.

(d) Additional fees may be assessed as follows:

1. Dairy operations: add \$ 150.00 for all dairy operations with 10 or more animals producing salable organic product. Additional livestock fees apply for additional species as set forth in (d)2 below.

2. Livestock fees: \$ 50.00 per species (excepting dairy).

3. Inspection cancellation fee: Producers will be assessed fees if a scheduled inspection is cancelled by the applicant less than 48 hours in advance, including a \$ 50.00 cancellation fee plus mileage charges, tolls, and inspector driving time (at \$ 25.00 per hour) if applicable. Driving time will be charged in increments of one quarter of an hour and rounded off to the nearest one-quarter of an hour.

4. On-farm processing fee: \$ 25.00 plus 100 percent of actual additional inspection costs incurred not to exceed a rate of \$ 50.00 per hour, plus mileage and tolls. This fee only applies to producers who want to be certified as handlers and who satisfy the requirements of N.J.A.C. 2:78-2.3(c). A separate fee schedule set forth in N.J.A.C. 2:78-2.3 applies to handlers.

5. A \$ 25.00 fee will be charged for returned checks.

6. Additional site fees: \$ 40.00 per each additional organic production area will be assessed if site is within 10 miles of the main operation. If additional sites are greater than 10 miles, \$ 25.00 per hour driving time will be added to the additional site fee. Driving time will be charged in increments of one quarter of an hour and rounded off to the nearest one-quarter of an hour.

7. Re-inspection fees: Fees for the first inspection (or first annual update inspection) are covered in the fee schedule above. The producer shall pay 100 percent of actual inspection costs incurred resulting from follow-up inspections not to exceed a rate of \$ 50.00 per hour plus mileage and tolls.

8. Official mileage will be charged at the prevailing New Jersey State rate per mile starting and ending where the inspector officially reports for duty.

§ 2:78-2.3 Handler fee schedule

(a) The following fee schedule shall apply to handler applications for certification:

1. First Time Applicant

Anticipated Gross Organic Income (from organic products or services)	Certification Fee
\$ 0-\$ 10,000	\$ 300
\$ 10,001-\$ 15,000	\$ 325
\$ 15,001-\$ 20,000	\$ 350
\$ 20,001-\$ 50,000	\$ 400
\$ 50,001-\$ 100,000	\$ 475
\$ 100,001-\$ 275,000	\$ 575
\$ 275,001-\$ 500,000	\$ 700
\$ 500,001-\$ 1,000,000	\$ 900
\$ 1,000,001-\$ 10,000,000	1/10 of 1 percent (.001) of gross organic income
Over \$ 10,000,000	\$ 10,000

2. Annual certification update

Actual Gross Organic Income (from organic products or services)	Certification Fee
\$ 0-\$ 10,000	\$ 200
\$ 10,001-\$ 15,000	\$ 225
\$ 15,001-\$ 20,000	\$ 250
\$ 20,001-\$ 50,000	\$ 200
\$ 50,001-\$ 100,000	\$ 375
\$ 100,001-\$ 275,000	\$ 475
\$ 275,001-\$ 500,000	\$ 600
\$ 500,001-\$ 1,000,000	\$ 800
\$ 1,000,001-\$ 10,000,000	1/10 of 1 percent (.001) of gross organic income minus \$ 150.00
Over \$ 10,000,000	\$ 9,850

(b) In addition to the certification fees set forth in (a)1 and 2 above, each applicant shall be charged a fee equal to the actual inspection costs incurred, not to exceed a rate of \$ 50.00 per hour. In addition, each applicant will be assessed re-inspection fees as set forth in (e)4 below.

(c) Applicants who choose to be certified as both an organic producer and a handler, and who have paid the application fee pursuant to N.J.A.C. 2:78-2.2(a)1 or 2, may apply to the NJDA at the time of the filing of the initial application or annual certification update, to be assessed an on-farm processing fee pursuant to N.J.A.C. 2:78-2.2(d)4 rather than the full handler fees set forth in (a)1 and 2 above, subject to the requirements below. On-farm processing fees are intended to allow small scale certified producers to increase profitability by offering value added organic products produced on-farm for sale to the public without having to complete a full organic system plan and pay the full handler certification fees. The applicability of this subsection will be determined as follows:

1. To qualify for on-farm processing fee rates, 75 percent of the product ingredients shall be produced by the operation doing the processing and anticipated gross income from processing shall be less than \$ 50,000 for initial certification and actual gross income from processing must be less than \$ 50,000 for annual updates.
2. Operations generating \$ 50,000 (anticipated or actual gross income) or more from on-farm processed organic products, operations who do not produce 75 percent of the ingredients on farm, or very complex on-farm processing operations, may have to complete a full handler certification application in addition to producer certification.
3. The NJDA shall make a determination as to whether an on-farm operation is sufficiently complex so as to require a complete handler certification and shall advise the applicant as soon as it becomes evident that a full handling application would be necessary. This determination will be based on several different factors including the number of different organic products produced, the intricacy and number of processing lines that must be inspected, the number of off-site facilities or storage areas that must be inspected, and the complexity and scope of the record keeping systems.
4. On-farm processing fees will be billed to the producer after the inspection, and must be remitted before certification decisions or updated documents are released.

(d) There shall be no refund except to correct a clerical error.

(e) Additional fees may be assessed as follows:

1. Inspection cancellation fee: Handlers will be assessed fees if a scheduled inspection is cancelled by the applicant less than 48 hours in advance, including a \$ 50.00 cancellation fee plus mileage charges, tolls, and inspector driving time (at \$ 25.00 per hour) if applicable. Driving time will be charged in increments of one quarter of an hour and rounded off to the nearest one-quarter of an hour.
2. A \$ 25.00 fee will be charged for returned checks.
3. Additional site fees: \$ 40.00 per each additional organic production area will be assessed if site is within 10 miles of the main operation. If additional sites are greater than 10 miles, \$ 25.00 per hour driving time will be added to the additional site fee. Driving time will be charged in increments of one quarter of an hour and rounded off to the nearest one-quarter of an hour.
4. Re-inspection fees: Fees for the first inspection (or first annual update inspection) are covered in the fee schedule above. The handler shall pay 100 percent of actual inspection costs incurred resulting from follow-up inspections not to exceed a rate of \$ 50.00 per hour plus mileage and tolls.
5. Official mileage will be charged at the prevailing New Jersey State rate per mile starting and ending where the inspector officially reports for duty.

§ 2:78-2.4 Registration

(a) All producers shall file a registration form and a non-refundable annual fee of \$ 25.00 to the NJDA before selling or distributing certified organic products in New Jersey and annually thereafter. Registration forms are available by contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625.

(b) All handlers shall file a registration form and a non-refundable annual fee of \$ 75.00 to the NJDA, before selling or distributing certified organic products in New Jersey and annually thereafter. Registration forms are available by contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625.

(c) All dealers except those who are registered as a handler pursuant to (b) above shall file a registration form and a non-refundable annual fee of \$ 100.00 per location with the NJDA, before selling or distributing certified organic products in New Jersey and annually thereafter. Registration forms are available by contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625.

(d) All USDA-accredited certifying agents shall file a registration form and a non-refundable annual fee of \$ 100.00 before providing organic certification services in New Jersey and annually thereafter. Registration forms are available by contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625.

(e) Operations exempt or excluded from organic certification pursuant to 7 CFR 205.101, who are not certified pursuant to N.J.A.C. 2:78-2.5, shall notify the NJDA of their excluded or exempted status by submitting to the NJDA a signed Declaration of Exempt or Excluded Status form and a \$ 25.00 processing fee. Forms are available by contacting Director's Office, Division of Marketing and Development, New Jersey Department of Agriculture, Health and Agriculture Building, John Fitch Plaza, P.O. Box 330, Trenton, NJ 08625.

§ 2:78-2.5 Exempt and excluded operations pursuant to 7 CFR 205.101

(a) Any operations exempt or excluded from organic certification pursuant to 7 CFR 205.101 seeking to use the USDA seal in 7 CFR 205.311(b)(3) and/or the NJDA logos in N.J.A.C. 2:78-4.1 and 4.2 may apply for certification from the NJDA in accordance with the requirements of N.J.A.C. 2:78-2.1. Certification pursuant to this subsection is voluntary.

TITLE 2. AGRICULTURE CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM SUBCHAPTER 3. TRANSITIONAL SUSTAINABLE CERTIFICATION

N.J.A.C. 2:78-3.1 (2015)

§ 2:78-3.1 Certification requirements

(a) In order for a "Transitional Sustainable" producer to be certified, all of the following requirements shall be met:

1. Application of prohibited substances, as set forth in 7 CFR 205.600 through 205.607 in the production area must have ceased at least 12 months prior to the harvest of the crop;
2. The producer shall comply with all the requirements for 100 percent organic production set forth

in N.J.A.C. 2:78-1.2, except for the requirements of 7 CFR 205.202(b); and

3. The producer shall complete the application and pay the fees set forth in N.J.A.C. 2:78-2.1.

(b) In order for a "Transitional Sustainable" handler to be certified, all of the following requirements shall be met:

1. The handler shall handle livestock or crops produced by a "Transitional Sustainable" operation;

2. The handler shall comply with all the requirements for 100 percent organic handling set forth in N.J.A.C. 2:78-1.2, except that the livestock or crops handled may be "Transitional Sustainable";

3. The handler shall be certified by the NJDA as an organic handler in accordance with this chapter;
and

4. The handler shall complete an application and pay the fees set forth in N.J.A.C. 2:78-2.1. The fees to be certified as both an organic handler and "Transitional Sustainable" handler will be calculated based on the total gross income from both organic and "Transitional Sustainable" products and services.

TITLE 2. AGRICULTURE
CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM
SUBCHAPTER 4. CERTIFICATION MARK

N.J.A.C. 2:78-4.1 (2015)

§ 2:78-4.1 Organic certification mark

(a) Organic producers and handlers certified pursuant to this chapter to use a "100 percent organic" or "organic" label may use the "NJDA Certified Organic" certification mark set forth in (b) below.

(b) The configuration of the "NJDA Certified Organic" certification mark is as follows:

(c) For the promotion or sale of organic products, only those producers and/or handlers certified as organic by the NJDA are entitled to utilize the "NJDA Certified Organic" certification mark.

(d) Any certified producer or handler 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) Penalties for knowingly selling or labeling a product as organic, except in compliance with the NOP are those set forth in 7 CFR 205.100(c)(1).

(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.

HISTORY:

Amended by R.2009 d.297, effective October 5, 2009.

See: 41 N.J.R. 2165(a), 41 N.J.R. 3796(a).

In (d), deleted ", or any registered producer, handler, dealer" following "handler"; and added (f) through (h).

§ 2:78-4.2 Transitional sustainable certification mark

(a) Producers and handlers certified pursuant to this chapter may use the "Transitional Sustainable" certification mark set forth in (b) below.

(b) The configuration of the "Transitional Sustainable" certification mark is as follows:

(c) For the promotion or sale of "Transitional Sustainable" products, only those producers or handlers certified as "Transitional Sustainable" by NJDA, pursuant to N.J.A.C. 2:78-3.1, are entitled to utilize the "Transitional Sustainable" certification mark.

(d) 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.

(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.

HISTORY:

Amended by R.2009 d.297, effective October 5, 2009.

See: 41 N.J.R. 2165(a), 41 N.J.R. 3796(a).

Rewrote (d) and (e); and added (f).

TITLE 2. AGRICULTURE
CHAPTER 78. NEW JERSEY ORGANIC CERTIFICATION PROGRAM
SUBCHAPTER 5. COMPLAINTS

N.J.A.C. 2:78-5.1 (2015)

§ 2:78-5.1 Complaints

(a) Any person with cause to believe that any provision of this chapter or the NOP has been violated may file a written complaint with the NJDA setting forth the facts of the alleged violation.

(b) The NJDA may investigate written complaints received pursuant to (a) above, subject to the following:

1. The NJDA may investigate written complaints relating to certified organic food or fiber involving persons or businesses certified by the NJDA in accordance with 7 CFR 205.661; and
2. Written complaints related to organic food or fiber involving persons or businesses not certified by the NJDA may be submitted by the NJDA to the United States Department of Agriculture National Organic Program Compliance Division for investigation and enforcement action.

(c) If NJDA determines that a certified person or business is not in compliance with the NOP, NJDA shall follow the noncompliance procedures set forth in 7 CFR 205.662.

(d) Anyone disputing a denial of certification, a proposed suspension of certification or a proposed revocation of certification issued by the NJDA may pursue mediation in accordance with 7 CFR 205.663 or an appeal in accordance with 7 CFR 205.680 through 205.681.

(e) If NJDA determines after investigation that anyone registered pursuant to N.J.A.C. 2:78-2.4 has violated the provisions of this chapter or the NOP, the NJDA will issue the violator a notice of noncompliance, in addition to any other remedy available pursuant to this section. The registered person or business must provide proof to the NJDA within 30 days from the receipt of the notice of noncompliance demonstrating that the violation has been corrected. If the violation is not corrected and/or proof of the correction is not received within 30 days, NJDA may revoke the registration for the rest of the registration year.

1. The Division of Marketing and Development shall make an initial determination as to whether to revoke registration under this subsection.
2. Revocation pursuant to this subsection does not prevent the person or business from reapplying for registration the following registration year, provided that all noncompliance violations have been corrected prior to submission of the application for registration.

3. The State Board of Agriculture shall make a final determination as to whether to revoke registration following a hearing, if a hearing is requested pursuant to (g) below.

(f) Anyone selling or distributing or attempting to sell or distribute certified organic products in New Jersey without registering in accordance with N.J.A.C. 2:78-2.4 or whose registration has been revoked pursuant to (e) 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 unregistered 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 (e) or (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
N.J. 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 notice of noncompliance, notice of the intent to revoke registration, or 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.