

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.

SUBCHAPTER 4. CERTIFICATION MARK

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 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) 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).

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) Any certified producer or handler, or any registered producer, improperly using the certification marks 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 or this chapter are those set forth in 7 CFR 205.100(c)(1).

SUBCHAPTER 5. COMPLAINTS

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.