

The Texas Department of Agriculture (the department) proposes the repeal of Chapter 18, Subchapter F, Division 5, §18.702 and §18.705, new §18.702 and amendments to §18.704 and §18.706, all concerning organic standards and certification. The department has conducted an evaluation of the department's Organic Certification Program and is now proposing a fee restructure in §18.702 or to discontinue the program if the program participants are not in support of the fee restructure proposal. The repeals, amendments and new §18.702 are proposed in order to facilitate the fee restructure. The proposed amendments are necessary to comply with changes made to the department's organic certification program by the 82<sup>nd</sup> Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly.

In order to meet the Legislative cost recovery mandate, the department first reviewed the program for cost savings and efficiencies, then restructured the program, as needed, to provide the best service possible at a reasonable cost to producers and handlers who were currently certified or may voluntarily seek certification by the department. A thirty-eight percent increase in certification fees was adopted for the program in 2011 (36 TexReg 5355), so that the program could continue in operation, under the cost recovery requirement imposed by the 82<sup>nd</sup> Legislature. As a result of the fee increase and other factors, program participation has declined by an average of twelve percent annually, which has resulted in lower revenue collections than projected for offsetting expenses, thereby impacting full cost recovery. The department has reduced staffing and modified program procedures to achieve greater efficiencies and meet cost-recovery requirements in law, however, service delivery turn-around time for certification processing has increased over time to an unacceptable level.

The department has conducted a survey of existing organic certification clients to obtain feedback concerning the program. Generally, the responses did not support a fee increase amount adequate to ensure full cost recovery. The department also obtained input from the Organic Agricultural Industry Advisory Board, advising the department to evaluate an outsourcing solution for certification activities. The department posted a Request for Proposal in June 2014, seeking proposals from external businesses, to provide an augmented certification review and processing service for the program. No proposals were submitted to the department for consideration.

The department is now faced with either discontinuing the program or restructuring fees to ensure adequate cost recovery. The proposed amendments to §18.702 restructures fees for organic certification or annual update of organic certification so that the program may continue, under the cost recovery requirement imposed by the 82<sup>nd</sup> Legislature. The repeal of §18.705 eliminates registration requirements for certified organic businesses and organic certifying agents. The proposed amendment to §18.704 updates the citation of the fee for transaction certificates in §18.702. The proposed amendments to §18.706 remove reference to a section that has been repealed, and remove the 12 month "waiting period" before applying for transitional certification.

Mary Ellen Holliman, Coordinator for the organic certification program has determined that for the first five-year period the proposed amendments related to fees are in effect, there will be fiscal implications for state government due to the increase in revenue collected. After computing an estimated twelve percent reduction in program participation, based on historical trend data, there will be an estimated increase in state revenue of \$101,686 annually. The charging of a fee is necessary to enable the continued operation of the program due to the Legislative requirement that this program generate revenue to completely offset its costs. The ability of the department to enforce statutory requirements will be impacted if the department does not assess a fee that recovers the full cost of the program. There

is no anticipated fiscal impact for local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. Holliman has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the proposed amendments will be achieving effective recovery of the costs of administering the organic certification program. The anticipated costs to micro-businesses, small businesses or individuals required to comply with the amendments would affect all 230 currently certified operations and operations applying for certification. All 130 production operations would experience a fee change. Due to the restructuring of fees to effectively recover costs, some land production operations will experience a fee increase of \$595 or more depending upon the number of inputs used. Similarly, some land production operations will experience a fee reduction of \$55 or more depending upon the number of inputs used. Three livestock production operations would experience a fee increase ranging from \$145 to \$595 or more depending upon the number of inputs used. The total certification fee for crop production operations with less than 5,000 acres shall not exceed \$4,200. All 111 operations that handle and process organic product would experience a fee increase ranging from \$145 to \$1,245. Approximately 37 organic handling operations that process multi-ingredient organic products would experience an additional fee increase of \$100 to \$250 per each multi-ingredient processed product. At this time, the department participates in the National Organic Certification Cost-share Program (NOCCP) that is funded through the U.S. Agriculture Act of 2014 and is administered by the United States Department of Agriculture's Agricultural Marketing Service. Certified organic operations that choose to participate in the NOCCP will see a net reduction of \$750 in certification fees under the proposal. The proposed repeals, new section and amendments will become effective on January 1, 2015. The department has posted fee restructure calculators on the department's website: [www.TexasAgriculture.gov](http://www.TexasAgriculture.gov), for affected producers and handlers to use in calculating their respective fee under the proposal.

Comments on the proposal may be submitted to Mary Ellen Holliman, Coordinator for Organic Certification Program, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments may be submitted by email at: [Organic@TexasAgriculture.gov](mailto:Organic@TexasAgriculture.gov). Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The Code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 18.

The repeal of §18.702 and §18.705 is proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

New §18.702 and the amendments to §§18.704 and 18.706 are proposed under Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules for the certification of organic products; §18.006 which requires the department to set fees for the organic certification program in amounts that enable it to recover the costs of administering the program; and §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Filed with the Office of the Secretary of State, on September 29, 2014.

**NEW 18.702. Fee Schedule.**

(a) The categories of fees that may be incurred by an operation applying for initial certification or annual update of certification are as follows: new application fee, certification fees, administrative fees, and additional service fees:

- (1) **New Application Fee: \$400.** An application fee is incurred at the time of submission for each new application for organic certification, and is in addition to any certification fees.
- (2) **Certification Fees:** These fees are incurred at the time of initial application and annual update of certification and shall be paid in conjunction with submission of a new application or an annual update of an existing certification. Certification fees are cumulative.
  - (A) **Producer Scopes.** Fees for an operation or a portion of an operation that produces organic crops and livestock as defined in 7 Code of Federal Regulations (CFR), Part 205.
    - (i) **Fees for crop producer scope:**
      - (I) Crop production operations that have 50 acres or less under organic management have an established baseline of up to 25 production inputs and a fee of \$1,000. Any additional inputs above this baseline will incur an additional fee as established in this subsection.
      - (II) Crop production operations that have more than 50 acres under organic management have an established baseline of up to 5 production inputs and a fee of \$1,500. Any additional inputs above this baseline will incur an additional fee as established in this subsection.
    - (ii) Fee for the review of each additional production input above the baseline that is established in this subsection: \$100 per production input.
    - (iii) The total certification fee for a crop production operation that is less than 5,000 acres shall not exceed \$4,200.
    - (iv) An operation with more than 5,000 acres of land under organic management incurs an additional fee of \$600.
    - (v) Fee to add the livestock producer scope to organic producer certification: \$1,000. Operations that incur this fee shall increase their baseline by 25 production inputs. Any additional inputs above this baseline will incur an additional fee as established in this subsection.
  - (B) **Handler Scope.** Fee for each location of an operation or portion of an operation that handles organic product and is required to obtain certification per 7 CFR Part 205 or desires to obtain organic certification for the purpose of brokering and/or trading of certified organic product.
    - (i) **Fee for handler scope: \$1,500.** Fee includes certification for handling of bulk raw agricultural commodities; single ingredient finished products (e.g. cotton, coffee, rice); livestock feed that is consumed onsite of the operation; and review of organic labeling claims made in compliance with 7 CFR Part 205, §§ 205.307 - 205.309.
    - (ii) **Fee for certification of multi-ingredient processed products for operations that have 25 or less multi-ingredient processed products: \$250 per product.**
    - (iii) **Fee for certification of multi-ingredient processed product for operations that have 26 or more multi-ingredient processed products: \$6,250 for the certification of the first 25 products and \$100 for the certification of each additional product.**
    - (iv) **Fee for reviewing each new organic product label or label template or change to a previously approved product label or label template for compliance with 7 CFR Part 205, §§205.303 - 205.306.** (To be classified as a label template, organic claims made on main label and any information content, use of the department's organic logo, use of the United

- States Department of Agriculture organic seal, and certified by statement must remain the same (i.e. size, color(s), and location on the label)): \$200.
- (C) A change fee is incurred when an operation submits documentation to make one or more changes to an organic system plan after the initial review of the organic system plan documentation has been conducted: \$300.
- (i) If an operation submits documentation to make one or more changes to an organic system plan after the initial review has been conducted and includes changes to add one or more producer inputs or changes to previously submitted multi-ingredient processed products or product labels, such changes are cumulative and charged at the applicable fee rate provided in paragraph (1) of this subsection.
- (ii) A change fee is not incurred when the only change to the organic system plan is the addition of one or more producer inputs, addition of new or changes to previously submitted multi-ingredient processed products or product labels. Such changes are charged at the applicable fee rate provided in paragraph (1) of this subsection.
- (3) Administrative fees. The following fees are incurred by an operation that is not compliant with 7 CFR Part 205 and are cumulative.
- (A) Corrective action fee: incurred for each area of noncompliance identified in a notice of noncompliance that is issued to an operation due to adverse findings from an inspection, review, or investigation of an operation that is seeking certification from or is currently certified by the department: \$200 per area of noncompliance.
- (B) Re-inspection fee: incurred when a re-inspection must be conducted to verify that an operation has come into compliance with one or more previously identified areas of noncompliance: \$400 per re-inspection.
- (C) Late Fees: incurred when an operation fails to submit an annual update fee payment on or before the due date of the certification annual update shall pay, in addition to the annual update fee, a late fee of:
- (i) 50 percent of the certification fee if received by the department from at least one but less than 91 days after the due date;
- (ii) 100 percent of the certification fee if received by the department 91 days after the due date.
- (4) Additional Service fees. The following fees are incurred at the time the service is requested and are cumulative. The purpose of the following service fees is to facilitate trade and satisfy document requirements by another state or a foreign country.
- (A) Organic pesticide residue tissue sample collection requested by client during scheduled inspection: \$250 per sample.
- (B) Organic pesticide residue tissue sample collection requested by client when inspection is not scheduled: \$200 fee for the facility visit, plus \$250 per sample.
- (C) Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): \$75.
- (D) Review of an operation's organic system plan for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): \$75.
- (E) Issuance of an attestation notice for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the Canadian Organic Regime (COR): \$50.

(F) Completion of Certificate of Inspection (COI) for compliance with the equivalency agreement between the United States Department of Agriculture National Organic Program and the European Community (EU): \$50.

(G) Transaction certificate: \$100 per certificate.

(b) The department may require additional fees or refund fees submitted by producers and handlers for underpayment or overpayment of prescribed annual fees or for a portion of a certification period.

(c) Prorated fees may be charged for extension of an annual certification period that is prescribed by the department.

(d) Scheduled date of annual update.

(1) The due date for annual certification update shall be the anniversary of initial certification or the anniversary date of the previous date for annual certification update.

(2) A certified operation may submit a written request to revise its due date for annual certification; provided that:

(A) The operation has not already submitted a written request to revise its existing due date for annual certification during the current certification year;

(B) The requested due date must not be more than five calendar months past the existing due date of certification;

(C) The requested due date is on the last date of the month; and

(D) Normal organic operations are available for inspection for a period of six calendar months following the requested due date.

(3) The written request must be received by the department prior to 30 days before the requested due date if the requested due date for annual certification will occur prior to the existing due date. The operation's annual update documents and fee payment will be due on the revised due date for annual certification update.

(4) The written request must be received by the department prior to 30 days before the existing due date if the requested due date for annual certification will occur after the existing due date and be accompanied by payment of all applicable fees.

(A) An operation that submits a written request to revise its due date for annual certification to occur after the existing due date will incur a prorated fee for each calendar month the current certification is extended. The prorated fee is cumulative. Payment of the prorated fee does not alter the fee amount incurred on the revised annual certification due date. If a request is made to revise the due date prior to the existing due date of certification, no additional fees are due and any fees previously paid are nonrefundable and may not be applied for future updates.

(B) An operation that submits a written request to revise its due date for annual certification to a date occurring after the existing date will also incur a re-inspection fee.

(e) Refunds. A portion of the certification fee may be refunded if the application is withdrawn or certification is surrendered prior to a certification decision. Refunds will be prorated based on the steps of the certification process that have been completed. Requests for refund of fees must be submitted in writing and submitted in conjunction with the request to withdraw an application or surrender an operation's certification.

(1) If withdrawn or surrendered prior to initial review, all of the certification fee may be refunded.

(2) If withdrawn or surrendered after initial review but prior to inspection, 40 percent of the certification fee may be refunded.

- (3) Once an inspection has been conducted, the certification fee shall not be refunded.
- (4) Administrative fees are nonrefundable.
- (5) New application fees are nonrefundable.
- (6) Change fees are only refundable prior to the review of the documentation being performed by the department.
- (7) Additional service fees are only refundable prior to the service being performed by the department.

§18.704. Transaction certificates.

(a) – (d) (No change.)

(e) Fees for transaction certificates established in §18.702(a) of this title (relating to Fees) must be submitted with the application, prior to issuance of the transaction certificate.

§18.706. Transitional Certification Requirements and Logo.

(a) Land that meets the requirements of 7 Code of Federal Regulations, Part 205 §205.202(a) and

(c) may be certified as Transitional.

(b) Crops planted and harvested from Transitional land after the last application of a prohibited substance or excluded method (as established in 7 CFR Part 205, §205.105) may be labeled as Certified Transitional.

(c) (No change.)

(d) All other requirements for Transitional certification are as established for organic certification under 7 CFR Part 205.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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