

**ADOPTED REGULATION OF THE
STATE BOARD OF AGRICULTURE**

LCB File No. R087-11

Effective December 30, 2011

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[\$75.]~~ is material to be omitted.

AUTHORITY: §§1 and 2, NRS 587.830.

A REGULATION relating to organic agricultural products; increasing the fees for the certification or continued certification of a production or handling operation; increasing the fees for certain fields or areas of operation; and providing other matters properly relating thereto.

Section 1. NAC 587.905 is hereby amended to read as follows:

587.905 1. A person seeking to receive certification of a production or handling operation must submit:

- (a) An application for certification pursuant to 7 C.F.R. § 205.401; and
- (b) The fees required pursuant to subsection 3.

2. A person seeking to maintain certification must annually submit:

(a) An updated organic system plan of production or handling pursuant to 7 C.F.R. § 205.406; and

- (b) The fees required pursuant to subsection 3.

3. A person seeking certification or continued certification of a production or handling operation must pay the following fees to the Department:

- (a) For an application for certification pursuant to subsection 1, a nonrefundable fee of ~~[\$75.]~~ ***\$150.***

(b) For annual continued certification pursuant to subsection 2, a nonrefundable fee of ~~[\$50.]~~ **\$75.**

(c) For each year in which a person applies for certification or continued certification, an amount specified in the following table based on an estimate of the gross income of the organic sales of the production or handling operation for the calendar year in which the certification or continued certification is requested:

Gross Income	Amount
\$0 to \$5,000	[\$15] \$150
\$5,001 to \$10,000	[\$30] \$175
\$10,001 to \$15,000	[\$45] \$250
\$15,001 to \$20,000	[\$60] \$275
\$20,001 to \$25,000	[\$75] \$300
\$25,001 to \$30,000	[\$90] \$325
\$30,001 to \$35,000	[\$105] \$350
\$35,001 to \$50,000	[\$150] \$375
\$50,001 to \$75,000	[\$225] \$450
\$75,001 to \$100,000	[\$300] \$550
\$100,001 to \$150,000	[\$450] \$600
\$150,001 to \$200,000	[\$600] \$700
\$200,001 to \$250,000	[\$750] \$850
\$250,001 to \$350,000	[\$1,050] \$1,250

\$350,001 to \$500,000	[\$1,500] \$1,750
\$500,001 or more.....	[\$2,500] \$3,500

(d) For each initial on-site inspection, a nonrefundable fee of ~~[\$30]~~ **\$65** per hour, ~~[for actual inspection time spent at the inspection site.]~~ ***including travel time, and, for mileage, per mile, an amount that is equal to the standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax.***

4. The payment of a fee based on gross income from organic sales required pursuant to paragraph (c) of subsection 3 will be refunded if the request for certification or continued certification is withdrawn in writing and received by the Department before the initial inspection for the year in which the certification or continued certification is requested. In determining the amount of the fee pursuant to paragraph (c) of subsection 3:

(a) For certification of a handling operation, all organic products handled at an area of operation certified by the Department must be included in calculating the estimated gross income; and

(b) For certification of a production operation, only organic products that are produced from operations certified by the Department must be included in calculating the estimated gross income.

5. Any forms or fees required to be submitted pursuant to subsections 1 to 4, inclusive, that are received by the Department after March 31 must be considered late and must be accompanied by a late fee of \$250 in addition to any fees otherwise prescribed by this section.

Sec. 2. NAC 587.906 is hereby amended to read as follows:

587.906 1. Except as otherwise provided in subsection 2, in addition to all other fees prescribed by the Department, the Department shall charge the following additional fees for the fields or areas of operation to be certified after the initial inspection has been completed and for any other additional inspections:

(a) For each hour of inspection, calculated from the inspector's assigned office, ~~[\$30.]~~ **\$65.**

(b) For mileage, per mile, an amount that is equal to the ~~[mileage allowance for a state officer or employee who uses his or her private conveyance for reasons of personal convenience in the transaction of state business.]~~ ***standard mileage reimbursement rate for which a deduction is allowed for the purposes of federal income tax.***

(c) For the per diem of the inspector, the amounts currently allowed by law for state employees, under the conditions set by the Department.

2. The Department shall prorate the fees prescribed by subsection 1 among the persons whose property is inspected in the same area if all inspections can be completed during the same trip of the inspector, as determined by the Department.

3. The Director may also charge a reasonable fee to cover the costs of the reproduction and mailing of application forms.

**NOTICE OF ADOPTION OF PROPOSED REGULATION
LCB File No. R087-11**

The State Board of Agriculture adopted regulations assigned LCB File No. R087-11 which pertain to chapter 587 of the Nevada Administrative Code.

INFORMATIONAL STATEMENT

NEVADA DEPARTMENT OF AGRICULTURE
INFORMATIONAL STATEMENT
LCB File Number: R087-11
NAC 587.905-906
December 9, 2011

1. A description of how public comment was solicited, a summary of public response, and an explanation of how other interested persons may obtain a copy of the summary;
 - a) Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the subject of organic agricultural products and those fees as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada Department of Agriculture (NDOA) **www.agri.state.nv.us**, mailed to all county libraries in Nevada and posted at the following locations:

Nevada Department of Agriculture
405 South 21st Street
Sparks, NV 89431-5566

Nevada Department of Agriculture
2150 Frazer Avenue
Sparks, NV 89431

Nevada Department of Agriculture
2300 McLeod Street
Las Vegas, NV 89104-4314

Nevada Department of Agriculture
4780 E. Idaho Street
Elko, NV 89801-4672

- b) Public response was generally against the level of fees as stated on the initial regulation change request. NDOA staff worked closely with members of the public and the Organic Advisory Committee to find a fee increase that could be supported by the industry and was still adequate to support the program as a self sustaining program within the Department. Comments at the Hearing were generally in support of the revised fee schedule.

- c) Interested persons may obtain a copy of the summary by contacting:
Nevada Department of Agriculture
Attn: Dawn Rafferty, Plant Industry Division
405 South 21st Street
Sparks, NV 89431

2. A statement indicating the number of persons who attended each meeting or workshop, testified at each hearing, and submitted written statements regarding the proposed regulation;

Workshop: November 10, 2011

Number in attendance: 13

Hearing: December 5, 2011

Number in attendance: 9

Number testifying: 6

Written statements submitted: 14

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary

a) Comments were solicited from affected businesses in the same manner as they were solicited from the public.

b) Public comments were received both via email and by phone. Several comments suggested that the fee structure be modified to include a reduced fee for smaller businesses. Several comments recognized that fees must be increased but felt the fee increase was too high and should be reduced. Some commented they are opposed to fee increases in general but understood why the fee increase was necessary in this case or that they did not support any fee increase for any reason. A request was made to take additional time to create and assess a better tiered structure.

c) Interested persons may obtain a copy of the summary by contacting:

Nevada Department of Agriculture

Attn: Dawn Rafferty, Plant Industry Division

405 South 21st Street

Sparks, NV 89431

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change. The statement should also explain the reasons for making any changes to the regulation as proposed.

The permanent regulation was adopted on December 6, 2011 with approval from the Board of Agriculture. Changes were made to address industry concerns heard during the workshop about the impact of the fee increase on very small businesses and that costs incurred by the Department to inspect these small businesses are captured by increasing the inspection fee.

5. The estimated economic effect of the regulation on businesses which it is to regulate and on the public. Stated separately:

There will be a substantial increase in the cost to individuals and companies participating in the organic certification program. The additional revenue generated will allow organic

certification activities to continue in the absence of a contribution to the program from the general fund. Organic certification of agricultural products provides additional value to the grower/handler. There are no adverse effects on the public. Local economies may benefit from the increased value of commodities produced.

The immediate and long term effects of the proposed changes are similar.

6. The estimated cost to the agency for enforcement of the proposed regulation.

There is no additional cost to the agency for the enforcement of this regulation.

7. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendments duplicate.

Although the proposed regulation is not required by federal law, the department receives accreditation from USDA to administer the program. The proposed regulation change is vital to maintaining federal-accreditation.

8. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of those provisions.
N/A

9. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used.

This is an increase to an existing fee. The combined revenue from the gross sales and inspection fees is estimated at approximately \$40,000 based on current clientele and estimated billable inspection hours. The fees support salary and expenses incurred by the organic program.