

FILED WITH LRC  
TIME: 10:30am  
OCT 14 2022  
Emily B Caudill  
REGULATIONS COMPILER

1 GENERAL GOVERNMENT

2 Department of Agriculture

3 Office of Agricultural Marketing

4 (Amendment)

5 302 KAR 40:010.Certification of organic production, processing, or handling operations.

6 RELATES TO: KRS 260.020, 260.030, 260.038, 7 C.F.R. 205

7 STATUTORY AUTHORITY: KRS 260.020(3), 260.030(1)(k), 7 C.F.R. 205

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 260.020(3) authorizes the

9 commissioner of the Kentucky Department of Agriculture to promulgate administrative

10 regulations to carry out any programs established under the Office for Agricultural Marketing

11 [~~and Product Promotion~~] and to establish fees for the administration of those programs. KRS

12 260.030(1)(k) requires the Office of [~~for~~] Agricultural Marketing [~~and Product Promotion~~] to

13 establish an Organic Agricultural Product Certification Program. This administrative regulation

14 establishes the procedures for certification of organically-produced agricultural products.

15 Section 1.

16 (1)A producer, processor, or handler of organic agricultural products shall comply with:

17 (a) 7 C.F.R. Part 205, the National Organic Program;

18 (b)The [~~KDA~~] Organic Certification Program Quality Manual; and

19 (c)The standards contained in the certification application required by Section 2(1) of this

20 administrative regulation.

- 1 (2)The department shall administer the Organic Certification Program in accordance with the  
2 [KDA] Organic Certification Program Quality Manual.
- 3 Section 2.Certification.
- 4 (1)To receive or maintain organic certification, a completed Organic Certification Application  
5 ~~application~~ form shall be submitted to the department annually.
- 6 ~~[(a)A producer shall submit an Organic Farm Certification Application.~~
- 7 ~~(b)A processor or handler shall submit:~~
- 8 ~~1. An Organic Processing/Handling Certification Application; and~~
- 9 ~~2. An Organic Product Profile for each product to be certified.~~
- 10 ~~(c)A producer requesting certification of livestock shall also submit an Organic Livestock~~  
11 ~~Certification Application.]~~
- 12 ~~(d)] Relevant supporting documentation required by the ~~[an]~~ application shall be submitted with~~
- 13 the application.
- 14 (2)The production, processing, or handling operation shall be inspected by the department.
- 15 (a) The inspector shall be trained as required by the [KDA] Organic Certification Program  
16 Quality Manual.
- 17 (b) The applicant shall be present during an unannounced ~~[the]~~ inspection.
- 18 (c) The inspector shall complete the appropriate field inspection report:
- 19 1. The ~~[KDA-Organic]~~ Crop Inspection Report;
- 20 2. The ~~[KDA-Organic]~~Livestock Inspection Report; or
- 21 3. The KDA Processing/Handler Organic Inspection Report.
- 22 (d) An exit interview shall be conducted using the Organic Inspection Exit Interview form.

1 (e) Upon receipt of a field inspection report, the department shall make a determination of  
2 certification and notify the applicant in writing of its decision. If the written application and the  
3 field inspection report demonstrate compliance with this administrative regulation and 7 C.F.R.  
4 205, the department shall grant certification.

5 (3) The department shall conduct an annual inspection of every certified organic entity.

6 (4) Except as provided by subsection (5) of this section and Section 3 of this administrative  
7 regulation, a producer, processor, or handler shall pay a certification fee of \$500 [~~\$250~~] for the  
8 initial certification scope and each year thereafter when renewed. Subsequent scopes beyond the  
9 initial shall be charged at \$250 [~~\$125~~] and each year thereafter when renewed. Except as  
10 provided by subsection (5) of this section and Section 3 of this administrative regulation,  
11 processors and handlers shall pay an additional fee of \$200 [~~\$100~~] per each \$100,000 increment  
12 of gross receipts that exceed \$100,000. Fees, including additional fees, shall be calculated in  
13 accordance with the application [~~Organic Program Fee Schedule~~].

14 (5) A production, processing, or handling operation with gross agricultural income from organic  
15 sales of less than \$5,000 annually shall register with the department by using the Exempt  
16 Organic Operation Registration form. There shall not be a fee to register.

17 (6) To withdraw a certification application, a Voluntary Withdrawal Form [~~Withdrawal of~~  
18 ~~USDA National Organic Program Certification Application form~~] shall be submitted to the  
19 department. The withdrawal procedures listed on the form shall be followed.

20 (7) To voluntarily surrender an organic certification, a Voluntary Surrender Form [~~of USDA~~  
21 ~~National Organic Program Certification form~~] shall be submitted to the department. The  
22 surrendering procedures listed on the form shall be followed.

23 [~~Section 3. Nonprofit, Educational, or Charitable Organization.~~

1 ~~(1) If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue~~  
2 ~~Code, 26 U.S.C. 501(e)(3), has at least \$5,000 gross sales of organic products, it shall be~~  
3 ~~certified and pay the required fees in accordance with Section 2 of this administrative regulation.~~

4 ~~(2) If a nonprofit, educational, or charitable organization, as defined by the Internal Revenue~~  
5 ~~Code, 26 U.S.C. 501(e)(3), has less than \$5,000 gross sales of organic products, it shall be~~  
6 ~~registered for production, processing, or handling organic products by using the Exempt Organic~~  
7 ~~Operation Registration form. There shall not be a fee to register.]~~

8 Section 3 [4]. Organic Agriculture Advisory Committee.

9 (1) The Organic Agriculture Advisory Committee shall consist of seven (7) members. At least  
10 three (3) of the members shall be farmers who produce organic products. The other four (4)  
11 members may include consumers, advocates, handlers, or processors of organic products.

12 (2) The committee shall be appointed by the commissioner and serve a term of two (2) years.  
13 Members may be reappointed to additional two (2) year terms.

14 (3) The committee shall develop recommendations to promote and expand the organic  
15 agricultural products industry in Kentucky.

16 (4) Members shall receive reimbursement for mileage only for meetings of the full committee.

17 Section 4 [5]. Exports. If export documentation is requested, the procedures established in the  
18 [~~KDA~~] Organic Certification Program Quality Manual shall be followed. The applicant shall  
19 pay an additional fee of fifty (50) dollars [~~in accordance with the Organic Program Fee~~  
20 ~~Schedule~~].

21 Section 5 [6]. Material Incorporated [~~Incorporation~~] by Reference.

22 (1) The following material is incorporated by reference:

23 (a) "Organic Certification Application", September 2021;

- 1 (b) "Processing and Handling Organic System Plan; August 2022;  
2 (c) "Livestock & Poultry Organic System Plan ", November 2021;  
3 (d) "2022 Crop Organic System Plan", November 2021;  
4 (e) "Single Ingredient Product List", October 22;  
5 (f) "Multiple Ingredient Product List", October 22;  
6 (g) "Voluntary Withdrawal Form", January 2020;  
7 (h) "Voluntary Surrender Form", January 2020;  
8 (i) "Organic Certification Program Quality Manual", November 2021;  
9 (j) "Exempt Organic Operation Registration", October 2022;  
10 (k) "Organic Inspection Exit Interview", November 2019;  
11 (l) " Crop Inspection Report", October 2022;  
12 (m) " Livestock Inspection Report", October 2022; and  
13 (n) "KDA Processing/Handler Organic Inspection Report", 2017.  
14 ~~{(a) "Organic Farm Certification Application", December 2013;~~  
15 ~~(b) "Organic Processing/Handling Certification Application", December 2013;~~  
16 ~~(c) "Organic Livestock Certification Application", December 2013;~~  
17 ~~(d) "Organic Certification Program Fee Schedule", October 2013;~~  
18 ~~(e) "Organic Product Profile", December 2013;~~  
19 ~~(f) "Withdrawal of USDA National Organic Program Certification Application", October 2013;~~  
20 ~~(g) "Voluntary Surrender of USDA National Organic Program Certification", October 2013;~~  
21 ~~(h) "KDA Organic Certification Program Quality Manual", December 2013;~~  
22 ~~(i) "Exempt Organic Operation Registration", December 2013;~~  
23 ~~(j) "Organic Inspection Exit Interview", May 2002;~~

1 ~~(k) "KDA Organic Crop Inspection Report", December 2013;~~  
2 ~~(l) "KDA Organic Livestock Inspection Report", December 2013; and~~  
3 ~~(m) "Processing/Handler Organic Inspection Report", December 2013.]~~

4 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at  
5 the Kentucky Department of Agriculture, Office of Agricultural Marketing [~~and Product~~  
6 ~~Promotion~~], 109 Corporate Drive [100 Fair Oaks], Frankfort, Kentucky 40601, Monday through  
7 Friday, 8 a.m. to 4:30 p.m. The material is also available on the department Web site at  
8 [www.kyagr.com](http://www.kyagr.com).

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*Ryan Quarles*

Dr. Ryan Quarles  
Commissioner of Agriculture

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Date: 10-13-22

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on December 21, 2022 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through December 31, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, email [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov).

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## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

302 KAR 40:010

Contact Person: Clint Quarles

Phone: 502-782-0284

Email: [clint.quarles@ky.gov](mailto:clint.quarles@ky.gov)

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This filing creates the rules and process for certification of organic operations by the KDA.

(b) The necessity of this administrative regulation:

This filing is necessary to create a uniform set of rules and processes for organic certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This filing creates a uniform set rules and processes for organic certification. This is critical for uniformity and ease of use.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This filing assists with the statute by incorporating the federal NOP manual and the forms the KDA uses in the program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

This filing updates the fee structure and forms used.

(b) The necessity of the amendment to this administrative regulation:

Updated forms are needed for the program. Updated fees are required to attempt to offset some of the program costs to the KDA.

(c) How the amendment conforms to the content of the authorizing statutes:

This filing helps fulfill the statutory command to the KDA.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment makes the program updated, particularly as to the forms used in administration.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation affects entities and persons seeking organic certification through the KDA. Approximately 167 entities are currently certified by the KDA.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

All persons seeking organic certification shall need to comply with the minimum standards laid out in this filing.

(b) In complying with this administrative regulation or amendment, how much will it cost

each of the entities identified in question (3):

The cost depends on the activity the regulated entity chooses to participate in. Costs are based on the number of scopes and the gross sales made.

(3): (c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Entities will be able to sell products as certified organic.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The KDA estimates \$585,000 total annually.

(b) On a continuing basis: The KDA estimates at least \$585,000 total annually.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

A combination of fees and the KDA general fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

Fee increases are required to attempt to cover part of the program costs.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This filing directly increases fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

No, all entities are treated the same.

## FISCAL NOTE

302 KAR 40:010

Contact Person: Clint Quarles

Phone: 502-782-0284

Email: clint.quarles@ky.gov

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?  
The KDA and the USDA NOP.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.  
KRS 260.020, 260.030, 260.038, 7 C.F.R. 205

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

Prior to the proposed fee increase, revenue is about \$70,475 annually. With the doubling of fees, the KDA expects this figure to double as well.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?  
The KDA anticipates \$140,000 or more as the popularity of the organics program increases.

(c) How much will it cost to administer this program for the first year?  
The cost to administer the organic program is \$585,000

(d) How much will it cost to administer this program for subsequent years?  
The cost to administer the organic program for subsequent years is estimated to be at least \$585,000.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Cost savings for regulated entities will still be a fraction of the cost of alternative certifiers, despite a doubling of fees.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Cost savings for regulated entities will still be a fraction of the cost of alternative certifiers, despite a doubling of fees in subsequent years.

(c) How much will it cost the regulated entities for the first year?

Costs will depend on the number of scopes and gross sales. The minimum cost is a single scope of \$500.

(d) How much will it cost the regulated entities for subsequent years?

Costs will depend on the number of scopes and gross sales. The minimum cost is a single scope of \$500.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

Fees and the increase will not exceed the major economic impact threshold.

## FEDERAL MANDATE ANALYSIS COMPARISON

302 KAR 40:010

Contact Person: Clint Quarles

Phone: 502-782-0284

Email: clint.quarles@ky.gov

(1) Federal statute or regulation constituting the federal mandate.  
7 C.F.R. 205

(2) State compliance standards.  
KRS 260.020, 260.030, 260.038,

(3) Minimum or uniform standards contained in the federal mandate.  
The federal act and regulations create the minimum guidelines for the National Organic Program.

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?  
No. Kentucky law and the federal standards are identical.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.  
The KDA does not believe that stricter or any additional standards are created.

Summary of Material Incorporated by Reference  
302 KAR 40:010

- (a) The "Organic Certification Application", (2021) is a 5 page document containing documentation required to apply with the KDA.
- (b) The " Processing and Handling Organic System Plan", (2022) is a 13 page document containing documentation concerning Processing and Handling.
- (c) The "Livestock & Poultry Organic System Plan", (2021) is a 20 page document containing documentation concerning livestock production.
- (d) The "2022 Crop Organic System Plan", (2021) is a 21 page document containing documentation concerning crop production.

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- (e) The "Single Ingredient Product List", (2022) is a 1 page document containing documentation requirements for single organic sources.
- (f) The "Multiple Ingredient Product List", (2022) is a 1 page document containing documentation requirements for multiple organic sources.
- (g) The "Voluntary Withdrawal Form", (2020) is a 1 page document for memorializing the withdrawal of an application prior to certification being issued.
- (h) The "Voluntary Surrender Form", (2020) is a 1 page document memorializing a certified person's choice to exit the organic program.
- (i) The "Organic Certification Program Quality Manual", (2021) is a 20 page document containing the requirements for the organic program.
- (j) The "Exempt Organic Operation Registration", (2022) is a 1 page document memorializing the exemption thresholds for the program.
- (k) The "Organic Inspection Exit Interview", (2019) is a 1 page document containing the required provisions for an exit interview.
- (l) The "Crop Inspection Report", (2022) is a 9 page document containing documentation required for reporting with the KDA.
- (m) The "Livestock Inspection Report", (2022) is a 19 page document containing documentation required for reporting with the KDA.
- (n) The "KDA Processing/Handler Organic Inspection Report", (2017) is a 12 page document containing documentation required for reporting with the KDA.

SENATE MEMBERS

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**Mike Wilson**  
Majority Whip  
**Dennis Parrett**  
Minority Whip



**LEGISLATIVE RESEARCH COMMISSION**

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502-564-8100

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Director

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Minority Whip

**MEMORANDUM**

TO: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture

FROM: Emily Caudill, Regulations Compiler

RE: Proposed Amendment or New Regulation – 302 KAR 040:010.

DATE: October 14, 2022

A copy of the administrative regulation listed above is enclosed for your files. This regulation is **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **JANUARY 2023** meeting. We will notify you of the date and time of this meeting once it has been scheduled.

Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration or a one-month extension request for this regulation is due **by noon on January 13, 2023**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at [RegsCompiler@LRC.ky.gov](mailto:RegsCompiler@LRC.ky.gov) or (502) 564-8100.

Enclosures