

CHAPTER 1205

ORGANIC AGRICULTURAL PRODUCTS

S.F. 2332

AN ACT relating to agriculture, regulating the sale of agricultural products advertised as organic, providing for fees and appropriations, and providing penalties and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

SUBCHAPTER 1
DEFINITIONSSection 1. NEW SECTION. 190C.1 DEFINITIONS.

For purposes of this chapter, unless the context otherwise requires:

1. "Advertise" means to present a commercial message in any medium, including but not limited to print, radio, television, sign, display, label, tag, or articulation.
2. "Agricultural commodity" includes but is not limited to livestock, crops, fiber, or food, such as vegetables, nuts, seeds, honey, eggs, or milk existing in an unprocessed state, which is produced on a farm and marketed for human or livestock consumption.
3. "Agricultural product" means an agricultural commodity or an agricultural processed product.
4. "Agricultural processed product" means an agricultural commodity that has been processed.
5. "Board" means the organic standards board established in section 190C.2.
6. "Certified" means any farm, wild crop harvesting, or handling operation that is verified annually, through an on-site inspection and comprehensive review of the operation by a certifying agent under 21 U.S.C. § 2115 or by the department's certification program, as producing and handling agricultural products in accordance with this chapter and rules adopted pursuant to this chapter.
7. "Department" means the department of agriculture and land stewardship.
8. "Farm" means a site where the agricultural commodities are produced.
9. "Food" means an agricultural product or an agricultural product ingredient which is used or intended for use in whole or in part for human consumption.
10. "Handler" means a person engaged in the business of handling agricultural products, including but not limited to distributors, wholesalers, brokers, and repackers. "Handler" does not include a person selling agricultural products to consumers on a retail basis, including a food service establishment as defined in section 137B.2, retail grocery, meat market, or bakery, if the person does not process the agricultural product.
11. "Label" means a commercial message in a printed medium which is affixed by any method to a product or to a receptacle including a container or package.
12. "Livestock" means an animal belonging to the bovine, caprine, equine, ovine, or porcine species; ostriches, rheas, or emus; farm deer as defined in section 481A.1; or poultry.
13. "Organic agricultural product" means food or fiber that is one of the following:
 - a. If the food or fiber is an agricultural commodity, it is produced and handled according to the requirements of this chapter.
 - b. If the food or fiber is an agricultural processed product, it is produced, handled, and processed according to the requirements of this chapter.
14. "Processing" means turning an agricultural commodity into an agricultural processed product by physical or chemical modification, including but not limited to canning, freezing, drying, dehydrating, cooking, pressing, powdering, packaging, repacking, baking, heating, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, jarring, brewing, or slaughtering.
15. "Produce" means to grow, raise, collect, or harvest an agricultural commodity.

16. "Producer" means a person who produces an agricultural commodity.
17. "Processor" means a person who processes an agricultural commodity.
18. "Regional organic association" means a corporation organized under chapter 504 or 504A which has certifying members, elects its own officers and directors, and is independent from the department.
19. "Retailer" means a person, other than an operator of a food service establishment, who is engaged in the business of selling food at retail to the ultimate customer.
20. "Sale" or "sell" means a commercial transfer or offer for sale and distribution in any manner.
21. "Secretary" means the secretary of agriculture.
22. "System of organic farming" means a system that is designed to produce agricultural products by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer. This includes a management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles, and soil biological activity. This is accomplished by using cultural, biological, and mechanical methods, as opposed to using synthetic materials, to fulfill any specific function within the system.
23. "System of organic handling" means a system that is designed to handle agricultural products without the use of synthetic additives, aids, or ingredients that are used during processing, packaging, or storing agricultural products in accordance with this chapter and by the use of methods and substances that maintain the integrity of organic agricultural products until they reach the consumer.

SUBCHAPTER 2 ADMINISTRATION

Sec. 2. NEW SECTION. 190C.2 ORGANIC STANDARDS BOARD.

1. An organic standards board is established within the department. The powers of the board are vested in and shall be exercised by eleven members appointed by the governor and secretary, as provided in this section. The governor and secretary shall accept nominations from persons or organizations representing persons who serve on the board, as determined by the governor and secretary making appointments under this section.
2. The members shall serve staggered terms of four years beginning and ending as provided in section 69.19. However, the governor and secretary shall cooperate to appoint initial members to serve for less than four years to ensure members serve staggered terms. Members appointed under this section shall be persons knowledgeable regarding the production, handling, processing, and retailing of organic agricultural products. The members of the board shall be appointed as follows:
 - a. Five persons who operate farms producing organic agricultural products. The governor shall appoint two of the persons, at least one of which shall be a producer of livestock, who may be a dairy or egg producer. The secretary shall appoint three of the persons, at least one of which shall be a producer of an agricultural commodity other than livestock. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from the production of organic agricultural products for three years prior to appointment.
 - b. Two persons who operate businesses processing organic agricultural products. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from processing organic agricultural products for three years prior to appointment.
 - c. One person appointed by the secretary, who shall be either of the following:
 - (1) A person who operates a business handling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from handling organic agricultural products for three years prior to appointment.

(2) A person who operates a business selling organic agricultural products. To qualify for appointment, a person must have derived a substantial portion of the person's income, wages, or salary from selling organic agricultural products on a retail basis for three years prior to appointment.

d. Two persons who have an educational degree and experience in agricultural or food science. One person shall be appointed by the governor and one person shall be appointed by the secretary. To qualify for appointment, a person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

e. One person appointed by the governor, who represents the public interest, the natural environment, or consumers. To qualify for appointment, the person must be a member of an organization representing the public interest, consumers, or the natural environment. The person must not have a financial interest in the production, handling, processing, or selling of organic agricultural products.

3. A vacancy on the board shall be filled in the same manner as an original appointment. A person appointed to fill a vacancy shall serve only for the unexpired portion of the term. A member is eligible for reappointment. The governor may remove a member appointed by the governor and the secretary may remove a member appointed by the secretary, if the removal is based on the member's misfeasance, malfeasance, or willful neglect of duty or other just cause, after notice and hearing, unless the notice and hearing is expressly waived in writing.

4. Six members of the board constitute a quorum and the affirmative vote of a majority of the members present is necessary for any substantive action to be taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member that the member has a conflict of interest is conclusive for this purpose. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the board.

5. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties as members, and shall be reimbursed for all actual and necessary expenses incurred in the performance of duties as members.

6. If a member has an interest, either direct or indirect, in a contract to which the board is or is to be a party, the member shall disclose the interest to the board in writing. The writing stating the conflict shall be set forth in the minutes of the board. The member having the interest shall not participate in any action by the board relating to the contract.

7. The board shall meet on a regular basis and at the call of the chairperson or upon the written request to the chairperson of two or more members. The department shall provide administrative support to the board.

Sec. 3. NEW SECTION. 190C.3 BOARD POWERS AND DUTIES.

The organic standards board shall have powers and duties to do all of the following:

1. Monitor conditions, practices, policies, programs, and procedures affecting the production, handling, processing, and sale of organic agricultural products.

2. Establish a schedule of state fees as provided in section 190C.5.

3. Compile materials or a list of materials which may assist producers, handlers, processors, and sellers of organic agricultural products, in complying with this chapter.

4. Assist the department in the development and interpretation of requirements of this chapter, including requirements established pursuant to this chapter, including standards regarding the production, processing, handling, and selling of organic agricultural products and other matters of concern to the producers, handlers, processors, and retailers of organic agricultural products.

5. Approve or disapprove applications for certification, after reviewing applications, inspection reports, and other materials submitted by applicants. The board may suspend a decision to approve or disapprove an application until an application is complete or additional materials relating to the application are provided to the board.

6. Establish procedures pursuant to rules adopted by the department governing appeals of decisions made by the department or board under this chapter, including final agency action under chapter 17A.

Sec. 4. NEW SECTION. 190C.4 ADMINISTRATIVE AUTHORITY.

1. The department, upon approval by the board, shall adopt all rules necessary to administer this chapter.

a. The rules may include regulations governing the production, handling, processing, and selling of agricultural products by persons advertising an agricultural product as organic. These rules may provide for standards, certification, inspections, testing, the assessment and collection of state fees, the maintenance of records, disciplinary action, and the issuance of stop sale orders as provided in this chapter.

b. The rules adopted under this section shall be consistent with federal regulations adopted pursuant to the federal Organic Food Production Act of 1990. The department may adopt rules which are stricter than federal regulations to the extent allowed by federal law.

2. The secretary, who may act through an authorized agent, shall serve as a certifying agent under 21 U.S.C. § 2115. The secretary or the secretary's agent may serve as an inspector in order to conduct investigations at times and places and to such an extent as the secretary and the board deems necessary to determine whether a person is in compliance with this chapter, according to rules adopted by the department.

3. A violation of this chapter includes a violation of any rule adopted or issue ordered pursuant to this chapter as provided in this chapter and under chapter 17A.

Sec. 5. NEW SECTION. 190C.5 STATE FEES — DEPOSIT INTO THE GENERAL FUND OF THE STATE.

1. The board shall establish a schedule of state fees under this chapter by rule adopted by the department, for persons required to be certified as producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic as provided in section 190C.13.

2. Beginning on July 1, 2000, the board shall establish the rate of fees based on an estimate of the amount of revenues from the fees required by the department to administer and enforce this chapter. The department shall annually review the estimate and recommend a change in the rate of fees to the board if the fees must be adjusted in order to comply with this subsection. The board may approve an adjustment in the fees by rule adopted by the department at any time in order to comply with this subsection.

3. The department shall collect state fees under this chapter as provided by the board, which shall be deposited into the general fund of the state.

Sec. 6. NEW SECTION. 190C.6 REGIONAL ORGANIC ASSOCIATIONS.

The department, upon approval by the board, may authorize a regional organic association to assist the board in certifying producers, handlers, and processors of agricultural products under section 190C.13. The regional organic association must be registered with the department. The registered regional organic association, upon approval of the board, may administer the provisions of section 190C.13 by doing all of the following:

1. Reviewing applications and providing applicants with technical assistance in completing applications. The department may authorize a regional organic association to process applications, including collecting and forwarding applications to the department.

2. Preparing a summary of an application, including materials accompanying the application, for review by the department and the organic standards board. A regional organic association may include a recommendation for approval, modification, or disapproval of an application.

SUBCHAPTER 3
REQUIREMENTS

Sec. 7. NEW SECTION. 190C.12 STANDARDS.

1. A person shall not sell an agricultural product as organic, unless the agricultural product is produced and handled in accordance with standards established by rules adopted by the department as provided in this chapter.

2. An agricultural product which is sold or advertised as organic must be produced and handled according to the following standards:

a. The agricultural product must be produced and handled without the use of synthetic chemicals, except as otherwise provided in rules adopted by the department.

b. The agricultural product must not be produced on land to which any prohibited substances have been applied during the three years immediately preceding the harvesting of the agricultural product.

c. The agricultural product must be produced and handled in compliance with an organic plan agreed to by the producer and handler of the product and the certifying agent.

Sec. 8. NEW SECTION. 190C.13 CERTIFICATION.

1. The department shall establish and administer a program to certify producers, handlers, and processors of agricultural products labeled, sold, or advertised as organic. A person shall not be certified unless the certification is approved by the organic standards board.

a. A certification shall expire one year from the date of issuance.

b. In order to be certified by the department, a producer, handler, or processor must submit an organic plan as prescribed by rules adopted by the department. The plan shall include methods used to ensure that the agricultural products are produced, handled, and processed according to requirements established by the department pursuant to this chapter. However, this section shall not require that any of the following persons be certified:

(1) A final retailer of agricultural products who does not process agricultural products.

(2) A person who receives five thousand dollars or less in gross income from the sale of agricultural products.

2. The department shall adopt rules upon approval by the board establishing a certification procedure.

Sec. 9. NEW SECTION. 190C.14 LABELING AND ORGANIC CERTIFICATION SEAL.

1. A label advertising an agricultural product as organic which is produced in this state shall conform with the requirements of this chapter including requirements established in rules adopted by the department pursuant to this chapter. The department shall adopt rules specifying the content of the label.

2. The department may establish a seal certifying that an agricultural product has been produced, handled, and processed in accordance with this chapter. A person shall not use a seal provided in this section to advertise an agricultural product, unless the person is authorized to use the seal by the department in accordance with requirements established by the department pursuant to rules adopted under chapter 17A. The seal may be used in addition to or in lieu of a label provided in subsection 1, as provided by the department.

Sec. 10. NEW SECTION. 190C.15 RECORDS.

A person required to be certified as provided in section 190C.13 shall maintain records regarding the production, processing, and handling of an organic agricultural product for five years. The records shall demonstrate that agricultural products advertised as organic have been produced, processed, and handled in conformance with this chapter.

SUBCHAPTER 4
ENFORCEMENT

Sec. 11. NEW SECTION. 190C.21 GENERAL ENFORCEMENT.

The department and the attorney general shall enforce this chapter. The attorney general may commence legal proceedings in district court at the request of the department or upon the attorney general's own initiative in order to enforce this chapter, including rules adopted

and orders issued by the department pursuant to this chapter. This chapter does not require the attorney general or the department to institute a proceeding for a minor violation, if the attorney general or department concludes that the public interest will be best served by a suitable notice of warning in writing.

Sec. 12. NEW SECTION. 190C.22 INVESTIGATIONS — COMPLAINTS — INSPECTIONS — EXAMINATIONS.

1. The department may conduct an investigation to determine if a person is complying with the requirements of this chapter.

2. Any person may file a complaint with the department regarding a violation of this chapter. The department shall adopt procedures for persons filing complaints. The department shall establish procedures for processing complaints including requiring minimum information to determine the verifiability of a complaint.

3. The department may conduct inspections at times and places, and to an extent that the department determines necessary in order to conclude whether an agricultural product is being produced, handled, processed, or sold in accordance with the provisions of this chapter. The department may inspect records required to be maintained pursuant to section 190C.15. The department may enter upon any public or private premises during regular business hours in a manner consistent with the laws of this state and the United States, including Article I, section 8, of the Constitution of the State of Iowa, or the fourth amendment to the Constitution of the United States for purposes of carrying out an inspection.

4. The department may conduct examinations of agricultural products in order to determine if the products are produced, handled, processed, and sold in compliance with this chapter.

a. The methods for examination shall be the official methods of the association of official agricultural chemists in all cases where methods have been adopted by the association.

b. A sworn statement by the state chemist or the state chemist's deputy stating the results of an analysis of a sample taken from a lot of agricultural products shall constitute prima facie evidence of the correctness of the analysis of that lot in an administrative hearing or court of this state.

Sec. 13. NEW SECTION. 190C.23 DISCIPLINARY ACTION.

1. The board may take disciplinary action concerning a person who is certified pursuant to this chapter by doing any of the following:

a. Issuing a letter of warning or reprimand.

b. Suspending or terminating a certification or denying an application for certification required pursuant to section 190C.13.

2. The disciplinary action must be based upon evidence satisfactory to the board that the person has used fraudulent or deceptive practices in violation of this chapter or has willfully disregarded the requirements of this chapter.

Sec. 14. NEW SECTION. 190C.24 STOP SALE ORDER.

1. If a person sells an agricultural product in violation of this chapter, including a rule adopted or an order issued under this chapter, the department may issue a written order to stop the sale of the agricultural product by a person in control of the agricultural product. The person named in the order shall not sell the item until the department determines that the sale of the agricultural product is in compliance with this chapter.

2. The department may require that the product be held at a designated place until released by the department.

3. The department or the attorney general may enforce the order by petitioning the district court in the county where the agricultural product is being sold.

4. The department shall release the agricultural product when the department issues a release order upon satisfaction that legal requirements compelling the issuance of the stop sale order are satisfied. The board must approve a delay in issuing a release order within

three months after requiring that the agricultural product be held. If the person is found to have violated this chapter, the person shall pay all expenses incurred by the department in connection with the agricultural product's removal.

Sec. 15. NEW SECTION. 190C.25 INJUNCTIONS.

The attorney general, the department, or an individual, private organization or association, county, or city may bring an action in district court to restrain a producer, processor, handler, or retailer from selling an agricultural product by false or misleading advertising claiming that the agricultural product is organic. A petitioner shall not be required to allege facts necessary to show, or tending to show, a lack of adequate remedy at law, or that irreparable damage or loss will result if the action is brought at law or that unique or special circumstances exist.

Sec. 16. NEW SECTION. 190C.26 PENALTIES.

A person who violates this chapter is subject to a civil penalty of not more than five thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the attorney general. Each day that the offense continues constitutes a separate offense. Civil penalties collected under this section shall be deposited in the general fund of the state.

Sec. 17. Chapter 190B, Code 1997, is repealed.

Sec. 18. IMPLEMENTATION.

1. The department of agriculture and land stewardship shall present proposed rules required to implement this Act to the organic standards board for approval prior to filing the rules pursuant to section 17A.5.

2. Not later than ninety days after the effective date of this Act, the governor and secretary shall appoint the members of the organic standards board as established pursuant to section 190C.2. The governor and secretary shall make the appointments from nominations received by the governor and secretary from interested persons and organizations as recognized by the governor and secretary. Members initially appointed to the board are not required to be certified as provided in section 190C.13.

Sec. 19. STAFF QUALIFICATIONS. The department shall adopt rules regarding the qualifications of departmental personnel responsible for implementing and administering this Act.

Sec. 20. EFFECTIVE AND APPLICABILITY DATES. This Act, being deemed of immediate importance, takes effect upon enactment. However, the department shall not be required to implement all of the provisions of this Act until it receives necessary accreditation or approval by the United States department of agriculture.

Approved May 20, 1998