

MAR 17 2003  
Place On Calendar

HOUSE FILE 600  
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 250)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act regulating organic agricultural products, providing for  
2 fees and penalties, and providing an effective date.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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**HOUSE FILE 600**

**H-1197**

- 1 Amend House File 600 as follows:
- 2 1. By striking page 6, line 33, through page 7,
- 3 line 29.
- 4 2. By renumbering as necessary.

**By** RAYHONS of Hancock

**H-1197** FILED MARCH 31, 2003

Adopted 4/1/03

HF 600

1 Section 1. Section 190C.1, Code 2003, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 190C.1 DEFINITIONS.

5 As used in this chapter, unless the context otherwise  
6 requires:

7 1. "Agricultural product" means any agricultural commodity  
8 or product, whether raw or processed, including any commodity  
9 or product derived from livestock, that is marketed in this  
10 state for human or livestock consumption.

11 2. "Council" means the organic advisory council  
12 established pursuant to section 190C.2.

13 3. "Crop" means a plant or part of a plant intended to be  
14 marketed as an agricultural product or fed to livestock.

15 4. "Department" means the department of agriculture and  
16 land stewardship.

17 5. "Handler" means a person engaged in the business of  
18 handling agricultural products, including producers who handle  
19 crops or livestock of their own production, except such term  
20 shall not include final retailers of agricultural products  
21 that do not process agricultural products.

22 6. "Label" means a display of written, printed, or graphic  
23 material on the immediate container of an agricultural product  
24 or any such material affixed to any agricultural product or  
25 affixed to a bulk container containing an agricultural  
26 product, except for package liners or a display of written,  
27 printed, or graphic material which contains only information  
28 about the weight of the product.

29 7. "Livestock" means any cattle, sheep, goats, swine,  
30 poultry, or equine animals used for food or in the production  
31 of food, fiber, feed, or other agricultural-based consumer  
32 products; wild or domesticated game; or other nonplant life,  
33 except such term shall not include aquatic animals or bees for  
34 the production of food, fiber, feed, or other agricultural-  
35 based consumer products.

1 8. "National organic program" means the program  
2 administered by the United States department of agriculture  
3 pursuant to 7 C.F.R. pt. 205, which implements the federal  
4 Organic Food Production Act of 1990, 7 U.S.C. § 6501 et seq.

5 9. "Organic" means a labeling term that refers to an  
6 agricultural product produced in accordance with this chapter.

7 10. "Organic agricultural product" means an agricultural  
8 product that is certified or otherwise qualifies as organic in  
9 accordance with the provisions of this chapter as they existed  
10 on and after May 20, 1998.

11 11. "Processing" means cooling, baking, curing, heating,  
12 drying, mixing, grinding, churning, separating, extracting,  
13 slaughtering, cutting, fermenting, distilling, eviscerating,  
14 preserving, dehydrating, freezing, chilling, or otherwise  
15 manufacturing, and includes the packaging, canning, jarring,  
16 or otherwise enclosing in a food container.

17 12. "Processor" means a person engaged in the business of  
18 processing.

19 13. "Producer" means a person who engages in the business  
20 of growing or producing food, fiber, feed, or other  
21 agricultural-based consumer products.

22 14. "Regional organic association" means a corporation  
23 authorized pursuant to section 190C.6.

24 15. "Retailer" means a person who sells agricultural  
25 products on a retail basis. "Retailer" includes a food  
26 establishment as defined in section 137F.1. "Retailer" also  
27 includes a restaurant, delicatessen, bakery, grocery store, or  
28 any retail outlet with an in-store restaurant, delicatessen,  
29 bakery, salad bar, or other eat-in or carry-out service of  
30 processed or prepared raw and ready-to-eat food.

31 16. "Secretary" means the secretary of agriculture who is  
32 the director of the department of agriculture and land  
33 stewardship.

34 Sec. 2. NEW SECTION. 190C.1A OTHER DEFINITIONS.

35 For purposes of this chapter, words and phrases that are

1 not defined in section 190C.1 shall have the same meanings as  
2 provided in 7 C.F.R. pt. 205.

3 Sec. 3. NEW SECTION. 190C.1B GENERAL AUTHORITY.

4 Any provision in this chapter referring generally to  
5 compliance with the requirements of this chapter also includes  
6 compliance with requirements in rules adopted by the  
7 department pursuant to this chapter, orders issued by the  
8 department as authorized under this chapter, and the terms and  
9 conditions applicable to any certification made pursuant to  
10 this chapter.

11 Sec. 4. Section 190C.2, subsection 1, Code 2003, is  
12 amended to read as follows:

13 1. An organic ~~standards-board~~ advisory council is  
14 established within the department. ~~The powers-of-the-board~~  
15 ~~are-vested-in-and-shall-be-exercised-by~~ council is composed of  
16 eleven members appointed by the governor and secretary, as  
17 provided in this section. The governor and secretary shall  
18 accept nominations from persons or organizations representing  
19 persons who serve on the ~~board~~ council, as determined by the  
20 governor and secretary making appointments under this section.

21 Sec. 5. Section 190C.2, subsection 2, unnumbered paragraph  
22 1, Code 2003, is amended to read as follows:

23 The members shall serve staggered terms of four years  
24 beginning and ending as provided in section 69.19. ~~However,~~  
25 ~~the-governor-and-secretary-shall-cooperate-to-appoint-initial~~  
26 ~~members-to-serve-for-less-than-four-years-to-ensure-members~~  
27 ~~serve-staggered-terms.~~ Members appointed under this section  
28 shall be persons knowledgeable regarding the production,  
29 handling, processing, and retailing of organic agricultural  
30 products. The members of the ~~board~~ council shall be appointed  
31 as follows:

32 Sec. 6. Section 190C.2, subsections 3, 4, 6, and 7, Code  
33 2003, are amended to read as follows:

34 3. A vacancy on the ~~board~~ council shall be filled in the  
35 same manner as an original appointment. A person appointed to

1 fill a vacancy shall serve only for the unexpired portion of  
2 the term. A member is eligible for reappointment. The  
3 governor may remove a member appointed by the governor and the  
4 secretary may remove a member appointed by the secretary, if  
5 the removal is based on the member's misfeasance, malfeasance,  
6 or willful neglect of duty or other just cause, after notice  
7 and hearing, unless the notice and hearing is expressly waived  
8 in writing.

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

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

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

29 Sec. 7. NEW SECTION. 190C.2A DUTIES OF THE COUNCIL.

30 The organic advisory council shall assist the department in  
31 implementing and administering the provisions of this chapter  
32 as requested by the department. Upon request by the  
33 department, the council shall do all of the following:

- 34 1. Develop rules, policies, and procedures required to  
35 implement and administer this chapter.

- 1     2. Collect information required by the department in  
2 implementing and administering this chapter.
- 3     3. Interpret the requirements of this chapter, including  
4 rules adopted and orders issued pursuant to this chapter, and  
5 requirements of the national organic program.
- 6     4. Establish and change fees as provided in section  
7 190C.5.
- 8     5. Provide advice regarding the most effective manner to  
9 use services provided by regional organic associations as  
10 provided in section 190C.6.
- 11    6. Provide information and expert opinions relating to  
12 organic agricultural products to the department.
- 13    7. Provide information relating to organic agricultural  
14 products to interested persons.
- 15    8. Promote organic agricultural products to consumers.

16    Sec. 8. NEW SECTION. 190C.2B ESTABLISHMENT AND  
17 IMPLEMENTATION OF THIS CHAPTER.

- 18    1. The department shall implement and administer the  
19 provisions of this chapter for agricultural products that have  
20 been produced and handled within this state using organic  
21 methods as provided in this chapter. The department may  
22 consult with the council in implementing and administering  
23 this chapter. The department may certify agricultural  
24 products that have been produced and handled outside this  
25 state using an organic method as provided in this chapter.
- 26    2. The department may establish a state organic program as  
27 provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The  
28 secretary may apply for any approval or accreditation or  
29 execute any agreement required under the national organic  
30 program in order to implement, administer, and enforce this  
31 chapter.
- 32    3. Unless prohibited by the national organic program, the  
33 attorney general may be joined as a party authorized to  
34 enforce the provisions of this chapter.
- 35    4. All provisions of this chapter shall be deemed in

1 compliance with the national organic program, unless expressly  
2 provided otherwise by the United States department of  
3 agriculture.

4 Sec. 9. Section 190C.3, Code 2003, is amended by striking  
5 the section and inserting in lieu thereof the following:

6 190C.3 DUTIES AND POWERS OF THE DEPARTMENT.

7 In implementing the provisions of this chapter consistent  
8 with the national organic program, the department shall  
9 provide for the administration and enforcement of this  
10 chapter, including by adopting rules and issuing orders  
11 pursuant to chapter 17A. The department may adopt any part of  
12 the national organic program by reference.

13 1. The department shall be a state certifying agent and  
14 the department shall be the certifying agent's operation as  
15 provided in the national organic program.

16 2. The department may request assistance from the council  
17 as provided in section 190C.2A or from one or more regional  
18 organic associations as provided in section 190C.6.

19 3. a. The secretary may serve as the state organic  
20 program's governing state official. However, no other person  
21 shall serve in that position without approval by the  
22 secretary.

23 b. The secretary may designate a person within the  
24 department to act on the secretary's behalf in carrying out  
25 the duties of the state organic program's governing state  
26 official.

27 4. The department may assume enforcement obligations under  
28 the national organic program in this state for the  
29 requirements of this chapter. The department shall provide  
30 for on-site inspections. The department and the attorney  
31 general may coordinate the enforcement activities as provided  
32 in section 190C.21.

33 Sec. 10. NEW SECTION. 190C.3A MORE RESTRICTIVE  
34 REQUIREMENTS.

35 The department may adopt rules that contain more

1 restrictive requirements for agricultural products to be sold,  
2 labeled, or represented as organic than generally provided in  
3 the national organic program. The rules must be adopted in  
4 compliance with the national organic program. The department  
5 may also adopt different or supplemental procedural  
6 requirements than generally provided in the national organic  
7 program if the rules are adopted in compliance with the  
8 national organic program. The rules may include but are not  
9 limited to rules governing any of the following:

10 1. The establishment of a departmental seal for  
11 agricultural products that are sold, labeled, or represented  
12 as organic. A person shall not use the departmental seal to  
13 advertise an agricultural product, unless the person is  
14 authorized to use the seal by the department.

15 2. The certification of producers, handlers, processors,  
16 or retailers who are not required to be certified pursuant to  
17 the general requirements of the national organic program.

18 3. Additional information accompanying an application for  
19 certification by the council or a more extensive on-site  
20 inspection by the department prior to certification.

21 4. The inspection of production or handling operations and  
22 the examination of agricultural products purported to be  
23 organic.

24 5. More extensive recordkeeping or the maintenance of  
25 records for a longer period.

26 6. The limitation or abrogation of a right to mediation,  
27 or revision in procedures for mediation.

28 7. The imposition of fees which are not specifically  
29 provided by the national organic program.

30 Sec. 11. Section 190C.5, Code 2003, is amended to read as  
31 follows:

32 190C.5 STATE FEES -- DEPOSIT INTO GENERAL FUND OF THE  
33 STATE.

34 1. a. The board department acting as a state certifying  
35 agent shall establish a schedule of state fees under-this

1 ~~chapter by rule adopted by the department for persons required~~  
2 ~~to be certified as producers, handlers, and processors of~~  
3 ~~agricultural products labeled, sold, or advertised as organic~~  
4 ~~as provided in section 190C.13. The fees shall be charged to~~  
5 ~~persons who are certified under this chapter, including~~  
6 ~~production operations and handling operations, in a manner~~  
7 ~~that is consistent with the national organic program.~~

8 ~~2.--Beginning on July 1, 2000, the board~~ The department  
9 shall establish the rate of fees based on an estimate of the  
10 amount of revenues from the fees required by the department to  
11 administer and enforce this chapter.

12 b. The department shall annually review the estimate and  
13 ~~recommend a~~ may change in the rate of fees ~~to the board if~~  
14 ~~the.~~ The fees must be adjusted in order to comply with this  
15 subsection. ~~The board may approve an adjustment in the fees~~  
16 ~~by rule adopted by the department at any time in order to~~  
17 ~~comply with this subsection.~~

18 2. a. The department acting as a state certifying agent  
19 may charge additional fees for carrying out the duties of that  
20 position to the extent that the fees are consistent with the  
21 national organic program.

22 b. The secretary acting as the state organic program's  
23 governing state official may charge fees for carrying out the  
24 duties of that position to the extent consistent with the  
25 national organic program.

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

29 Sec. 12. Section 190C.6, Code 2003, is amended to read as  
30 follows:

31 190C.6 REGIONAL ORGANIC ASSOCIATIONS.

32 1. Regional organic associations may be established as  
33 provided in this section. A regional organic association must  
34 be organized as a corporation under chapter 504A which has  
35 certified members, elects its own officers and directors, and

1 is independent from the department.

2 ~~2. The department, upon approval by the board,~~ may  
3 authorize a regional organic association to assist the ~~board~~  
4 ~~department in certifying producers, handlers, and processors~~  
5 ~~of agricultural products under acting as a state certifying~~  
6 ~~agent pursuant to section 190C.13 190C.3.~~ The regional  
7 organic association must be registered with the department.  
8 ~~The~~ Upon request by the department, a registered regional  
9 organic association, ~~upon approval of the board, may~~  
10 ~~administer the provisions of section 190C.13 by doing~~ may do  
11 all of the following:

12 ~~1. a. Reviewing~~ Review applications and ~~providing~~ provide  
13 applicants with technical assistance in completing  
14 applications. The department may authorize a regional organic  
15 association to process applications, including collecting and  
16 forwarding applications to the department.

17 ~~2. b. Preparing~~ Prepare a summary of an application,  
18 including materials accompanying the application, for review  
19 by the department ~~and the organic standards board.~~ A regional  
20 organic association may include a recommendation for approval,  
21 modification, or disapproval of an application.

22 Sec. 13. Section 190C.21, Code 2003, is amended to read as  
23 follows:

24 190C.21 GENERAL ENFORCEMENT.

25 1. The department and the attorney general acting as a  
26 state certifying agent and on behalf of the secretary who  
27 elects to act as the state organic program's governing state  
28 official shall enforce this chapter.

29 2. The To the extent authorized by the national organic  
30 program, the attorney general shall assist the department in  
31 enforcing this chapter. The department or the attorney  
32 general may commence legal proceedings in district court to  
33 enforce a provision of this chapter. If the attorney general  
34 assists the department under this section, the attorney  
35 general may commence the legal proceedings at the request of

1 the department or upon the attorney general's own initiative  
2 ~~in order to enforce this chapter, including rules adopted and~~  
3 ~~orders issued by the department pursuant to this chapter.~~

4 3. This chapter does not require the ~~attorney general or~~  
5 ~~the~~ department or attorney general to institute a proceeding  
6 for a minor violation, if the department or attorney general  
7 ~~or department~~ concludes that the public interest will be best  
8 served by a suitable notice of warning in writing.

9 Sec. 14. Section 190C.22, Code 2003, is amended to read as  
10 follows:

11 190C.22 INVESTIGATIONS, COMPLAINTS, INSPECTIONS, AND  
12 EXAMINATIONS.

13 ~~1.~~ In enforcing the provisions of this chapter  
14 consistent with the national organic program, the department  
15 may conduct an investigation to determine if a person is  
16 complying with the requirements of this chapter. To the  
17 extent consistent with the national organic program, all of  
18 the following shall apply:

19 2. 1. Any The department may receive a complaint from any  
20 ~~person may file a complaint with the department~~ regarding a  
21 violation of this chapter. The department shall adopt  
22 procedures for persons filing complaints. The department  
23 shall establish procedures for processing complaints including  
24 requiring minimum information to determine the verifiability  
25 of a complaint.

26 3. 2. The department may conduct inspections at times and  
27 places and to an extent that the department determines  
28 necessary in order to conclude whether ~~an agricultural product~~  
29 ~~is being produced, handled, processed, or sold in accordance~~  
30 ~~with the provisions~~ there is a violation of this chapter. ~~The~~  
31 ~~department may inspect records required to be maintained~~  
32 ~~pursuant to section 190C.15.~~ The department may enter upon  
33 any public or private premises during regular business hours  
34 in a manner consistent with the laws of this state and the  
35 United States, including Article I, section 8, of the

1 Constitution of the State of Iowa, or the fourth amendment to  
2 the Constitution of the United States for purposes of carrying  
3 out an inspection.

4 ~~4-~~ 3. The department may conduct examinations of  
5 agricultural products in order to determine if the  
6 agricultural products are ~~produced, handled, processed, and~~  
7 ~~sold~~ in compliance with this chapter. Unless the national  
8 organic program otherwise requires, all of the following shall  
9 apply:

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

14 b. A sworn statement by the state chemist or the state  
15 chemist's deputy stating the results of an analysis of a  
16 sample taken from a lot of agricultural products shall  
17 constitute prima facie evidence of the correctness of the  
18 analysis of that lot in ~~an administrative hearing~~ a contested  
19 case proceeding or court ~~of this state~~ proceeding.

20 Sec. 15. Section 190C.23, Code 2003, is amended by  
21 striking the section and inserting in lieu thereof the  
22 following:

23 190C.23 DISCIPLINARY ACTION.

24 1. The department may take disciplinary action against a  
25 person who is certified pursuant to this chapter for  
26 noncompliance with a provision of this chapter or a willful  
27 violation of this chapter. The procedures of the disciplinary  
28 action shall be consistent with the national organic program.  
29 The disciplinary action shall proceed as provided in chapter  
30 17A unless contrary to the national organic program. The  
31 department may do any of the following:

32 a. Issue a letter of warning or reprimand.

33 b. Suspend or revoke the person's certification.

34 2. Any other disciplinary action provided in the national  
35 organic program shall be implemented by the secretary acting

1 as the state organic program's governing state official.

2 Sec. 16. Section 190C.24, subsection 1, Code 2003, is  
3 amended to read as follows:

4 ~~It is~~ Unless prohibited by the national organic program,  
5 the department may issue a stop order to a person who sells,  
6 labels, or represents an agricultural product as organic in  
7 violation of this chapter, including a rule adopted or an  
8 order issued under this chapter, the.

9 1. The department may issue a written order to stop the  
10 sale of the agricultural product by a person in control of the  
11 agricultural product. The person named in the order shall not  
12 sell, label, or represent the item agricultural product as  
13 organic until the department determines that the sale of the  
14 agricultural product is in compliance with this chapter.

15 Sec. 17. Section 190C.24, subsection 4, Code 2003, is  
16 amended to read as follows:

17 4. The department shall release the agricultural product  
18 when the department issues a release order upon satisfaction  
19 that legal requirements compelling the issuance of the stop  
20 sale order are satisfied. ~~The board must approve a delay in~~  
21 ~~issuing a release order within three months after requiring~~  
22 ~~that the agricultural product be held.~~ If the person is found  
23 to have violated this chapter, the person shall pay all  
24 expenses incurred by the department in connection with the  
25 agricultural product's removal.

26 Sec. 18. Section 190C.25, Code 2003, is amended to read as  
27 follows:

28 190C.25 INJUNCTIONS.

29 ~~The attorney general,~~ Unless prohibited by the national  
30 organic program, the department, or the attorney general, an  
31 individual, a private organization or association, a county,  
32 or a city may bring an action in district court to restrain a  
33 producer, processor, handler, or retailer from selling an  
34 agricultural product by false or misleading advertising  
35 claiming that the agricultural product is organic. A

1 petitioner shall not be required to allege facts necessary to  
2 show, or tending to show, a lack of adequate remedy at law, or  
3 that irreparable damage or loss will result if the action is  
4 brought at law or that unique or special circumstances exist.

5 Sec. 19. Section 190C.26, Code 2003, is amended to read as  
6 follows:

7 190C.26 SELLING, LABELING, OR REPRESENTING AGRICULTURAL  
8 PRODUCTS AS ORGANIC -- PENALTIES.

9 A person ~~who violates this chapter is~~ shall not knowingly  
10 sell, label, or represent an agricultural product as organic,  
11 except in accordance with this chapter. A person who violates  
12 this section shall be subject to a civil penalty of not more  
13 than ~~five~~ ten thousand dollars. Civil penalties shall be  
14 assessed by the district court in an action initiated by the  
15 department or attorney general as provided in section 190C.21.  
16 Each Unless prohibited by the national organic program, each  
17 day that the ~~offense~~ violation continues constitutes a  
18 separate ~~offense~~ violation. Civil penalties collected under  
19 this section shall be deposited in the general fund of the  
20 state.

21 Sec. 20. DIRECTIONS TO CODE EDITOR. The Code editor is  
22 directed to reorganize and renumber the provisions of chapter  
23 190C to enhance its readability. The Code editor may  
24 reorganize the provisions in the 2003 Code Supplement or the  
25 2005 Code. Nothing in this section limits the Code editor's  
26 authority under section 2B.13.

27 Sec. 21. Sections 190C.4, 190C.12, 190C.13, 190C.14, and  
28 190C.15, Code 2003, are repealed.

29 Sec. 22. EFFECTIVE DATE. This Act, being deemed of  
30 immediate importance, takes effect upon enactment.

31 EXPLANATION

32 BACKGROUND. This bill substantially revises Code chapter  
33 190C providing for organic agricultural products as  
34 administered by the department of agriculture and land  
35 stewardship (department). The Code chapter was enacted in

1 Senate File 2332 during the 1998 Legislative Session. Senate  
2 File 2332 was in response to a federal Act referred to as the  
3 federal Organic Food Production Act of 1990. Senate File 2332  
4 in part provided that the department was not required to  
5 implement all of its provisions until it received necessary  
6 accreditation or approval by the United States department of  
7 agriculture (USDA). Late in 2000, the USDA adopted final  
8 rules governing requirements for agricultural products which  
9 are sold, labeled, or represented as organic, known as the  
10 national organic program (NOP). Current provisions in Code  
11 chapter 190C may be in conflict with the federal regulations.

12 ADMINISTRATIVE ORGANIZATION. Current Code chapter 190C is  
13 administered jointly by the department and an organic  
14 standards board composed of members appointed by the governor  
15 and the secretary of agriculture. The board approves  
16 applications for certification, establishes procedures  
17 governing appeals of decisions made by the department or  
18 board, and establishes a fee structure for certification. The  
19 bill provides that the department performs these duties. The  
20 name of the board is changed to the organic advisory council  
21 and its functions are made advisory. The bill does not  
22 substantially modify the role of regional organic associations  
23 responsible for assisting in certification. The department  
24 retains its existing authority to administer the Code chapter,  
25 including by providing for inspections, the examination of  
26 agricultural products, and the issuance of stop orders. The  
27 attorney general retains authority to enforce the Code  
28 chapter's provisions in court. The bill does not  
29 significantly amend provisions providing for a private right  
30 of attorney general.

31 To the extent that the bill amends these provisions, it  
32 uses language contained in the NOP, it provides more  
33 prominence to the department rather than the attorney general,  
34 and it repeats that provisions which supplement the NOP apply  
35 only to the extent allowed by federal law.

1 COMPLIANCE WITH FEDERAL REQUIREMENTS. The bill requires  
2 the department to adopt provisions of the NOP by  
3 administrative rule. The bill eliminates the statutory  
4 provisions establishing standards for agricultural products to  
5 be considered organic. The NOP contains extensive standards  
6 for the production and handling of agricultural products which  
7 are to be labeled, sold, or represented as organic. Specific  
8 Code sections which are repealed include Code sections 190C.12  
9 (providing standards), 190C.13 (providing for certification),  
10 190C.14 (providing for labeling), and 190C.15 (providing for  
11 records). In addition, the bill eliminates specific  
12 references to processors and retailers since the NOP  
13 specifically regulates producers and handlers, but considers  
14 certain processors as handlers.

15 Under federal regulation, the USDA accredits private or  
16 governmental entities as certifying agents responsible for  
17 certifying producers and handlers. The bill authorizes the  
18 department to become a state certifying agent. The NOP also  
19 provides that a state official may assume the role of the  
20 state organic program's governing state official, largely  
21 responsible for enforcing the state organic program. The bill  
22 provides that the secretary of agriculture may serve in that  
23 position upon approval by the USDA. The federal regulations  
24 allow a state to adopt more restrictive requirements if  
25 approved by the USDA. The federal regulations also allow the  
26 department to provide different procedural requirements than  
27 the NOP provides, and the bill also authorizes the department  
28 to adopt different rules if done in compliance with USDA  
29 requirements.

30 CIVIL PENALTY. The bill increases the civil penalty for  
31 violations of the Code chapter from \$5,000 to \$10,000 in  
32 conformance with the NOP. Code chapter 190C provides that the  
33 penalty applies for any violation of the Code chapter. The  
34 bill provides that the penalty applies to a person who  
35 knowingly sells, labels, or represents an agricultural product

1 as organic, except as provided in the Code chapter adopting  
2 the state organic program.

3 CODE EDITOR DIRECTIVE. The bill directs the Code editor to  
4 rearrange and renumber the Code sections in the Code chapter  
5 in order to enhance the readability of the chapter.

6 EFFECTIVE DATE. The bill takes effect upon enactment.

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HOUSE FILE 600  
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO HSB 250)

(As Amended and Passed by the House April 1, 2003)

Passed House, Date Passed 4/1/03 Passed Senate, Date 4/22/03  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved 5/1/03

**A BILL FOR**

1 An Act regulating organic agricultural products, providing for  
2 fees and penalties, and providing an effective date.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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Deleted Language \*

HF 600

1 Section 1. Section 190C.1, Code 2003, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 190C.1 DEFINITIONS.

5 As used in this chapter, unless the context otherwise  
6 requires:

7 1. "Agricultural product" means any agricultural commodity  
8 or product, whether raw or processed, including any commodity  
9 or product derived from livestock, that is marketed in this  
10 state for human or livestock consumption.

11 2. "Council" means the organic advisory council  
12 established pursuant to section 190C.2.

13 3. "Crop" means a plant or part of a plant intended to be  
14 marketed as an agricultural product or fed to livestock.

15 4. "Department" means the department of agriculture and  
16 land stewardship.

17 5. "Handler" means a person engaged in the business of  
18 handling agricultural products, including producers who handle  
19 crops or livestock of their own production, except such term  
20 shall not include final retailers of agricultural products  
21 that do not process agricultural products.

22 6. "Label" means a display of written, printed, or graphic  
23 material on the immediate container of an agricultural product  
24 or any such material affixed to any agricultural product or  
25 affixed to a bulk container containing an agricultural  
26 product, except for package liners or a display of written,  
27 printed, or graphic material which contains only information  
28 about the weight of the product.

29 7. "Livestock" means any cattle, sheep, goats, swine,  
30 poultry, or equine animals used for food or in the production  
31 of food, fiber, feed, or other agricultural-based consumer  
32 products; wild or domesticated game; or other nonplant life,  
33 except such term shall not include aquatic animals or bees for  
34 the production of food, fiber, feed, or other agricultural-  
35 based consumer products.

1 8. "National organic program" means the program  
2 administered by the United States department of agriculture  
3 pursuant to 7 C.F.R. pt. 205, which implements the federal  
4 Organic Food Production Act of 1990, 7 U.S.C. § 6501 et seq.

5 9. "Organic" means a labeling term that refers to an  
6 agricultural product produced in accordance with this chapter.

7 10. "Organic agricultural product" means an agricultural  
8 product that is certified or otherwise qualifies as organic in  
9 accordance with the provisions of this chapter as they existed  
10 on and after May 20, 1998.

11 11. "Processing" means cooling, baking, curing, heating,  
12 drying, mixing, grinding, churning, separating, extracting,  
13 slaughtering, cutting, fermenting, distilling, eviscerating,  
14 preserving, dehydrating, freezing, chilling, or otherwise  
15 manufacturing, and includes the packaging, canning, jarring,  
16 or otherwise enclosing in a food container.

17 12. "Processor" means a person engaged in the business of  
18 processing.

19 13. "Producer" means a person who engages in the business  
20 of growing or producing food, fiber, feed, or other  
21 agricultural-based consumer products.

22 14. "Regional organic association" means a corporation  
23 authorized pursuant to section 190C.6.

24 15. "Retailer" means a person who sells agricultural  
25 products on a retail basis. "Retailer" includes a food  
26 establishment as defined in section 137F.1. "Retailer" also  
27 includes a restaurant, delicatessen, bakery, grocery store, or  
28 any retail outlet with an in-store restaurant, delicatessen,  
29 bakery, salad bar, or other eat-in or carry-out service of  
30 processed or prepared raw and ready-to-eat food.

31 16. "Secretary" means the secretary of agriculture who is  
32 the director of the department of agriculture and land  
33 stewardship.

34 Sec. 2. NEW SECTION. 190C.1A OTHER DEFINITIONS.

35 For purposes of this chapter, words and phrases that are

1 not defined in section 190C.1 shall have the same meanings as  
2 provided in 7 C.F.R. pt. 205.

3 Sec. 3. NEW SECTION. 190C.1B GENERAL AUTHORITY.

4 Any provision in this chapter referring generally to  
5 compliance with the requirements of this chapter also includes  
6 compliance with requirements in rules adopted by the  
7 department pursuant to this chapter, orders issued by the  
8 department as authorized under this chapter, and the terms and  
9 conditions applicable to any certification made pursuant to  
10 this chapter.

11 Sec. 4. Section 190C.2, subsection 1, Code 2003, is  
12 amended to read as follows:

13 1. An organic ~~standards-board~~ advisory council is  
14 established within the department. The ~~powers-of-the-board~~  
15 ~~are-vested-in-and-shall-be-exercised-by~~ council is composed of  
16 eleven members appointed by the governor and secretary, as  
17 provided in this section. The governor and secretary shall  
18 accept nominations from persons or organizations representing  
19 persons who serve on the ~~board~~ council, as determined by the  
20 governor and secretary making appointments under this section.

21 Sec. 5. Section 190C.2, subsection 2, unnumbered paragraph  
22 1, Code 2003, is amended to read as follows:

23 The members shall serve staggered terms of four years  
24 beginning and ending as provided in section 69.19. ~~However,~~  
25 ~~the-governor-and-secretary-shall-cooperate-to-appoint-initial~~  
26 ~~members-to-serve-for-less-than-four-years-to-ensure-members~~  
27 ~~serve-staggered-terms.~~ Members appointed under this section  
28 shall be persons knowledgeable regarding the production,  
29 handling, processing, and retailing of organic agricultural  
30 products. The members of the ~~board~~ council shall be appointed  
31 as follows:

32 Sec. 6. Section 190C.2, subsections 3, 4, 6, and 7, Code  
33 2003, are amended to read as follows:

34 3. A vacancy on the ~~board~~ council shall be filled in the  
35 same manner as an original appointment. A person appointed to

1 fill a vacancy shall serve only for the unexpired portion of  
2 the term. A member is eligible for reappointment. The  
3 governor may remove a member appointed by the governor and the  
4 secretary may remove a member appointed by the secretary, if  
5 the removal is based on the member's misfeasance, malfeasance,  
6 or willful neglect of duty or other just cause, after notice  
7 and hearing, unless the notice and hearing is expressly waived  
8 in writing.

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

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

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

29 Sec. 7. NEW SECTION. 190C.2A DUTIES OF THE COUNCIL.

30 The organic advisory council shall assist the department in  
31 implementing and administering the provisions of this chapter  
32 as requested by the department. Upon request by the  
33 department, the council shall do all of the following:

- 34 1. Develop rules, policies, and procedures required to  
35 implement and administer this chapter.

1 2. Collect information required by the department in  
2 implementing and administering this chapter.

3 3. Interpret the requirements of this chapter, including  
4 rules adopted and orders issued pursuant to this chapter, and  
5 requirements of the national organic program.

6 4. Establish and change fees as provided in section  
7 190C.5.

8 5. Provide advice regarding the most effective manner to  
9 use services provided by regional organic associations as  
10 provided in section 190C.6.

11 6. Provide information and expert opinions relating to  
12 organic agricultural products to the department.

13 7. Provide information relating to organic agricultural  
14 products to interested persons.

15 8. Promote organic agricultural products to consumers.

16 Sec. 8. NEW SECTION. 190C.2B ESTABLISHMENT AND  
17 IMPLEMENTATION OF THIS CHAPTER.

18 1. The department shall implement and administer the  
19 provisions of this chapter for agricultural products that have  
20 been produced and handled within this state using organic  
21 methods as provided in this chapter. The department may  
22 consult with the council in implementing and administering  
23 this chapter. The department may certify agricultural  
24 products that have been produced and handled outside this  
25 state using an organic method as provided in this chapter.

26 2. The department may establish a state organic program as  
27 provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The  
28 secretary may apply for any approval or accreditation or  
29 execute any agreement required under the national organic  
30 program in order to implement, administer, and enforce this  
31 chapter.

32 3. Unless prohibited by the national organic program, the  
33 attorney general may be joined as a party authorized to  
34 enforce the provisions of this chapter.

35 4. All provisions of this chapter shall be deemed in

1 compliance with the national organic program, unless expressly  
2 provided otherwise by the United States department of  
3 agriculture.

4 Sec. 9. Section 190C.3, Code 2003, is amended by striking  
5 the section and inserting in lieu thereof the following:

6 190C.3 DUTIES AND POWERS OF THE DEPARTMENT.

7 In implementing the provisions of this chapter consistent  
8 with the national organic program, the department shall  
9 provide for the administration and enforcement of this  
10 chapter, including by adopting rules and issuing orders  
11 pursuant to chapter 17A. The department may adopt any part of  
12 the national organic program by reference.

13 1. The department shall be a state certifying agent and  
14 the department shall be the certifying agent's operation as  
15 provided in the national organic program.

16 2. The department may request assistance from the council  
17 as provided in section 190C.2A or from one or more regional  
18 organic associations as provided in section 190C.6.

19 3. a. The secretary may serve as the state organic  
20 program's governing state official. However, no other person  
21 shall serve in that position without approval by the  
22 secretary.

23 b. The secretary may designate a person within the  
24 department to act on the secretary's behalf in carrying out  
25 the duties of the state organic program's governing state  
26 official.

27 4. The department may assume enforcement obligations under  
28 the national organic program in this state for the  
29 requirements of this chapter. The department shall provide  
30 for on-site inspections. The department and the attorney  
31 general may coordinate the enforcement activities as provided  
32 in section 190C.21.

\* 33 Sec. 10. Section 190C.5, Code 2003, is amended to read as  
34 follows:

35 190C.5 STATE FEES -- DEPOSIT INTO GENERAL FUND OF THE

1 STATE.

2 1. a. The board department acting as a state certifying  
3 agent shall establish a schedule of state fees under this  
4 chapter by rule adopted by the department for persons required  
5 to be certified as producers, handlers, and processors of  
6 agricultural products labeled, sold, or advertised as organic  
7 as provided in section 190C.13. The fees shall be charged to  
8 persons who are certified under this chapter, including  
9 production operations and handling operations, in a manner  
10 that is consistent with the national organic program.

11 ~~2. Beginning on July 17, 2000, the board~~ The department  
12 shall establish the rate of fees based on an estimate of the  
13 amount of revenues from the fees required by the department to  
14 administer and enforce this chapter.

15 b. The department shall annually review the estimate and  
16 ~~recommend a~~ may change in the rate of fees ~~to the board if~~  
17 the. The fees must be adjusted in order to comply with this  
18 subsection. ~~The board may approve an adjustment in the fees~~  
19 ~~by rule adopted by the department at any time in order to~~  
20 ~~comply with this subsection.~~

21 2. a. The department acting as a state certifying agent  
22 may charge additional fees for carrying out the duties of that  
23 position to the extent that the fees are consistent with the  
24 national organic program.

25 b. The secretary acting as the state organic program's  
26 governing state official may charge fees for carrying out the  
27 duties of that position to the extent consistent with the  
28 national organic program.

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

32 Sec. 11. Section 190C.6, Code 2003, is amended to read as  
33 follows:

34 190C.6 REGIONAL ORGANIC ASSOCIATIONS.

35 1. Regional organic associations may be established as

1 provided in this section. A regional organic association must  
2 be organized as a corporation under chapter 504A which has  
3 certified members, elects its own officers and directors, and  
4 is independent from the department.

5 2. The department, upon approval by the board, may  
6 authorize a regional organic association to assist the board  
7 department in certifying producers, handlers, and processors  
8 of agricultural products under acting as a state certifying  
9 agent pursuant to section 190C.13 190C.3. The regional  
10 organic association must be registered with the department.  
11 The Upon request by the department, a registered regional  
12 organic association, upon approval of the board, may  
13 administer the provisions of section 190C.13 by doing may do  
14 all of the following:

15 1. a. Reviewing Review applications and providing provide  
16 applicants with technical assistance in completing  
17 applications. The department may authorize a regional organic  
18 association to process applications, including collecting and  
19 forwarding applications to the department.

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

25 Sec. 12. Section 190C.21, Code 2003, is amended to read as  
26 follows:

27 190C.21 GENERAL ENFORCEMENT.

28 1. The department and the attorney general acting as a  
29 state certifying agent and on behalf of the secretary who  
30 elects to act as the state organic program's governing state  
31 official shall enforce this chapter.

32 2. The To the extent authorized by the national organic  
33 program, the attorney general shall assist the department in  
34 enforcing this chapter. The department or the attorney  
35 general may commence legal proceedings in district court to

1 enforce a provision of this chapter. If the attorney general  
2 assists the department under this section, the attorney  
3 general may commence the legal proceedings at the request of  
4 the department or upon the attorney general's own initiative  
5 ~~in-order-to-enforce-this-chapter,-including-rules-adopted-and~~  
6 ~~orders-issued-by-the-department-pursuant-to-this-chapter.~~

7 3. This chapter does not require the ~~attorney-general-or~~  
8 the department or attorney general to institute a proceeding  
9 for a minor violation, if the department or attorney general  
10 ~~or-department~~ concludes that the public interest will be best  
11 served by a suitable notice of warning in writing.

12 Sec. 13. Section 190C.22, Code 2003, is amended to read as  
13 follows:

14 190C.22 INVESTIGATIONS, COMPLAINTS, INSPECTIONS, AND  
15 EXAMINATIONS.

16 ~~1.--The~~ In enforcing the provisions of this chapter  
17 consistent with the national organic program, the department  
18 may conduct an investigation to determine if a person is  
19 complying with the requirements of this chapter. To the  
20 extent consistent with the national organic program, all of  
21 the following shall apply:

22 ~~2. 1.~~ Any The department may receive a complaint from any  
23 ~~person may-file-a-complaint-with-the-department~~ regarding a  
24 violation of this chapter. The department shall adopt  
25 procedures for persons filing complaints. The department  
26 shall establish procedures for processing complaints including  
27 requiring minimum information to determine the verifiability  
28 of a complaint.

29 ~~3. 2.~~ The department may conduct inspections at times and  
30 places and to an extent that the department determines  
31 necessary in order to conclude whether ~~an-agricultural-product~~  
32 ~~is-being-produced,-handied,-processed,-or-sold-in-accordance~~  
33 with-the-provisions there is a violation of this chapter. ~~The~~  
34 ~~department-may-inspect-records-required-to-be-maintained~~  
35 ~~pursuant-to-section-190C-15.~~ The department may enter upon

1 any public or private premises during regular business hours  
2 in a manner consistent with the laws of this state and the  
3 United States, including Article I, section 8, of the  
4 Constitution of the State of Iowa, or the fourth amendment to  
5 the Constitution of the United States for purposes of carrying  
6 out an inspection.

7 ~~4.~~ 3. The department may conduct examinations of  
8 agricultural products in order to determine if the  
9 agricultural products are produced, handled, processed, and  
10 sold in compliance with this chapter. Unless the national  
11 organic program otherwise requires, all of the following shall  
12 apply:

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

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

23 Sec. 14. Section 190C.23, Code 2003, is amended by  
24 striking the section and inserting in lieu thereof the  
25 following:

26 190C.23 DISCIPLINARY ACTION.

27 1. The department may take disciplinary action against a  
28 person who is certified pursuant to this chapter for  
29 noncompliance with a provision of this chapter or a willful  
30 violation of this chapter. The procedures of the disciplinary  
31 action shall be consistent with the national organic program.  
32 The disciplinary action shall proceed as provided in chapter  
33 17A unless contrary to the national organic program. The  
34 department may do any of the following:

35 a. Issue a letter of warning or reprimand.

1 b. Suspend or revoke the person's certification.

2 2. Any other disciplinary action provided in the national  
3 organic program shall be implemented by the secretary acting  
4 as the state organic program's governing state official.

5 Sec. 15. Section 190C.24, subsection 1, Code 2003, is  
6 amended to read as follows:

7 ~~1. If~~ Unless prohibited by the national organic program,  
8 the department may issue a stop order to a person who sells,  
9 labels, or represents an agricultural product as organic in  
10 violation of this chapter, including a rule adopted or an  
11 order issued under this chapter, the

12 1. The department may issue a written order to stop the  
13 sale of the agricultural product by a person in control of the  
14 agricultural product. The person named in the order shall not  
15 sell, label, or represent the item agricultural product as  
16 organic until the department determines that ~~the sale of~~ the  
17 agricultural product is in compliance with this chapter.

18 Sec. 16. Section 190C.24, subsection 4, Code 2003, is  
19 amended to read as follows:

20 4. The department shall release the agricultural product  
21 when the department issues a release order upon satisfaction  
22 that legal requirements compelling the issuance of the stop  
23 sale order are satisfied. ~~The board must approve a delay in~~  
24 ~~issuing a release order within three months after requiring~~  
25 ~~that the agricultural product be held.~~ If the person is found  
26 to have violated this chapter, the person shall pay all  
27 expenses incurred by the department in connection with the  
28 agricultural product's removal.

29 Sec. 17. Section 190C.25, Code 2003, is amended to read as  
30 follows:

31 190C.25 INJUNCTIONS.

32 ~~The attorney general,~~ Unless prohibited by the national  
33 organic program, the department, or the attorney general, an  
34 individual, a private organization or association, a county,  
35 or a city may bring an action in district court to restrain a

1 producer, processor, handler, or retailer from selling an  
2 agricultural product by false or misleading advertising  
3 claiming that the agricultural product is organic. A  
4 petitioner shall not be required to allege facts necessary to  
5 show, or tending to show, a lack of adequate remedy at law, or  
6 that irreparable damage or loss will result if the action is  
7 brought at law or that unique or special circumstances exist.

8 Sec. 18. Section 190C.26, Code 2003, is amended to read as  
9 follows:

10 190C.26 SELLING, LABELING, OR REPRESENTING AGRICULTURAL  
11 PRODUCTS AS ORGANIC -- PENALTIES.

12 A person ~~who violates this chapter~~ shall not knowingly  
13 sell, label, or represent an agricultural product as organic,  
14 except in accordance with this chapter. A person who violates  
15 this section shall be subject to a civil penalty of not more  
16 than ~~five~~ ten thousand dollars. Civil penalties shall be  
17 assessed by the district court in an action initiated by the  
18 department or attorney general as provided in section 190C.21.  
19 ~~Each~~ Unless prohibited by the national organic program, each  
20 day that the ~~offense~~ violation continues constitutes a  
21 separate ~~offense~~ violation. Civil penalties collected under  
22 this section shall be deposited in the general fund of the  
23 state.

24 Sec. 19. DIRECTIONS TO CODE EDITOR. The Code editor is  
25 directed to reorganize and renumber the provisions of chapter  
26 190C to enhance its readability. The Code editor may  
27 reorganize the provisions in the 2003 Code Supplement or the  
28 2005 Code. Nothing in this section limits the Code editor's  
29 authority under section 2B.13.

30 Sec. 20. Sections 190C.4, 190C.12, 190C.13, 190C.14, and  
31 190C.15, Code 2003, are repealed.

32 Sec. 21. EFFECTIVE DATE. This Act, being deemed of  
33 immediate importance, takes effect upon enactment.

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Dolecheck - Chair  
Rayhons  
Struyk

SF/HF  
Succeeded By

HSB 250  
Agriculture

SENATE/HOUSE FILE \_\_\_\_\_

BY (PROPOSED DEPARTMENT OF  
AGRICULTURE AND LAND  
STEWARDSHIP BILL)

SF 0600

Passed Senate, Date \_\_\_\_\_

Passed House, Date \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

Approved \_\_\_\_\_

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14 marketed as an agricultural product or fed to livestock.

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16 land stewardship.

17 5. "Handler" means a person engaged in the business of  
18 handling agricultural products, including producers who handle  
19 crops or livestock of their own production, except such term  
20 shall not include final retailers of agricultural products  
21 that do not process agricultural products.

22 6. "Label" means a display of written, printed, or graphic  
23 material on the immediate container of an agricultural product  
24 or any such material affixed to any agricultural product or  
25 affixed to a bulk container containing an agricultural  
26 product, except for package liners or a display of written,  
27 printed, or graphic material which contains only information  
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29 7. "Livestock" means any cattle, sheep, goats, swine,  
30 poultry, or equine animals used for food or in the production  
31 of food, fiber, feed, or other agricultural-based consumer  
32 products; wild or domesticated game; or other nonplant life,  
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12 drying, mixing, grinding, churning, separating, extracting,  
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28 any retail outlet with an in-store restaurant, delicatessen,  
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26 ~~members-to-serve-for-less-than-four-years-to-ensure-members~~  
27 ~~serve-staggered-terms.~~ Members appointed under this section  
28 shall be persons knowledgeable regarding the production,  
29 handling, processing, and retailing of organic agricultural  
30 products. The members of the board council shall be appointed  
31 as follows:

32 Sec. 6. Section 190C.2, subsections 3, 4, 6, and 7, Code  
33 2003, are amended to read as follows:

34 3. A vacancy on the board council shall be filled in the  
35 same manner as an original appointment. A person appointed to

1 fill a vacancy shall serve only for the unexpired portion of  
2 the term. A member is eligible for reappointment. The  
3 governor may remove a member appointed by the governor and the  
4 secretary may remove a member appointed by the secretary, if  
5 the removal is based on the member's misfeasance, malfeasance,  
6 or willful neglect of duty or other just cause, after notice  
7 and hearing, unless the notice and hearing is expressly waived  
8 in writing.

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

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

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

29 Sec. 7. NEW SECTION. 190C.2A DUTIES OF THE COUNCIL.

30 The organic advisory council shall assist the department in  
31 implementing and administering the provisions of this chapter  
32 as requested by the department. Upon request by the  
33 department, the council shall do all of the following:

34 1. Develop rules, policies, and procedures required to  
35 implement and administer this chapter.

1 2. Collect information required by the department in  
2 implementing and administering this chapter.

3 3. Interpret the requirements of this chapter, including  
4 rules adopted and orders issued pursuant to this chapter, and  
5 requirements of the national organic program.

6 4. Establish and change fees as provided in section  
7 190C.5.

8 5. Provide advice regarding the most effective manner to  
9 use services provided by regional organic associations as  
10 provided in section 190C.6.

11 6. Provide information and expert opinions relating to  
12 organic agricultural products to the department.

13 7. Provide information relating to organic agricultural  
14 products to interested persons.

15 8. Promote organic agricultural products to consumers.

16 Sec. 8. NEW SECTION. 190C.2B ESTABLISHMENT AND  
17 IMPLEMENTATION OF THIS CHAPTER.

18 1. The department shall implement and administer the  
19 provisions of this chapter for agricultural products that have  
20 been produced and handled within this state using organic  
21 methods as provided in this chapter. The department may  
22 consult with the council in implementing and administering  
23 this chapter. The department may certify agricultural  
24 products that have been produced and handled outside this  
25 state using an organic method as provided in this chapter.

26 2. The department may establish a state organic program as  
27 provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The  
28 secretary may apply for any approval or accreditation or  
29 execute any agreement required under the national organic  
30 program in order to implement, administer, and enforce this  
31 chapter.

32 3. Unless prohibited by the national organic program, the  
33 attorney general may be joined as a party authorized to  
34 enforce the provisions of this chapter.

35 4. All provisions of this chapter shall be deemed in

1 compliance with the national organic program, unless expressly  
2 provided otherwise by the United States department of  
3 agriculture.

4 Sec. 9. Section 190C.3, Code 2003, is amended by striking  
5 the section and inserting in lieu thereof the following:

6 190C.3 DUTIES AND POWERS OF THE DEPARTMENT.

7 In implementing the provisions of this chapter consistent  
8 with the national organic program, the department shall  
9 provide for the administration and enforcement of this  
10 chapter, including by adopting rules and issuing orders  
11 pursuant to chapter 17A. The department may adopt any part of  
12 the national organic program by reference.

13 1. The department shall be a state certifying agent and  
14 the department shall be the certifying agent's operation as  
15 provided in the national organic program.

16 2. The department may request assistance from the council  
17 as provided in section 190C.2A or from one or more regional  
18 organic associations as provided in section 190C.6.

19 3. a. The secretary may serve as the state organic  
20 program's governing state official. However, no other person  
21 shall serve in that position without approval by the  
22 secretary.

23 b. The secretary may designate a person within the  
24 department to act on the secretary's behalf in carrying out  
25 the duties of the state organic program's governing state  
26 official.

27 4. The department may assume enforcement obligations under  
28 the national organic program in this state for the  
29 requirements of this chapter. The department shall provide  
30 for on-site inspections. The department and the attorney  
31 general may coordinate the enforcement activities as provided  
32 in section 190C.21.

33 Sec. 10. NEW SECTION. 190C.3A MORE RESTRICTIVE  
34 REQUIREMENTS.

35 The department may adopt rules that contain more

1 restrictive requirements for agricultural products to be sold,  
2 labeled, or represented as organic than generally provided in  
3 the national organic program. The rules must be adopted in  
4 compliance with the national organic program. The department  
5 may also adopt different or supplemental procedural  
6 requirements than generally provided in the national organic  
7 program if the rules are adopted in compliance with the  
8 national organic program. The rules may include but are not  
9 limited to rules governing any of the following:

10 1. The establishment of a departmental seal for  
11 agricultural products that are sold, labeled, or represented  
12 as organic. A person shall not use the departmental seal to  
13 advertise an agricultural product, unless the person is  
14 authorized to use the seal by the department.

15 2. The certification of producers, handlers, processors,  
16 or retailers who are not required to be certified pursuant to  
17 the general requirements of the national organic program.

18 3. Additional information accompanying an application for  
19 certification by the council or a more extensive on-site  
20 inspection by the department prior to certification.

21 4. The inspection of production or handling operations and  
22 the examination of agricultural products purported to be  
23 organic.

24 5. More extensive recordkeeping or the maintenance of  
25 records for a longer period.

26 6. The limitation or abrogation of a right to mediation,  
27 or revision in procedures for mediation.

28 7. The imposition of fees which are not specifically  
29 provided by the national organic program.

30 Sec. 11. Section 190C.5, Code 2003, is amended to read as  
31 follows:

32 190C.5 STATE FEES -- DEPOSIT INTO GENERAL FUND OF THE  
33 STATE.

34 1. a. The board department acting as a state certifying  
35 agent shall establish a schedule of state fees under-this

1 chapter by rule adopted-by-the-department-for-persons-required  
2 to-be-certified-as-producers,handlers,and-processors-of  
3 agricultural-products-labeled,sold,or-advertised-as-organic  
4 as-provided-in-section-190C.13. The fees shall be charged to  
5 persons who are certified under this chapter, including  
6 production operations and handling operations, in a manner  
7 that is consistent with the national organic program.

8 ~~2.--Beginning-on-July-17-2007-the-board~~ The department  
9 shall establish the rate of fees based on an estimate of the  
10 amount of revenues from the fees required by the department to  
11 administer and enforce this chapter.

12 b. The department shall annually review the estimate and  
13 ~~recommend-a~~ may change in the rate of fees ~~to-the-board-if~~  
14 the. The fees must be adjusted in order to comply with this  
15 subsection. The-board-may-approve-an-adjustment-in-the-fees  
16 by-rule-adopted-by-the-department-at-any-time-in-order-to  
17 comply-with-this-subsection.

18 2. a. The department acting as a state certifying agent  
19 may charge additional fees for carrying out the duties of that  
20 position to the extent that the fees are consistent with the  
21 national organic program.

22 b. The secretary acting as the state organic program's  
23 governing state official may charge fees for carrying out the  
24 duties of that position to the extent consistent with the  
25 national organic program.

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

29 Sec. 12. Section 190C.6, Code 2003, is amended to read as  
30 follows:

31 190C.6 REGIONAL ORGANIC ASSOCIATIONS.

32 1. Regional organic associations may be established as  
33 provided in this section. A regional organic association must  
34 be organized as a corporation under chapter 504A which has  
35 certified members, elects its own officers and directors, and

1 is independent from the department.

2 ~~2.~~ The department~~, upon approval by the board,~~ may  
3 authorize a regional organic association to assist the board  
4 department in certifying producers, handlers, and processors  
5 of agricultural products under acting as a state certifying  
6 agent pursuant to section 190C.13 190C.3. The regional  
7 organic association must be registered with the department.  
8 ~~The~~ Upon request by the department, a registered regional  
9 organic association~~, upon approval of the board,~~ may  
10 ~~administer the provisions of section 190C.13 by doing~~ may do  
11 all of the following:

12 ~~1-~~ a. Reviewing Review applications and providing provide  
13 applicants with technical assistance in completing  
14 applications. The department may authorize a regional organic  
15 association to process applications, including collecting and  
16 forwarding applications to the department.

17 ~~2-~~ b. Preparing Prepare a summary of an application,  
18 including materials accompanying the application, for review  
19 by the department ~~and the organic standards board.~~ A regional  
20 organic association may include a recommendation for approval,  
21 modification, or disapproval of an application.

22 Sec. 13. Section 190C.21, Code 2003, is amended to read as  
23 follows:

24 190C.21 GENERAL ENFORCEMENT.

25 1. The department ~~and the attorney general~~ acting as a  
26 state certifying agent and on behalf of the secretary who  
27 elects to act as the state organic program's governing state  
28 official shall enforce this chapter.

29 2. ~~The~~ To the extent authorized by the national organic  
30 program, the attorney general shall assist the department in  
31 enforcing this chapter. The department or the attorney  
32 general may commence legal proceedings in district court to  
33 enforce a provision of this chapter. If the attorney general  
34 assists the department under this section, the attorney  
35 general may commence the legal proceedings at the request of

1 the department or upon the attorney general's own initiative  
2 ~~in-order-to-enforce-this-chapter,-including-rules-adopted-and~~  
3 ~~orders-issued-by-the-department-pursuant-to-this-chapter.~~

4 3. This chapter does not require the ~~attorney-general-or~~  
5 ~~the department~~ or attorney general to institute a proceeding  
6 for a minor violation, if the department or attorney general  
7 ~~or-department~~ concludes that the public interest will be best  
8 served by a suitable notice of warning in writing.

9 Sec. 14. Section 190C.22, Code 2003, is amended to read as  
10 follows:

11 190C.22 INVESTIGATIONS, COMPLAINTS, INSPECTIONS, AND  
12 EXAMINATIONS.

13 ~~1-~~ The In enforcing the provisions of this chapter  
14 consistent with the national organic program, the department  
15 may conduct an investigation to determine if a person is  
16 complying with the requirements of this chapter. To the  
17 extent consistent with the national organic program, all of  
18 the following shall apply:

19 ~~2-~~ 1. Any The department may receive a complaint from any  
20 ~~person may file a complaint with the department~~ regarding a  
21 violation of this chapter. The department shall adopt  
22 procedures for persons filing complaints. The department  
23 shall establish procedures for processing complaints including  
24 requiring minimum information to determine the verifiability  
25 of a complaint.

26 ~~3-~~ 2. The department may conduct inspections at times and  
27 places and to an extent that the department determines  
28 necessary in order to conclude whether ~~an-agricultural-product~~  
29 ~~is-being-produced,-handled,-processed,-or-sold-in-accordance~~  
30 ~~with-the-provisions~~ there is a violation of this chapter. ~~The~~  
31 ~~department-may-inspect-records-required-to-be-maintained~~  
32 ~~pursuant-to-section-190C-15-~~ The department may enter upon  
33 any public or private premises during regular business hours  
34 in a manner consistent with the laws of this state and the  
35 United States, including Article I, section 8, of the

1 Constitution of the State of Iowa, or the fourth amendment to  
2 the Constitution of the United States for purposes of carrying  
3 out an inspection.

4 ~~4-~~ 3. The department may conduct examinations of  
5 agricultural products in order to determine if the  
6 agricultural products are ~~produced, handled, processed, and~~  
7 ~~sold~~ in compliance with this chapter. Unless the national  
8 organic program otherwise requires, all of the following shall  
9 apply:

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

14 b. A sworn statement by the state chemist or the state  
15 chemist's deputy stating the results of an analysis of a  
16 sample taken from a lot of agricultural products shall  
17 constitute prima facie evidence of the correctness of the  
18 analysis of that lot in ~~an administrative hearing~~ a contested  
19 case proceeding or court ~~of this state~~ proceeding.

20 Sec. 15. Section 190C.23, Code 2003, is amended by  
21 striking the section and inserting in lieu thereof the  
22 following:

23 190C.23 DISCIPLINARY ACTION.

24 1. The department may take disciplinary action against a  
25 person who is certified pursuant to this chapter for  
26 noncompliance with a provision of this chapter or a willful  
27 violation of this chapter. The procedures of the disciplinary  
28 action shall be consistent with the national organic program.  
29 The disciplinary action shall proceed as provided in chapter  
30 17A unless contrary to the national organic program. The  
31 department may do any of the following:

32 a. Issue a letter of warning or reprimand.

33 b. Suspend or revoke the person's certification.

34 2. Any other disciplinary action provided in the national  
35 organic program shall be implemented by the secretary acting

1 as the state organic program's governing state official.

2 Sec. 16. Section 190C.24, subsection 1, Code 2003, is  
3 amended to read as follows:

4 ~~1. If~~ Unless prohibited by the national organic program,  
5 the department may issue a stop order to a person who sells,  
6 labels, or represents an agricultural product as organic in  
7 violation of this chapter,~~including a rule adopted or an~~  
8 ~~order issued under this chapter,~~ the.

9 1. The department may issue a written order to stop the  
10 sale of the agricultural product by a person in control of the  
11 agricultural product. The person named in the order shall not  
12 sell, label, or represent the item agricultural product is  
13 organic until the department determines that ~~the sale of~~ the  
14 agricultural product is in compliance with this chapter.

15 Sec. 17. Section 190C.24, subsection 4, Code 2003, is  
16 amended to read as follows:

17 4. The department shall release the agricultural product  
18 when the department issues a release order upon satisfaction  
19 that legal requirements compelling the issuance of the stop  
20 sale order are satisfied. ~~The board must approve a delay in~~  
21 ~~issuing a release order within three months after requiring~~  
22 ~~that the agricultural product be held.~~ If the person is found  
23 to have violated this chapter, the person shall pay all  
24 expenses incurred by the department in connection with the  
25 agricultural product's removal.

26 Sec. 18. Section 190C.25, Code 2003, is amended to read as  
27 follows:

28 190C.25 INJUNCTIONS.

29 ~~The attorney general,~~ Unless prohibited by the national  
30 organic program, the department, ~~or the attorney general,~~ an  
31 individual, a private organization or association, a county,  
32 or a city may bring an action in district court to restrain a  
33 producer, ~~processor,~~ handler, or retailer from selling an  
34 agricultural product by false or misleading advertising  
35 claiming that the agricultural product is organic. A

1 petitioner shall not be required to allege facts necessary to  
2 show, or tending to show, a lack of adequate remedy at law, or  
3 that irreparable damage or loss will result if the action is  
4 brought at law or that unique or special circumstances exist.

5 Sec. 19. Section 190C.26, Code 2003, is amended to read as  
6 follows:

7 190C.26 SELLING, LABELING, OR REPRESENTING AGRICULTURAL  
8 PRODUCTS AS ORGANIC -- PENALTIES.

9 A person ~~who violates this chapter~~ is shall not knowingly  
10 sell, label, or represent an agricultural product as organic,  
11 except in accordance with this chapter. A person who violates  
12 this section shall be subject to a civil penalty of not more  
13 than five ten thousand dollars. Civil penalties shall be  
14 assessed by the district court in an action initiated by the  
15 department or attorney general as provided in section 190C.21.  
16 Each Unless prohibited by the national organic program, each  
17 day that the offense violation continues constitutes a  
18 separate offense violation. Civil penalties collected under  
19 this section shall be deposited in the general fund of the  
20 state.

21 Sec. 20. DIRECTIONS TO CODE EDITOR. The Code editor is  
22 directed to reorganize and renumber the provisions of chapter  
23 190C to enhance its readability. The Code editor may  
24 reorganize the provisions in the 2003 Code Supplement or the  
25 2005 Code. Nothing in this section limits the Code editor's  
26 authority under section 2B.13.

27 Sec. 21. Sections 190C.4, 190C.12, 190C.13, 190C.14, and  
28 190C.15, Code 2003, are repealed.

29 Sec. 22. EFFECTIVE DATE. This Act, being deemed of  
30 immediate importance, takes effect upon enactment.

31 EXPLANATION

32 BACKGROUND. This bill substantially revises Code chapter  
33 190C providing for organic agricultural products as  
34 administered by the department of agriculture and land  
35 stewardship (department). The Code chapter was enacted in

1 Senate File 2332 during the 1998 Legislative Session. Senate  
2 File 2332 was in response to a federal Act referred to as the  
3 federal Organic Food Production Act of 1990. Senate File 2332  
4 in part provided that the department was not required to  
5 implement all of its provisions until it received necessary  
6 accreditation or approval by the United States department of  
7 agriculture (USDA). Late in 2000, the USDA adopted final  
8 rules governing requirements for agricultural products which  
9 are sold, labeled, or represented as organic, known as the  
10 national organic program (NOP). Current provisions in Code  
11 chapter 190C may be in conflict with the federal regulations.

12 ADMINISTRATIVE ORGANIZATION. Current Code chapter 190C is  
13 administered jointly by the department and an organic  
14 standards board composed of members appointed by the governor  
15 and the secretary of agriculture. The board approves  
16 applications for certification, establishes procedures  
17 governing appeals of decisions made by the department or  
18 board, and establishes a fee structure for certification. The  
19 bill provides that the department performs these duties. The  
20 name of the board is changed to the organic advisory council  
21 and its functions are made advisory. The bill does not  
22 substantially modify the role of regional organic associations  
23 responsible for assisting in certification. The department  
24 retains its existing authority to administer the Code chapter,  
25 including by providing for inspections, the examination of  
26 agricultural products, and the issuance of stop orders. The  
27 attorney general retains authority to enforce the Code  
28 chapter's provisions in court. The bill does not  
29 significantly amend provisions providing for a private right  
30 of attorney general.

31 To the extent that the bill amends these provisions, it  
32 uses language contained in the NOP, it provides more  
33 prominence to the department rather than the attorney general,  
34 and it repeats that provisions which supplement the NOP apply  
35 only to the extent allowed by federal law.

1 COMPLIANCE WITH FEDERAL REQUIREMENTS. The bill requires  
2 the department to adopt provisions of the NOP by  
3 administrative rule. The bill eliminates the statutory  
4 provisions establishing standards for agricultural products to  
5 be considered organic. The NOP contains extensive standards  
6 for the production and handling of agricultural products which  
7 are to be labeled, sold, or represented as organic. Specific  
8 Code sections which are repealed include Code sections 190C.12  
9 (providing standards), 190C.13 (providing for certification),  
10 190C.14 (providing for labeling), and 190C.15 (providing for  
11 records). In addition, the bill eliminates specific  
12 references to processors and retailers since the NOP  
13 specifically regulates producers and handlers, but considers  
14 certain processors as handlers.

15 Under federal regulation, the USDA accredits private or  
16 governmental entities as certifying agents responsible for  
17 certifying producers and handlers. The bill authorizes the  
18 department to become a state certifying agent. The NOP also  
19 provides that a state official may assume the role of the  
20 state organic program's governing state official, largely  
21 responsible for enforcing the state organic program. The bill  
22 provides that the secretary of agriculture may serve in that  
23 position upon approval by the USDA. The federal regulations  
24 allow a state to adopt more restrictive requirements if  
25 approved by the USDA. The federal regulations also allow the  
26 department to provide different procedural requirements than  
27 the NOP provides, and the bill also authorizes the department  
28 to adopt different rules if done in compliance with USDA  
29 requirements.

30 CIVIL PENALTY. The bill increases the civil penalty for  
31 violations of the Code chapter from \$5,000 to \$10,000 in  
32 conformance with the NOP. Code chapter 190C provides that the  
33 penalty applies for any violation of the Code chapter. The  
34 bill provides that the penalty applies to a person who  
35 knowingly sells, labels, or represents an agricultural product

1 as organic, except as provided in the Code chapter adopting  
2 the state organic program.

3 CODE EDITOR DIRECTIVE. The bill directs the Code editor to  
4 rearrange and renumber the Code sections in the Code chapter  
5 in order to enhance the readability of the chapter.

6 EFFECTIVE DATE. The bill takes effect upon enactment.  
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AN ACT  
REGULATING ORGANIC AGRICULTURAL PRODUCTS, PROVIDING FOR FEES  
AND PENALTIES, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 190C.1, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

190C.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Agricultural product" means any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in this state for human or livestock consumption.
2. "Council" means the organic advisory council established pursuant to section 190C.2.
3. "Crop" means a plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.
4. "Department" means the department of agriculture and land stewardship.
5. "Handler" means a person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.
6. "Label" means a display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural

product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

7. "Livestock" means any cattle, sheep, goats, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

8. "National organic program" means the program administered by the United States department of agriculture pursuant to 7 C.F.R. pt. 205, which implements the federal Organic Food Production Act of 1990, 7 U.S.C. § 6501 et seq.

9. "Organic" means a labeling term that refers to an agricultural product produced in accordance with this chapter.

10. "Organic agricultural product" means an agricultural product that is certified or otherwise qualifies as organic in accordance with the provisions of this chapter as they existed on and after May 20, 1998.

11. "Processing" means cooling, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing, and includes the packaging, canning, jarring, or otherwise enclosing in a food container.

12. "Processor" means a person engaged in the business of processing.

13. "Producer" means a person who engages in the business of growing or producing food, fiber, feed, or other agricultural-based consumer products.

14. "Regional organic association" means a corporation authorized pursuant to section 190C.6.

15. "Retailer" means a person who sells agricultural products on a retail basis. "Retailer" includes a food

establishment as defined in section 137F.1. "Retailer" also includes a restaurant, delicatessen, bakery, grocery store, or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food.

16. "Secretary" means the secretary of agriculture who is the director of the department of agriculture and land stewardship.

Sec. 2. NEW SECTION. 190C.1A OTHER DEFINITIONS.

For purposes of this chapter, words and phrases that are not defined in section 190C.1 shall have the same meanings as provided in 7 C.F.R. pt. 205.

Sec. 3. NEW SECTION. 190C.1B GENERAL AUTHORITY.

Any provision in this chapter referring generally to compliance with the requirements of this chapter also includes compliance with requirements in rules adopted by the department pursuant to this chapter, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to any certification made pursuant to this chapter.

Sec. 4. Section 190C.2, subsection 1, Code 2003, is amended to read as follows:

1. An organic ~~standards-board~~ advisory council is established within the department. The ~~powers-of-the-board are-vested-in-and-shall-be-exercised-by~~ council is composed of 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~~ council, as determined by the governor and secretary making appointments under this section.

Sec. 5. Section 190C.2, subsection 2, unnumbered paragraph 1, Code 2003, is amended to read as follows:

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 council shall be appointed as follows:

Sec. 6. Section 190C.2, subsections 3, 4, 6, and 7, Code 2003, are amended to read as follows:

3. A vacancy on the board council 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 council 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 council. 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 council.

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

7. The board council 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 council.

Sec. 7. NEW SECTION. 190C.2A DUTIES OF THE COUNCIL.

The organic advisory council shall assist the department in implementing and administering the provisions of this chapter as requested by the department. Upon request by the department, the council shall do all of the following:

1. Develop rules, policies, and procedures required to implement and administer this chapter.

2. Collect information required by the department in implementing and administering this chapter.

3. Interpret the requirements of this chapter, including rules adopted and orders issued pursuant to this chapter, and requirements of the national organic program.

4. Establish and change fees as provided in section 190C.5.

5. Provide advice regarding the most effective manner to use services provided by regional organic associations as provided in section 190C.6.

6. Provide information and expert opinions relating to organic agricultural products to the department.

7. Provide information relating to organic agricultural products to interested persons.

8. Promote organic agricultural products to consumers.

Sec. 8. NEW SECTION. 190C.2B ESTABLISHMENT AND IMPLEMENTATION OF THIS CHAPTER.

1. The department shall implement and administer the provisions of this chapter for agricultural products that have been produced and handled within this state using organic methods as provided in this chapter. The department may consult with the council in implementing and administering this chapter. The department may certify agricultural products that have been produced and handled outside this state using an organic method as provided in this chapter.

2. The department may establish a state organic program as provided in 7 U.S.C. § 6501 et seq. and 7 C.F.R. pt. 205. The secretary may apply for any approval or accreditation or execute any agreement required under the national organic program in order to implement, administer, and enforce this chapter.

3. Unless prohibited by the national organic program, the attorney general may be joined as a party authorized to enforce the provisions of this chapter.

4. All provisions of this chapter shall be deemed in compliance with the national organic program, unless expressly provided otherwise by the United States department of agriculture.

Sec. 9. Section 190C.3, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

190C.3 DUTIES AND POWERS OF THE DEPARTMENT.

In implementing the provisions of this chapter consistent with the national organic program, the department shall provide for the administration and enforcement of this chapter, including by adopting rules and issuing orders pursuant to chapter 17A. The department may adopt any part of the national organic program by reference.

1. The department shall be a state certifying agent and the department shall be the certifying agent's operation as provided in the national organic program.

2. The department may request assistance from the council as provided in section 190C.2A or from one or more regional organic associations as provided in section 190C.6.

3. a. The secretary may serve as the state organic program's governing state official. However, no other person shall serve in that position without approval by the secretary.

b. The secretary may designate a person within the department to act on the secretary's behalf in carrying out the duties of the state organic program's governing state official.

4. The department may assume enforcement obligations under the national organic program in this state for the requirements of this chapter. The department shall provide for on-site inspections. The department and the attorney general may coordinate the enforcement activities as provided in section 190C.21.

Sec. 10. Section 190C.5, Code 2003, is amended to read as follows:

190C.5 STATE FEES -- DEPOSIT INTO GENERAL FUND OF THE STATE.

1. a. ~~The board~~ department acting as a state certifying agent 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. The fees shall be charged to persons who are certified under this chapter, including production operations and handling operations, in a manner that is consistent with the national organic program.

~~2.--Beginning on July 17, 2000, the board~~ The department 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.

b. The department shall annually review the estimate and ~~recommend a~~ may change in the rate of fees to the board if ~~the.~~ 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.~~

2. a. The department acting as a state certifying agent may charge additional fees for carrying out the duties of that position to the extent that the fees are consistent with the national organic program.

b. The secretary acting as the state organic program's governing state official may charge fees for carrying out the

duties of that position to the extent consistent with the national organic program.

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. 11. Section 190C.6, Code 2003, is amended to read as follows:

190C.6 REGIONAL ORGANIC ASSOCIATIONS.

1. Regional organic associations may be established as provided in this section. A regional organic association must be organized as a corporation under chapter 504A which has certified members, elects its own officers and directors, and is independent from the department.

2. ~~The department, upon approval by the board,~~ may authorize a regional organic association to assist the ~~board department in certifying producers, handlers, and processors of agricultural products under~~ acting as a state certifying agent pursuant to section ~~190C.13~~ 190C.3. The regional organic association must be registered with the department. ~~The~~ Upon request by the department, a registered regional organic association ~~, upon approval of the board, may administer the provisions of section 190C.13 by doing~~ may do all of the following:

1- a. Reviewing Review applications and providing provide 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- b. Preparing Prepare 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.

Sec. 12. Section 190C.21, Code 2003, is amended to read as follows:

190C.21 GENERAL ENFORCEMENT.

1. The department and the attorney general acting as a state certifying agent and on behalf of the secretary who elects to act as the state organic program's governing state official shall enforce this chapter.

2. To the extent authorized by the national organic program, the attorney general shall assist the department in enforcing this chapter. The department or the attorney general may commence legal proceedings in district court to enforce a provision of this chapter. If the attorney general assists the department under this section, the attorney general may commence the legal proceedings 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.

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

Sec. 13. Section 190C.22, Code 2003, is amended to read as follows:

190C.22 INVESTIGATIONS, COMPLAINTS, INSPECTIONS, AND EXAMINATIONS.

~~1. The~~ In enforcing the provisions of this chapter consistent with the national organic program, the department may conduct an investigation to determine if a person is complying with the requirements of this chapter. To the extent consistent with the national organic program, all of the following shall apply:

~~2. 1. Any~~ The department may receive a complaint from 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-~~ 2. 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~~ there is a violation 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-~~ 3. The department may conduct examinations of agricultural products in order to determine if the agricultural products are ~~produced,-handled,-processed,-and sold~~ in compliance with this chapter. Unless the national organic program otherwise requires, all of the following shall apply:

a. The methods for examination shall be the official methods ~~of~~ adopted by 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~~ a contested case proceeding or court ~~of-this-state~~ proceeding.

Sec. 14. Section 190C.23, Code 2003, is amended by striking the section and inserting in lieu thereof the following:

190C.23 DISCIPLINARY ACTION.

1. The department may take disciplinary action against a person who is certified pursuant to this chapter for

noncompliance with a provision of this chapter or a willful violation of this chapter. The procedures of the disciplinary action shall be consistent with the national organic program. The disciplinary action shall proceed as provided in chapter 17A unless contrary to the national organic program. The department may do any of the following:

- a. Issue a letter of warning or reprimand.
- b. Suspend or revoke the person's certification.
2. Any other disciplinary action provided in the national organic program shall be implemented by the secretary acting as the state organic program's governing state official.

Sec. 15. Section 190C.24, subsection 1, Code 2003, is amended to read as follows:

~~17--If~~ Unless prohibited by the national organic program, the department may issue a stop order to a person who sells, labels, or represents an agricultural product as organic in violation of this chapter,~~including a rule adopted or an order issued under this chapter,~~ the.

1. 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, label, or represent the item agricultural product as organic until the department determines that ~~the sale of~~ the agricultural product is in compliance with this chapter.

Sec. 16. Section 190C.24, subsection 4, Code 2003, is amended to read as follows:

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. 17. Section 190C.25, Code 2003, is amended to read as follows:

190C.25 INJUNCTIONS.

~~The attorney general,~~ Unless prohibited by the national organic program, the department, ~~or the attorney general,~~ an individual, a private organization or association, a county, or a 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. 18. Section 190C.26, Code 2003, is amended to read as follows:

190C.26 SELLING, LABELING, OR REPRESENTING AGRICULTURAL PRODUCTS AS ORGANIC -- PENALTIES.

~~A person who violates this chapter is~~ shall not knowingly sell, label, or represent an agricultural product as organic, except in accordance with this chapter. A person who violates this section shall be subject to a civil penalty of not more than five ten thousand dollars. Civil penalties shall be assessed by the district court in an action initiated by the department or attorney general as provided in section 190C.21. ~~Each~~ Unless prohibited by the national organic program, each day that the offense violation continues constitutes a separate offense violation. Civil penalties collected under this section shall be deposited in the general fund of the state.

Sec. 19. DIRECTIONS TO CODE EDITOR. The Code editor is directed to reorganize and renumber the provisions of chapter 190C to enhance its readability. The Code editor may reorganize the provisions in the 2003 Code Supplement or the 2005 Code. Nothing in this section limits the Code editor's authority under section 2B.13.

Sec. 20. Sections 190C.4, 190C.12, 190C.13, 190C.14, and 190C.15, Code 2003, are repealed.

Sec. 21. EFFECTIVE DATE. This Act, being deemed of immediate importance, takes effect upon enactment.

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CHRISTOPHER C. RANTS  
Speaker of the House

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MARY E. KRAMER  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 600, Eightieth General Assembly.

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MARGARET THOMSON  
Chief Clerk of the House

Approved \_\_\_\_\_, 2003

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THOMAS J. VILSACK  
Governor