

CHAPTER 104**ORGANIC AGRICULTURAL PRODUCTS***H.F. 600*

ANACT 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 restaur-

rant, 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 1, 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. The 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:

~~1. 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.

Approved May 1, 2003