
SENATE BILL 6228

State of Washington

61st Legislature

2010 Regular Session

By Senators Haugen, Jacobsen, and Shin; by request of Department of Agriculture

Read first time 01/11/10. Referred to Committee on Agriculture & Rural Economic Development.

1 AN ACT Relating to organic products; amending RCW 15.86.010,
2 15.86.020, 15.86.030, 15.86.060, 15.86.065, 15.86.070, and 15.86.090;
3 and adding new sections to chapter 15.86 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 15.86.010 and 2002 c 220 s 1 are each amended to read
6 as follows:

7 The legislature recognizes a public benefit in:

8 (1) Establishing standards governing the labeling and advertising
9 of (~~food~~) agricultural products and agricultural commodities as
10 transitionally or organically produced;

11 (2) Providing certification under the federal organic food
12 production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules
13 adopted thereunder for agricultural products marketed and labeled using
14 the term "organic" or a derivative of the term "organic;"

15 (3) Providing access for Washington producers, processors, and
16 handlers to domestic and international markets for organic (~~food~~)
17 products; (~~and~~)

18 (4) Establishing a state organic program or obtaining federal

1 accreditation as a certifying agent under the federal organic food
2 production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules
3 adopted thereunder; and

4 (5) Establishing a brand name materials list for registration of
5 inputs that are in compliance with 7 C.F.R. Part 205, the national
6 organic standards or international or additional organic standards.

7 **Sec. 2.** RCW 15.86.020 and 2002 c 220 s 2 are each amended to read
8 as follows:

9 ~~((Unless the context clearly requires otherwise,))~~ The definitions
10 in this section apply throughout this chapter unless the context
11 clearly requires otherwise.

12 (1) "Director" means the director of the department of agriculture
13 or the director's designee.

14 (2) "Organic ~~((food))~~ product" means any agricultural product, in
15 whole or in part, including meat, dairy, and beverage, that is marketed
16 using the term organic or any derivative of organic and that is
17 produced, handled, and processed in accordance with this chapter.

18 (3) "Producer" means any person or organization who or which grows,
19 raises, or produces an agricultural product.

20 (4) "Handler" means any person who sells, distributes, or packs
21 organic or transitional products.

22 (5) "Transitional ~~((food))~~ product" means any ~~((food))~~ agricultural
23 product that satisfies all of the requirements of organic ~~((food))~~
24 products except ~~((the time requirements as defined in rule))~~ that it
25 has had no prohibited substances applied to it for a period of one year
26 immediately preceding harvest of the crop.

27 (6) "Organic certifying agent" means any third-party certification
28 organization that is recognized by the director as being one which
29 imposes, for certification, standards consistent with this chapter.

30 (7) "Processor" means any person engaged in the canning, freezing,
31 drying, dehydrating, cooking, pressing, powdering, packaging, baking,
32 heating, mixing, grinding, churning, separating, extracting, cutting,
33 fermenting, eviscerating, preserving, jarring, or otherwise processing
34 organic ~~((food))~~ products.

35 (8) "Person" means any natural person, firm, partnership, exchange,
36 association, trustee, receiver, corporation, and any member, officer,
37 or employee thereof or assignee for the benefit of creditors.

1 (9) "Department" means the state department of agriculture.

2 (10) "Represent" means to hold out as or to advertise.

3 (11) "Sale" means selling, offering for sale, holding for sale,
4 preparing for sale, trading, bartering, offering a gift as an
5 inducement for sale of, and advertising for sale in any media.

6 (12) "Material" means any substance or mixture of substances that
7 is intended to be used in agricultural production, processing, or
8 handling.

9 (13) "Fertilizer" means a single or blended substance containing
10 one or more recognized plant nutrient or nutrients that is used
11 primarily for its plant nutrient content and that is designed for use
12 or claimed to have value in promoting plant growth.

13 (14) "Label" means a display of written, printed, or graphic
14 material on the immediate container of an agricultural product or any
15 such material affixed to any agricultural product or affixed to a bulk
16 container containing an agricultural product, except for package liners
17 or a display of written, printed, or graphic material that contains
18 only information about the weight of the product.

19 (15) "Labeling" includes all written, printed, or graphic material
20 accompanying an agricultural product at any time or written, printed,
21 or graphic material about the agricultural product displayed at retail
22 stores about the product.

23 (16) "National organic program" means the United States department
24 of agriculture national organic program established under the federal
25 organic food production act of 1990 (7 U.S.C. Sec. 6501 et seq.), and
26 the rules adopted thereunder at 7 C.F.R. Part 205, the national organic
27 standards.

28 (17) "Registrant" means the person registering a material on the
29 brand name materials list under the provisions of this chapter.

30 (18) "Certification" or "certified" means a determination
31 documented by a certificate of organic operation made by a certifying
32 agent that a production or handling operation is in compliance with the
33 national organic program or is in compliance with international
34 standards.

35 (19) "Compost" means the product of a managed process through which
36 microorganisms break down plant and animal materials into more
37 available forms suitable for application to the soil.

1 (20) "Crop production aid" means any substance, material,
2 structure, or device that is used to aid a producer of an agricultural
3 product except for fertilizers and pesticides.

4 (21) "Livestock production aid" means any substance, material,
5 structure, or device that is used to aid a producer in the production
6 of livestock such as parasiticides, medicines, and feed additives.

7 (22) "Organic waste-derived material" means grass clippings,
8 leaves, weeds, bark, plantings, prunings, and other vegetative wastes,
9 uncontaminated wood waste from logging and milling operations, food
10 wastes, food processing wastes, and materials derived from these wastes
11 through composting. "Organic waste-derived material" does not include
12 products that contain biosolids as defined in chapter 70.95 RCW.

13 (23) "Soil amendment" means any substance that is intended to
14 improve the physical characteristics of the soil, except for
15 fertilizers and pesticides.

16 (24) "Spray adjuvant" means any product intended to be used with a
17 pesticide as an aid to the application or to the effect of the
18 pesticide and that is in a package or container separate from the
19 pesticide. "Spray adjuvant" includes, but is not limited to, wetting
20 agents, spreading agents, deposit builders, adhesives, emulsifying
21 agents, deflocculating agents, and water modifiers or similar agent
22 with or without toxic properties of its own intended to be used with
23 any other pesticide as an aid to its application or to its effect.
24 "Spray adjuvant" does not include products that are only intended to
25 mark the location where a pesticide is applied.

26 (25) "Pesticide" means, but is not limited to:

27 (a) Any substance or mixture of substances intended to prevent,
28 destroy, control, repel, or mitigate any insect, rodent, nematode,
29 mollusk, fungus, weed, and any other form of plant or animal life or
30 virus, except a virus on or in a living human being or other animal,
31 which is normally considered to be a pest or which the director may
32 declare to be a pest;

33 (b) Any substance or mixture of substances intended to be used as
34 a plant regulator, defoliant, or desiccant;

35 (c) Any substance or mixture of substances intended to be used as
36 a spray adjuvant; and

37 (d) Any other substances intended for such use as may be named by
38 the director by rule.

1 (26) "Post-harvest material" means any substance, material,
2 structure, or device that is used in the post-harvest handling of
3 agricultural products.

4 (27) "Processing aid" means a substance that is added to a food:

5 (a) During the processing of the food but is removed in some manner
6 from the food before it is packaged in its finished form;

7 (b) During processing, is converted into constituents normally
8 present in the food, and does not significantly increase the amount of
9 the constituents naturally found in the food; and

10 (c) For its technical or functional effect in the processing but is
11 present in the finished food at insignificant levels and does not have
12 any technical or functional effect in that food.

13 (28) "Manufacturer" means a person that compounds, produces,
14 granulates, mixes, blends, repackages, or otherwise alters the
15 composition of materials.

16 **Sec. 3.** RCW 15.86.030 and 2002 c 220 s 3 are each amended to read
17 as follows:

18 (1) To be labeled, sold, or represented as an organic ((~~food~~))
19 product, a product shall be produced under standards established under
20 ((~~RCW 15.86.060~~)) this chapter or the rules adopted under this chapter.
21 A producer, processor, or handler shall not represent, sell, or offer
22 for sale any ((~~food~~)) agricultural product with the representation that
23 the product is ((~~an~~)) organic ((~~food~~)) if the producer, processor, or
24 handler knows, or has reason to know, that the ((~~food~~)) product has not
25 been produced, processed, or handled in accordance with standards
26 established under ((~~RCW 15.86.060~~)) this chapter or the rules adopted
27 under this chapter.

28 (2) The department may conduct compliance checks in retail
29 establishments to evaluate compliance with organic labeling and
30 advertising requirements of this chapter and the rules adopted under
31 this chapter and the national organic program and regulations adopted
32 thereunder.

33 **Sec. 4.** RCW 15.86.060 and 2002 c 220 s 4 are each amended to read
34 as follows:

35 (1) The director shall adopt rules, in conformity with chapter
36 34.05 RCW, as the director believes are appropriate for the adoption of

1 the national organic program under the federal organic food production
2 act of 1990(~~(7)~~) (7 U.S.C. Sec. 6501 et seq.), and the rules adopted
3 thereunder and for the proper administration of this chapter.

4 (2) The director shall issue orders to producers, processors, or
5 handlers whom (~~he or she~~) the director finds are violating (~~any~~
6 ~~provision of this chapter, or rules or regulations adopted under this~~
7 ~~chapter,~~) RCW 15.86.030 or 15.86.090 to cease their violations and
8 desist from future violations. Whenever the director finds that a
9 producer, processor, or handler has committed a violation, the director
10 shall impose on and collect from the violator a civil fine not
11 exceeding the total of the following amounts: (a) The state's
12 estimated costs of investigating and taking appropriate administrative
13 and enforcement actions in respect to the violation; and (b) one
14 thousand dollars.

15 (~~(3) The director may deny, suspend, or revoke a certification~~
16 ~~provided for in this chapter if he or she determines that an applicant~~
17 ~~or certified person has violated this chapter or rules adopted under~~
18 ~~it.~~)

19 **Sec. 5.** RCW 15.86.065 and 2002 c 220 s 7 are each amended to read
20 as follows:

21 The department is authorized to take such actions, conduct
22 proceedings, and enter orders as permitted or contemplated for a state
23 organic program or certifying agent under the federal organic food
24 production act of 1990(~~(7)~~) (7 U.S.C. Sec. 6501 et seq.), and the rules
25 adopted thereunder. The director may deny, suspend, or revoke a
26 certification provided for in this chapter if the director determines
27 that an applicant or certified person has violated this chapter or
28 rules adopted under this chapter. The (~~state organic~~) program shall
29 not be inconsistent with the requirements of 7 U.S.C. Sec. 6501 et seq.
30 and the rules adopted thereunder, including 7 C.F.R. Sec. 205.668. The
31 department shall adopt rules necessary to implement this section.

32 **Sec. 6.** RCW 15.86.070 and 2002 c 220 s 5 are each amended to read
33 as follows:

34 (1) The director may adopt rules establishing a program for
35 certifying producers, processors, and handlers as meeting state,
36 national, or international standards for organic or transitional

1 ((~~food~~)) products. The rules may govern, but are not limited to
2 governing: The number and scheduling of on-site visits, both announced
3 and unannounced, by certification personnel; recordkeeping
4 requirements; and the submission of product samples for chemical
5 analysis. The rules shall include a fee schedule that will provide for
6 the recovery of the full cost of the ((~~organic food~~)) program.

7 (2) All fees collected under this ((~~section~~)) chapter shall be
8 deposited in an account within the agricultural local fund and the
9 revenue from such fees shall be used solely for carrying out the
10 provisions of this ((~~section~~)) chapter, and no appropriation is
11 required for disbursement from the fund. The director may employ such
12 personnel as are necessary to carry out the provisions of this
13 ((~~section~~)) chapter.

14 ((~~(2) The fees established under this section may be increased in~~
15 ~~excess of the fiscal growth factor as provided in RCW 43.135.055 for~~
16 ~~the fiscal year ending June 30, 2003.~~))

17 **Sec. 7.** RCW 15.86.090 and 2002 c 220 s 6 are each amended to read
18 as follows:

19 (1) It is unlawful for any person to sell, offer for sale, or
20 process any agricultural product within this state with an organic
21 label unless that person is certified under this chapter by the
22 department or a recognized organic certifying agent.

23 (2) Subsection (1) of this section shall not apply to:

24 (a) Final retailers of organic ((~~food~~)) products that do not
25 process organic ((~~food~~)) products; or

26 (b) Producers who sell no more than five thousand dollars annually
27 in value of agricultural products directly to consumers.

28 NEW SECTION. **Sec. 8.** A new section is added to chapter 15.86 RCW
29 to read as follows:

30 (1) To be labeled, sold, or represented as a transitional product,
31 a product must be produced under standards established under this
32 chapter or the rules adopted under this chapter except that no
33 prohibited substances as specified under the national organic program
34 are applied to it within one year immediately preceding harvest of the
35 crop. A producer, processor, or handler may not represent, sell, or
36 offer for sale any agricultural product with the representation that

1 the product is transitional if the producer, processor, or handler
2 knows or has reason to know that the product has not been produced,
3 processed, or handled in accordance with standards established under
4 this chapter or the rules adopted under this chapter for transitional
5 products.

6 (2)(a) The department is authorized to set and collect fees related
7 to transitional certification, including application for transitional
8 certification, renewal of transitional certification, inspections, and
9 sampling. Fees collected under this section must be deposited in an
10 account within the agricultural local fund and the revenue from the
11 fees must be used solely for carrying out the provisions of this
12 section, and no appropriation is required for disbursement from the
13 fund. The department may by rule increase the initial fees established
14 in this section as necessary to cover costs of provision of services.

15 (b) The fee for application for transitional certification is fifty
16 dollars per site in addition to any organic certification application
17 fees established under this chapter.

18 (3) The department may conduct compliance checks in retail
19 establishments to evaluate compliance with transitional labeling and
20 advertising requirements of this chapter and the rules adopted under
21 this chapter and the national organic program.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 15.86 RCW
23 to read as follows:

24 (1) The department may establish a brand name materials list. The
25 brand name materials list is a list of registered materials that are
26 approved for use in organic production, processing, or handling in
27 accordance with 7 C.F.R. Part 205, national organic standards, or
28 international standards. Registration of a material on the brand name
29 materials list is voluntary. While registration under this section is
30 not required for a material to be used or sold in this state,
31 registration is necessary for a material to appear on the brand name
32 materials list.

33 (2)(a) Manufacturers of materials may submit an application to the
34 department for registration of a material on the brand name materials
35 list. Applications for registration on the brand name materials list
36 must be made on a form designated by the department. The application
37 must include:

1 (i) The name and address of the manufacturer;
2 (ii) The name and address of the manufacturer's representative
3 making the representations in the application;
4 (iii) The brand name that the material is sold under;
5 (iv) A copy of the labeling accompanying the material and a
6 statement of all claims to be made for it, including the directions and
7 precautions for use;
8 (v) The complete formula of the material including the active and
9 inert ingredients;
10 (vi) A description of the manufacturing process including all
11 materials used for the extraction and synthesis of the material, if
12 appropriate;
13 (vii) The intended uses of the product;
14 (viii) The source or supplier of all ingredients;
15 (ix) The required fee for registration or renewal; and
16 (x) Any additional information required by rule.
17 (b) If any change to the information provided in an application
18 occurs at any time after an application is submitted, the registrant
19 must immediately submit the changed information to the department for
20 review. Failure by the registrant to provide notice of change of
21 information provided in the application may result in suspension or
22 revocation of the registration.
23 (c) By submitting an application for registration on the brand name
24 materials list, the applicant expressly consents to jurisdiction of the
25 state of Washington in all matters related to the registration.
26 Applications for registration for the brand name materials list are
27 governed by the administrative procedure act, chapter 34.05 RCW.
28 (3)(a) By applying for registration on the brand name materials
29 list, the registrant expressly grants to the department or other
30 organic certifying agent or inspection agent approved by the national
31 organic program the right to enter the registrant's premises during
32 normal business hours or at other reasonable times to: (i) Inspect the
33 portion of the premises where the material, inputs, or ingredients are
34 stored, produced, manufactured, packaged, or labeled; (ii) inspect
35 records related to the sales, storage, production, manufacture,
36 packaging, or labeling of the material, inputs, or ingredients; and
37 (iii) obtain samples of materials, inputs, and ingredients. Should the
38 registrant refuse to allow the inspection of the premises or records or

1 fail to provide samples, the registration on the brand name materials
2 list is cancelled. The department shall deny applications for
3 registration where the registrant refuses to allow the inspection of
4 the premises or records as provided in this subsection or fails to
5 provide samples as provided in this subsection.

6 (b) Required inspections may be conducted by department personnel,
7 by an organic certifying agent, or by another inspection agent approved
8 by the national organic program. The department may establish by rule
9 the evaluation criteria for the review of inspection reports conducted
10 by an organic certifying agent or inspection agent approved by the
11 national organic program.

12 (4) The director may adopt rules necessary to implement the brand
13 name materials list. The rules may address, but are not limited to:
14 (a) Fees related to registration; (b) the number and scheduling of
15 inspections, both announced and unannounced; (c) recordkeeping
16 requirements; (d) additional application requirements; (e) labeling of
17 registered materials; and (f) the chemical analysis of material
18 samples.

19 (5) The department may establish a brand name materials list to
20 register materials approved for use under the following standards:

21 (a) The national organic program. A material that meets the
22 requirements of 7 C.F.R. Part 205, national organic standards, may be
23 registered; or

24 (b) The international or additional organic standards. The
25 director may review materials registered on the brand name materials
26 list as approved for use under the national organic program for
27 compliance with specific international or additional organic standards
28 as designated by rule. A registered material that complies with a
29 specific international or additional organic standard may also be
30 registered as approved under that standard.

31 (6) Registration of a material on the brand name materials list
32 under this chapter does not guarantee acceptance for use in organic
33 production or processing by organic certifying agents other than the
34 department. The department is not liable for any losses or damage that
35 occurs as a result of use of a material registered on the brand name
36 materials list.

37 (7)(a) The director may deny, suspend, or revoke a registration on
38 the brand name materials list provided for in this chapter if the

1 director determines that a registrant has failed to meet the
2 registration criteria established in this chapter or rules adopted
3 under it or violated any other provision of this chapter or rules
4 adopted under it.

5 (b) Failure to consent to inspections or sampling constitutes
6 grounds for removal from the brand name materials list.

7 NEW SECTION. **Sec. 10.** A new section is added to chapter 15.86 RCW
8 to read as follows:

9 (1) The department is authorized to set and collect fees for
10 application for registration, renewal of registration, inspections, and
11 sampling for the brand name materials list. Fees collected under this
12 section shall be deposited in an account within the agricultural local
13 fund and the revenue from such fees shall be used solely for carrying
14 out the provisions of this section, and no appropriation is required
15 for disbursement from the fund. The department may increase by rule
16 the initial fees established in this section as necessary to cover
17 costs of provision of services.

18 (2)(a) The application fee for initial registration of a pesticide,
19 spray adjuvant, processing aid, livestock production aid, or post-
20 harvest material is five hundred dollars per material.

21 (b) The application fee for initial registration of a fertilizer,
22 soil amendment, organic waste-derived material, compost, animal manure,
23 or crop production aid is four hundred dollars per material.

24 (3)(a)(i) The application fee for renewing a registration for a
25 pesticide, spray adjuvant, processing aid, livestock production aid, or
26 post-harvest material is three hundred dollars per material.

27 (ii) The application fee for renewing a registration for a
28 fertilizer, soil amendment, organic waste-derived material, compost,
29 animal manure, or crop production aid is two hundred dollars per
30 material.

31 (b) Renewal applications postmarked after October 31st must include
32 a late fee in addition to the renewal fee. Late fees must be assessed
33 as follows:

34 (i) Applications postmarked after October 31st, a late fee of one
35 hundred dollars per material.

36 (ii) Applications postmarked after November 30th, a late fee of two
37 hundred dollars per material.

1 (iii) Applications postmarked after December 31st, a late fee of
2 three hundred dollars per material.

3 (c) Renewal applications received after February 2nd will not be
4 accepted and are required to reapply as a new applicant.

5 (4) Inspections must be billed at forty dollars per hour plus
6 travel costs and mileage, which is charged at the rate established by
7 the office of financial management.

8 (5) Samples, if required for registration, or requested by the
9 applicant, will be charged to the applicant at a rate established by
10 the laboratory services division of the department of agriculture or at
11 cost for analyses performed by another laboratory. If an additional
12 visit must be arranged, then the visit must be billed at forty dollars
13 per hour plus travel costs and mileage, which is charged at the rate
14 established by the office of financial management.

15 (6) Requests for expedited reviews may be submitted and, if
16 approved, are billed at a rate of forty dollars per hour.

17 (7) The department may assess compliance with an international or
18 additional organic standard for materials registered on the brand name
19 materials list as approved for use under the national organic program.
20 Requests for additional assessments of materials approved under the
21 national organic program are billed at a rate of one hundred dollars
22 per product for each standard.

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