

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2460

61st Legislature
2010 Regular Session

Passed by the House March 6, 2010
Yeas 95 Nays 0

Speaker of the House of Representatives

Passed by the Senate March 3, 2010
Yeas 45 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **HOUSE BILL 2460** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

HOUSE BILL 2460

AS AMENDED BY THE SENATE

Passed Legislature - 2010 Regular Session

State of Washington

61st Legislature

2010 Regular Session

By Representatives Smith, Nelson, Lias, Van De Wege, Blake, Bailey, Upthegrove, Kenney, and Moeller; by request of Department of Agriculture

Prefiled 12/15/09. Read first time 01/11/10. Referred to Committee on Agriculture & Natural Resources.

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 adding new sections to chapter 15.86 RCW; and prescribing penalties.

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 ~~((organically produced))~~ organic products or transitional products;

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))~~ national organic program for agricultural products
14 marketed and labeled using the term "organic" or a derivative of the
15 term "organic;"

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

1 (4) Establishing a state organic program or obtaining federal
2 accreditation as a certifying agent under the (~~federal organic food~~
3 ~~production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules~~
4 ~~adopted thereunder~~) national organic program; and

5 (5) Establishing a brand name materials list for registration of
6 inputs that comply with national, international, or other organic
7 standards.

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

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

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

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

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

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

23 (5) "Transitional (~~food~~) product" means any (~~food~~) agricultural
24 product that (~~satisfies all of the~~) meets requirements (~~of~~) for
25 organic (~~food~~) certification, except (~~the time requirements as~~
26 defined in rule) that the organic production areas have not been free
27 of prohibited substances for thirty-six months. Use of prohibited
28 substances must have ceased for at least twelve months prior to the
29 harvest of a transitional product.

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

33 (7) "Processor" means any person engaged in the canning, freezing,
34 drying, dehydrating, cooking, pressing, powdering, packaging, baking,
35 heating, mixing, grinding, churning, separating, extracting, cutting,
36 fermenting, eviscerating, preserving, jarring, or otherwise processing
37 of an organic (~~food~~) or transitional product.

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

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

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

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

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

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

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

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

26 (16) "National organic program" means the program administered by
27 the United States department of agriculture pursuant to 7 C.F.R. Part
28 205, which implements the federal organic food production act of 1990
29 (7 U.S.C. Sec. 6501 et seq.).

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

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

36 (19) "Compost" means the product of a managed process through which
37 microorganisms break down plant and animal materials into more
38 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 70.95J 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) "Postharvest material" means any substance, material,
2 structure, or device that is used in the postharvest handling of
3 agricultural products.

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

5 (a) During processing, but is removed in some manner from the food
6 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)) must be produced under standards
20 established ((under RCW 15.86.060)) in this chapter or rules adopted
21 pursuant to this chapter. A producer, processor, or handler shall not
22 represent, sell, or offer for sale any ((food)) agricultural product
23 with the representation that the product is ((an)) organic ((food)) if
24 the producer, processor, or handler knows, or has reason to know, that
25 the ((food)) product has not been produced, processed, or handled in
26 accordance with standards established ((under RCW 15.86.060)) in this
27 chapter or rules adopted pursuant to this chapter.

28 (2) The department may conduct evaluations in retail establishments
29 to verify compliance with organic labeling and advertising requirements
30 of this chapter, rules adopted pursuant to this chapter, and the
31 national organic program.

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

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

1 the national organic program (~~(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 for the proper administration of this chapter.~~

4 (2)(a) 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,~~) RCW 15.86.030 or 15.86.090 or rules (~~or~~
7 ~~regulations~~) adopted (~~under~~) pursuant to this chapter, to cease
8 their violations and desist from future violations.

9 (b) Whenever the director finds that a producer, processor, or
10 handler has committed a violation, the director shall impose on and
11 collect from the violator a civil fine not exceeding the total of (~~the~~
12 ~~following amounts~~):

13 (~~(a)~~) (i) The state's estimated costs of investigating and taking
14 appropriate administrative and enforcement actions in respect to the
15 violation; and

16 (~~(b)~~) (ii) One thousand dollars.

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

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

23 (1) The department is authorized to take such actions, conduct
24 proceedings, and enter orders as permitted or contemplated for a state
25 organic program or certifying agent under the (~~federal organic food~~
26 ~~production act of 1990, 7 U.S.C. Sec. 6501 et seq., and the rules~~
27 ~~adopted thereunder)) national organic program.~~

28 (2) The director may deny, suspend, or revoke a certification
29 provided for in this chapter if the director determines that an
30 applicant or certified person has violated this chapter or rules
31 adopted pursuant to this chapter.

32 (3) The (~~state organic~~) program shall not be inconsistent with
33 the requirements of (~~7 U.S.C. Sec. 6501 et seq. and the rules adopted~~
34 ~~thereunder, including 7 C.F.R. Sec. 205.668~~) the national organic
35 program.

36 (4) The department shall adopt rules necessary to implement this
37 section.

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

3 (1) The director may adopt rules establishing a program for
4 certifying producers, processors, and handlers as meeting state,
5 national, or international standards for organic or transitional
6 ~~((food))~~ products.

7 (2) The rules:

8 (a) May govern, but are not limited to governing:

9 (i) The number and scheduling of on-site visits, both announced and
10 unannounced, by certification personnel;

11 (ii) Recordkeeping requirements; and

12 (iii) The submission of product samples for chemical analysis(~~(-~~
13 The rules)); and

14 (b) Shall include a fee schedule that will provide for the recovery
15 of the full cost of the ~~((organic food))~~ program.

16 (3) All fees collected under this ~~((section))~~ chapter shall be

17 deposited in an account within the agricultural local fund ~~((and))~~.

18 The revenue from such fees shall be used solely for carrying out the

19 provisions of this ~~((section))~~ chapter, and no appropriation is

20 required for disbursement from the fund.

21 (4) The director may employ such personnel as are necessary to
22 carry out the provisions of this ~~((section))~~ chapter.

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

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

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

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

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

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

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

3 (1) To be labeled, sold, or represented as transitional products,
4 agricultural products must comply with transitional product standards
5 specified in this chapter and rules adopted pursuant to this chapter,
6 including no application of substances prohibited under the national
7 organic program within one year immediately preceding harvest.

8 (2) A producer, processor, or handler may not represent, sell, or
9 offer for sale any agricultural product as a transitional product if
10 the producer, processor, or handler knows or has reason to know that
11 the product does not comply with transitional product standards
12 specified in this chapter or rules adopted pursuant to this chapter.

13 (3)(a) The department may set and collect transitional
14 certification fees, including fees for application for transitional
15 certification, renewal of transitional certification, inspections, and
16 sampling. Collected fees are subject to provisions specified in RCW
17 15.86.070.

18 (b) The fee for application for transitional certification is fifty
19 dollars per site in addition to any organic certification application
20 fees established under this chapter. The department may increase this
21 fee by rule as necessary to cover costs of provision of services.

22 (4) The department may conduct evaluations in retail establishments
23 to verify compliance with transitional labeling and advertising
24 requirements of this chapter, rules adopted pursuant to this chapter,
25 and the national organic program.

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

28 (1) The department may establish a brand name materials list of
29 registered materials that are approved for use in organic production,
30 processing, or handling in accordance with the national organic program
31 or international standards. Registration of a material on the brand
32 name materials list is voluntary. While registration is not required
33 for a material to be used or sold in this state, registration is
34 necessary for a material to be included on the brand name materials
35 list.

36 (2)(a) Manufacturers of materials may submit an application to the

1 department for registration of a material on the brand name materials
2 list. Applications must be made on a form designated by the
3 department, and must include:

4 (i) The name and address of the manufacturer;

5 (ii) The name and address of the manufacturer's representative
6 making the representations in the application;

7 (iii) The brand name that the material is sold under;

8 (iv) A copy of the labeling accompanying the material and a
9 statement of all claims to be made for it, including the directions and
10 precautions for use;

11 (v) The complete formula of the material, including the active and
12 inert ingredients;

13 (vi) A description of the manufacturing process, including all
14 materials used for the extraction and synthesis of the material, if
15 appropriate;

16 (vii) The intended uses of the product;

17 (viii) The source or supplier of all ingredients;

18 (ix) The required fee for registration or renewal; and

19 (x) Any additional information required by rule.

20 (b) If any change to the information provided in an application
21 occurs at any time after an application is submitted, the registrant
22 must immediately submit corrected information to the department for
23 review. Failure by the registrant to provide corrections to
24 information provided in the application may result in suspension or
25 revocation of the registration.

26 (c) By submitting an application for registration on the brand name
27 materials list, the applicant expressly consents to jurisdiction of the
28 state of Washington in all matters related to the registration.

29 (d) Applications for registration on the brand name materials list
30 are governed by chapter 34.05 RCW.

31 (3)(a) By applying for registration on the brand name materials
32 list, the registrant expressly grants to the department or other
33 organic certifying agent or inspection agent approved by the national
34 organic program the right to enter the registrant's premises during
35 normal business hours or at other reasonable times to:

36 (i) Inspect the portion of the premises where the material, inputs,
37 or ingredients are stored, produced, manufactured, packaged, or
38 labeled;

1 (ii) Inspect records related to the sales, storage, production,
2 manufacture, packaging, or labeling of the material, inputs, or
3 ingredients; and

4 (iii) Obtain samples of materials, inputs, and ingredients.

5 (b) Should the registrant refuse to allow inspection of the
6 premises or records or fail to provide samples, the registration on the
7 brand name materials list is cancelled. The department shall deny
8 applications for registration where the registrant refuses to allow the
9 inspection of the premises or records or fails to provide samples as
10 provided in this section.

11 (c) Required inspections may be conducted by department personnel,
12 by an organic certifying agent, or by another inspection agent approved
13 by the national organic program. The department may establish by rule
14 evaluation criteria for review of inspection reports conducted by an
15 organic certifying agent or inspection agent approved by the national
16 organic program.

17 (4) The director may adopt rules necessary to implement the brand
18 name materials list, including but not limited to:

19 (a) Fees related to registration;

20 (b) The number and scheduling of inspections, both announced and
21 unannounced;

22 (c) Recordkeeping requirements;

23 (d) Additional application requirements;

24 (e) Labeling of registered materials; and

25 (f) Chemical analysis of material samples.

26 (5)(a) The department may establish a brand name materials list to
27 register materials approved for use under:

28 (i) National organic program standards; or

29 (ii) International or additional organic standards.

30 (b) The director may review materials registered on the brand name
31 materials list as approved for use under the national organic program
32 for compliance with specific international or additional organic
33 standards as designated by rule. A registered material that complies
34 with a specific international or additional organic standard may also
35 be registered as approved under that standard.

36 (6) Registration of a material on the brand name materials list
37 under this chapter does not guarantee acceptance for use in organic
38 production or processing by organic certifying agents other than the

1 department. The department is not liable for any losses or damage that
2 occurs as a result of use of a material registered on the brand name
3 materials list.

4 (7) The director may deny, suspend, or revoke a registration on the
5 brand name materials list if the director determines that a registrant
6 has:

7 (a) Failed to meet the registration criteria established in this
8 chapter or rules adopted pursuant to this chapter; or

9 (b) Violated any other provision of this chapter or rules adopted
10 pursuant to this chapter.

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

13 (1) The department is authorized to set and collect fees for
14 application for registration, renewal of registration, inspections, and
15 sampling for the brand name materials list. Collected fees are subject
16 to provisions specified in RCW 15.86.070. The department may increase
17 by rule fees established in this section as necessary to cover costs of
18 provision of services.

19 (2)(a) The application fee for registration of a pesticide, spray
20 adjuvant, processing aid, livestock production aid, or postharvest
21 material is:

22 (i) Five hundred dollars per material for an initial registration;
23 and

24 (ii) Three hundred dollars per material for renewing a
25 registration.

26 (b) The application fee for registration of a fertilizer, soil
27 amendment, organic waste-derived material, compost, animal manure, or
28 crop production aid is:

29 (i) Four hundred dollars per material for an initial registration;
30 and

31 (ii) Two hundred dollars per material for renewing a registration.

32 (3)(a) Renewal applications postmarked after October 31st must
33 include, in addition to the renewal fee, a late fee of:

34 (i) One hundred dollars per material for applications postmarked
35 after October 31st;

36 (ii) Two hundred dollars per material for applications postmarked
37 after November 30th; and

1 (iii) Three hundred dollars per material for applications
2 postmarked after December 31st.

3 (b) Renewal applications received after February 2nd will not be
4 accepted, and applicants must reapply as new applicants.

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

8 (5) Chemical analysis of material samples, if required for
9 registration or requested by the applicant, must be billed at a rate
10 established by the laboratory services division of the department of
11 agriculture or at cost for analyses performed by another laboratory.

12 (6) Requests for expedited reviews may be submitted and, if
13 approved, must be billed at forty dollars per hour.

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

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