

AGRICULTURE CODE

TITLE 2. DEPARTMENT OF AGRICULTURE

CHAPTER 18. CERTIFICATION AND AGRICULTURAL PRODUCT STANDARDS

SUBCHAPTER A. ORGANIC STANDARDS AND CERTIFICATION

Sec. 18.001. DEFINITIONS. In this subchapter:

(1) "Agricultural product" means any raw or processed agricultural commodity or product, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

(2) "National organic program" means the program established under the Organic Foods Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended, or any similar federal program.

(3) "Organic" means labeled, advertised, marketed, or otherwise represented as an agricultural product produced in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. Section 6501 et seq.), as amended, and this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 52, Sec. 5, eff. May 7, 2001; Acts 2003, 78th Leg., ch. 1288, Sec. 1, eff. June 21, 2003.

Sec. 18.002. ORGANIC STANDARDS PROGRAM. (a) The department by rule may create and administer a program for the administration and enforcement of standards related to organic agricultural products, including certification of persons who produce, process, distribute, or handle organic agricultural products, and may regulate the use of "organic" and related terms.

(b) Any program created by the department under Subsection (a) must be consistent with the provisions of the national organic program.

(c) To the extent consistent with federal law, the department by rule may adopt standards related to organic agricultural products other than the standards established by the national organic program.

(d) The department may enter into an agreement with the United States Department of Agriculture to act as an organic certifying agent or to provide primary enforcement of state and national standards relating to organic agricultural products.

(e) In regulating organic agricultural products under this subchapter, the department may require certification, registration, or other documentation the department considers necessary:

(1) to ensure the integrity of the state and national organic programs;

(2) to ensure the marketability of organic agricultural products produced in this state; and

(3) to meet the authentication or verification requirements of the federal government, another state, or a foreign country relating to organic agricultural products.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 2, eff. June 21, 2003.

Sec. 18.003. ORGANIC CERTIFICATION. (a) The department may certify each person who produces, processes, distributes, or handles an organic agricultural product in this state.

(b) A person may apply for any required certification under this subchapter by submitting the following, as prescribed by department rule:

(1) an application for certification;

(2) a plan for production, processing, distribution, or handling of organic agricultural products; and

(3) a fee.

(c) The department by rule may require a person certified under this subchapter to submit an annual report of that person's production, processing, distribution, or handling of organic agricultural products, along with an annual reporting fee.

(d) The department may by written notice require that a person certified under this subchapter submit any additional report, including copies of records, the department considers necessary to investigate or monitor production, processing,

distribution, or handling of organic agricultural products.

(e) A certificate issued under this subchapter remains in effect until surrendered, suspended, or revoked in accordance with procedures established by department rule and Section 18.0075.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.17, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 211, Sec. 3, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1288, Sec. 3, eff. June 21, 2003.

Sec. 18.004. REGISTRATION PROGRAM. The department by rule may establish a voluntary or mandatory registration program for persons who produce, process, distribute, handle, or advertise organic products in this state and for persons who certify any producers, processors, distributors, or handlers located in this state.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.18, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 4, 5, 12, eff. June 21, 2003.

Sec. 18.006. FEES. (a) The department by rule may require a fee for each:

- (1) application for certification;
- (2) application for registration or registration renewal;
- (3) annual report required by the department;
- (4) certificate issued by the department; and
- (5) document required by the federal government, another state, or a foreign country that is issued by the department under this subchapter.

(b) The department may establish:

- (1) a different fee amount for each fee under Subsection (a); and
- (2) a fee schedule for each fee under Subsection (a).

(c) The department may establish a late fee in an amount that is not more than twice the amount of the fee authorized under

Subsection (a) and required to be paid by a date established by rule or by written notice provided to the person who owes the fee.

(d) The department shall set fees under this subchapter in amounts that enable it to recover the costs of administering this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 419, Sec. 2.19, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 6, eff. June 21, 2003.

Sec. 18.007. DENIAL, SUSPENSION, OR REVOCATION OF ORGANIC CERTIFICATION OR REGISTRATION. The department may deny, suspend, or revoke a certification or registration issued under this subchapter if the person to whom the certification or registration was issued:

(1) makes a false representation material to a matter governed by this subchapter; or

(2) violates or refuses to comply with this subchapter or a rule or instruction of the department under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 7, eff. June 21, 2003.

Sec. 18.0075. ADMINISTRATIVE PROCEDURES. (a) To the extent consistent with the requirements of the national organic program, the department by rule shall adopt administrative procedures relating to assessment of administrative penalties and other sanctions for violations of this subchapter. Chapter 2001, Government Code, does not apply to department rules adopted under this subchapter to the extent that Chapter 2001, Government Code, conflicts with the requirements of the national organic program.

(b) The department shall provide a person with written notice of the department's intent to assess the person with an administrative penalty or other sanction. If the department requires a written response to the notice, the department shall allow the person not less than 10 days after the date the person receives the notice to provide the department with the written

response. A written response may contain an admission of a violation of this subchapter or rule adopted under this subchapter, as applicable, and an agreement to assessment of the applicable administrative penalty or sanction.

(c) The department's administrative procedures may provide for a default judgment without a hearing for failure to submit to the department a written response under Subsection (b) that contains a request for a hearing and a general or specific denial that the department's action is warranted by the facts or law.

(d) A default judgment may be entered under this section by order of the commissioner. The order entering a default judgment is final on the day the commissioner issues the order.

(e) A default judgment may be appealed for review de novo to a Travis County district court not later than the first anniversary of the date the order is issued under Subsection (d).

(f) On appeal, the court may only consider the issues of whether the appellant received proper notice as required by Subsection (b) and whether the department received a proper response under Subsection (b). The appellant has the burden of proof to establish, by a preponderance of the evidence, that proper notice was not received by the appellant or that a proper response under Subsection (b) was received by the department. If the appellant prevails, the default judgment shall be vacated and the case shall be remanded to the department for an administrative hearing on the substantive issues raised by the department's notice.

(g) The State Office of Administrative Hearings shall conduct any hearing required by a rule of the department adopted under this subchapter.

(h) In the absence of administrative procedures adopted by the department under this section, the procedures under Chapter 12 and under Chapter 2001, Government Code, apply to the assessment of administrative penalties or license sanctions, except that the procedures may, on motion of a party or on the administrative law judge's own motion, be modified by the judge as necessary to comply with standards and procedures under the national organic program. Added by Acts 2003, 78th Leg., ch. 1288, Sec. 8, eff. June 21, 2003.

Sec. 18.008. PENALTY. (a) A person commits an offense if the person knowingly:

(1) violates this subchapter; or

(2) fails to comply with a notice, order, or rule of the department under this subchapter.

(b) An offense under this section is a Class C misdemeanor. Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.009. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted under this subchapter is liable to the state for a civil penalty not to exceed \$10,000 for each violation. Each day a violation continues is a separate violation for purposes of a civil penalty assessment.

(b) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall file suit to collect the penalty.

(c) A civil penalty collected under this section shall be deposited in the general revenue fund. All civil penalties recovered in suits instituted by a county or district attorney under this section shall be divided between the state and the county in which the county or district attorney brought suit, with 50 percent of the recovery to be paid to the general revenue fund and 50 percent to the county.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On request of the department, the attorney general or the county or district attorney of the county in which the alleged violation is threatened or occurring shall file suit for the injunctive relief. Venue is in the county in which the alleged violation is threatened or is occurring.

(e) This section is applicable only if the department chooses to use civil remedy as opposed to criminal penalty under Section [18.008](#).

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1288, Sec. 9, eff. June 21, 2003.

Sec. 18.010. STOP-SALE ORDER. (a) If an organic agricultural product is being sold or distributed in violation of this subchapter or a rule adopted under this subchapter, the department may issue a written order to stop the sale or distribution of the product by a person in control of the product. The product named in the order may not be sold or distributed while labeled, marketed, advertised, or otherwise represented as "organic" until:

- (1) permitted by a court under Subsection (b); or
- (2) the department determines that the sale or distribution of the product is in compliance with this subchapter and rules adopted under this subchapter.

(b) A person in control of the product named in the order may bring suit in a court in the county where the product is located. After a hearing, the court may permit the product to be sold if the court finds the product is not being sold in violation of this subchapter or a department rule issued under this subchapter.

(c) This section does not limit the department's right to act under another section of this subchapter.

Added by Acts 1993, 73rd Leg., ch. 650, Sec. 1, eff. Aug. 30, 1993.  
Amended by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 52, Sec. 6, eff. May 7, 2001; Acts 2003, 78th Leg., ch. 1288, Sec. 10, eff. June 21, 2003.

Sec. 18.011. PUBLIC INFORMATION. Information created, collected, assembled, or maintained by the department under this subchapter is public information, except that the department by rule may exempt specified information from disclosure but only to the extent necessary to comply with the national organic program.  
Added by Acts 2003, 78th Leg., ch. 1288, Sec. 11, eff. June 21, 2003.

#### SUBCHAPTER B. AGRICULTURAL PRODUCT STANDARDS

Sec. 18.051. PRODUCT CERTIFICATION PROGRAMS. (a) The department may establish certification programs relating to the protection, sale, advertising, marketing, transporting, or other commercial handling of agricultural, horticultural, or related products in this state if the department determines that a certification program is warranted to:

(1) ensure genetic purity, identity, or disease or pest resistance; or

(2) help prevent the spread of insects, other pests, diseases, or pathogens.

(b) The department may regulate the use of the term "Texas Certified Product," other terms that indicate product quality standards, and symbols connected with those terms as used with a product regulated under this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.052. STANDARDS. The department by rule may develop minimum certification standards for the administration and enforcement of this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.053. FEES. The department may set fees under this subchapter in amounts that do not exceed the amounts reasonably necessary to enable the department to recover the costs of administering this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.054. CIVIL PENALTY; INJUNCTION. (a) A person who violates this subchapter or a rule adopted by the department under this subchapter is liable for a civil penalty not to exceed \$500 for each violation. Each day a violation continues is a separate violation for purposes of assessment of a civil penalty under this section.

(b) A civil penalty recovered by the department under this section shall be deposited in the general revenue fund. A civil penalty recovered in an action instituted by a local government



under this section shall be equally divided between this state and the local government, with 50 percent of the penalty recovered paid to the general revenue fund and the other 50 percent to the general fund of the local government instituting the action.

(c) On request of the department, the attorney general or the county attorney or district attorney of the county in which the violation is alleged to have occurred shall bring an action to collect the civil penalty.

(d) The department is entitled to appropriate injunctive relief to prevent or abate a violation of this subchapter or a rule adopted under this subchapter. On the request of the department, the attorney general or the county attorney or district attorney of the county in which the alleged violation is threatened or occurring shall bring an action for the injunctive relief. Venue for the action lies in the county in which the alleged violation is threatened or occurring.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

#### SUBCHAPTER C. AGRICULTURAL PRODUCTION PROCESS CERTIFICATION PROGRAM

Sec. 18.071. AGRICULTURAL CERTIFICATION. The department may establish certification programs under this subchapter relating to the protection, sale, advertising, marketing, or related production processes in this state.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Amended by Acts 2003, 78th Leg., ch. 196, Sec. 3, eff. Sept. 1, 2003.

Sec. 18.072. CERTIFICATION STANDARDS. The department by rule may develop programs establishing minimum certification standards for production processes.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.073. FEES. The department may set fees under this subchapter in amounts that do not exceed the amounts reasonably necessary to enable the department to recover the costs of

administering this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.

Sec. 18.074. ADMINISTRATIVE PENALTY. The department may assess an administrative penalty under Section [12.020](#) if the department determines that a person is falsely claiming to be certified under this subchapter.

Added by Acts 1995, 74th Leg., ch. 425, Sec. 1, eff. Sept. 1, 1995.