

Dear Senators CORDER, Winder & Malepeai, and
Representatives TRAIL, Andrus & Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Department of Agriculture:

IDAPA 02.06.33 – Organic Food Product Rules – Docket No. 02-0633-1001.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than
10-1-10. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting
on the enclosed rules is 11-1-10.

The germane joint subcommittee may request a statement of economic impact with
respect to a proposed rule by notifying Research and Legislation. There is no time limit on
requesting this statement, and it may be requested whether or not a meeting on the proposed rule
is called or after a meeting has been held.

To notify Research and Legislation, call 334-4845, or send a written request to the
address or FAX number indicated on the memorandum attached.



Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

Jeff Youtz
Director

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Agricultural Affairs Committee and the House Agricultural Affairs Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity *KAG*

DATE: September 14, 2010

SUBJECT: Idaho State Department of Agriculture

IDAPA 02.06.33 – Organic Food Product Rules – Docket No. 02-0633-1001

The Idaho State Department of Agriculture submits notice of a proposed rule at IDAPA 02.06.33 – Organic Food Product Rules. According to the Department, the purpose of the rule is to incorporate by reference the June 25, 2010 version of the National Organic Program Regulations. The Department also states that it will no longer offer certification seal stickers for certified organic products in order to protect the integrity of the organic certification. The Department will continue to issue seals electronically. In addition, the Department notes that all references to “gross organic income” will be changed to “gross organic sales” in order to clarify the fee requirements in the rules.

The action appears to be authorized pursuant to Section 22-1103, Idaho Code.

cc: Idaho State Department of Agriculture
Brian J. Oakey
Brandon Lamb

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCT RULES

DOCKET NO. 02-0633-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will incorporate by reference the June 25, 2010 version of the National Organic Program Regulations, 7 CFR Part 250. The Idaho State Department of Agriculture ("ISDA") will no longer offer certification seal stickers for certified organic products in order to prevent the misuse of the certification seal. All references of "gross organic income" will be changed to "gross organic sales" in order to clarify the fee requirements in the Rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rule changes. The United State Department of Agriculture requires that ISDA follow the National Organic Program Regulations in order for ISDA to be an accredited agent. ISDA will no longer offer certification seal stickers in order to protect the integrity of the organic certification. This rulemaking also corrects confusing references to clarify the fee requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

All accredited agents must follow the National Organic Program Regulations in 7 CFR Part 205.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0633-1001

004. INCORPORATION BY REFERENCE.

The ~~October 21, 2007~~ Code of Federal Regulations, (~~CFR~~) Title 7, ~~CFR~~ Part 205, ~~Subchapter M-Organic Foods Production Act Provisions~~ National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.6422, is incorporated by reference and can be viewed at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=37e82b8975625fa42c381cd0fbb522d8&rgn=div5&view=text&node=7:3.1.1.9.32&idno=7>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 ~~and are also available at the state law library.~~ (4-2-08)(____)

(BREAK IN CONTINUITY OF SECTIONS)

200. IDAHO ORGANIC CERTIFICATION SEAL.

01. Description of Seal. The Idaho seal must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously.

FIGURE 1



(4-2-03)

02. Utilization of Seal. The Idaho organic certification seal as approved by the director and as shown in Figure 1, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. (4-2-03)

a. Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

b. Authorization granted to imprint facsimile seals shall be subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03)

e. ~~Seals are available at the Department at the cost of two and one-half cents (\$.025) each plus Idaho sales tax.~~ (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

301. CERTIFICATION REQUIREMENTS, DEADLINES AND FEES.

01. Certification Requirements and Deadlines. All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed by the Department by July 1st of each year. (3-29-10)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

b. Producers/handlers with annual gross organic income sales of five thousand dollars (\$5,000) or less may select certification in place of registration. (~~3-19-07~~)(____)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

d. Livestock producer and handler applications will be accepted throughout the year. (3-19-07)

02. Certification Fees. (3-29-10)

a. Organic producers/handlers with annual gross organic income sales of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (~~3-19-07~~)(____)

b. Organic producer/handler with annual gross organic income sales of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (~~3-19-07~~)(____)

c. A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

03. Certification Inspection Fees. (3-19-07)

a. The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

c. There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

e. The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler. (3-19-07)

f. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

g. Upon approval by the Department, private inspectors may be utilized. The applicant shall bear the total cost of the private inspection. (3-29-10)