

Dear Senators CORDER, Smyser, Bock, and
Representatives ANDRUS, Boyle, 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. 02-0633-1101).

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 09/13/2011. 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 10/11/2011.

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 enclosed.



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: August 24, 2011

SUBJECT: Department of Agriculture

IDAPA 02.06.33 - Organic Food Product Rules (Docket No. 02-0633-1101)

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, as an accredited certifying agent under the National Organic Program of the USDA, the Department must not only comply with the federal NOP regulations but must also refrain from requiring compliance with provisions that are not in the NOP regulations. The Department states that the purpose of this rule is to eliminate certain provisions in the rules that are more stringent than the NOP regulations, specifically the educational activity requirements for certification, the July 1st deadline for certification, and the fees for chemical residue analysis. In addition, the Department notes that HB 38, from the 2011 legislative session, eliminated educational activity requirements.

Negotiated rulemaking was not conducted. The action appears to be authorized pursuant to Section 22-1103, Idaho Code.

cc: Department of Agriculture
Brian Oakey and Brandon Lamb

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCT RULES

DOCKET NO. 02-0633-1101

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 September 21, 2011.

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 nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho State Department of Agriculture is an accredited certifying agent under the National Organic Program (NOP) of the United States Department of Agriculture, and ISDA must comply the federal NOP Regulations, 7 C.F.R. Part 205. ISDA may not require compliance with provisions not in the NOP Regulations. In order to comply with the NOP Regulations, ISDA must eliminate certain provisions of IDAPA 02.06.33, Organic Food Product Rules that are more stringent than NOP Regulations. Therefore, this rulemaking will eliminate the following provisions: the educational activity requirements for certification, the July 1st deadline for certification, and the fees for chemical residue analysis.

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 resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes are required to comply with the NOP Regulations. The elimination of the education activity requirements is also required to comply with House Bill 38 passed by the Idaho Legislature in 2011.

INCORPORATION BY REFERENCE: No documents are being incorporated by reference as a result of this rulemaking.

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 September 28, 2011.

DATED this 3rd day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0633-1101

012. -- ~~099.~~ (RESERVED)

~~100.~~ EDUCATIONAL ACTIVITY REQUIREMENTS.

~~01. Eligibility. In addition to the requirements outlined in this rule, all producers and handlers shall participate in at least one (1) approved educational activity annually to be eligible for continued certification. (3-19-07)~~

~~02. Request for Approval. A producer or handler who intends to attend an educational activity, that is either in or out of state, or the organizer of an educational activity, shall submit to the department a request for approval of the educational activity not less than thirty (30) days prior to the scheduled educational activity. Such a request shall be submitted on a form prescribed by the department. Under exceptional circumstances, as described in writing by the producer or handler requesting approval, the thirty (30) day requirement may be waived. (3-19-07)~~

~~03. List of Attendees. The organizer of an approved educational activity shall submit to the department a list of attendees within thirty (30) days of the conclusion of the educational activity. (3-19-07)~~

~~04. Official Approval. Official approval shall be given only for those educational activities that deal with: (3-19-07)~~

~~a. Organic production; (4-2-03)~~

~~b. Integrated pest management; (4-2-03)~~

~~c. Sustainable agriculture practices; (4-2-03)~~

~~d. Organic handling; or (4-2-03)~~

~~e. Processing practices. (4-2-03)~~

~~101.—199.~~ (RESERVED)

(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 ~~or approved~~ 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 sales of five thousand dollars (\$5,000) or less may select certification in place of registration. (4-7-11)

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 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). (4-7-11)
- b.** Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (4-7-11)
- 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)