

Dear Senators BURTENSHAW, Bayer, Nelson, and
Representatives KAUFFMAN, Andrus, Toone:

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

IDAPA 02.06.33 - Organic Food Products Rules (Fee Rule) - Temporary and Proposed (Docket
No. 02-0633-2201).

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 08/08/2022. 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 09/05/2022.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
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: Deputy Division Manager - Katharine Gerrity

DATE: July 20, 2022

SUBJECT: Department of Agriculture

IDAPA 02.06.33 - Organic Food Products Rules (Fee Rule) - Temporary and Proposed (Docket No. 02-0633-2201)

Summary and Stated Reasons for the Rule

The Idaho State Department of Agriculture submits notice of temporary and proposed rule at IDAPA 02.06.33 - Organic Food Products Rules. This is a fee rule. According to the department, fees are being increased for this voluntary program which was supported by the stakeholders. The department adds that the fee increase is necessary to ensure the financial stability of the dedicated fund program.

Negotiated Rulemaking / Fiscal Impact

The department states that during negotiated rulemaking in 2021, the subject of fees was discussed at length. The department notes that the Organics Advisory Committee also expressed support for the new fees.

Statutory Authority

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

cc: Department of Agriculture
Lloyd Knight

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

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IDAPA 02 – DEPARTMENT OF AGRICULTURE

02.06.33 – ORGANIC FOOD PRODUCTS RULES

DOCKET NO. 02-0633-2201 (FEE RULE)

NOTICE OF RULEMAKING – TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 4, 2022.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. 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 July 20, 2022.

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 the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rules were open for negotiated rulemaking in 2021. The subject of fees was discussed at length with stakeholders during that rulemaking, and support was expressed to increase the fees for this voluntary program. In addition, the Organics Advisory Committee also expressed support for these new fees. All negotiated rules were published as Temporary Rules in 2022, but the agency did not want to publish the fee increase as a temporary rule without review by the Legislature. The rule and new fee structure was presented to the Idaho Legislature during the 2022 legislative session, and the rule was approved by joint resolution.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This new temporary rule adds the new fee table that is supported by stakeholders and the Organic Advisory Committee and was presented to and approved by the Idaho Legislature. The fee increase is necessary to ensure the financial stability of this dedicated fund program.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The fee is authorized under 22-1103, Idaho Code. It is necessary to maintain services to customers of this voluntary certification program.

301. GRADUATED GROSS SALES FEE SCHEDULE.

~~01. Graduated Gross Sales Fee Table.~~ In addition to the fees prescribed above, all producers and handlers certified by the Department must remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross organic sale dollar amount for the upcoming calendar year, with a minimum fee of ~~ten~~ thirty-five dollars (~~\$1035~~). The graduated gross organic sales fee structure is as follows:

0-2,000	<u>\$10</u>
2,001-5,000	<u>\$235</u>
5,001 - 10,000	<u>\$650</u>
10,001 - 15,000	<u>\$75100</u>
15,001 - 20,000	<u>\$1030</u>
20,001 - 25,000	<u>\$1265</u>

25,001 - 30,000	\$ 1950
30,001 - 35,000	\$ 175230
35,001 - 50,000	\$ 3250
50,001 - 75,000	\$ 375490
75,001 - 100,000	\$ 6500
100,001 - 150,000	\$ 9750
150,001 - 200,000	\$1, 0300
200,001 - 280,000	\$1, 40820
280,001 - 375,000	\$ 1,8752,440
375,001 - 500,000	\$ 2,5003,250
500,001 and up	0. 75 % of gross organic sales up to \$ 5,0006,500

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:

This rule change will not have a negative impact on the general fund due to the program being operated by a fee for service dedicated fund. These fee changes are needed to provide the services requested by organic certifiers in a growing voluntary program and align with recommendations from industry to increase the graduate gross fee schedule fees by 30%, hour rate by 42%, and nominal fee increases to three other categories. Total potential impact to dedicated funds is a \$168,000 increase with 93% coming from the fee schedule and hour rate increase.

IDAHO CODE SECTION 22-101A STATEMENT: Pursuant to 22-101A(1), for any rule promulgated or adopted by the director which is broader in scope or more stringent than federal law or regulations, or which regulates an activity not regulated by the federal government, the director shall identify the portions of the adopted rule that are broader in scope or more stringent than federal law or rules, or which regulate an activity not regulated by the federal government. The sections of the rule which are broader in scope, more stringent than federal law or regulations, or regulate an activity not regulated by the federal government:

This rule is neither broader in scope nor more stringent than federal laws or regulations and does not regulate an activity not already regulated by the federal government. The detailed 22-101A analysis can be found on the agency’s website at www.agri.idaho.gov.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted under docket 02-ZBRR-2101. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021 Idaho Administrative Bulletin, Vol. 21-4, page 13.

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:

The Code of Federal Regulations, Title 7, Part 205, National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.622, is incorporated by reference and can be viewed online at <http://www.ecfr.gov/cgi/bintextidx?c=ecfr&SID=b885492294d6e01d334ae6076da2c3c2&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, Boise, Idaho 83712.

Incorporating this document is necessary as it ensures organic certifications facilitated by ISDA comply with and are consistent with the national regulations. Organic certification is voluntary, but for those that decide that certification is necessary, compliance with the federal regulation is essential.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jared Stuart, Administrator of the Division of Agricultural Inspections, at (208)332-8500 or jared.stuart@isda.idaho.gov. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2022.

DATED this July 6, 2022.

Lloyd B. Knight, Rules Review Officer
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 7249

Boise, Idaho 83707
Phone: (208) 332-8664
Fax: (208) 334-2170
Email: rulesinfo@isda.idaho.gov

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF FEE DOCKET NO. 02-0633-2201
(Only Those Sections With Amendments Are Shown.)**

300. CERTIFICATION REQUIREMENTS AND FEES.

01. Certification Requirements. All applicants applying for certification with the Department, must submit the application to the Department on forms prescribed or approved by the Department. (3-15-22)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) must be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-15-22)

b. Producers/handlers with annual gross organic sales of five thousand dollars (\$5,000) or less may select certification. (3-15-22)

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-15-22)

02. Certification Fees. (3-15-22)

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 – Certification Application Fee of ~~one~~ **two** hundred ~~twenty-five~~ dollars (~~\$125~~**200**) that is non-refundable. ~~(3-15-22)~~**(5-4-22)T**

~~**b.** Organic producer/handler with annual gross organic sales of more than fifteen thousand dollars (\$15,000) – Certification Application Fee of two hundred dollars (\$200) that is non-refundable. (3-15-22)~~

eb. A person who produces and handles their own organic food products pays only one (1) annual certification fee based on gross annual organic sales. (3-15-22)

03. Certification Inspection Fees. (3-15-22)

a. The hourly rate is ~~thirty-five~~ **fifty** dollars (~~\$35~~**50**) including travel time. ~~(3-15-22)~~**(5-4-22)T**

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. (3-15-22)

c. There will be a minimum charge of ~~thirty-five~~ **fifty** dollars (~~\$35~~**50**) plus mileage ~~as approved by the Board of Examiners~~ **as approved by the Board of Examiners** for any inspection. ~~(3-15-22)~~**(5-4-22)T**

~~d.~~ *A mileage rate as approved by the Board of Examiners will be included in the inspection fees.* (3-15-22)

~~ed.~~ Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of ~~forty-seven~~ sixty-five dollars ~~and fifty cents~~ (\$~~47.50~~65) including travel time with a minimum charge of one (1) hour plus mileage. (3-15-22)(5-4-22)T

~~fe.~~ Upon approval by the Department, private inspectors may be utilized. The applicant bears the total cost of the private inspection. (3-15-22)

04. Additional Services/Charges. (5-4-22)T

~~a.~~ Private Label Arrangement – Annual fee of two hundred dollars (\$200) per arrangement assessed to ISDA certified co-packer or handler packaging and/or affixing a private label for a non-ISDA certified entity. (5-4-22)T

~~b.~~ Export and Transaction Certifications – Twenty-five dollars (\$25) will be assessed for each international export and transaction certificate requested. (5-4-22)T

301. GRADUATED GROSS SALES FEE SCHEDULE.

~~01. Graduated Gross Sales Fee Table.~~ In addition to the fees prescribed above, all producers and handlers certified by the Department must remit with their certification application an amount based on their annual gross organic sales during the last calendar year, or in the case of a first-time applicant, a projected gross organic sale dollar amount for the upcoming calendar year, with a minimum fee of ~~ten~~ thirty-five dollars (\$~~10~~35). The graduated gross organic sales fee structure is as follows:

0-2,000	\$10
2,001-5,000	\$235
5,001 - 10,000	<u>\$650</u>
10,001 - 15,000	<u>\$75100</u>
15,001 - 20,000	<u>\$1030</u>
20,001 - 25,000	<u>\$1265</u>
25,001 - 30,000	<u>\$1950</u>
30,001 - 35,000	<u>\$475230</u>
35,001 - 50,000	<u>\$3250</u>
50,001 - 75,000	<u>\$375490</u>
75,001 - 100,000	<u>\$6500</u>
100,001 - 150,000	<u>\$9750</u>
150,001 - 200,000	<u>\$1,0300</u>
200,001 - 280,000	<u>\$1,40820</u>
280,001 - 375,000	<u>\$1,8752,440</u>
375,001 - 500,000	<u>\$2,5003,250</u>
500,001 and up	0.75% of gross organic sales up to <u>\$5,0006,500</u>

(3-15-22)(5-4-22)T

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: **Idaho State Department of Agriculture**_____

Agency Contact: **Lloyd Knight**_____ Phone: **(208)332-8664**_____

Date: _____

IDAPA, Chapter and Title Number and Chapter Name:

[IDAPA 02.06.33 – Organic Food Products Rules](#)

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: **02-0633-2201**_____

STATEMENT OF ECONOMIC IMPACT:

This temporary rule simply puts in place the changes that were approved by the 2022 Legislature. This temporary rule adds the fee table that was supported by stakeholders and the Organic Advisory Committee. The fee table was presented to and approved by the Idaho Legislature but was not yet printed in the Bulletin due to an error. All information presented below was presented and approved by the House and Senate Agricultural Affairs Committees in 2022. This is being published to correct the issue with the Bulletin. This fee increase is necessary to ensure the financial stability of this voluntary, dedicated fund program. The fee is authorized under 22-1103, Idaho Code.

This rule change will not have a negative impact on the general fund due to the program being operated by a fee for service dedicated fund. These fee changes are needed to provide the services requested by organic certifiers in a growing voluntary program and align with recommendations from industry to increase the graduate gross fee schedule fees by 30%, hour rate by 42%, and nominal fee increases to three other categories. Total potential impact to dedicated funds is a \$168,000 increase with 93% coming from the fee schedule and hour rate increase.

The fee changes are summarized as follows:

- Minimum fee - \$35 (from \$10)

0-2,000	\$10
2,001-5,000	\$25
5,001-10,000	\$50
10,001-15,000	\$75
15,001-20,000	\$100

20,001 - 25,000	\$125
25,001 - 30,000	\$150
30,001 - 35,000	\$175
35,001 - 50,000	\$250
50,001 - 75,000	\$375
75,001 - 100,000	\$500
100,001 - 150,000	\$750
150,001 - 200,000	\$1,000
200,001 - 280,000	\$1,400
280,001 - 375,000	\$1,875
375,001 - 500,000	\$2,500
500,001 and up	0.5% of gross organic sales up to \$5,000
<u>0 - 5,000</u>	<u>\$35</u>
<u>5,001 - 10,000</u>	<u>\$65</u>
<u>10,001 - 15,000</u>	<u>\$100</u>
<u>15,001 - 20,000</u>	<u>\$130</u>
<u>20,001 - 25,000</u>	<u>\$165</u>
<u>25,001 - 30,000</u>	<u>\$195</u>
<u>30,001 - 35,000</u>	<u>\$230</u>
<u>35,001 - 50,000</u>	<u>\$325</u>
<u>50,001 - 75,000</u>	<u>\$490</u>
<u>75,001 - 100,000</u>	<u>\$650</u>
<u>100,001 - 150,000</u>	<u>\$975</u>
<u>150,001 - 200,000</u>	<u>\$1,300</u>
<u>200,001 - 280,000</u>	<u>\$1,820</u>
<u>280,001 - 375,000</u>	<u>\$2,440</u>
<u>375,001 - 500,000</u>	<u>\$3,250</u>
<u>500,001 and up</u>	<u>0.75% of gross organic sales up to \$6,500</u>

