

Dear Senators ANDREASON, Coiner & Werk, and
Representatives SCHAEFER, Bradford & Ringo:

The Legislative Services Office, Research and Legislation, has received the enclosed
rules of the Dept. Of Labor:

IDAPA 09.01.08 - Rules on Disclosure of Information (Docket #09-0108-0801).

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
8-8-08. 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 9-5-08.

_____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 334-2475, or send a written request to the
address or FAX number indicated on the memorandum enclosed.

MEMORANDUM

TO: Subcommittees for Administrative Rules Review of the Senate Commerce and Human Resources Committee and the House Commerce and Human Resources Committee

FROM: Eric Milstead, Principal Research Analyst

DATE: July 22, 2008

SUBJECT: Idaho Department of Labor - IDAPA 09.01.08 (Docket No. 09-0108-0801)

The Idaho Department of Labor has submitted notice of temporary and proposed rulemaking at IDAPA 09.01.08 - Rules on Disclosure of Information. The temporary and proposed rule provides a number of new and revised rule sections. The Department states that these changes are required to comply with federal regulations and recent statutory changes made during the 2008 legislative session. The Department states that negotiated rulemaking was not conducted because the changes reflected in the temporary and proposed rule are being made to comply with federal and state law. The temporary rule takes effect July 1, 2008.

The temporary and proposed rule's provisions govern the disclosure of employment security information. In short, the rule specifically governs instances relating to the following: access by persons to information pertaining to them (Section 011); disclosure of information to public officials (Section 012); disclosure to third parties with written, informed consent (Section 013); the costs of disclosure (Section 020); subpoenas of employment security information (Section 021); and records requests submitted by electronic mail (Section 022).

The substance of the temporary and proposed rule appears to be consistent with statutory directive. We note a few minor suggestions. In Section 010.03, it appears the words "Idaho Code" should be followed by a comma. In Section 020.01 regarding recovery of costs of disclosure, there is a requirement that "there must be reimbursement in advance..." We pose the question as to how such "reimbursement in advance" will be calculated or estimated and also question what happens if such calculation or estimation ultimately proves inaccurate. Finally, in Section 022, the Internet address cited might be more easily read if it is set off by quotation marks or perhaps other appropriate punctuation.

Aside from the minor observations and questions we posed, the rule appears to be within the authority of the Department pursuant to section 72-133 and 72-1342.

cc: Roger B. Madsen, Director, Idaho Department of Labor
Bob Fick, Communications and Legislative Liaison, Idaho Department of Labor

IDAPA 09 - DEPARTMENT OF LABOR

09.01.08 - RULES ON DISCLOSURE OF INFORMATION

DOCKET NO. 09-0108-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2008.

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 Sections 72-1333 and 72-1342, Idaho Code, and Sections 9-340C, 72-1342, 72-1372, 72-1374, Idaho Code and Federal Code 20 CFR part 603.

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 August 20, 2008.

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:

IDAPA 09.01.08 is being changed to add required sections, provide for public inspection of records, make changes to definitions and provide for access to information by individuals, employers, agents, attorneys and elected officials.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in federal regulation.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

20 CFR 603.8 requires the Department to charge persons requesting Employment Security information for the actual costs of disclosures that are not for Employment Security purposes. No costs will be charged for de minimis requests. The Department's failure to comply with the requirements of 20 CFR part 603 would cause the loss of federal funding for Idaho's Unemployment Insurance program.

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:

There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being changed to comply with federal regulations and a recent statutory change during the 2008 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bob Fick, Communications & Legislative Liaison, 332-3570 ext. 3628.

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 August 27, 2008.

DATED this 3rd of July, 2008.

Bob Fick
Communications & Legislative Liaison
Department of Labor
317 W. Main St., Boise, ID 83735
Phone 332-3570 ext. 3628
Fax 334-6455

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0108-0801

IDAPA 09
TITLE 01
CHAPTER 08

09.01.08 - RULES ON DISCLOSURE OF EMPLOYMENT SECURITY INFORMATION

000. LEGAL AUTHORITY.

These rules are promulgated under the legal authority of Sections 72-1333 and 72-1342, Idaho Code. (7-1-08)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.08, "Rules on Disclosure of Employment Security Information." (7-1-08)T

02. Scope. These rules address disclosure of employment security information, as defined in Section 9-340C(7), Idaho Code, by the Idaho Department of Labor. These rules comply with the requirements of 20 CFR Part 603, "Confidentiality and Disclosure of State Unemployment Compensation Information," as well as the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. (7-1-08)T

002. WRITTEN INTERPRETATIONS.

Explanations for rule changes are available for public inspection at the Idaho Department of Labor, 317 W. Main Street, Boise, Idaho 83735. (7-1-08)T

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal under these rules. Appeals of denials of requests for Department records are governed by the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. (7-1-08)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (7-1-08)T

005. OFFICE - OFFICE HOURS - MAILING ADDRESS AND STREET ADDRESS.

The principle place of business of the Department of Labor is in Boise, Idaho. (7-1-08)T

01. Address and Hours. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho 8373. and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. (7-1-08)T

02. Mailing Address. The office is located at 317 W. Main St., Boise, Idaho, 83735. (7-1-08)T

03. Telephone. The telephone of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. (7-1-08)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (7-1-08)T

~~007.~~ -- 009. (RESERVED).

010. PUBLIC EMPLOYEE DEFINITIONS.

These terms shall have the following meanings when used in these rules, in interpretations, in forms, and in other official documents issued by the Idaho Department of Labor. (7-1-08)T

01. Agent. One who acts for or in the place of an individual or employer by the authority of that individual or employer. (7-1-08)T

02. Payment in Advance. Full payment of all costs before or at the time that employment security information is disclosed to a recipient. (7-1-08)T

03. Public Official. For the purpose of employment security disclosure of information to public employees officials in the performance of ~~their public official~~ duties, in accordance with Section 72-1342, Idaho Code "public employee official" is defined as ~~a person employed in the civil service of the~~ an official, agency, or public entity within the executive branch of federal ~~government, a~~ state, or local government, or an agent or contractor thereof, who or which has responsibility for administering or enforcing a law, including research related to the law being administered, or ~~a political subdivision thereof~~ an elected official in federal, state, or local government. Reference Section 72-1342, Idaho Code. (+12-24-93)(7-1-08)T

011. ACCESS BY PERSONS TO INFORMATION PERTAINING TO THEM.

01. Individual or Employer. Individuals or employers may access employment security information pertaining to them, subject to the procedures and restrictions contained in the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, and the reimbursement provisions in Section 020 of these rules. Unless the disclosure is for the purposes of the Employment Security Law, Chapter 13, Title 72, Idaho Code, the Department will not comply with requests for disclosure of records to an individual or employer on an ongoing basis, and only existing records in the Department's custody as of the date of receipt of the request will be disclosed, not records that may be created in the future. (7-1-08)T

02. Attorney. An attorney representing a party for the purposes of the Employment Security Law need only submit a letter on letterhead to the Department confirming the attorney's representation of the party, for an Employment Security Law purpose, to access any employment security information that would be available to the attorney's client. If the attorney is not representing the client for the purposes of the Employment Security Law, the attorney must provide an informed consent release, in the same manner and with the same restrictions as an agent in Subsection 011.04 of these rules, in order to access any employment security information that would be available to the client. (7-1-08)T

03. Elected Official. An elected official performing constituent services who requests employment security information on behalf of an individual or employer may access any employment security information related to the inquiry that would be available to the constituent if the elected official presents reasonable evidence that the constituent has authorized the disclosure. Such reasonable evidence may include a letter or written record of a telephone request for assistance from the constituent. (7-1-08)T

04. Agent. An agent of an individual or employer must provide an informed consent release that meets the requirements of Subsection 013.01 of these rules in order to access any employment security information that would be available to the individual or employer. If the disclosure is for the purposes of the Employment Security Law and it is impossible or impracticable to obtain an informed consent release, the agent must provide clear and convincing evidence, as determined by the Department, that the agent is authorized to act on behalf of the individual or employer in order to access any employment security information that would be available to the individual or employer. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to an agent on an ongoing basis, and only existing records in the Department's

custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. (7-1-08)T

0142. DISCLOSURE TO PUBLIC ~~EMPLOYEE ACCESS TO INFORMATION OFFICIALS.~~

~~Employment security information obtained from any employer or individual pursuant to the administration of Idaho's Employment Security Law which reveals the individual's or the employer's identity in any manner may be released disclosed by the director or his or her the director's authorized representative to the following public employees officials or to an agent or contractor of the following agencies only public officials, for use in the performance of official duties:~~ (12-1-93)(7-1-08)T

01. Required by Federal Law. Any public agency to whom the Department is required by federal law to disclose information, under the terms and restrictions required by federal law; (5-25-94)(7-1-08)T

02. Reciprocal Disclosures. Any public agency where reciprocal disclosures from such agency to the Department will reasonably assist in the collection of contributions and payments in lieu of contributions. (5-25-94)(7-1-08)T

03. Of Benefit to Department. Any public agency to whom disclosure of Department information would be consistent with the mission of the Department or of benefit to the Department, as determined by the director. (5-25-94)(7-1-08)T

04. Written Agreement. Any release of information to ~~the foregoing~~ public employees officials under Subsections 012.02 and 012.03, of these rules, must be made pursuant to a written ~~contract or a letter of~~ agreement signed by both the director of the requesting agency or ~~his or her~~ the director's authorized representative and the director of the Department of Employment. If an agent or contractor is to obtain or access information on behalf of a requesting agency, the director of the requesting agency or the director's authorized representative must sign the agreement and the requesting agency will be held responsible for ensuring that the agent or contractor complies with all security requirements of the agreement. Reference Section 72-1342, Idaho Code. (12-1-93)(7-1-08)T

05. Agency Subpoena. ~~Information may be supplied to a public employee in response to and after service of a public agency subpoena that is reasonable in nature and scope. This provision does not apply to subpoenas served on behalf of private parties to civil or criminal proceedings to which the Department is not a party.~~ **Terms and Conditions of Written Agreement.** The interagency agreement must contain the following provisions: (5-25-94)(7-1-08)T

a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used; (7-1-08)T

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name and/or job title, with a need to access it for the purpose(s) specified in the agreement; (7-1-08)T

c. The methods and timing, if the disclosure is to be made more than once, including the format to be used; (7-1-08)T

d. Provisions for the timely payment of the Department's billed costs as required by Subsection 020.02 of these rules, including the Department's costs of performing on-site inspections to ensure compliance with State and Federal law and the requirements of the agreement; (7-1-08)T

e. Provisions for safeguarding the information disclosed, including the following requirements: (7-1-08)T

i. Recipient will use the information only for purposes authorized by law and specified in the agreement; (7-1-08)T

ii. Recipient will store the information in a place physically secure from access by unauthorized persons; (7-1-08)T

iii. Recipient will store and process the information maintained in electronic format in such a way that unauthorized persons cannot obtain the information by any means; (7-1-08)T

iv. Recipient will undertake precautions to ensure that only authorized personnel are given access to the information stored in computer systems; (7-1-08)T

v. Recipient will instruct all personnel having access to the information about the confidentiality requirements in the agreement and the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, for unauthorized disclosure of the information, sign an acknowledgment that this has been done and stating that all personnel will adhere to the confidentiality requirements, and fully and promptly report to the Department any breach of the confidentiality requirements; (7-1-08)T

vi. Recipient will dispose of the information and any copies made by the requesting agency or its agent or contractor after the purpose(s) of the disclosure has been served, except for information possessed by any court, by destroying the information or returning it to the Department, as directed by the Department, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and (7-1-08)T

vii. Recipient will redisclose the information only as provided in the agreement or as required by State or Federal law. (7-1-08)T

f. Provisions for on-site inspections of the requesting agency and/or its agent or contractor by the Department to ensure compliance with State and Federal law and the requirements of the agreement; (7-1-08)T

g. Provisions for the immediate suspension of the agreement, including disclosures being processed, if the Department determines that the requesting agency or its agent or contractor is not adhering to the requirements of the agreement, including timely payment of the Department's billed costs, and that further disclosures will not occur until the Department is satisfied that corrective action has been taken and there will be no further breach; (7-1-08)T

h. Provisions for the termination of the agreement if, after a breach of the agreement, prompt and satisfactory corrective action is not taken, and for the immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the requesting agency and/or its agent or contractor; and (7-1-08)T

i. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, and attorneys fees and costs incurred by the Department for the pursuit of any breaches of the agreement and required enforcement. (7-1-08)T

06. Exception for Certain Federal Agencies. These requirements do not apply to disclosures of employment security information to a Federal agency which the U.S. Department of Labor has determined, by notice in the Federal Register, to have in place safeguards adequate to satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act, and an appropriate method of paying or reimbursing the Department for any costs involved in such disclosures. (7-1-08)T

067. Threat to Safety Concerns. Employment security information may be *supplied* disclosed to a public *employee of an agency* official contacted for assistance when the safety of Department staff or property *has been threatened* may be at risk. Such disclosures are considered necessary for the proper administration of programs under the Employment Security Law and may be made without a written agreement or a subpoena from the public official. (5-25-94)(7-1-08)T

013. DISCLOSURE TO THIRD PARTIES WITH WRITTEN, INFORMED CONSENT.
A person may agree, through written, informed consent, to allow a third party to obtain employment security information pertaining to the person from the Department, subject to the following terms and conditions: (7-1-08)T

01. Informed Consent Release. (7-1-08)T

a. An informed consent release must be signed by the person providing informed consent and dated within one (1) year of the date of the request for access to the records. (7-1-08)T

b. In the document, the person providing informed consent must: (7-1-08)T

i. Specifically identify the records to be disclosed; (7-1-08)T

ii. Acknowledge that Department files will be accessed to obtain the records; (7-1-08)T

iii. List all third parties who are authorized to access the person's information; and (7-1-08)T

iv. Indicate the specific purpose(s) of the disclosure and state that the records will be used only for the specified purpose(s). If the disclosure is not for the purposes of the Employment Security Law, Chapter 13, Title 72, Idaho Code, the purpose(s) specified must be either to provide a service or benefit to the person providing informed consent that the person expects to receive as a result of providing informed consent or to carry out the administration or evaluation of a public program to which the informed consent release pertains. (7-1-08)T

c. Unless the disclosure is for the purposes of the Employment Security Law, the Department will not comply with requests for disclosure of records to a third party on an ongoing basis, and only existing records in the Department's custody as of the date of receipt of the request will be disclosed pursuant to the informed consent release, not records that may be created in the future. (7-1-08)T

02. Agreement by Third Party. Before the Department will disclose employment security information to a third party pursuant to an informed consent release, the third party must sign an agreement containing the following provisions: (7-1-08)T

a. A description of the specific information to be furnished by the Department and the purpose(s) for which the information is sought and will be used, as specified in the informed consent release; (7-1-08)T

b. A statement that those who request or receive information under the agreement will be limited to those individuals, identified by name, with a need to access it for the purpose(s) specified in the informed consent release; (7-1-08)T

c. The method for the disclosure, including the format to be used; (7-1-08)T

d. Provisions for the payment of the Department's costs of disclosure as required by Subsection 020.02 of these rules, including the Department's costs of performing audits to ensure compliance with State and Federal law and the requirements of the agreement; (7-1-08)T

e. Provisions for safeguarding the information disclosed, including the following requirements: (7-1-08)T

i. Recipient will use the information only for purposes authorized by law and specified in the informed consent release; (7-1-08)T

ii. Recipient will store the information in a place physically secure from access by unauthorized persons; (7-1-08)T

iii. Recipient will store and process the information maintained in electronic format in such a way that unauthorized persons cannot obtain the information by any means; (7-1-08)T

iv. Recipient will undertake precautions to ensure that only authorized personnel are given access to the information stored in computer systems; (7-1-08)T

v. Recipient will instruct all personnel having access to the information about the confidentiality requirements in the agreement and the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, for

unauthorized disclosure of the information, sign an acknowledgment that this has been done and stating that all personnel will adhere to the confidentiality requirements, and fully and promptly report to the Department any breach of the confidentiality requirements; (7-1-08)T

vi. Recipient will dispose of the information and any copies made by the recipient after the purpose(s) of the disclosure has been served, except for information possessed by any court, by destroying the information or returning it to the Department, as directed by the Department, and will not retain the information with personal identifiers for any longer period of time than the Department deems appropriate; and (7-1-08)T

vii. Recipient will redisclose the information only as authorized under the informed consent release and for the purpose(s) specified in the release or as required by State or Federal law. (7-1-08)T

f. Provisions for on-site audits of the recipient by the Department as the Department may deem necessary to ensure compliance with State and Federal law and the requirements of the agreement; (7-1-08)T

g. Provisions for the immediate suspension of the agreement if the Department determines that the recipient is not adhering to the requirements of the agreement; (7-1-08)T

h. Provisions for the termination of the agreement if, after a breach of the agreement prompt and satisfactory corrective action is not taken, and for the immediate surrender to the Department of all employment security information, including copies in any form, obtained under the agreement by the recipient; (7-1-08)T

i. An acknowledgment by the recipient that the agreement is governed by the laws of the State of Idaho, and that the civil and criminal penalties in Sections 72-1372 and 72-1374, Idaho Code, apply to any unauthorized disclosure of the information no matter where the unauthorized disclosure may occur; and (7-1-08)T

j. Provisions for the Department to take any remedial action permitted under State or Federal law to enforce the agreement, including seeking damages, penalties, restitution, and attorneys fees and costs incurred by the Department for any breaches of the agreement and required enforcement. (7-1-08)T

03. Department's Right to Audit. After a third party receives employment security information pursuant to an informed consent release, the Department may perform an on-site audit of the third party to ensure that the information is not being used for any unauthorized purpose. (7-1-08)T

014. -- 019. (RESERVED).

020. COSTS OF DISCLOSURE.

Unless the disclosure of employment security information is for the purposes of the Employment Security Law, Chapter 13, Title 72, Idaho Code, the party requesting the disclosure must reimburse the Department's costs of disclosure, including staff time and processing costs, as follows: (7-1-08)T

01. Private Party. If the requestor is not a public official, there must be reimbursement in advance to the Department unless the disclosure involves only an incidental amount of staff time and nominal processing costs. (7-1-08)T

02. Public Official. If the requestor is a public official, reimbursement may be made in advance or by way of reimbursement, as determined by the director, unless the disclosure involves only an incidental amount of staff time and nominal processing costs or there is a reciprocal cost arrangement with the public official. The Department may enter into a reciprocal cost arrangement with a public official when the relative benefits received by each agency through information sharing are approximately equal. (7-1-08)T

021. SUBPOENAS OF EMPLOYMENT SECURITY INFORMATION.

01. Subpoena from Public Official. Employment security information may be supplied to a public official with subpoena authority after the Department receives a subpoena that is reasonable in nature and scope from the public official. This provision does not apply to subpoenas served on behalf of private parties to civil or criminal proceedings to which the Department is not a party. (7-1-08)T

02. Subpoena from Private Party. If the Department is served with a subpoena on behalf of a private party to a civil or criminal proceeding to which the Department is not a party and the private party is not entitled to access the information pursuant to Section 011 of these rules, the Department will move to quash the subpoena and attempt to recover costs if other means of avoiding unauthorized disclosure of the information have been unsuccessful or the court has not already ruled on the disclosure. (7-1-08)T

022. RECORDS REQUESTS SUBMITTED BY ELECTRONIC MAIL.

The Department will accept records requests sent via electronic mail only at records.requests@labor.idaho.gov. Records requests sent to any other Department electronic mail address will not be accepted. A person making a records request in writing or via electronic mail must include the requestor's name, mailing address, and telephone number. If the request is for employment security information, the person may be required to provide identification to the Department. For security reasons, the Department will not disclose employment security information via electronic mail. (7-1-08)T

~~0423.~~ -- 999. (RESERVED).