

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

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

IDAPA 09.01.35 - Unemployment Insurance Tax Administration Rules
(Docket No. 09-0135-0801).

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
8-7-08. 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 9-4-08.

_____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 18, 2008

SUBJECT: Idaho Department of Labor - IDAPA 09.01.35 - Unemployment Insurance Tax Administration Rules (Docket No. 09-0135-0801)

The Idaho Department of Labor has submitted notice of proposed rulemaking at IDAPA 09.01.35 -- Unemployment Insurance Tax Administration Rules. The proposed rule provides two changes: it provides the office hours and mailing address for the Department of Labor in Boise; and it revises a term in Section 221.01 to make the rule consistent with applicable Idaho Code. (See, Section 72-1351A(5)(d).)

The proposed rule appears to be within the authority granted to the Department under Section 72-1333, Idaho Code.

cc: Don Arnold, Bureau Chief, Unemployment Insurance Compliance

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0801

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 72-1333, 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 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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

IDAPA 09.01.35.221.01 is being changed to delete "continuity of business activity" and insert "transfer of trade or business" to accurately reflect statutory language found in Section 72-1351A, Idaho Code. The statutory reference in this section is also being changed to Section 72-1351A, Idaho Code.

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

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: 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 agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, (208) 332-3570 ext. 3258.

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 August 27, 2008.

DATED this 3rd of July, 2008.

Don Arnold
Unemployment Insurance Compliance Bureau Chief
Department of Labor
317 W. Main St., Boise, ID 83735
(208) 332-3570 ext. 3258
Fax: (208) 334-6301

THE FOLLOWING IS THE TEXT OF DOCKET NO. 09-0135-0801

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule.

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

The principle place of business of the Department of Labor is in Boise, Idaho. ()

01. Street Address and Office 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. ()

02. Mailing Address. The office is located at 317 W. Main St., Boise, Idaho, 83735. ()

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

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. ()

0047. -- 010. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

221. TRANSFER OF EXPERIENCE RATING.

Upon request, employers shall be informed of the requirements for transferring an experience rating record. Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sec. 72-1351, Idaho Code. (4-11-06)

01. Mandatory Transfer of Rate. An experience rating record transfer shall be mandatory if there is a ~~continuity of business activity~~ transfer of trade or business and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. Such determination may be appealed as provided in Ref. Sec. 72-1351A, 72-1361, Idaho Code. (4-11-06)()

02. Partial Experience Rate Transfers. The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity. (4-11-06)

03. Continued Predecessor Employment for Liquidation. When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Sec. 72-1351, Idaho Code. (3-19-99)

04. Management or Ownership or Control Substantially the Same. For the purposes of Sections 72-1351(5)(a) and (b), Idaho Code, in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies. (4-11-06)

05. Wage Paid by Predecessor. The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sec. 72-1349(1), 72-1351(5), and 72-1350(8), Idaho Code. (4-11-06)