

Dear Senators PATRICK, Agenbroad, Ward-Engelking, and
Representatives HOLTZCLAW, Anderson, Chew:

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

IDAPA 09.01.01 - Rules of Administrative Procedure of the Department of Labor - Proposed Rule
(Docket No. 09-0101-2001);

IDAPA 09.01.60 - Complaint Procedures under the Workforce Innovation and Opportunity Act
(WIOA) (Chapter Repeal) - Proposed Rule (Docket No. 09-0160-2001).

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 09/25/2020. 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 10/23/2020.

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.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Commerce & Human Resources Committee and the House Commerce & Human Resources Committee

FROM: Legislative Drafting Attorney - Matt Drake

DATE: September 08, 2020

SUBJECT: Department of Labor

IDAPA 09.01.01 - Rules of Administrative Procedure of the Department of Labor - Proposed Rule (Docket No. 09-0101-2001)

IDAPA 09.01.60 - Complaint Procedures under the Workforce Innovation and Opportunity Act (WIOA) (Chapter Repeal) - Proposed Rule (Docket No. 09-0160-2001)

Docket No. 09-0101-2001

Summary and Stated Reasons for the Rule

The Department of Labor submits notice of proposed rulemaking at IDAPA 09.01.01 relating to administrative procedure. The proposed rule clarifies that electronic transmission via e-mail is acceptable as a method for transmitting a protest or an appeal. When e-mail is used, the date of receipt is the date deemed filed unless the transmission is received on a holiday. In that instance, the transmission is received on the next business day. The date of mailing or service indicated on the determination is deemed the date of service.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted. There is no fiscal impact.

Statutory Authority

The rulemaking appears authorized pursuant to section 72-1333, Idaho Code.

Docket No. 09-0160-2001

Summary and Stated Reasons for the Rule

The Department of Labor submits notice of proposed rulemaking at IDAPA 09.01.60 relating to complaint procedures under the workforce innovation and opportunity act. The proposed rule deletes the applicable rule chapter because all of its provisions are contained in existing department procedures and federal law.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted. There is no fiscal impact.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

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

Tel: 208-334-2475
www.legislature.idaho.gov

Statutory Authority

The rulemaking appears authorized pursuant to section 72-1333, Idaho Code.

cc: Department of Labor
Patricia Fitzpatrick

***** 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.

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.01 – RULES OF ADMINISTRATIVE PROCEDURE OF THE DEPARTMENT OF LABOR

DOCKET NO. 09-0101-2001

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 Title 72, Chapter 13, Section 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 September 16, 2020.

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:

- **09.01.01, Sections 027, 035, 036 and 037 – Appeals to Appeals Examiner** – Clean up and update the language to reflect:
 - Electronic transmission (email) is an acceptable method for transmitting a protest or appeal;
 - The date the department receives a protest for a decision on an appeal for unemployment insurance benefits or a wage and hour claim will be the date deemed filed, or if the protest is received on a holiday, the next business day; and
 - The date of mailing or service indicated on the determination shall be deemed the date of service.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because proposed changes have no effect on the rule and are for purposes of accommodating the new technologies available for transmitting documents.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Hohnstein, Appeals Bureau Administrator, (208) 332-3570 x 3330

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 23, 2020.

Dated this 14th day of August, 2020.

Amy Hohnstein, Administrator
Appeals Bureau, Idaho Department of Labor
317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 x 3330.

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0101-2001
(Only Those Sections With Amendments Are Shown.)

027. WAGE CLAIM AND EMPLOYMENT SECURITY LAW DETERMINATIONS.

01. **Determinations and Time for Filing Appeals.** Department determinations under the Claims for Wages Act and Employment Security Law must be in writing and contain provisions advising the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing, or the date of electronic transmission to an electronic-mail address approved by the Department, in accordance with Sections 45-617(5), 72-1361 and 72-1368(5), Idaho Code. ~~Every such determination, and~~ must contain and clearly identify the mailing address, fax number and electronic address for filing an appeal. The date of mailing or service indicated on the determination shall be deemed the date of service of the determination A determination is final unless, within fourteen (14) days after notice, as provided in Sections 45-617(5) and 72-1368(5), Idaho Code, an appeal is filed by an interested party with the Department in accordance with these rules. If an appeal from a wage claim determination is not timely filed, the amount awarded by a final determination will be immediately due and payable to the Department. (3-20-20)()

02. **Appeals Heard By Appeals Examiners.** Appeals from wage claim and Employment Security Law determinations will be heard by an appeals examiner in accordance with the Claims for Wages Act, the Employment Security Law, and these rules. (3-20-20)

03. **Computation of Time.** In computing any time period prescribed or allowed by the Employment Security Law or the Claims for Wages Act, the day of the act, event, or default is not to be included. Saturdays, Sundays, and holidays will be counted during the period, except, if the last day of the period is a Saturday, Sunday, or legal holiday, the period extends to the next business day following the Saturday, Sunday, or legal holiday. (3-20-20)

(BREAK IN CONTINUITY OF SECTIONS)

035. APPEALS TO APPEALS EXAMINER – FORM AND MANNER OF FILING OF NOTICES OF APPEAL.

01. **Form of Notices of Appeal.** Any appeal taken to an appeals examiner pursuant to the Employment Security Law and the Claims for Wages Act must be in writing, signed by an interested party, the appellant or representative, and contain words that, by fair interpretation, request the appeal process for a specific determination or other decision of the Department. (3-20-20)

02. **Filing of Notices of Appeal.** To appeal a determination or other decision of the Department, interested parties must follow these rules and the instructions on ~~these rules and~~ the document determination or other decision being appealed. If an appeal is delivered personally, the personal delivery date will be noted on the appeal and deemed the date of filing. ~~A faxed or electronically transmitted appeal received after 5 p.m., mountain time zone, on a business day will be deemed filed on the next business day.~~ A faxed or electronically transmitted appeal will be deemed filed on the date received by the Department (mountain time) or, if received on a weekend or holiday, ~~will be deemed filed~~ the next business day. If mailed, the appeal will be deemed filed on the date of mailing as determined by the postmark on the envelope containing the appeal, unless a party establishes by a preponderance of the evidence that but for error by the U.S. Postal Service, the envelope would have been postmarked within the period for timely appeal. If such a postal error is established, the appeal will be deemed to be timely filed. Ref. Section 72-1368(6), and Section 45-617, Idaho Code. (3-20-20)()

036. DATE OF MAILING SERVICE OF DETERMINATIONS.

The date indicated on ~~Department~~ determinations, ~~revised determinations, redeterminations~~ and decisions as the “Date of Mailing Service” or “Date of Mailed ing” will be presumed to be the date the document was deposited in the

United States mail, or the date the document was electronically transmitted to an electronic-mail address approved by the Department pursuant to Section 72-1368(5), Idaho Code, unless shown otherwise by a preponderance of competent evidence. ~~(3-20-20)~~()

037. EFFECT OF DELAY OR ERROR OF POSTAL SERVICE OR DEPARTMENT.

01. Department Determinations. If a party establishes by a preponderance of the evidence that because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, ~~notice of a Department~~ determination was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within fourteen (14) days of the date of mailing, ~~as provided by the Employment Security Law and by the Claims for Wages Act~~ or service indicated on the determination, the period for filing a timely appeal extends to fourteen (14) days from the date of actual notice. ~~(3-20-20)~~()

02. Decisions of the Appeals Examiner. If a party establishes by a preponderance of the evidence that, because of delay or error by the U.S. Postal Service, or because of error on the part of the Department, ~~notice of~~ a decision by an appeals examiner was not delivered to the party's last known address, or transmitted electronically to the party's electronic-mail address approved by the Department, within the time periods prescribed by the Employment Security Law or the Claims for Wages Act for filing an application for rehearing or an appeal to the Industrial Commission, as the case may be, then: ~~(3-20-20)~~()

a. For an application for rehearing that must be filed within ten (10) days of notice of service of a decision, the period for filing a timely application for rehearing extends to ten (10) days from the date of actual notice; and ~~(3-20-20)~~()

b. For an appeal to the Industrial Commission that must be filed within fourteen (14) days of notice of service of a decision, the period for filing a timely appeal extends fourteen (14) days from the date of actual notice. Ref. Section 72-1368 (5) and (6) and Section 45-617(7), Idaho Code. ~~(3-20-20)~~()

IDAPA 09 – IDAHO DEPARTMENT OF LABOR

09.01.60 – COMPLAINT PROCEDURES UNDER THE WORKFORCE INNOVATION AND OPPORTUNITY ACT (WIOA)

DOCKET NO. 09-0160-2001 (CHAPTER REPEAL)

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 Title 72, Chapter 13, Section 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 September 16, 2020.

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:

- 09.01.60 “Complaint Procedures Under the Workforce Innovation and Opportunity Act (WIOA)” - The department proposes to delete this rule chapter. All provisions are duplicated in department procedures and federal law (Title 29 Subtitle Part A Part 38, Code of Federal Regulations - Implementation of the Non-Discrimination and Equal Opportunity Provisions of the Workforce Opportunity Act).

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the contents of this chapter are currently included in departmental procedures and federal law (Title 29 Subtitle Part A Part 38, Code of Federal Regulations - Implementation of the Non-Discrimination and Equal Opportunity Provisions of the Workforce Opportunity Act).

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Hohnstein, Appeals Bureau Administrator, (208) 332-3570 x 3330.

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 23, 2020.

Dated this 17th day of July, 2020.

Amy Hohnstein, Administrator
Appeals Bureau, Idaho Department of Labor
317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 x 3330

IDAPA 09.01.60 IS BEING REPEALED IN ITS ENTIRETY.