

Dear Senators HAMMOND, Brackett, Werk, and
Representatives PALMER, Ellsworth, Ringo :

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

39.02.70 - Pertaining To The Rules Governing Restricted Driving Permits (Docket No. 39-0270-1101)

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 07/28/2011. 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 08/25/2011.

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 Transportation Committee and the House Transportation & Defense Committee
FROM: Principal Legal Analyst - Eric Milstead
DATE: July 11, 2011
SUBJECT: Idaho Transportation Department

39.02.70 - Pertaining To The Rules Governing Restricted Driving Permits (Docket No. 39-0270-1101)

The Idaho Transportation Department submits notice of temporary and proposed rulemaking at IDAPA 39.02.70 - Rules Governing Restricted Driving Permits. The temporary and proposed rule reflects the following:

- Clarifies that the rule governs "non-commercial" restricted driving privileges;
- Provides for office hours, mailing and street addresses, phone numbers and other "housekeeping" matters
- Provides that a restricted driving permit shall not be issued to an individual who is not at least seventeen years old
- Provides a statutory reference to a non-refundable application fee for a non-commercial restricted driving permit; and
- Deletes certain provisions including ones relating to the general application procedure for restricted driving permits, a provision relating to specified driving restrictions, and certain other provisions relating to the cancellation of a restricted driving permit (See Rule 500.02 and 500.03; Rule 600.04 and Rule 700.03 and 700.04)

The temporary and proposed rule appears to be authorized pursuant to Sections 18-8002A, 49-325, 49-326 and 49-306, Idaho Code.

cc: Idaho Transportation Department
Linda Emry, Office of Governmental Affairs and
Ed Pemble, Driver Services Manager

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.70 - RULES GOVERNING RESTRICTED DRIVING PERMITS

DOCKET NO. 39-0270-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2011.

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 rule-making procedures have been initiated. The action is authorized pursuant to Sections 18-8002A, 49-325, and 49-326, Idaho Code, and Section 49-306, Idaho Code, as amended in House Bill 334, 2009, effective 1/1/10.

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 20th, 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 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 rule-making:

Rule changes are being proposed to replace a fee with a code reference since the fee has been codified, update terminology, remove restricted driving permit provisions for drivers under the age of 17 for consistency with graduated licensing laws, remove time limitations for application for a restricted driving permit, and add prescribed subsections to meet formatting requirements of the Office of Administrative Rules.

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

Compliance with changes to Section 49-306, Idaho Code, in House Bill 334, 2009, effective 1/1/10, which codified the fee previously listed in this rule. Outdated language also needed to be updated.

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

This rulemaking does not impose or change a fee, but removes the fee amount from the rule and replaces it with a reference to the Section 49-306, Idaho Code, where it was codified.

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: N/A

NEGOTIATED RULE-MAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is based primarily on Legislative changes to Idaho Code.

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 temporary and proposed rule, contact Ed Pemble, Driver Services Manager, 332-7830.

Anyone may submit written comments regarding the proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before July 27, 2011.

DATED this 9th day of June, 2011.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department
3311 West State Street
P.O. Box 7129, Boise ID 83707-1129
Phone: 208-334-8810 / FAX: 208-332-4107

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 39-0270-1101

000. LEGAL AUTHORITY.

Under authority of Sections 18-8002A, 49-325, and 49-326, Idaho Code, the Idaho Transportation Board adopts the following Rule for the issuance of Restricted Driving Permits for licensed drivers ~~licensed in Idaho~~ who face certain suspension or revocation of driving privileges in the state of Idaho. ~~(3-19-99)~~(7-1-11)T

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.02.70 "Rules Governing Restricted Driving Permits," IDAPA 39, Title 02, Chapter 70. (7-1-11)T

02. Scope. ~~It is the purpose of this rule to provide~~ This rule contains guidelines for issuance of non-commercial restricted driving privileges for those individuals whose driving privileges have been suspended or revoked under authority of Idaho law. ~~This rule;~~ and establishes minimum standards for the issuance, denial and cancellation of non-commercial Restricted Driving Permits pursuant to Sections 18-8002A, 49-325 and 49-326, Idaho Code. ~~(10-1-94)~~(7-1-11)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (7-1-11)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-11)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (7-1-11)T

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

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street, with a mailing address of P O Box 7129, Boise ID 83707-1129. (7-1-11)T

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. (7-1-11)T

03. Telephone and FAX numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-8739. (7-1-11)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (7-1-11)T

0027. -- 099. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

200. DURATION AND EXPIRATION OF RESTRICTED DRIVING PERMIT.

01. ~~Department Stay~~ **Duration and Expiration.** ~~The Department may stay the suspension or revocation of applicant's driving privileges for the duration of the suspension or revocation upon receipt and approval of all necessary requirements for a restricted driving permit.~~ The Restricted Driving Permit shall remain in effect for the period of time the driver's privileges have been suspended or revoked unless cancelled by the department or otherwise provided by law. (10-1-94)(7-1-11)T

02. **Reinstatement Action.** Satisfactory completion of the terms and conditions of the Restricted Driving Permit will be noted in the driving records of the participant as maintained by the Department, and the Department shall reinstate the applicant's regular driving privileges at the expiration of the Restricted Driving Permit if he has complied with all conditions of the ~~Restricted Driving Permit~~ and reinstatement requirements. Any convictions or notices of suspensions or revocations shall remain a part of the driver's file. (10-1-94)(7-1-11)T

201. -- 299. (RESERVED)

300. RESTRICTED DRIVING PERMITS MAY BE ISSUED.

The Department may only issue Restricted Driving Permits to individuals whose driving privileges have been suspended or revoked for: (10-1-94)

01. **Reckless Driving.** Conviction of reckless driving-~~Ref.~~ per Sections 49-1401 and 49-326(1)(f), Idaho Code. (10-1-94)(7-1-11)T

02. **Fleeing or Eluding an Officer.** Conviction of fleeing or attempting to elude a peace officer-~~Ref.~~ per Sections 49-1404 and 49-326(1)(f), Idaho Code. (9-14-92)(7-1-11)T

03. **Points.** Accumulation of excessive "point" violations- per Sections 49-326(1)(i) and (j), Idaho Code. (8-31-89)(7-1-11)T

04. **Leaving Scene of Accident.** Conviction of leaving the scene of an accident involving damage to a vehicle-~~Ref.~~ per Sections 49-1301, and 49-326(1)(l), Idaho Code. (9-14-92)(7-1-11)T

05. **Using Motor Vehicle.** Conviction of using a motor vehicle in the commission of a felony-~~Ref.~~ per Section 49-325(1)(b), Idaho Code. (8-31-89)(7-1-11)T

06. **Offense in Another State.** Conviction of an offense in another state that would be grounds for suspension/revocation in this state-~~Ref.~~ per Section 49-326(1)(e), Idaho Code. (8-31-89)(7-1-11)T

07. **Restricted License.** Conviction of violation of a restricted license-~~Ref.~~ per Sections 49-317 and 49-326(1)(k), Idaho Code. (9-14-92)(7-1-11)T

08. **Administrative License Suspension.** An Aadministrative suspension of driving privileges for a first-time failure of an evidentiary test for the last sixty (60) days of that suspension, for Class D privileges only ~~if driver was operating a commercial vehicle.~~ ~~Ref.~~ per Section 18-8002A, Idaho Code. (3-19-99)(7-1-11)T

301. -- 399. (RESERVED)

400. RESTRICTED DRIVING PERMITS SHALL NOT BE ISSUED.

Restricted Driving Permits shall not be issued by the Department to: (8-31-89)

~~01. **Non-Residents.** Non residents, except for active military stationed in the state of Idaho. (8-31-89)~~

021. Privileges Suspended. Individuals who have had their driving privileges suspended or revoked by the Court and/or Department three (3) or more times during the three (3) year period prior to the effective date of the current suspension. (10-1-94)

032. Like Offense. Individuals who have been issued a Restricted Driving Permit by the Department or by an Idaho Court for a like offense within a previous two (2) year period prior to the effective date of the current suspension or revocation. (10-1-94)

~~04. **Time Period.** Any individual whose suspension/revocation period has less than twenty one (21) days remaining. (10-1-94)~~

053. Violation of Restrictions. An individual found to be in violation of restrictions on any court or Department-issued permit ~~if the permit was issued by the Department pursuant to IDAPA 39.02.70 or if the restricted permit was issued by a Court.~~ (9-14-92)(7-1-11)T

064. Revoked Out-of-State Drivers. An individual who was an out-of-state resident at the time driving privileges were revoked or suspended in that state or any other state. (10-1-94)

05. Under Seventeen. An individual who is not at least seventeen (17) years of age at the time of issuance of the permit. (7-1-11)T

401. -- 499. (RESERVED)

500. GENERAL APPLICATION PROCEDURE FOR A NON-COMMERCIAL RESTRICTED DRIVING PERMIT.

01. Applicant Submissions. Applicant must submit the following before their suspension or revocation is stayed: (10-1-94)

a. Completed Form No. ITD-3227, Application for Restricted Driving Permit; (8-31-89)

b. Completed Form No. ITD-3208, Work Verification; (8-31-89)

c. Proof of motor vehicle liability insurance coverage in the amount required by Idaho law to cover any and all vehicles to be used by the applicant. ~~Additionally, an applicant operating a vehicle other than his own shall provide a letter of permission from the owner to operate the vehicle and to verify the insurance coverage on that vehicle;~~ (3-19-99)(7-1-11)T

d. ~~Financial responsibility in the form of an SR-22 is required for Idaho or out-of-state convictions for driving under the influence of alcohol or other intoxicating substances, reckless driving, eluding a peace officer, driving without privileges, leaving the scene of an accident, or using a motor vehicle in the commission of a felony. Or other acceptable forms of insurance pursuant to Section 49-1209, Idaho Code.~~ All applicable reinstatement requirements must be satisfied; (10-1-94)(7-1-11)T

e. A non-refundable application fee ~~of thirty five dollars (\$35)~~ pursuant to Section 49-306, Idaho Code; (10-1-94)(7-1-11)T

~~f. A reinstatement fee for regular driving privileges pursuant to Section to Section 49-328, Idaho Code.~~ (10-1-94)

02. Written Agreement. If the Department determines that an applicant is eligible for a non-commercial Restricted Driving Permit, the applicant must then sign written agreements, prepared by the Department, affirming that: (3-19-99)(7-1-11)T

a. Cause exists to suspend or revoke the driver's license or privileges of the applicant and that the driver's license of the applicant is suspended or revoked; ~~(8-31-89)~~(7-1-11)T

~~**b.** The driver's license of the applicant is suspended or revoked but that such suspension or revocation shall be stayed pending completion of the Restricted Driving Permit and suspension;~~ (10-1-94)

eb. The applicant shall obey all motor vehicle laws; (10-1-94)

~~**d.** The applicant may be required to attend and complete defensive drivers courses or obtain an alcohol evaluation and follow the recommendations of the evaluator if the suspension is based upon conviction of an alcohol related offense;~~ (9-14-92)

ec. The applicant shall provide and maintain adequate motor vehicle liability insurance; (10-1-94)

fd. The applicant shall notify the Department within ~~twenty-four (24) hours~~ one business day following arrest, citation, accident or warnings by any law enforcement officer with regard to motor vehicle violations or alleged violations, and any change of address, telephone number, place of employment; ~~(8-31-89)~~(7-1-11)T

~~**g.** The applicant understands that if they plead guilty to, are found guilty, or forfeit bond as to any moving traffic violation while operating with a Restricted Driving Permit, their Restricted Driving Permit may be cancelled;~~ (3-19-99)

ke. The applicant shall not operate any motor vehicle after consuming any alcohol, drugs, or other intoxicating substances; (3-19-99)

if. The applicant shall submit to any evidentiary testing to determine alcohol concentration at any time at the request of any peace officer; (9-14-92)

fg. The applicant shall operate a motor vehicle only for those reasons specified on the Restricted Driving Permit (See Section 600); (10-1-94)

~~**kh.** The applicant shall abide by all rules and regulations concerning the Restricted Driving Permit;~~ (8-31-89)

hi. The applicant's Restricted Driving Permit may be cancelled by the Department without a hearing for violation of the terms of the agreement or other conditions specified on the Restricted Driving Permit; and (10-1-94)

mj. The applicant understands that if, while driving on a Restricted Driving Permit, he/she receives an additional Department or court suspension that results in cancellation of the restricted permit, the applicant will not be eligible to receive another Restricted Driving Permit for said suspension. (10-1-94)

03. Restricted Driving Permit Approval. Approval will be given and a Restricted Driving Permit shall be issued if the following conditions are met: (7-1-94)

a. Submission and approval of all requirements listed in Subsection 500.01; and (10-1-94)

b. No other suspensions or revocations are in effect which preclude issuance of a Restricted Driving Permit. (10-1-94)

501. -- 599. (RESERVED)

600. DRIVING RESTRICTIONS SPECIFIED.

The Department may impose the following restrictions upon an applicant's driving privileges and such restrictions shall be specified on the Restricted Driving Permit: (10-1-94)

01. Operation of Vehicle. Time of operation of a motor vehicle, i.e. restricted to certain days, or hours of a day. (8-31-89)

02. Geographic Area. Geographic limitations within limits of states, counties, cities. (8-31-89)

03. Purpose of Permit. Purposes of travel such as to and from employment, to and from counseling sessions, to and from medical appointments, to and from grocery store, church, etc. (10-1-94)

~~**04. Vehicles Approved for Operation.** Operation of only those vehicles approved under Section 500 of this rule. (10-1-94)~~

054. Purpose of Permit Administrative License Suspension. To travel to and from work and for work purposes, to attend an alternative high school, work on a GED, for post-secondary education, or to meet the medical needs of the person or their family. (3-19-99)

601. -- 699. (RESERVED)

700. CANCELLATION OF RESTRICTED DRIVING PERMIT.

The Department may cancel a Restricted Driving Permit and shall re-activate the suspension or revocation order which will expire according to the original order if: (10-1-94)

01. Violation of Terms. There is a violation of terms of the written driver's agreement set forth in Section 500.02. herein. (8-31-89)

02. Violation of Restrictions. There is a violation of any of the restrictions set forth in the applicant's Restricted Driving Permit, see Section 600. (10-1-94)

~~**03. Change in Employment.** There is a substantial change in the driver's employment that affects the necessity of driving privileges in order to maintain livelihood. (8-31-89)~~

~~**04. Applicant Moves Out of State.** The applicant moves from the state of Idaho and comes under the jurisdiction of another state. (8-31-89)~~

701. -- 999. (RESERVED)