

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

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

IDAPA 39.02.72 - Rules Pertaining To The Rules Governing Administrative License Suspensions
(Docket No. 39-0272-1101)

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 07/20/2011. 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 08/17/2011.

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: Eric Milstead, Principal Legislative Research Analyst, LSO
DATE: June 30, 2011
SUBJECT: Idaho Transportation Department

IDAPA 39.02.72 - Rules Pertaining To The Rules Governing Administrative License Suspensions (Docket No. 39-0272-1101)

The Idaho Transportation Department submits notice of temporary and proposed rulemaking at IDAPA 39.02.72 -- Rules Governing Administrative License Suspensions. The agency notes that the temporary and proposed rule reflects changes to Idaho Code from House Bill 61 passed by the 2011 Legislature. That legislation revised aspects of the Administrative License Suspension program found in sections 18-8002 and 18-8002A, Idaho Code. The substantive changes reflected in the temporary and proposed rule include the removal of the requirement to seize a license and issue a temporary permit regardless of whether the driver is licensed in Idaho or in another state. The agency notes that the changes reflected in the temporary and proposed rule will result in a less complicated and more easily administered Administrative License Suspension procedure.

The temporary and proposed rule makes a number of revisions, including:

- Provides for office hours, mailing and street address and phone numbers of the central office and provides that records shall be subject to the Idaho Public Records Act;
- Revises the definition section by deleting the definition of "Temporary Permit";
- Revises provisions governing the submission of documents by law enforcement upon service of a Notice of Suspension. Specifically, the revised rule deletes the reference to a "Temporary Permit" and also deletes references to submission by law enforcement of an "operational checklist" and the submission by law enforcement of the petitioner's driver's license, if the petitioner is an Idaho licensed driver; and
- Deletes references to commercial drivers.

The above revisions appears to be consistent with the provisions of House Bill 61. Also, the agency states that negotiated rulemaking was not conducted because the rule revisions were required to comply with statutory changes imposed by House Bill 61. The temporary rule became effective May 1, 2011.

The temporary and proposed rule appears to be authorized by Sections 67-5226, 67-5221 and 18-8002A.

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

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.72 - RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS
DOCKET NO. 39-0272-1101
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 18-8002 and 18-8002A, 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 June 15, 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 rulemaking: House Bill 61, 2011, brought the Administrative License Suspension (ALS) program in Sections 18-8002 and 18-8002A, Idaho Code, into compliance with a 2010 Idaho Court of Appeals ruling regarding the seizure of the license and the issuance of a temporary permit to an out-of-state licensed driver who refuses to submit to, or submits to and fails, evidentiary testing for the presence of alcohol or drugs, in violation of Section 18-8004, Idaho Code. The bill removes the requirement to seize any license and issue a temporary permit whether the driver is licensed in-state or out-of-state. The ALS procedure will be less complex and more efficient for law enforcement officers and the department to administer. It will also allow the driver (whether licensed in-state or out-of-state) whose license is otherwise valid and current, to proceed with a photo ID in their possession that remains valid and current until a starting suspension date.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with House Bill 61, effective May 1, 2011.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This rulemaking does not impose any new or increased fee.

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 rulemaking has no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the action was required to comply with changes to statute in House Bill 61, effective May 1, 2011.

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: There are no materials being incorporated by reference in this rulemaking.

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 June 22, 2011.

DATED this 12th day of June, 2011.

Linda L. Emry, Rules Coordinator
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 TEXT OF THE TEMPORARY RULE AND THE
PROPOSED RULE TEXT FOR DOCKET NO. 39-0272-1101**

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter.

(5-1-11)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.

(5-1-11)T

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays.

(5-1-11)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.

(5-1-11)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.

(5-1-11)T

0047. -- 009. (RESERVED).

010. DEFINITIONS.

01. Petitioner. A person who has been served with a Notice of Suspension pursuant to Section 18-8002A, Idaho Code.

(10-1-94)

~~**02. Temporary Permit.** A permit to operate a motor vehicle for a period of time not to exceed thirty (30) days from the date of issuance.~~

~~(10-1-94)~~

032. Received by the Department. A document that has been:

(10-1-94)

a. Personally delivered to the Department's Driver Services Section at 3311 W. State Street, Boise, Idaho; or

(10-1-94)

b. Delivered by mail and addressed to P.O. Box 7129, Boise, ID 83707-1129; or

(10-1-94)

c. Transmitted by facsimile machine to telephone number (208) ~~334-8739~~ 332-4124.

~~(10-1-94)~~(5-1-11)T

d. Sent by e-mail to driverrecords@itd.idaho.gov.

(5-1-11)T

043. Business Days. All days of the week except Saturday, Sunday, and legal holidays as defined by Section 73-108, Idaho Code.

(10-1-94)

054. Certified Copy. A reproduction of an original record that has been certified by a custodian of such

record to be a true and accurate copy. (10-1-94)

065. Duplicate Original. A counterpart produced by the same impression as the original, or from the same matrix. (3-19-99)

076. Evidentiary Test. An analysis of blood, breath, or urine to determine the presence of alcohol, drugs, or other intoxicating substances. (10-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

101. HEARING NOTICES.

01. Notification. Upon timely receipt of hearing requests, the Department shall notify petitioners of the time and date of the hearing as soon as practicable, but no later than seven (7) days prior to the hearing. Hearing notices shall be mailed or e-mailed to the address provided in the hearing requests, or if no address was provided, notices shall be mailed to the most current address contained in the petitioner's driver's license records.

~~(3-19-99)~~(5-1-11)T

02. Hearings Conducted by Telephone. Hearings shall be conducted by telephone unless the hearing officer shall determine that the petitioner or other participant would be denied the opportunity to participate in the entire hearing if held by telephone. Face to face hearings shall be held in Ada County (or other locations within the state as may be determined by the Department). (3-19-99)

03. Hearing Date. Hearings shall be conducted within twenty (20) days of receipt of the hearing request. However, the Hearing Officer may extend the hearing date for ~~an additional one (1) ten (10) days~~ period upon a showing of good cause. Such extension shall not stay the suspension ~~nor extend the expiration date of the thirty (30) day temporary permit.~~ (10-1-94)(5-1-11)T

102. -- 199. (RESERVED).

200. DOCUMENT SUBMISSION.

01. Forwarding Documents to the Department. Upon service of a Notice of Suspension, a law enforcement agency shall, in accordance with Section 18-8002A, Idaho Code, forward the following documents to the Department within five (5) business days: (3-19-99)

a. Notice of Suspension ~~and Temporary Permit. A temporary permit shall not be issued by a peace officer when the drivers license is not surrendered, when the drivers license surrendered is not valid, when the driver holds a drivers license from another jurisdiction, or when the driver is operating a commercial vehicle at the time of the stop. No permit will be issued to operate a commercial vehicle.~~ (3-19-99)(5-1-11)T

b. The sworn statement of the officer incorporating any arrest or incident reports relevant to the arrest and evidentiary testing. (10-1-94)

c. A certified copy or duplicate original of the test results or log of test results if the officer has directed an evidentiary test of the petitioner's breath. (3-19-99)

~~**d.** The operational checklist for the administration of breath tests, if used. (10-1-94)~~

~~**e.** The petitioner's driver's license, if the petitioner is an Idaho licensed driver. (10-1-94)~~

02. Compliance. The documents shall be considered forwarded in a timely manner if they are postmarked within five (5) business days of the date of service of the Notice of Suspension or are accompanied by a certificate, certifying the documents were deposited with: (3-19-99)

- a. The United States mail or overnight delivery service; or (10-1-94)
- b. Hand delivered, within five (5) business days of the date of service of the suspension notice. (3-19-99)

03. Blood and Urine Tests. If an evidentiary test of blood or urine was administered rather than a breath test, the Notice of Suspension shall not be served until the results of the test are obtained. In such cases, the peace officer may forward the sworn statement and accompanying reports to the Department and the Department shall have the responsibility of serving the Notice of Suspension, if necessary. (10-1-94)

201. -- 299. (RESERVED).

300. SUBPOENAS.

01. Request. The Hearing Officer assigned to the matter may, upon written request, issue subpoenas requiring the attendance of witnesses or the production of documentary or tangible evidence at a hearing. (10-1-94)

02. Serving Subpoenas. Parties requesting subpoenas shall be responsible for having the subpoenas served. Witnesses shall not be compelled to attend and testify at hearings unless served with subpoenas at least ~~seventy-two~~ one hundred and twenty (72/120) hours prior to the time of hearing. ~~(10-1-94)~~(5-1-11)T

03. Proof of Service. Parties responsible for service of the subpoena shall provide proof of service of the subpoena prior to the scheduled hearing. (5-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

500. RECORDS OF PROCEEDINGS.

01. Required Records. The Hearing Officer shall make a record of hearing proceedings. This record shall consist of: (10-1-94)

- a. An ~~tape~~ audio recording of the hearing, except in instances where the Hearing Officer authorizes a different method of reporting the hearing. ~~(10-1-94)~~(5-1-11)T
- b. Exhibits and other items of evidentiary nature. (10-1-94)

02. Requesting Copies. Any party may make a written request for a copy of the ~~tape~~ audio recording of the hearing from the Department. The requesting party shall reimburse the Department for the actual cost of providing the copy. ~~(10-1-94)~~(5-1-11)T

501. -- 599. (RESERVED).

600. FINAL ORDER REQUEST FOR RECONSIDERATION.

The Hearing Officer shall make Findings of Fact, Conclusions of Law and Order either sustaining or vacating the license suspension in question. The Findings of Fact, Conclusions of Law and Order shall be the final order of the Department. A request for reconsideration must be made within fourteen (14) days of the issuance of the Findings of Fact, Conclusions of Law and Order. The request for reconsideration shall contain a request to submit new evidence if the party wishes the hearing officer to consider any new evidence. (3-19-99)

01. Issuing ~~Before Suspension Expiration Date~~ Facts and Findings. The Hearing Officer shall issue the Findings of Fact, Conclusions of Law and Order ~~prior to the expiration of the thirty (30) day temporary permit, but failure to do so shall not be grounds for staying or vacating the suspension~~ following the hearing. ~~(10-1-94)~~(5-1-11)T

02. Mailing Final Order. The Findings of Fact, Conclusions of Law and Order is issued when a copy is deposited in the United States Mail addressed to the petitioner or the petitioner's attorney or e-mailed to the petitioner or the petitioner's attorney. (10-1-94)(5-1-11)T

601. -- 699. (RESERVED).

700. FAILURE TO APPEAR.

01. Proposed Order of Default. Should the petitioner fail to appear at the scheduled hearing, either in person or through an attorney, the Hearing Officer shall promptly issue a notice of proposed order of default. This notice is deemed served when mailed or e-mailed to the petitioner or petitioner's attorney at the address shown in the request for hearing, or if no address was provided, the notice shall be mailed to the most current address contained in the petitioner's driver's license records. (10-1-94)(5-1-11)T

02. Filing Petition. The petitioner may, within seven (7) days of service of the notice of proposed order of default, file a petition requesting that the order of default not be entered and stating the grounds for such a request. If the Hearing Officer grants the petitioner's request, the hearing shall be promptly rescheduled. Granting the petitioner's request shall not stay or vacate the suspension. (10-1-94)(5-1-11)T

03. Denied Petitions. If the Hearing Officer denies the petitioner's request that the default order not be entered, the Hearing Officer shall make a determination to sustain or vacate the suspension based upon the documentary record submitted by the Department. (10-1-94)

04. Attending a Hearing. A petitioner or witness shall be deemed to have appeared if present within fifteen (15) minutes after the time the Hearing Officer is ready to begin the hearing. In the case of a telephone hearing, the petitioner or witness shall be deemed to have appeared if contacted by telephone on the second attempt to do so within a fifteen (15) minute period from the commencement of the hearing. (3-19-99)

701. -- 799. (RESERVED).

800. FORMS.

The Department shall develop appropriate forms to be used throughout the state including, but not limited to, forms for Notice of Suspension, ~~temporary driving permit~~, and officer's sworn statement. Each law enforcement agency shall use the forms supplied by the Department in carrying out the requirements of Section 18-8002A, Idaho Code, and this Rule. However, the sworn statement may be in the form of a law enforcement agency's affidavit of probable cause or equivalent document, so long as it contains the elements required by Section 18-8002A, Idaho Code. (4-5-00)(5-1-11)T

~~801. -- 899. (RESERVED).~~

~~900. COMMERCIAL DRIVERS.~~

~~If a person is stopped while driving or in actual physical control of a commercial motor vehicle (as defined by Section 49-123(2)(c)) and is given an evidentiary test indicating an alcohol concentration of four hundredths (.04) through seven hundredths (.07) in violation of Section 18-8004b, Idaho Code, the notice of suspension served shall state, in addition to the information required by Section 18-8002A, Idaho Code, that: (3-19-99)~~

~~01. Class A, B, and C Licenses. Only Class A, B, and C driving privileges shall be suspended, unless the driver is under twenty-one (21) years then all driving privileges shall be suspended; and (10-1-94)~~

~~02. Restricted Privileges. A restricted driving permit shall not be issued by the Department for the operation of commercial vehicles during the term of the suspension. (10-1-94)~~

~~9801. -- 999. (RESERVED).~~