

## IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT

### Division of Motor Vehicles

#### 39.02.72 – Rules Governing Administrative License Suspensions

##### **Who does this rule apply to?**

*Drivers operating under the influence of alcohol, drugs or other intoxicating substances.*

- Drivers stopped for driving under the influence of alcohol, drugs or intoxicating substances who fail evidentiary testing at time of arrest

##### **What is the purpose of this rule?**

*This rule establishes the driver's license suspension procedures and administrative hearing procedures administered by the Department for drivers who fail evidentiary testing of breath, blood or urine at time of arrest for driving under the influence of alcohol, drugs or other intoxicating substances. Idaho Code provides for both criminal and civil penalties of driving under the influence. The civil penalties are administered by the Department, which is also responsible for providing drivers with the opportunity for an administrative hearing that is separate and apart from the criminal aspect of driving under the influence.*

*The rule establishes the timeframes that drivers and the Department must meet to request and hold the administrative hearing on the failure of evidentiary testing. Law enforcement must also comply with the requirements of the rule in submitting documentation in support of the suspension and respond to any subpoena(s) issued by a hearing officer. Findings of fact and Conclusions of Law and Order are the final order of the Department.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statute passed by the Idaho Legislature:*

Crimes and Punishment:

- [18-8002A, Idaho Code](#) – Motor Vehicles: Tests of Driver for Alcohol Concentration, Presence of Drugs or Other Intoxicating Substances — Suspension Upon Failure of Tests

##### **Who do I contact for more information on this rule?**

Idaho Transportation Department  
Monday – Friday 8:00 am to 5:00 pm  
P.O. Box 7129  
Boise, ID 83707-1129  
3311 West State Street  
Phone: (208) 334-8000  
[itd.idaho.gov](http://itd.idaho.gov)

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**39.02.72 – RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS**

**000. LEGAL AUTHORITY.**

Section 18-8002A, Idaho Code. (4-6-23)

**001. SCOPE.**

This rule establishes driver's license suspension procedures for persons driving under the influence of alcohol or other intoxicating substances as indicated by an evidentiary test of blood, breath, or urine. (4-6-23)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Petitioner.** A person who has been served with a Notice of Suspension pursuant to Section 18-8002A, Idaho Code. (4-6-23)

**02. 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. (4-6-23)

**03. Duplicate Original.** A counterpart produced by the same impression as the original, or from the same matrix. (4-6-23)

**04. Evidentiary Test.** An analysis of blood, breath, or urine to determine the presence of alcohol, drugs, or other intoxicating substances. (4-6-23)

**011. -- 099. (RESERVED)**

**100. HEARING REQUESTS.**

**01. Written Requests.** Hearing requests will be made in writing and contain the following information: (4-6-23)

**a.** The petitioner's full name, complete mailing address, and telephone number where hearing will be conducted; (4-6-23)

**b.** The driver's license number; (4-6-23)

**c.** The petitioner's date of birth; (4-6-23)

**d.** The date of arrest; (4-6-23)

**e.** A brief statement of the issues the petitioner proposes to raise at the hearing; and (4-6-23)

**f.** Any dates or times that the petitioner or attorney cannot be available for the hearing. (4-6-23)

**02. Timely Requests.** Hearing requests will be received by the Department no later than 5 p.m. of the seventh business day following the service of the Notice of Suspension. Hearing requests received after that time will be considered untimely. The Department will deny an untimely hearing request unless the petitioner can demonstrate that a request should be granted. (4-6-23)

**03. Request Withdrawal.** Petitioners may withdraw their hearing requests at any time. (4-6-23)

**101. HEARING NOTICES.**

**01. Notification.** Upon timely receipt of hearing requests, the Department will 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 will be mailed or e-mailed to the address provided in the hearing requests, or if no address was provided, notices will be mailed to the most current address contained in the petitioner's driver's license records. (4-6-23)

**02. Hearings Conducted by Telephone.** Hearings will be conducted by telephone unless the hearing officer will 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 will be held in Ada County (or other locations within the state as may be determined by the Department). (4-6-23)

**102. -- 199. (RESERVED)**

**200. DOCUMENT SUBMISSION.**

**01. Compliance.** The documents will 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: (4-6-23)

- a. The United States mail or overnight delivery service; or (4-6-23)
- b. Hand delivered, within five (5) business days of the date of service of the suspension notice. (4-6-23)

**02. Blood and Urine Tests.** If an evidentiary test of blood or urine was administered rather than a breath test, the Notice of Suspension will 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 will have the responsibility of serving the Notice of Suspension, if necessary. (4-6-23)

**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. (4-6-23)

**02. Serving Subpoenas.** Parties requesting subpoenas will be responsible for having the subpoenas served. Witnesses will not be compelled to attend and testify at hearings unless served with subpoenas at least one hundred and twenty (120) hours prior to the time of hearing. (4-6-23)

**03. Proof of Service.** Parties responsible for service of the subpoena will provide proof of service of the subpoena prior to the scheduled hearing. (4-6-23)

**301. -- 399. (RESERVED)**

**400. DOCUMENT DISCOVERY.**

**01. Obtaining Photocopies.** To obtain a photocopy of a document which is public record, relates to the petitioner hearing, and is in the possession of the Department, petitioners will make a written request to the Department. The Department will attempt to provide the requested copies prior to the hearing date, but failure to do so will not be grounds for staying or rescinding a suspension. (4-6-23)

**02. Document Discovery.** Further discovery will be conducted in accordance with IDAPA 04.11.01.521, "Idaho Rules of Administrative Procedure of the Attorney General." (4-6-23)

**401. -- 499. (RESERVED)**

**500. RECORDS OF PROCEEDINGS.**

**01. Records.** The Hearing Officer will make a record of hearing proceedings consisting of: (4-6-23)

a. An audio recording of the hearing, except in instances where the Hearing Officer authorizes a different method of reporting the hearing. (4-6-23)

b. Exhibits and other items of evidentiary nature. (4-6-23)

**02. Requesting Copies.** Any party may make a written request for a copy of the audio recording of the

hearing from the Department. The requesting party will reimburse the Department for the actual cost of providing the copy. (4-6-23)

**501. -- 599. (RESERVED)**

**600. FINAL ORDER REQUEST FOR RECONSIDERATION.**

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

(4-6-23)

**01. 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. (4-6-23)

**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 will 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 will be mailed to the most current address contained in the petitioner's driver's license records. (4-6-23)

**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 will be rescheduled. Granting the petitioner's request will not stay or vacate the suspension. (4-6-23)

**03. Denied Petitions.** If the Hearing Officer denies the petitioner's request that the default order not be entered, the Hearing Officer will make a determination to sustain or vacate the suspension based upon the documentary record submitted by the Department. (4-6-23)

**04. Attending a Hearing.** A petitioner or witness will 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 will 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. (4-6-23)

**701. -- 799. (RESERVED)**

**800. FORMS.**

Each law enforcement agency will 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 directed by Section 18-8002A, Idaho Code. (4-6-23)

**801. -- 999. (RESERVED)**