

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

Submitted for Review Before  
**Senate Transportation Committee**  
66th Idaho Legislature  
First Regular Session – 2021



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Division of Financial Management*

*January 2021*



State of Idaho  
**DIVISION OF FINANCIAL MANAGEMENT**  
Executive Office of the Governor

BRAD LITTLE  
Governor

ALEX J. ADAMS  
Administrator

January 11, 2021

**MEMORANDUM**

TO: **Members of the 2021 Idaho State Legislature**

FROM: **Alex J. Adams, Administrator** *Alex J. Adams*  
**Bradley A. Hunt, Rules Coordinator** *Bradley A. Hunt*

SUBJECT: **Overview of Executive Agency Rulemaking in 2020**

**Background.** Governor Little initiated a rules moratorium for calendar year 2020 and thus the volume of rulemaking is down substantially relative to most years. Most rules published in the Legislative Rules Review book are simply re-published because the 2020 Legislature adjourned *sine die* without passing a concurrent resolution approving any pending fee rules as specified in Section 67-5224, Idaho Code. The necessary fee rules were re-published in the following special bulletins:

- [April 15](#) – Temporary Fee Rules
- [September 16](#) – Proposed Fee Rules
- [November 18](#) – Pending Fee Rules

**Changes in Existing Fee Rules.** Since all fee rules expired upon sine die, there is no existing rule available to amend. Therefore, only a clean version of the rule chapter is able to be presented to the Legislature in January 2021. In some cases, fee rules were modified based on public comment, or to implement Executive Order [2020-13](#), among other reasons. Given the unprecedented volume, all edits are incorporated within a single docket and presented as a clean fee rule chapter. There are several ways that legislators may view previous rules for comparison purposes:

- An [archive of any rule](#) since 1996 is available on the DFM website. This allows legislators to see the evolution of a rule over time.
- The Legislative Services Office analyzes all proposed rules. You can find their analysis of proposed rules which, in some cases, may discuss changes to rules between sine die and the proposed rules. These may be found on the [Legislature's website](#).
- Changes made between the proposed and pending rule stages were noted in the [November 18th](#) bulletin where applicable.

**Process for Approving/Extending Rules.** Below, you will find a brief description on legislative actions and outcomes regarding the rules review process and contents of the Legislative Rules Review Books:

- Pending Fee Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to become final.
- Temporary Rules must be affirmatively approved by both bodies via adoption of concurrent resolution to be extended.
- Pending Rules become final and effective sine die unless rejected, in whole or in part, via concurrent resolution adopted by both bodies.
  - Pending rules may be approved, in whole or in part, or rejected if determined to be inconsistent with legislative intent of the governing statute.
  - If rejected, new or amended language must be identified at a numerical or alphabetical designation within the rule and specified in the concurrent resolution.
- A link to LSO's proposed rule analysis is provided at the beginning of each docket and includes any required supporting documentation (e.g. Cost Benefit Analysis (CBA), Incorporation By Reference Synopsis (IBRS)) as part of the analysis.
- All 2021 review books can be accessed on the DFM website [here](#).

**Contact Information.** If questions arise during the rules review process, please do not hesitate to contact the Rules Coordinator, Brad Hunt: [Brad.Hunt@dfm.idaho.gov](mailto:Brad.Hunt@dfm.idaho.gov); 208-854-3096.

***SENATE TRANSPORTATION COMMITTEE***

***ADMINISTRATIVE RULES REVIEW***

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**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT**  
**39.02.71 – RULES GOVERNING DRIVER’S LICENSE VIOLATION POINT SYSTEM**  
**DOCKET NO. 39-0271-2001**  
**NOTICE OF RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Proposed Rule Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2021 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 40-312, 49-201 & 49-326, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The changes being proposed to this rule are based on the passage of [HB614-2020](#). The rule change will add a new violation for distracted driving and update the points table for motor vehicle moving violations and driver license assessed points. This rulemaking will ensure consistency between Idaho Code and the Idaho Administrative Procedures Act.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the October 7, 2020, Idaho Administrative Bulletin, [Vol. 20-10, pages 92-96](#).

**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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, please contact Brendan Floyd, DMV Program Specialist, at (208) 334-8474.

Dated this 9th Day of November, 2020.

Ramón S. Hobdey-Sánchez, J.D.  
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Idaho Transportation Department  
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**THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is August 20, 2020.

**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 40-312, 49-201 & 49-326, 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 October 21, 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 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:

The changes being proposed to this rule are based on the passage of [HB614-2020](#). The rule change will add a new violation for distracted driving and update the points table for motor vehicle moving violations and driver license assessed points. This rulemaking will ensure consistency between Idaho Code and the Idaho Administrative Procedures Act.

**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:

To reflect statutory changes made to Section 49-1401A, Idaho Code, during the 2nd Regular Session of the 65th Idaho Legislature (2020).

**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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [June 3, 2020, Idaho Administrative Bulletin, Volume 20-6, Pages 189-190](#).

**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, please contact Brendan Floyd, DMV Program Specialist, at (208) 334-8474.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2020.

Dated this 25th Day of August, 2020.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0271-2001**

39.02.71 – RULES GOVERNING DRIVER'S LICENSE VIOLATION POINT SYSTEM

000. LEGAL AUTHORITY.

Under authority of Sections 49-201 and 49-326, Idaho Code, the ~~Idaho Transportation Board~~ Department adopts the following rule ~~for Violation Point Count System for drivers licensed in Idaho.~~ (7-20-89)(\_\_\_\_)

001. TITLE AND SCOPE.

01. Title. This rule is titled IDAPA 39.02.71, "Rules Governing Driver's License Violation Point System." (3-30-01)

02. Scope. ~~It is the purpose of this rule to establish guidelines for the implementation of~~ These rules ~~establish~~ a driver's license violation point system for drivers convicted of moving traffic violations and convictions. (3-30-01)(\_\_\_\_)

002. -- 099. (RESERVED)

100. VIOLATION POINT COUNT SYSTEM.

01. Points for Moving Traffic Violations. ~~The~~ Idaho Code authorizes ~~and directs~~ the Department to establish a violation point count system for drivers convicted of various moving traffic violations and infractions occurring either within the state of Idaho, or outside the state of Idaho. ~~Moving traffic violations and infractions are violations that occur while operating a motor vehicle, hereinafter, referred to collectively as traffic violations.~~ Therefore, a schedule of violation points for ~~moving~~ traffic violations ~~and infractions~~ has been established. ~~Moving traffic violations and infractions are violations that occur while operating a motor vehicle.~~ (7-1-97)(\_\_\_\_)

02. Violation Point Count List. The following violation point count list includes ~~moving traffic~~ violations ~~and infractions~~ in Idaho Code, and the appropriate ~~code~~ sections ~~reference~~. Convictions of ~~moving traffic~~ violations ~~and infractions~~ not herein listed which are violations of a state law or municipal ordinance will receive three (3) violation points, except those for which mandatory ~~suspension/revocation~~ ~~withdrawal of driving privileges~~ is required by ~~statute~~ Idaho Code or the ~~statute~~ Idaho Code provides a point exemption. (1-1-14)(\_\_\_\_)

03. Points Assessed. Each ~~moving~~ traffic ~~violation~~ conviction ~~and infractions shall will~~ be assessed from one (1) point for less serious violations to a maximum of four (4) points for more serious violations. The degree of seriousness of ~~moving~~ traffic violations ~~and infractions~~ has been determined by considering the possibility of bodily injury or property damage resulting from such violation. (7-1-97)(\_\_\_\_)

04. Dual Violation. In cases where the driver is convicted of more than one (1) violation arising from one (1) occasion of arrest or citation, only one (1) conviction will be counted and assessed points against the driver's record. The conviction counted will be the one with the greater amount of points. (1-1-14)

05. Speeding Violation. Drivers convicted of traveling sixteen (16) miles per hour or more over the posted maximum speed limit or exceeding the speed limit in a work zone will receive four (4) points. Driving convictions of other speeding violations will receive three (3) points. (1-1-14)

06. ~~Exemptions~~ **Distracted Driving.** ~~No points will be assessed to an Idaho driving record for texting as defined per Section 49-1401A(2), Idaho Code, and Safety Restraint Use as defined per Sections 49-673(3) and (4), Idaho Code. A first offense of Section 49-1401A, Idaho Code, will not be assessed points pursuant to code. Subsequent offenses will be assessed points as shown in Section 200. Third and subsequent offenses in a three-year period may also be subject to a court suspension.~~ (1-1-14)(\_\_\_\_)

101. -- 199. (RESERVED)

**200. LIST OF ~~MOVING~~ TRAFFIC CONVICTIONS AND/OR VIOLATIONS POINT COUNT.**

<b>Idaho Code</b>	<b>Convictions Reported by Court</b>	<b>Point Count</b>
49-603	Starting Parked Vehicle	Two (2)
49-604	Limitations on Backing	One (1)
49-605	Driving Upon Sidewalk	Three (3)
49-606	Coasting Prohibited	Two (2)
49-612	Obstruction to Driver's View or Driving Mechanism	Three (3)
49-614	Stopping When Traffic Obstructed	One (1)
49-615	Drivers to Exercise Due Care	Three (3)
49-616	Driving through Safety Zone Prohibited	Two (2)
49-619	Slow Moving Vehicles	Two (2)
49-623(4)	Authorized Emergency or Police Vehicles	Three (3)
49-624	Duty Upon Approaching a Stationary Police Vehicle or an Emergency Vehicle Displaying Flashing Lights	Three (3)
49-625	Operation of Vehicles on Approach of Authorized Emergency or Police Vehicles	Three (3)
49-626	Following Fire Apparatus Prohibited	Three (3)
49-627	Crossing Fire Hose	One(1)
49-630	Drive on Right Side of Roadway - Exceptions	Three (3)
49-631	Passing Vehicles Proceeding in Opposite Directions	Two (2)
49-632	Overtaking a Vehicle on Left	Three (3)
49-633	When Passing on the Right Is Permitted	Two (2)
49-634	Limitations on Overtaking on the Left	Three (3)
49-635	Further Limitations on Driving on Left of Center of Highway	Three (3)
49-636	One-Way Highways	One (1)
49-637	Driving on Highways Laned for Traffic	One (1)
49-638	Following Too Closely	Three (3)
49-639	Turning Out of Slow Moving Vehicles	Two (2)
49-640	Vehicles Approaching or Entering Unmarked or Uncontrolled Intersection	Three (3)
49-641	Vehicle Turning Left	Three (3)
49-642	Vehicle Entering Highway	Three (3)
49-643	Highway Construction and Maintenance	Three (3)
49-644	Required Position and Method of Turning	Three (3)
49-645	Limitations on Turning Around	Three (3)
49-648	Obedience to Signal Indicating Approach of Train	Four (4)
49-649	Compliance with Stopping Requirement at All Railroad Grade Crossings	Four (4)

Idaho Code	Convictions Reported by Court	Point Count
49-650	Moving Heavy Equipment at Railroad Grade Crossings	Three (3)
49-651	Emerging from Alley, Driveway or Building	Three (3)
49-652	School Safety Patrols – Failure to Obey Unlawful	Three (3)
49-654	Basic Rule and Maximum Speed Limits	Three (3) Four (4)
49-655	Minimum Speed Regulation	Three (3)
49-656	Special Speed Limitations	Three (3) Four (4)
49-657	Work Zone Speed Limits	Four (4)
49-658	School Zone Speed Limit	Three (3)
49-663	Restricted Use of Neighborhood Electric Vehicles on Highways	Two (2)
<del>49-673(3)&amp;(4)</del>	<del>Safety Restraint Use</del>	<del>Exempt</del>
49-702	Pedestrians' Right of Way in Crosswalks	Three (3)
49-706	Blind and/or Hearing Impaired Pedestrian Has Right-of-Way	Three (3)
49-707	Pedestrians' Right-of-Way on Sidewalks	Three (3)
49-801	Obedience to and Required Traffic Control Devices	Three (3)
49-802	Traffic Control Signal Legend	Three (3)
49-804	Flashing Signals	Three (3)
49-806	Lane Use Control Signals	Three (3)
49-807(2)	Stop Signs	Three (3)
49-807(3)	Failure to Yield – Signed Intersection	Three (3)
49-808	Turning Movements and Required Signals	Three (3)
49-1302	Duty to Give Information in Accident Involving Damage to a Vehicle	Four (4)
49-1303	Duty Upon Striking Unattended Vehicle	Four (4)
49-1304	Duty Upon Striking Fixtures Upon or Adjacent to a Highway	Four (4)
49-1401(3)	Inattentive Driving	Three (3)
49-1401A	<del>Texting While</del> Distracted Driving (second and subsequent offenses)	<del>Exempt</del> Three (3)
49-1419	Obedience to Traffic Direction	Two (2)
49-1421(1)	Driving on Divided Highways	One (1)
49-1421(2)	Restricted Access	One (1)
49-1422	Overtaking and Passing School Bus	Four (4)
49-1424	Racing on Public Highways	Four (4)

~~(3-28-18)~~ ( )

201. -- 299. (RESERVED)



300. SUSPENSION OF **DRIVER** LICENSE.

01. **Twelve Points.** When a driver accumulates twelve (12) or more points in any twelve (12) month period of time, the suspension period shall be for thirty (30) days. (7-20-89)

02. **Eighteen Points.** When a driver accumulates eighteen (18) or more points within any twenty-four (24) month period of time, the suspension period shall be for ninety (90) days. (7-20-89)

03. **Twenty-Four Points.** When a driver accumulates twenty-four (24) or more points within any thirty-six (36) month period of time, the suspension period shall be for six (6) months. (7-20-89)

301. -- 399. (RESERVED)

400. COMPLETION OF A DEFENSIVE DRIVING CLASS OR TRAFFIC SAFETY EDUCATION PROGRAM.

01. **Removal of Points Upon Completion of Defensive Driving Class or Traffic Safety Education Program.** Three (3) points may be removed from an Idaho driving record upon the driver's completion of an approved defensive driving class or points may be removed from ~~an infraction~~ **a traffic violation** upon the driver's completion of an approved traffic safety education program. Points may only be removed from a driver's record once every three (3) years. ~~This time restriction~~ **The three year period** begins on the completion date of either a defensive driving class or traffic safety education program. (~~1-1-14~~)( )

a. For completion of a defensive driving class, points are only removed from the violation point count total on the driving record. (1-1-14)

b. For completion of a traffic safety education program as provided in Section 50-336, Idaho Code, points are removed from the conviction for which the traffic safety education program was **offered and** taken. (~~1-1-14~~)( )

02. **Driving Conviction Cannot Be Removed.** A driver may not remove a **driving traffic** conviction from ~~his~~ **their** record by attending a defensive driving class or a traffic safety education program. (~~1-1-14~~)( )

03. **Suspension for Excessive Points.** Once the department has suspended a driver for excessive points, that driver may not ~~wave~~ **have** the suspension action **rescinded** by attending a defensive driving class or traffic safety education program. (~~1-1-14~~)( )

04. **Driver May Not Reserve Point Reduction.** When a driver completes a defensive driving class or traffic safety education program but has no violation points on ~~his~~ **their** driver record, ~~he~~ **the driver** may not reserve a point reduction for use on a future ~~point assessing~~ **traffic** violation **that points are assessed**. (~~1-1-14~~)( )

401. -- 999. (RESERVED)