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**IDAPA 39
TITLE 02
CHAPTER 72**

39.02.72 - RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS

000. LEGAL AUTHORITY.

In accordance with Section 18-8002A, Idaho Code, the Idaho Transportation Board adopts the following rule governing Administrative License Suspensions (ALS). (10-1-94)

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.02.72, "Rules Governing Administrative License Suspensions". (4-5-00)

02. Scope. The purpose of this Rule is to establish 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, pursuant to Section 18-8002A, Idaho Code. This rule also includes the procedures for administrative hearings to review the propriety of administrative license suspensions. (4-5-00)

002. WRITTEN INTERPRETATIONS.

Written interpretations of this rule in the form of explanatory comments accompanying the rule-making proposal and a review of the comments submitted during the rule-making process are available from the Secretary to the Board, Idaho Transportation Board, P.O. Box 7129, Boise, ID 83707-1129, or 3311 W. State Street, Boise, Idaho. (10-1-94)

003. ADMINISTRATIVE APPEALS.

All Administrative License Suspension appeals pursuant to Section 18-8002A, Idaho Code, shall be governed by this rule and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," in so far as they apply. (10-1-94)

004. -- 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)

03. 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. (10-1-94)

04. Business Days. All days of the week except Saturday, Sunday, and legal holidays as defined by Section 73-108, Idaho Code. (10-1-94)

05. 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)

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

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

011. -- 099. (RESERVED).

100. HEARING REQUESTS.

01. Written Requests. Hearing requests must be made in writing. Hearing requests must contain the following information: (10-1-94)

- a.** The petitioner's full name, complete mailing address, and telephone number where hearing will be conducted; (3-19-99)
- b.** The driver's license number; (10-1-94)
- c.** The petitioner's date of birth; (10-1-94)
- d.** The date of arrest; (10-1-94)
- e.** A brief statement of the issues the petitioner proposes to raise at the hearing; and (10-1-94)
- f.** Any dates or times that the petitioner or attorney cannot be available for the hearing. (10-1-94)

02. Timely Requests. Hearing requests must be received by the department no later than 5 p.m. of the seventh day following the service of the Notice of Suspension. Hearing requests received after that time shall be considered untimely. The department shall deny an untimely hearing request unless the petitioner can demonstrate that a request should be granted. (10-1-94)

03. Request Withdrawal. Petitioners may withdraw their hearing requests at any time. (10-1-94)

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 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)

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 ten (10) days 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)

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)

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 (72) hours prior to the time of hearing. (10-1-94)

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 shall make a written request to the Department. The Department shall attempt to provide the requested copies prior to the hearing date, but failure to do so shall not be grounds for staying or rescinding a suspension. (10-1-94)

02. Further Document Discovery. Further discovery shall only be conducted in accordance with IDAPA 04.11.01.521, "Idaho Rules of Administrative Procedure of the Attorney General". (10-1-94)

401. -- 499. (RESERVED).

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. A tape recording of the hearing, except in instances where the Hearing Officer authorizes a different method of reporting the hearing. (10-1-94)

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 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)

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. 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. (10-1-94)

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. (10-1-94)

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 to the petitioner 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)

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)

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)

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)

901. -- 999. (RESERVED).

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