

Dear Senators BRACKETT, Crabtree, Buckner-Webb, and
Representatives PALMER, Shepherd, Wintrow:

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

IDAPA 39.02.71 - Rules Governing Driver's License Violation Point System - Temporary and
Proposed (Docket No. 39-0271-2001).

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 11/19/2020. 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 12/17/2020.

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 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
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: Legislative Drafting Attorney - Matt Drake

DATE: November 02, 2020

SUBJECT: Idaho Transportation Department

IDAPA 39.02.71 - Rules Governing Driver's License Violation Point System - Temporary and Proposed (Docket No. 39-0271-2001)

Summary and Stated Reasons for the Rule

The Idaho Transportation Department submits notice of temporary and proposed rulemaking at IDAPA 39.02.71. This rulemaking relates to the Rules Governing Driver's License Violation Point System. The rule implements House Bill 614 of 2020, which added a new violation for distracted driving. The rulemaking adds the violation for distracted driving to rule, including within the table of point violations. Pursuant to Idaho Code, distracted driving shall only result in points for second offenses and subsequent offenses thereafter. The proposed rulemaking also includes several non-substantive cleanup changes.

Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was conducted. There is no anticipated fiscal impact on the state general fund.

Statutory Authority

The proposed rule changes appear to be within the statutory authority of the Department pursuant to Sections 40-312 and 49-201, Idaho Code.

cc: Idaho Transportation Department
Ramon Hobdey-Sanchez

*** PLEASE NOTE ***

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
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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 – 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.

Ramón S. Hobdey-Sánchez, J.D.
Office of Governmental Affairs
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

Idaho Transportation Department
3311 W. State Street
Boise, ID 83707-1129

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 39-0271-2001

(All sections have some changes, therefore,
the entire chapter is being published below.)

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)~~ (8-20-20)T

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)~~ (8-20-20)T

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~~ 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)~~ (8-20-20)T

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)~~ (8-20-20)T

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)~~ (8-20-20)T

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.~~ **(8-20-20)T**

101. -- 199. (RESERVED)

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

Idaho Code	Convictions Reported by Court	Point Count
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)

Idaho Code	Convictions Reported by Court	Point Count
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)
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)
49-673(3)&(4)	Safety Restraint Use	Exempt
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	Texting While Distracted Driving (second and subsequent offenses)	Exempt Three (3)
49-1419	Obedience to Traffic Direction	Two (2)
49-1421(1)	Driving on Divided Highways	One (1)

Idaho Code	Convictions Reported by Court	Point Count
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)~~(8-20-20)T

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)~~(8-20-20)T

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)~~(8-20-20)T

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)~~(8-20-20)T

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)~~(8-20-20)T

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)~~(8-20-20)T

401. -- 999. (RESERVED)