



APPEALING DEPARTMENT ACTIONS AND ORDERS

Purpose

As directed by the Board in Board Policy 4025, this policy outlines the various types of appeals available to persons who are affected by Department actions and orders. This policy informs persons of their statutory right to appeal a Department action or order and provides guidance to Department staff on which appeal process to follow in their particular area of operation.

Legal Authority

49 CFR Part 24

Idaho Code sections 9-343 (Public Records Law), 18-8002A (Administrative License Suspension), 40-312(3), 49-508(1) (motor vehicle titles), 49-1618(1) (motor vehicle dealer licensing), 40-1925 (outdoor advertising and junkyards), 40-902(5) (construction bid disputes), and Idaho Administrative Procedures Act, Chapter 52, Title 67

IDAPA 04.11.01, et seq., Idaho Rules of Administrative Procedure of the Attorney General

IDAPA 39.02.72, Rules Governing Administrative License Suspensions

IDAPA 39.03.42, Rules Governing Highway Right-of-Way Encroachments on State Rights-of-Way

IDAPA Rule 39.03.43, Rules Governing Utilities on State Highway Right of Way

IDAPA Rule 39.03.64, Rules Governing Tourist Oriented Directional Signs (TODS)

In the course of business, the Idaho Transportation Department takes various agency actions and issues orders as required by law or rule. These actions can affect the rights of individual citizens. A party aggrieved by such actions or orders may challenge those actions or orders through the administrative appeals process provided by statute, administrative rule, and policy of the Department.

Administrative Remedy Provided as a Matter of Right

Different statutes, rules, and policies provide an administrative remedy in the following subject matter areas. These processes may consist of a formal or an informal procedure. An informal proceeding lacks the formality of notice, a hearing or a formal record, and may result in negotiations, stipulations, agreed settlements or consent orders. While informal proceedings are more common, a formal administrative hearing is required, by rule or statute, in the following instances:

- Relocation Benefits: Denial of eligibility or amount of benefits under the Federal Highway Relocation Assistance Program.
- Junkyard Control: Denial or revocation of a junkyard permit.
- Outdoor Advertising Control: Denial or revocation of an outdoor advertising permit or demand to remove an outdoor advertising display.
- Access Control: Denial of an application for an access encroachment, an application to use the right of way, or an order to remove an illegal encroachment.
- Logo Signs: Denial of an application for a logo sign on the interstate system.
- Tourist Oriented Directional Signs (TODS): Denial of an application for a tourist oriented directional sign (TODS) on the State right of way of primary and secondary highways for tourist

oriented businesses, (including seasonal agricultural products), services, and attractions.

- Division of Motor Vehicle Actions or Orders taken pursuant to Title 49, Idaho Code: Suspension, revocation, cancellation, or disqualification of a) drivers' licenses, privileges, or permits; b) identification cards; c) motor vehicle titles and registrations; d) motor carrier use fee audits; e) motor vehicle dealers and salesman licenses; f) vanity/personalized license plates; or g) motor vehicle franchise agreement disputes.
- Division of Highways Construction Contract Bid Disputes: When a bidder on a state highway construction contract alleges error in the Department's contract bidding or awarding procedure.

Upon request, the aggrieved party, in one of the above matters, shall be afforded a formal administrative hearing. The administrative hearing is governed by the contested case provisions of the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code, and shall proceed as follows:

- The aggrieved party's request for hearing shall be directed to the Idaho Transportation Department, Legal Section, PO Box 7129, Boise, Idaho 83707.
- A contested case hearing shall be held before an administrative hearing officer (the "presiding officer") appointed by the Director. Telephonic hearings shall be utilized whenever practical to reduce costs to the parties.
- Hearings shall be conducted in accordance with the Idaho Rules of Administrative Procedure of the Attorney General (IDAPA 04.11.01, et seq.) as applicable.
- Orders of the hearing officer shall be in the form of Findings of Fact, Conclusions of Law, and a Preliminary Order or a Recommended Order.
- The Director, as designee of the Idaho Transportation Board, shall review recommended orders. The Director may review preliminary orders, either upon his or her own motion, or upon the timely receipt of a petition for review of a preliminary order. Petitions for review of preliminary orders shall be directed to the Idaho Transportation Department, Legal Section, PO Box 7129, Boise, Idaho 83707, for consideration by the Director.

Review of Other Department Actions or Orders

It is the policy of the Idaho Transportation Board that when a party is notified of a Department action or order, for which an administrative remedy is not provided by statute, rule, or policy (see examples listed below), the party may, within thirty days (30) of the notice of action or order, request in writing, a review of the action or order to the next supervisory level. If the matter is not resolved at that level, the aggrieved party may request further review by the appropriate Division Administrator. The decision of the Division Administrator shall be the final agency action.

Example: Denial of request for installation of a traffic control device.

Other Proceedings

The following matters have specific administrative remedies provided by Idaho Code or by contract specifications:

- Administrative License Suspension Hearing: Appeals and hearing procedures are contained in Section 18-8002A, Idaho Code, and IDAPA Rule 39.02.72, Rules Governing Administrative License Suspensions. Neither of these authorities provide for an

administrative appeal to the agency head.

- Construction Contract Claims Disputes: Claims for adjustments and disputes dealing with construction contracting or under issued construction contracts are governed by the procedures contained in the department's Standard Specifications for Highway Construction.
- Public Records Request: If the Department denies a request for public records, the sole remedy available to the party making the request is to file a petition protesting the denial in district court. Such a petition must be filed within 180 days of the mailing of the denial notice (Section 9-343, Idaho Code).
- Utility Installation and Relocation: Disputes arising out of the location and relocation of utilities on the right of way are handled in accordance with Section 40-312 (3), Idaho Code and IDAPA Rule 39.03.43-- Rules Governing Utilities on State Highway Right- of- Way.

Precedence and Scope of the Policies

This Administrative policy and the corresponding Board policy, 4025, shall govern all appeals on and after their effective dates. These policies shall take precedence over all other appeals policies to the extent there is a conflict.

The policies apply only to those parties directly involved in the dispute. They do not create any appeal rights for other persons interested in the dispute.

Signed _____
Brian W. Ness
Director

Date August 26, 2013