

STATE AFFAIRS COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 03 - STATE ATHLETIC COMMISSION

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DOCKET NO. 03-0101-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 fee rule. The action is authorized pursuant to Section 54-416, 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 pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 88 through 91.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-4809, Idaho Code:

This is not a new fee. The ring official fee was collected as a non-combatant fee.

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:

The addition of a ring official application and renewal fees will have no impact on the Board's dedicated funds as this category was a part of the non-combatant fees.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending fee rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220, Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-416, 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, 2009.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rule updates the Athletic Commission's website address as it has changed. The rule clarifies that an application is required for a sanctioning permit and that all combatants must apply for a license. It adds a \$30 application and renewal fee for a ring official. The rule indicates that the Commission may, for good cause shown, lower the ring official age requirement from 21 to 18 years. It corrects terminology. The rule changes the reference from a boxer to a combatant to be consistent with the statute. Finally, it clarifies an exemption and corrects a reference in Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: This is not a new fee.

The ring official fee was collected as a non-combatant fee.

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 resulting from this rulemaking:

The addition of a ring official application and renewal fees will have no impact on the Board's dedicated funds as this category was a part of the non-combatant fees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the discussion was held in an open meeting of the commission.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written

comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 25th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

006. ADDRESS OF THE IDAHO STATE ATHLETIC COMMISSION.

The office of the State Athletic Commission is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is atc@ibol.idaho.gov. The Board's official web site ~~is~~ can be found at www.ibol.idaho.gov/atc.htm. ~~(3-26-08)()~~

(BREAK IN CONTINUITY OF SECTIONS)

100. LICENSING.

01. Application for License. An application for a license must be submitted to the Bureau on a form supplied by the Commission and be verified under oath by the applicant for each of the following: (3-26-08)

- a. *Professional* Combatant; (5-8-09)()
- b. Promoter; (3-3-94)
- c. Matchmaker; (3-3-94)
- d. Manager; (3-3-94)
- e. Second, including a trainer; ~~or~~ (5-8-09)()
- f. Ring Official; or (5-8-09)()
- g. Sanctioning permit for an event. ()

02. Complete Applications. All applications must be made on a form provided by the Bureau and must be complete and include the required fee and any supporting documentation required before they will be considered by the commission. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

104. FEES (RULE 104).

- 01. Application.** Application fee: (3-26-08)
 - a.** Combatant - thirty dollars (\$30). (3-26-08)
 - b.** Non-combatant - thirty dollars (\$30). (3-26-08)
 - c.** Matchmaker - one hundred dollars (\$100). (3-26-08)
 - d.** Promoter - five hundred dollars (\$500). (3-26-08)
 - e.** Sanction permit - twenty-five dollars (\$25). (3-26-08)
 - f.** Ring official - thirty dollars (\$30). ()
- 02. Renewal of License/Permit.** Annual renewal fee: (3-26-08)
 - a.** Combatant - thirty dollars (\$30). (3-26-08)
 - b.** Non-combatant - thirty dollars (\$30). (3-26-08)
 - c.** Matchmaker - fifty dollars (\$50). (3-26-08)
 - d.** Promoter - one hundred dollars (\$100). (3-26-08)
 - e.** Ring official - thirty dollars (\$30). ()

(BREAK IN CONTINUITY OF SECTIONS)

111. REQUIREMENTS FOR LICENSE AS RING OFFICIAL.

- 01. Qualifications.** To qualify for a license as a ring official of contests, an applicant must: (5-8-09)
 - a.** Be at least twenty-one (21) years of age. The Commission may, for good cause shown, lower the minimum age limit for a particular applicant to eighteen (18) years of age; (~~3-3-94~~)()
 - b.** Have no record of conviction of a felony or other crime involving moral turpitude unless approved by the commission; (3-26-08)

c. Have had at least one (1) year experience in either amateur or professional contest as a ring official; (5-8-09)

d. Submit verifications from three (3) persons of his proficiency as a ring official; and (5-8-09)

e. Provide proof that the applicant meets the other requirements of the commission law and rules. (3-26-08)

02. Equivalent Qualifications. In lieu of the above qualifications, the Commission may accept satisfactory evidence of equivalent qualifications possessed by an applicant who: (5-8-09)

a. Is currently licensed in another state or country; or (3-3-94)

b. Formerly held an Idaho license which lapsed in good standing. (3-26-08)

03. Other Functions. A person holding a current Idaho license or who formerly held an Idaho license which lapsed in good standing may be licensed by the Commission without examination or internship to perform an officiating function other than that for which he is or was licensed if the Commission determines that he is qualified to perform that function. (3-3-94)

04. Ring Officials Determination. The Commission will determine when additional ring officials are needed and when licensing examinations for ring officials will be conducted. (3-3-94)

05. Validity of Licenses. Each license issued by the commission is annually renewable in accordance with Section 67-2614, Idaho Code. The renewal of a license is not automatic. The applicant's past performance and abilities may be considered in evaluating an application for renewal. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

728. ANNOUNCEMENT OF WINNER OF BOUT.

At the termination of each boxing bout the announcer shall announce the winner and the referee shall raise the winner's hand ~~of the winner~~. (3-3-94)(____)

729. CHANGE OF DECISION IN CONTEST.

The Commission will not change a decision rendered at the end of any ~~boxing~~ contest unless: (5-8-09)(____)

01. Collusion. The Commission determines that there was collusion affecting the result of the contest; (3-3-94)

02. Error in Scoring. The compilation of scorecards of the judges discloses an error which shows that the decision was given to the wrong ~~boxer~~ combatant; or (3-3-94)(____)

03. Error in Interpretation of Rules. As a result of an error in interpreting a provision of this chapter, the referee has rendered an incorrect decision. (3-3-94)

04. Failure of Drug Test. The Commission determines that there was a violation of Section 900. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

731. MARTIAL ARTS AND MIXED MARTIAL ARTS (MMA).

01. Regulation of Marital Arts and MMA. Except to the extent set forth under Rules 731-799, all requirements and the limitations relating to combatants and licenses (as set forth within Title 54, Chapter 4, Idaho Code, and in the remaining rules of the Commission) will apply to all martial arts and MMA contests and exhibitions. Notwithstanding the foregoing, at its sole discretion, the Commission may (by specific reference in the sanctioning permit) allow the use of other requirements and limitations during a particular martial arts contest or exhibition. (5-8-09)

02. Practices, Belt Promotions, and Non-Contact Demonstrations. Martial arts practices, belt promotion testing and demonstrations (as used herein the term demonstrations means ~~exhibitions~~ displays that do not involve combative contact between combatants or between participants) conducted by martial arts schools are not considered to be boxing. Such practices, testing, and demonstrations are exempt from the licensing requirements of Title 54, Chapter 4, Idaho Code, and persons do not need a license to participate in such practices, testing, and demonstrations. ~~(5-8-09)~~()

03. Licensing Exemption. Martial arts schools that meet the conditions set forth within Section 54-406(23)(b), Idaho Code, may apply to the Commission for exemption from licensing and sanctioning permit requirements relating to exhibitions and contests. ~~(4-6-05)~~()

04. Use of Official Rules for Art. Martial arts contests and exhibitions must be conducted pursuant to the official rules of the particular art. The sponsoring organization or promoter must file a copy of the official rules with the Commission before the Commission will issue a sanctioning permit for the contest or exhibition. (4-6-05)

05. Boxing Gloves. The requirement set forth in Section 54-414, Idaho Code, of wearing boxing gloves applies to kickboxing but will not apply to any other form of martial art unless the use of boxing gloves is required by the official rules of that particular art. Any gloves utilized must be in good condition as approved by the commission. For the main and semi main events gloves must be in new condition and of the same brand for combatants. (5-8-09)

**IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION**

11.04.07 - RULES GOVERNING RACING ASSOCIATIONS

DOCKET NO. 11-0407-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 Section(s) 54-2506, 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.

This rule provides a clear concise rule Chapter on Racing Associations. In addition, this rule conforms more closely with the Association of Racing Commissioners International Model Rules in a plain English format.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the January 7, 2009 Idaho Administrative Bulletin, Vol. 09-01, pages 111 through 125.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 54-2506, Idaho Code.

Every Racing Association conducting a race meet in Idaho must pay a fee of twenty-five dollars (\$25) for each day of racing.

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, contact Dennis Jackson, 208-884-7080.

DATED this November 1, 2009.

Dennis Jackson, Executive Director
Idaho State Racing Commission
700 S Stratford Drive
Meridian, Idaho, 83642
208-884-7080, fax 208-884-7098

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED FEE RULE***

EFFECTIVE DATE: The effective date of the temporary rule is **January 1, 2009**.

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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2506, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

MONDAY - JANUARY 12, 2009 - 6:00 p.m.

**NAMPA CIVIC CENTER
Home Federal Room
311 3RD Street South, Nampa, ID**

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:

This rule provides a clear concise rule Chapter on Racing Associations. In addition, this rule conforms more closely with the Association of Racing Commissioners International Model Rules in a plain English format.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: **Confers a benefit.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

Every Racing Association conducting a race meet in Idaho must pay a fee of twenty-five dollars (\$25) for each day of racing.

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(2), Idaho Code, negotiated rulemaking was not conducted. However this rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Idaho State Racing Commission, 208-884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before January 28, 2009.

DATED this 12th day of November, 2008.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

**IDAPA 11
TITLE 04
CHAPTER 07**

IDAHO STATE RACING COMMISSION

11.04.07 - RULES GOVERNING RACING ASSOCIATIONS

000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 11.04.07, "Rules Governing Racing Associations." ()

02. Scope. This rule governs conduct and licensing of racing associations. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal racing commission actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference into these rules. ()

005. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE -- WEBSITE.

01. Physical Address. The central office of the Idaho State Racing Commission is located at 700 S. Stratford Drive, Meridian, Idaho. ()

02. Office Hours. The central office is open 8 a.m. to 5 p.m., Mountain Time, Monday thru Friday, except holidays designated by the state of Idaho. ()

03. Mailing Address. The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. ()

04. Telephone Number. The telephone of the office is (208) 884-7080. ()

05. Fax Number. The facsimile number of the office is (208) 884-7098. ()

06. Website. The Racing Commission website is <http://www.isp.state.id.us/race>. ()

006. PUBLIC RECORDS COMPLIANCE AND AVAILABILITY.

These rules are public records available for inspection and copying at the Idaho State Racing Commission central office or on the Racing Commission website, <http://www.isp.state.id.us/race>. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Bookmaker. A person who makes a business of accepting the bets of others on the outcome of any sports contest including horse racing. ()

02. Breed Association. A group organized under Idaho law to receive breeder awards. ()

03. Breeder. Breeder of a horse is determined by the definition of breeder used by the registry of the particular breed of that horse. ()

04. Calendar Day. Twenty-four (24) hours ending at midnight. ()

- 05. Chemical.** A substance composed of chemical elements or obtained by chemical processes. ()
- 06. Claiming Race.** A race in which any horse entered therein may be claimed in conformity with the rules. ()
- 07. Conditions.** Qualifications and requirements set by the Racing Association which determine a horse's eligibility to be entered in a race. ()
- 08. Drug.** Any chemical compound or any noninfectious biological substance not used for its mechanical properties, which may be administered to or used on or for patients, either human or animal, as an aid in diagnosis, treatment or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any physiological or pathological condition. See Subsection 010.22 for Prescription Drug definition. ()
- 09. Entry.** Means, according to the requirements of the text: ()
- a.** A horse made eligible to run a race. ()
- b.** Two (2) or more horses that are entered or run in a race and are coupled because of common ties or ownership. Where two (2) or more horses owned by separate owners but trained by the same Trainer are entered in the same race, the horses may run as separate betting interests. ()
- 10. Forfeit.** Money due because of an error fault, neglect of duty, breach of contract or a penalty. ()
- 11. Grounds.** Any area owned or leased by any licensed Association, Corporation, or Race Track which is operated for the purpose of conducting pari-mutuel racing. ()
- 12. Handbook.** A method of soliciting and recording wagers on the outcome of a sports contest including a horse race. ()
- 13. Horse.** Includes filly, mare, colt, horse and gelding in general; when referring to sex, a filly becomes a mare when five (5) years old; a horse is an entire male when five (5) years old or older. ()
- 14. Horsemen's Agreement.** An agreement approved by the Racing Commission between the Racing Association and the authorized horsemen's group. ()
- 15. Idaho Bred.** A foal dropped by a mare in Idaho. ()
- 16. Jockey.** A race rider, whether a licensed Jockey, apprentice, or amateur. ()
- 17. Meet.** The entire consecutive period for which a license to race has been granted to any one (1) association by the Racing Commission. ()
- 18. Month.** A calendar month. ()

19. Owner. Includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In case of husband and wife, it is presumed that joint ownership exists. ()

20. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. ()

21. Place. Means first, second or third and in that order is called “Win,” “Place,” and “Show.” ()

22. Prescription Drug. ()

a. A drug which under federal law is required prior to being dispensed or delivered to be labeled with either of the following statements: ()

i. “Caution: Federal law prohibits dispensing without a prescription”; or ()

ii. “Caution: Federal law restricts this drug to be used by or on the order of a licensed Veterinarian.” ()

b. Or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioner only. ()

23. Purse Race. A race for money or any other prize to which the owners of the horses do not contribute. ()

24. Racing Association. Any person licensed by the Racing Commission to conduct live or simulcast pari-mutuel wagering. ()

25. Racing Commission. Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. ()

26. Racing Dates. The number of racing dates authorized by the Racing Commission in a Racing Association license. ()

27. Ruled Off. An action by the racing stewards, under these rules, to suspend a license for a violation of these rules. ()

28. Rules. The “Rules Governing Horse Racing” herein and any amendments or additions thereto. ()

29. Starter. ()

a. The individual approved to dispatch the horses in a race. ()

b. The horse is a “starter” for a race when the stall doors of the starting gate open in

front of it at the time the starter dispatches the horses. ()

30. Stewards. The Stewards of the meet or their duly appointed deputies. ()

31. Winner. Winner of a single race of a certain sum or value unless otherwise expressed in the conditions. ()

32. Year. A calendar year. ()

011. ABBREVIATIONS.

There are no abbreviations used in these rules. ()

012. – 019. (RESERVED).

020. ENTER, SEARCH AND INSPECT.

Every Racing Association, the Racing Commission, the Stewards or trained and qualified agents of the Idaho State Police, have the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the Racing Association. Any licensee accepting a license is deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith. ()

021. – 039. (RESERVED).

040. RACING COMMISSION.

01. Visit and Inspection. The Racing Commission or designated representatives will visit and inspect the race meets. Each Racing Association conducting a race meet must make available to the Racing Commission a box of four (4) seats for each day of the race meet. The private cars of Racing Commissioners or designated representatives will have access to the restricted parking area of all tracks. ()

02. Association Office. Each Racing Association must furnish and provide an adequate office for the use of the Racing Commission or its designated representatives. ()

041. – 049. (RESERVED).

050. EMPLOYEES.

01. Licenses. Any Racing Association that employs any person in a capacity that is required to be licensed by the Racing Commission prior to the Racing Commission granting such a license may be subject to suspension or a fine, or both. ()

02. Suspension or Fine. The extent of said suspension or fine, or both, is determined by the Board of Stewards. ()

03. Report to Stewards. Any licensee who harbors anyone not licensed by the Racing

Commission will be immediately reported to the Stewards of the race meet so that they may make investigation thereof and report the fact to the Racing Commission. ()

051. – 054. (RESERVED).

055. DISTURBING THE PEACE.

No person will in any manner or at any time disturb the peace or behave in a disorderly manner on the grounds of a Racing Association; nor will any person interfere with the performance of the duties of a racing official or any employee or representative of the Racing Commission. ()

056. – 059. (RESERVED).

060. RULED OFF.

01. Admittance to Grounds. No person or horse ruled off, or under suspension by any recognized racing authority, will be admitted to or allowed to remain upon the grounds of any Racing Association. ()

02. Persons Ruled Off a Track Ineligible. When a person is ruled off a course or suspended, every horse owned in whole or part by him, or under his care, management, training or superintendence, is ineligible to enter or to start in any race until the rescinding of said person's penalty, or by the placement of the horse or horses in the hands of a licensed Trainer approved by the Stewards. ()

061. – 069. (RESERVED).

070. PROHIBITED PRINTED MATERIAL.

No unauthorized tip sheet, pamphlet or other printed matter, other than official programs, the Daily Racing Form and general newspapers, are to be sold on the Racing Association grounds. ()

01. Copies. Copies of all such materials offered for sale in the parking area or elsewhere on or off the grounds of the Racing Association must be furnished daily to the Presiding State Steward, not later than two (2) hours before first post. ()

02. Publishers. All tip sheet publishers and vendors must be licensed by the Racing Commission. ()

071. – 074. (RESERVED).

075. HANDBOOKS.

No person may make a handbook or a foreign book, or solicit a bet with a handbook or a foreign book on the grounds of a Racing Association. ()

076. – 079. (RESERVED).

080. BOOKMAKERS.

01. Entry Prohibited. The following persons will not be allowed entry into or remain upon the premises of any Racing Association: ()

- a. A person who is a bookmaker or who is known or reputed to be a bookmaker; ()
- b. A person who is a vagrant within the meaning of the laws of Idaho; ()
- c. A person who is a fugitive from justice; ()
- d. A person whose conduct now or heretofore has been improper, obnoxious, unbecoming or detrimental to the best interest of racing. ()

02. Ejection. Upon discovery or recognition, all such persons described in Subsection 080.01 of these rules will be ejected by the Racing Association or representatives and agents of the Racing Commission. ()

03. License Revocation. Associating with a person or persons such as described in Subsection 080.01 of these rules may be grounds for the revocation of any license. ()

081. – 089. (RESERVED).

090. IDAHO BRED RACES.

At least one (1) race each day at each race meet must be limited to Idaho bred horses. If a sufficient class of horses is not available to fill the race, said race may be opened to Idaho bred preferred. ()

01. Number of Races. The Racing Secretary must alternate among breeds according to the applicable horsemen's agreement. ()

02. Certificate of Registration. The owners' certificate of registration is proof that horses entered in such races were bred in Idaho. ()

091. BREEDER AWARDS.

A sum equal to ten percent (10%) of the first place purse money won by an Idaho bred horse must be paid by the Racing Association to the breeder of such horse. All purse moneys derived from pari-mutuel racing and all purse enhancement moneys from the Idaho State Racing Commission are included in the calculation of these breeder payments. All nominating and sustaining fees, and any moneys from outside sponsors are excluded from the calculation of these breeder payments. ()

092. – 094. (RESERVED).

095. BREED ASSOCIATIONS.

Pursuant to Section 54-2513, Idaho Code, on or before December 15 of each year, representatives of each breed which received money the preceding year must file a financial report showing disposition of any funds thus received. ()

01. Failure to File. Failure to file such report is grounds for the Racing Commission to deny approval of any future disbursement to that breed. ()

02. Representatives. “Lawfully constituted representatives of each breed” is the designated representative of the one (1) recognized breed organization for each breed racing in Idaho that has established itself as the traditional breed acknowledged by the Racing Commission. ()

096. – 099. (RESERVED).

100. RACING ASSOCIATION LICENSE.

No person may conduct a live race meet unless they possess a valid Racing Association license issued by the Racing Commission. ()

101. – 109. (RESERVED).

110. RACING ASSOCIATION LICENSE FEES.

Every Racing Association conducting a race meet in Idaho must pay a fee of twenty-five dollars (\$25) for each day of racing, except as otherwise provided in Title 54, Chapter 25, Idaho Code. ()

110. – 119. (RESERVED).

120. RACING ASSOCIATION LICENSE APPLICATIONS.

Applications for Racing Association licenses must be made on forms approved by the Racing Commission. The Racing Commission sets the application date. ()

121. – 129. (RESERVED).

130. APPLICATIONS FOR SUCCEEDING SEASONS.

Applications for a license to conduct a race meet during the next succeeding season must be filed with the Racing Commission over the signature of an executive officer of the Racing Association. The Racing Commission sets the application date. ()

131. – 139. (RESERVED).

140. HORSEMEN’S AGREEMENT.

Every Racing Association must have in effect a signed Horsemen’s Agreement. ()

141. – 149. (RESERVED).

150. RACING ASSOCIATIONS OPERATION.

01. Requirements. The scope of the Racing Associations operation and plant facilities will determine the Racing Commission’s requirements for the following: ()

a. Proof of financial stability; ()

- b. Names of stockholders; ()
- c. Medical and veterinary facilities; ()
- d. Lodging facilities; and ()
- e. Protective facilities. ()

02. Additional Information. The Racing Commission or Idaho State Police may require additional background information of applicants or licensees. ()

151. – 159. (RESERVED).

160. REPORT OF FUNDS.

Pursuant to Section 54-2513, Idaho Code, prior to or at the time of making application for licensing Racing Associations which received money the preceding year must file a financial report with the Racing Commission showing disposition of any funds thus received. ()

161. – 169. (RESERVED).

170. APPROVAL OF RACING ASSOCIATION LICENSES.

The Racing Commission will consider each application for a Racing Association license individually and decide whether to grant the license or not on a case by case basis. ()

171. – 179. (RESERVED).

180. LICENSE GRANTED UPON CONDITIONS.

Every Racing Association license is granted upon the condition that the licensee accept, observe and enforce the Racing Commission rules. ()

01. Duty. It is the duty of each and every officer to observe and enforce the Racing Commission rules. ()

02. Investigations. The Racing Commission may require background investigations, fingerprints and photographs of Racing Association officers, stockholders or employees. ()

181. – 189. (RESERVED).

190. REFUSAL TO ISSUE LICENSE.

The Racing Commission may refuse to issue a Racing Association license when such refusal appears to be for the best interest of racing and of the public. The Racing Commission will, in deciding upon applications for Racing Association licenses, consider the following matters: ()

01. Properly Develop. The opportunity for the sport to properly develop. ()

02. Competition. The avoidance of competition with established tracks in Idaho. ()

03. Community Support. The extent of community support for the promotion and continuance of the tracks. ()

04. Reputation. The character and reputation of the persons identified with the Racing Association. ()

05. Safety. The general conditions and safety of the Racing Association facilities. ()

191. – 199. (RESERVED).

200. FINGERPRINTS – PHOTOGRAPH.

Every person holding a Racing Association license in Idaho, and every person that holds such a license who is an officer or director of a Racing Association that is in any capacity connected to any extent with the pari-mutuel wagering business in this State, must, on demand, furnish his fingerprints and photograph to the Racing Commission for its files. Fingerprints and photograph are to be taken at such time and place and in such manner as the Racing Commission may from time to time direct and prescribe. ()

201. – 209. (RESERVED).

210. RACING DATES.

Application for racing dates must be made on forms approved by the Racing Commission. Application for racing dates does not commit the Racing Commission to the granting of a license to conduct race meets upon the dates requested. ()

211. – 219. (RESERVED).

220. LICENSE NOT TRANSFERABLE.

No Racing Association license or any part thereof is transferable or assignable without the consent of the Racing Commission and said license is not valid for any racing days other than those set out therein. ()

221. – 239. (RESERVED).

240. PROPOSED OFFICIALS.

Thirty (30) days prior to the first day of a race meet the Racing Association must submit in writing to the Racing Commission all names and personal data of proposed officials for processing for licensing. No official may act until approved by the Racing Commission. A Racing Commission representative at the track will process substitutions. The required form will be provided by the Racing Commission. ()

01. Hardship. To avoid undue hardship the Racing Commission may authorize Racing Associations to allow officials other than Stewards to act in dual capacities. ()

241. – 249. (RESERVED).

250. RACING ASSOCIATIONS – GENERAL RULES.

01. Laws and Rules. The laws of Idaho and the rules promulgated by the Racing Commission supersede the conditions of the race or the regulations of a race meet. ()

02. Racing Hours. Each Racing Association may conduct horse racing only between the hours of 12:00 noon and 12:00 midnight, unless otherwise specifically authorized by the Racing Commission. ()

03. Conditions of Races. Each Racing Association must file with the Racing Commission the conditions of races it proposes to hold together with the stakes, purse or rewards. ()

04. Open Market. Owners and stables participating in race meets operating under license of the Racing Commission may purchase feed and supplies on the open market. No Racing Association may grant exclusive concessions which will interfere with this right. ()

05. Toilets and Other Facilities. Each Racing Association must on every racing day provide and maintain adequate toilet facilities and facilities for furnishing drinking water for its patrons and persons having business at the track. ()

06. Tampering. Each Racing Association must provide protection facilities to prevent tampering with horses or any other corrupt practices at licensed race meets. The Racing Commission may at any time require Racing Associations to expand their protective services. ()

07. Fire Regulations Posted. Every Racing Association must post in the stable area of its premises the fire regulations applicable on its grounds and such posted notice must also state the location of the nearest fire alarm box and the telephone number of the fire department or other pertinent instructions as to the method for reporting a fire in the area. Such notices must be posted no more than one hundred (100) feet apart or as approved by the local fire authority. No Racing Association or other person may violate the posted fire regulations specified by the Racing Commission. ()

08. Credentials. A full record of credentials issued by the Racing Association must be compiled and open to inspection at all times. All additions made to or changes in the list of employees of any Racing Association must be reported promptly to the Racing Commission in writing. ()

09. Horse Ambulance. Racing Associations must furnish, maintain, and have available a horse ambulance, as required by the Racing Commission, for each day that the track is open for racing or exercising during the race meet. ()

10. Human Emergency Medical Response Vehicle. Racing Associations must furnish and maintain a human emergency medical response vehicle, as required by the Racing Commission, for each day that the track is open for racing or exercising during the race meet. If the human emergency medical response vehicle is being used to transport an individual, the Racing Association may not conduct a race until the ambulance is replaced. ()

11. Medical Professionals. Racing Associations must have a licensed physician, registered nurse, paramedic or licensed emergency medical technician on duty at the track on each day of racing and must also provide adequate first aid and medical facilities to protect patrons and participants at licensed race meets. ()

12. Comfort and Safety. Racing Associations must at all times maintain the premises in good condition and properly secured, with special consideration for the comfort and safety of the public, of the horses and of all others present. ()

13. Violators. Violators of any rules are subject to ejection from the grounds, fine, suspension, being ruled off or any combination of the preceding. ()

14. Post Notices. Racing Associations must promptly post Racing Commission notices in places that can be easily viewed by licensees. ()

251. – 259. (RESERVED).

260. HORSEMEN'S ACCOUNT.

Unless otherwise authorized by the Racing Commission and consistent with the Horsemen's agreement pertaining to the Horsemen's account, each Racing Association must keep an account, to be known as the "Horsemen's Account," with sufficient funds at all times in such account to cover all monies due horsemen in regard to purses, stakes, rewards, claims and deposits. ()

01. Subject to Review or Audit. The account is at all times be subject to review or audit by the Racing Commission. ()

02. Bonded. The horsemen's bookkeeper is in charge of such an account and must be insured against crime or employee dishonesty in a manner approved by the Racing Commission. ()

261. – 269. (RESERVED).

270. PURSE MONEY.

Purse money must be made available to the winners promptly following release by the Racing Commission or its representative. ()

01. Release. Release will be given when test results of the horse's urine, blood or other specimens have been reported to the Racing Commission. ()

02. Breeder's Awards. Breeder's awards will be payable when the purse is cleared. ()

03. Weekly Remittance. The one-half (1/2) of one percent (1%) to benefit owners or breeders is to be remitted weekly by the Racing Association to the Racing Commission for distribution quarterly to the representatives of each breed. ()

271. – 279. (RESERVED).

280. COMMUNICATION.

01. Communication System. Racing Associations must provide and maintain in good working order a communication system between racing officials and locations as determined by the Racing Commission. ()

02. Public Address System. Racing Associations must provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area. ()

281. – 289. (RESERVED).

290. DOCUMENTS FILED WITH RACING COMMISSION.

Not less than thirty (30) days before opening a race meet each Racing Association must file with the Racing Commission the following: ()

01. Bond. A bond signed by a surety company licensed to do business in this State in such form and in the sum as may be required by the Racing Commission, conditioned that the association will pay to the state of Idaho all money due under the provisions of Title 54, Chapter 25, Idaho Code. ()

02. Liability Insurance. Proof of public liability insurance by a company licensed to do business in this State in such form and in the amount as may be required by the Racing Commission for the protection of the public, the exhibitors and visitors. ()

03. Accident Insurance or Workmen's Compensation Insurance. Proof of an accident insurance policy or workmen's compensation insurance policy issued by a company licensed to do business in Idaho for the protection of Jockeys and exercise persons for injuries incurred in connection with race meets in such form and amount as may be required by the Racing Commission. ()

291. – 299. (RESERVED).

300. HORSE RACE TRACKS.

01. Track Width. A minimum of twenty (20) feet of track width must be allowed for the first two (2) horses in a race, with an additional five (5) feet for each added starter. ()

02. Implements. Racing Associations must provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The Racing Association must provide back-up equipment for maintaining the track surface. ()

03. Limit on Number of Horses. No more than eight (8) horses may start in any race on a one-half (1/2) mile track. ()

04. Racing Surface. The surface of a racetrack, including the cushion, subsurface and base, must be designed, constructed and maintained to provide for the safety of the jockeys and

horses. ()

05. Rails. Race tracks must have inside and outside rails, including gap rails, designed, constructed and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the Racing Commission prior to the first race meet at the track. ()

301. – 309. (RESERVED).

310. JOCKEY ROOM.

Each Racing Association must provide a room reserved for jockeys to prepare for a race. ()

311. – 319. (RESERVED).

320. OFFICIALS' STANDS.

Racing Associations must provide adequate stands for officials to have a clear view of the racetrack. The location and design of the stands must be approved by the Racing Commission. ()

321. – 329. (RESERVED).

330. PHOTO FINISH DEVICES.

Racing Associations must provide two (2) electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each horse in at least hundredths of a second. ()

01. Location. The location and operation of the photo finish devices must be approved by the Racing Commission before its first use in a race. ()

02. Posting Photographs. The Racing Association must promptly post a photograph of each photo finish for win, place or show in an area accessible to the public. ()

03. Devices Calibrated. The Racing Association must ensure that the photo finish devices are calibrated before the first day of each race meet and at other times as required by the Racing Commission. ()

04. Print Provided. On request by the Racing Commission, the Racing Association must provide, without cost, a print of a photo finish to the Racing Commission. ()

05. Records. Photo finish records of each race must be maintained by the Racing Association for not less than six (6) months after the end of the race meet, or such other period as may be requested by the stewards or the Racing Commission. ()

331. – 339. (RESERVED).

340. VIDEOTAPING SYSTEM.

Racing Associations must provide a videotaping system approved by the Racing Commission. Cameras must be located to provide clear panoramic and head-on views of each race. ()

01. Monitors. Separate monitors that simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review must be provided in the stewards' stand. ()

02. Location. The location and construction of video towers must be approved by the Racing Commission. ()

03. Stewards. The stewards may, at their discretion, direct the video camera operators to videotape the activities of any horses or persons handling horses prior to, during or following a race. ()

04. Oval Track. Races run on an oval track must be recorded by at least three (3) video cameras. ()

05. Straight Course. Races run on a straight course must be recorded by at least two (2) video cameras. ()

06. Videotape Copy. Racing Associations must, upon request, provide to the Racing Commission, without cost, a copy of a videotape of a race. ()

07. Videotapes Maintained. Videotapes recorded prior to, during and following each race must be maintained by the Racing Association for not less than six (6) months after the end of the race meet, or such other period as may be requested by the stewards or the Racing Commission. ()

08. Objection. Following any race in which there is an inquiry or objection, the Racing Association must display to the public on designated monitors the videotaped replays of the incident in question which were utilized by the stewards in making their decision. ()

341. – 349. (RESERVED).

350. STARTING GATE.

All horse races must utilize a starting gate approved by the Racing Commission, except that with permission of the Stewards a race may be started with or without a gate. When the starting gate is used, it must be placed on the track at the direction of the Starter. ()

01. Training Hours. Racing Associations must make at least one (1) starting gate and qualified starting gate personnel available for schooling during designated training hours. ()

02. Backup Equipment. If a race is started at a place other than in a chute, the Racing Association must provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure. ()

351. – 359. (RESERVED).

360. DISTANCE MARKERS.

Racing Associations must provide starting point markers and distance poles in a size and position that is clearly seen from the stewards' stand. ()

361. – 369. (RESERVED).

370. BARNs.

Racing Associations must provide barns containing a sufficient number of stalls to accommodate all horses approved to race and all other horses approved to be on the grounds. The Racing Association's stable area configuration and facilities must be approved by the Racing Commission. ()

01. Good Repair. Racing Associations must ensure that the barns are kept clean and in good repair. Each barn, including the receiving barn, must have a water supply available, be well-ventilated, have proper drainage and be constructed to be comfortable during the race meet. ()

02. Stall Size. Racing Associations must ensure that each horse is stabled in an individual box stall with minimum dimensions of ten feet by ten feet (10' x 10'). ()

371. – 379. (RESERVED).

380. TEST AREA.

Racing Associations must provide a test area for taking specimens of urine, blood or other bodily substances or tissues for testing. The Racing Associations must limit access to the test area to persons authorized by the commission veterinarian. ()

381. – 389. (RESERVED).

390. ISOLATION AREA.

Racing Associations must provide an isolation area, approved by the Racing Commission, for the care and treatment of a horse that is ordered isolated by the commission veterinarian. ()

391. – 899.. (RESERVED).

900. SECURITY.

Racing Associations conducting live race meets must maintain security controls over their grounds. Security controls are subject to the approval of the Racing Commission. ()

01. Restricted Areas. Racing Associations must restrict access of licensees or their guests to certain areas of the grounds. Those restricted areas are the Paddock, Jockey Room, Veterinarian's Test Area, the Steward's Stand, the Mutuel Room, racing offices and any other area the Racing Association feels should be limited access. ()

02. Escort Guests. Any licensee may escort an unlicensed guest through the enclosure of a Racing Association except restricted areas. The licensee and the guest must sign in and out and identify all such persons. The licensee by signing accepts full responsibility for the safety and actions of the guest while in the enclosure. ()

03. Passes. Racing Associations may establish a system or method of issuing credentials or passes to restrict access to its restricted areas or to ensure that all participants at its race meet are licensed as required by these rules. ()

04. Prevent Access. Racing Associations must prevent access to and must remove or cause to be removed from its restricted areas any person who is unlicensed, or who has not been issued a visitor's pass or other identifying credential, or whose presence in such restricted area is unauthorized. ()

05. List of Security Personnel. On request by the Racing Commission, a Racing Association must provide a list of the security personnel, including the name, qualifications, training, duties duty station and area supervised by each employee. ()

06. Daily Reports. Each day, the chief of security for a Racing Association must deliver a written report to the stewards regarding occurrences on Racing Association grounds on the previous day. Not later than twenty-four (24) hours after an incident occurs requiring the attention of security personnel, the chief of security must deliver to the stewards a written report describing the incident. The report must include the name of each individual involved in the incident, the circumstances of the incident and any recommended charges against each individual involved. ()

901. – 909. (RESERVED).

910. COMPLAINTS.

Racing Associations must promptly notify the Racing Commission of any complaints regarding: ()

01. Violations. Alleged violation of Section 54-2501, Idaho Code, ordinances or statutes, or a rule of the Racing Commission; ()

02. Accidents or Injuries. ()

03. Unsafe Conditions. Unsafe or unsanitary conditions for patrons, licensees or horses. ()

911. – 919. (RESERVED).

920. EXCLUSION AND EJECTION.

Racing Associations must immediately, upon notification by the Racing Commission, take steps to bar admittance to the racing grounds to any person who is subject to an exclusion order of the Racing Commission. ()

01. Lawful Reason. Racing Associations may eject or exclude a person for any lawful reason. Racing Associations must immediately notify the stewards and the Racing Commission in writing of any person ejected or excluded by the Racing Association and the reasons for the ejection or exclusion. ()

02. Readmission. Any person ejected from the grounds of a Racing Association will

be denied readmission to said grounds until permission has been approved by the Racing Commission. ()

921. – 989. (RESERVED).

990. PENALTIES.

Any person violating any of the provisions of this chapter is subject to the penalties provided for in Title 54, Chapter 25, Idaho Code and any of the Racing Commission rules. ()

991. – 998. (RESERVED).

999. MINOR VIOLATIONS.

Nothing in this chapter may be construed as requiring the Racing Commission to report minor violations when the Racing Commission believes that the public interest will be best served by suitable warnings or other administrative action. ()

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.04.04 - RULES GOVERNING CAPITOL MALL PARKING

DOCKET NO. 38-0404-0902 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. 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 Section 67-5708, Idaho Code, and Senate Concurrent Resolution 135 (1976).

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 pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 431 through 439.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

This fee or charge is being imposed pursuant to Section 67-5708, Idaho Code, and Senate Concurrent Resolution 135 (1976). Parking permit fees will be established by the Department of Administration, and will be administered by Capitol Mall Parking.

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, contact Tim Mason, Administrator, Division of Public Works, Department of Administration at (208) 332-1911.

DATED this 29th day of October, 2009.

Melissa Vandenberg
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720

Boise, ID 83720-0003
Ph: (208) 332-1832
Fax: (208) 334-2307

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5708, Idaho Code, and Senate Concurrent Resolution 135 (1976).

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, 2009.

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 a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The new Capitol Mall Parking rules will be made current with existing or desired practices and parking space limitations. These new rules replace existing rules that are being simultaneously repealed.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Parking permit fees will be established by the Department of Administration, and will be administered by Capitol Mall Parking.

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 resulting from this rulemaking:

There is no fiscal impact to the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the feasibility issue of reaching a consensus on parking rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tim Mason, Administrator, Division of Public Works, Department of Administration at (208) 332-1911.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2009.

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING FEE RULE

**IDAPA 38,
TITLE 04,
CHAPTER 04**

38.04.04 - RULES GOVERNING CAPITOL MALL PARKING

000. LEGAL AUTHORITY.

The following rules are promulgated pursuant to the authority of Section 67-5708, Idaho Code, and Senate Concurrent Resolution No. 135 (1976). ()

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 38.04.04, "Rules Governing Capitol Mall Parking." ()

02. Scope. These rules govern parking in the Capitol Mall. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, an agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of the agency. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. ()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

01. Office Hours. Capitol Mall Parking is open from 7:30 a.m. to 4:30 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. Capitol Mall Parking's mailing address is: Capitol Mall Parking, P.O. Box 83720, Boise, Idaho 83720-0013. ()

03. Street Address. Capitol Mall Parking is under Facilities Services, Division of Public Works, Department of Administration, and its principal place of business is 550 West State Street, Boise, Idaho 83702-5972. ()

04. Web Site Address. Capitol Mall Parking's web address is <http://www.adm.idaho.gov/pubworks/facilities/parking/>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Capitol Mall. The Capitol Mall consists of the following buildings: State Capitol (700 W. Jefferson Street), Joe R. Williams (700 W. State Street), Len B. Jordan (650 W. State Street), 550 W. State Street Parking Garage (550 W. State Street), Pete T. Cenarrusa (450 W. State Street), Division of Public Works (502 N. 4th Street), Alexander House (304 W. State Street), State Library (325 W. State Street), 954 Jefferson (954 W. Jefferson Street), Capitol Annex (514 W. Jefferson Street), Blind Commission (341 W. Washington Street), Borah Building (304 N. 8th Street), and Idaho Supreme Court (451 W. State Street). ()

02. Capitol Mall Employee. A state employee whose assigned work area is in the Capitol Mall, and who receives a state of Idaho-issued paycheck from a tenant of the Capitol Mall. ()

03. Carpool. A vehicle carrying two (2) or more Capitol Mall employees who are working in the Capitol Mall at least four (4) work days per week. ()

04. Employee with a Disability. An employee with a disability as defined in Section 49-117(7)(b), Idaho Code. ()

05. Executive Branch Departments. Department of Administration, Department of Agriculture, Department of Commerce, Department of Correction, Department of Environmental Quality, Department of Finance, Department of Fish and Game, Department of Health and Welfare, Idaho State Police, Idaho Transportation Department, Industrial Commission, Department of Insurance, Department of Juvenile Corrections, Department of Labor, Department of Lands, Department of Parks and Recreation, Department of Revenue and Taxation, State Board of Education and Department of Water Resources. This definition excludes the Department of Self-Governing Agencies. ()

06. Facilities Services. Bureau of Facilities Services, Division of Public Works, Department of Administration. ()

07. General Parking. A parking space used for all Capitol Mall employees registered for general parking. ()

08. Legislative Attaché. An employee hired by the Legislative branch that receives a state of Idaho-issued paycheck during the Legislative session or is a year round employee of the Legislative branch. ()

09. Legislator. A member of the Idaho Senate or the Idaho House of Representatives for the state of Idaho. ()

10. Reserved Parking. A parking space assigned to a particular person, vehicle or agency. ()

11. State Elected Officials. The governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer and superintendent of public instruction, for the state of Idaho. ()

12. Temporary Contract Employee. An employee of a temporary employment service company who is working temporarily for a tenant of the Capitol Mall. ()

13. Visitor. Any person visiting the Capitol Mall to carry out state business or attend a state-sponsored event. ()

011. -- 019. (RESERVED).

020. PARKING LOT LOCATIONS.

All Capitol Mall parking lots will be identified by signage. Capitol Mall Parking manages the state-owned parking lots at the following locations: 550 W. State Street Parking Garage, 10th and Jefferson Streets, 8th Street between State and Bannock Streets, 7th and Washington Streets, and 3rd and Washington Streets. Capitol Mall Parking also manages parking spaces in and around the following Capitol Mall buildings: Capitol Annex, Len B. Jordan, Pete T. Cenarrusa, Division of Public Works, Borah Building and Idaho State Library. ()

021. TYPES OF AVAILABLE PARKING.

Designated parking spaces are available for reserved parking, state elected officials and directors of executive branch departments, Legislators, carpool, disabled employees and state agency vehicles. All other parking spaces, unless designated as public or visitor parking, are considered general parking. ()

022. PARKING SPACE ALLOCATION.

01. Reserved Parking Spaces. ()

a. Reserved parking spaces are available for state elected officials and directors of executive branch departments. Capitol Mall Parking will assign a reserved space to each state elected official and director of executive branch departments upon request. ()

b. Reserved parking spaces will be made available to the Senate pro-tem, and the speaker of the House of Representatives. Capitol Mall Parking will assign a reserved space to each individual. ()

c. All other Capitol Mall employees may apply for a reserved parking space. General reserved parking spaces are assigned to Capitol Mall employees on a first-come, first-served basis when designated reserved parking spaces become available. ()

i. Capitol Mall employees may not sell, trade or barter the right to use their assigned reserved parking space. Capitol Mall Parking retains the right to assign, reassign, suspend or revoke Capitol Mall employees' reserved parking spaces at any time. ()

d. Reserved parking spaces for state elected officials, directors of executive branch departments and Capitol Mall employees are located in the following parking lots only: the first floor of the 550 W. State Street Parking Garage, the Pete T. Cenarrusa Building parking lot, and the 8th Street parking lot between State and Bannock Streets. ()

e. Capitol Mall Parking will determine the location of all reserved parking spaces. ()

f. Reserved parking spaces for state elected officials, directors of executive branch departments and Capitol Mall employees will not exceed fifteen percent (15%) of general parking spaces available within the Capitol Mall. ()

02. Legislators' Parking Spaces. During Legislative sessions and special sessions, Capitol Mall Parking will make available one hundred three (103) reserved Legislator parking spaces to Legislators. ()

a. Legislators may chose to park in either a general Legislative parking space or a reserved Legislator parking space. Each Legislator is required to purchase the appropriate parking permit. ()

b. General Legislator and reserved Legislator parking spaces will be on the third floor of the 550 W. State Street Parking Garage and will be clearly marked. When the Legislature is not in session, all Legislator parking spaces will be redesignated as general parking spaces. ()

c. When the Legislature is not in session, a Legislator or Legislative attaché, possessing a valid Capitol Mall parking permit, may park in any general parking space. ()

03. Disabled Employee Parking Spaces. Capitol Mall Parking will make available reserved disabled employee parking spaces for employees who have a proven disability. ()

a. A temporarily or permanently disabled employee who has obtained an Americans with Disabilities Act (ADA) placard issued by the Idaho Transportation Department may request a reserved disabled employee parking space as close as possible to the employee's work location. ()

b. A disabled employee requesting a reserved disabled employee parking space must provide either a copy of his Americans with Disabilities Act (ADA) placard issued by the Idaho Transportation Department or a copy of the application to the Idaho Department of Transportation for an Americans with Disabilities Act (ADA) placard. ()

c. If Capitol Mall Parking only receives a copy of the application to the Idaho Department of Transportation for an Americans with Disabilities Act (ADA) placard, Capitol Mall Parking will provide a temporary reserved disabled employee parking space until the Americans with Disabilities Act (ADA) placard issued by the Idaho Department of Transportation is received. Temporary reserved disabled parking spaces will only be made available for five (5) working days per disabled employee. ()

d. Reserved disabled employee parking spaces will be marked with signage. ()

e. A permit for a reserved disabled employee parking space will be the same fee as a permit for a general parking space. ()

04. Carpool Parking Spaces. Capitol Mall Parking will make available an indeterminate number of carpool parking spaces, which will be clearly marked, to employees who carpool at least four (4) work days per week. ()

a. Capitol Mall employees who carpool may request a carpool parking permit from Capitol Mall Parking to use a designated carpool space. ()

b. Carpool parking spaces will be available on a first-come, first-served basis for vehicles carrying two (2) or more Capitol Mall employees. All carpooling employees must be employees of the Capitol Mall and at least one (1) carpooling employee must have a general parking space permit. ()

c. A permit for a carpool parking space will be the same fee as a permit for a general parking space. ()

d. All unoccupied reserved carpool parking spaces will be redesignated as general parking spaces after 9 a.m. work days. ()

e. It is a parking violation to park in a reserved carpool parking space when the vehicle is carrying less than two (2) Capitol Mall employees before 9 a.m. ()

05. State-Owned Vehicles Parking Spaces. Capitol Mall Parking will make available designated state-owned vehicle parking spaces. ()

a. Capitol Mall Parking will make available an indeterminate number of designated state-owned vehicle parking spaces to department tenants of the Capitol Mall. ()

b. Designated state-owned vehicle parking spaces will be on the fourth level of the 550 W. State Street Parking Garage, and will be clearly marked "State Vehicle Only." ()

c. A Capitol Mall employee may park his personal vehicle in a designated state-owned vehicle parking space when removing a state vehicle for state purposes. The Capitol Mall employee's personal vehicle must display the state-owned vehicle parking space permit. ()

d. A visiting agency employee conducting official business at the Capitol Mall may

park a state-owned vehicle in an unoccupied designated state-owned vehicle parking space or in any Capitol Mall visitor parking space. ()

06. Motorcycle Parking Spaces. Capitol Mall Parking will make available designated motorcycle parking spaces. ()

a. Capitol Mall employees may request a special motorcycle parking permit for motorcycles, at no additional cost, to park in the designated motorcycle parking areas. ()

b. In order to receive a motorcycle permit, the Capitol Mall employee must possess a valid general or reserved parking permit. ()

07. General Parking Spaces. All other undesignated parking is considered general parking. ()

a. All Capitol Mall employees may request a general parking permit from Capitol Mall Parking. ()

b. General parking spaces are available on a first-come, first-served basis, and possession of a valid general parking permit does not guarantee the Capitol Mall employee a general parking space. ()

08. Visitor Parking Spaces. Capitol Mall Parking will make available a limited number of parking spaces for visitors and the public visiting the Capitol Mall. ()

a. Non-metered visitor parking spaces will be available at the parking lot at the corner between 6th and Washington Streets, and on the southern side of the parking lot at the State Library Building, and will be clearly marked. ()

b. State-owned vehicles that do not belong to the departments' tenants of the Capitol Mall, and non-Capitol Mall employees visiting the Capitol Mall on business, may park in visitor parking spaces. ()

c. Capitol Mall employees may not park in visitor parking spaces between 6 a.m. and 6 p.m., Monday through Friday. ()

023. HOURS OF OPERATION.

Space allocation is in effect from 6 a.m. through 6 p.m., Monday through Friday, excluding legal holidays. ()

024. -- 029. (RESERVED).

030. PARKING PERMITS.

Capitol Mall Parking will issue applicable parking permits to Capitol Mall employees. ()

01. Parking Permits for Reserved, Legislator, Disabled Employee, Carpool, State-Owned Vehicles and General Parking. ()

a. Capitol Mall Parking will reissue parking permits once a year. Outdated parking permits must be returned to Capitol Mall Parking. ()

b. Capitol Mall Parking will issue one (1) type of parking permit to each Capitol Mall state elected official, director of an executive branch department, Legislator and employee, with the exception of a carpool parking permit and a special motorcycle parking permit. ()

c. Capitol Mall Parking will issue only one (1) parking permit per employee. Capitol Mall Parking will not provide duplicate parking permits to employees. State elected officials, directors of executive branch departments, and Capitol Mall employees with reserved parking spaces may request an additional parking permit for an additional vehicle for five dollars (\$5). ()

d. All individuals and department tenants are responsible for displaying the parking permit in the front windshield or other prominent location of the parked vehicle at all times. ()

e. In the event that a parking permit is lost or destroyed, the official, Legislator or employee must sign a statement to that effect prior to Capitol Mall Parking issuing a new permit. ()

02. Temporary Monthly Parking Permits. An individual performing work or providing services to a department tenant in the Capitol Mall, but who does not receive a state of Idaho-issued paycheck, may purchase a general monthly parking permit for a fee from Capitol Mall Parking. ()

a. Upon request and receipt of the general parking permit fee, Capitol Mall Parking may issue a monthly general parking permit to individuals performing work or providing services to a department tenant in the Capitol Mall but who do not receive a state of Idaho-issued paycheck. This includes, but is not limited to, employees of the Idaho Central Credit Union, employees of vendors of the Commission for the Blind and Visually Impaired, and Capitol Mall tenant departments' temporary contract employees. ()

031. PARKING PERMIT FEES.

Parking permit fees will be established by the Department of Administration and will be administered by Capitol Mall Parking. ()

01. Elected Officials Parking Permits. The governor, lieutenant governor, secretary of state, attorney general, state controller, state treasurer, superintendent of public instruction, Senate pro-tem, and the speaker of the House of Representatives will be provided a reserved parking space at no charge. Additionally, upon request, Capitol Mall Parking will provide the governor two (2) additional reserved parking spaces. ()

02. Directors of Executive Branch Departments. Directors of executive branch departments will be provided a reserved parking space at the reserved parking space rate, and executive branch departments will be charged for the reserved parking spaces annually by Capitol Mall Parking. ()

03. Reserved Parking Permits. Reserved parking space permits are twenty-five dollars (\$25) per month. ()

04. General Parking Permits. General parking space permits are five dollars (\$5) per month. ()

05. Payment for Parking Permits. Capitol Mall employees will be charged the respective permit fee in the first paycheck of each month through a payroll deduction or through an automatic deduction system. ()

06. Legislators. Legislators who request a general Legislator parking space permit must pay the general parking permit fee, and Legislators who request a reserved Legislator parking space must pay the reserved parking permit fee. Legislators and Legislative attachés who request parking spaces must pay the associated space fee for every month that the Legislature is in session. ()

07. State-Owned Vehicles. State-owned vehicles belonging to the tenant departments will receive general state vehicle parking permits for a general parking space monthly fee. ()

08. Replacement Permits. If a parking permit is lost, stolen or destroyed, the Capitol Mall employee will be charged a five dollars (\$5) replacement fee for a new permit. ()

032. -- 039. (RESERVED).

040. PARKING LOT VIOLATIONS.

01. Driving Violations. Any driving violation in a Capitol Mall parking lot or garage may result in the suspension or loss of parking privileges. ()

a. It is a violation of these rules to drive or operate a personal vehicle negligently or recklessly in any Capitol Mall parking lot or garage. It is a violation of these rules to drive or operate a vehicle under the influence of illegal substances or alcohol in any Capitol Mall parking lot or garage. ()

b. It is a violation for any individual to drive above the posted speed limits or drive against posted directional arrows. ()

02. Parking Violations. Any parking violation in a Capitol Mall parking lot or garage may result in the suspension or loss of parking privileges. ()

a. It is a violation of these rules to park in a location that is not marked as a parking space within the Capitol Mall. This includes, but is not limited to, parking in or on a driveway, sidewalk or other common driving areas of any parking lot or garage. It is also a violation to park one (1) vehicle in more than one (1) parking space. ()

b. It is a violation to park in a reserved Legislator parking space without displaying the appropriate permit during Legislative sessions. ()

c. It is a violation to park in a reserved parking space, in a reserved disabled employee parking space, or in a reserved carpool parking space before 9 a.m., without displaying the appropriate parking permit. ()

d. It is a violation to park a motorcycle in any space not designated for motorcycle parking, unless the individual possesses a valid reserved parking permit and parks in his designated reserved parking space. ()

e. It is a violation of these rules to: ()

i. Use an invalid parking permit; ()

ii. Use a parking permit reported lost or stolen; ()

iii. Fail to properly display a valid Capitol Mall parking permit; or ()

iv. Transfer an invalid permit to another person. ()

03. Other Violations. The Capitol Mall parking lots and garage are private property, and any tampering or other physical defacement of any vehicle parked on the lots or in the garage is considered a violation. ()

a. The distribution of flyers or other materials on vehicles parked on Capitol Mall parking lots and in the 550 W. State Street Parking Garage is prohibited, and violators will be escorted off the property. ()

b. Any individual engaging in suspicious activity or threatening behavior, or an individual loitering in a Capitol Mall parking lot or in the 550 W. State Street Parking Garage, will be escorted off the property. ()

c. Public access is not allowed in the 550 W. State Street Parking Garage before 6 a.m. and after 6 p.m. and violators will be considered trespassers. ()

041. ENFORCEMENT.

01. Security and Patrol. Capitol Mall parking lots and the 550 W. State Street Parking Garage are secured and patrolled by Capitol Mall Parking, or its authorized representative. ()

02. Notice of Violation. Upon witnessing or finding a violation of these rules, Capitol Mall Parking, or its authorized representative, will leave notice with any person driving or on the vehicle parked in violation of these rules. ()

a. Notice may be in the form of a warning or a violation, will bear the date and hour of the violation, the nature of the violation, and the name of the Capitol Mall Parking employee or its authorized representative. A warning notice may be used only for those violations that do not cause the loss of a parking space and do not cause a safety hazard. ()

b. A ticket may be issued by Capitol Mall Parking, or its authorized representative,

for a fine of at least two dollars (\$2), but will not exceed twenty-five dollars (\$25). ()

c. If an individual is determined to have altered, counterfeited or otherwise misused a parking permit, a ticket may be issued by Capitol Mall Parking, or its authorized representative, for a fine not to exceed fifty dollars (\$50). ()

d. All tickets issued by Capitol Mall Parking, or its authorized representative, will be forwarded to the city of Boise, county of Ada, for collection or prosecution. ()

e. Capitol Mall Parking is not precluded from suspending or terminating an individual's parking privileges if the warnings or fines have been imposed for the same violations. ()

042. SUSPENSION OR REVOCATION OF PARKING PRIVILEGES.

01. Delinquent Payment. Capitol Mall Parking may suspend or revoke any individual's parking permit if the parking permit fee is unpaid and at least thirty (30) days delinquent. Upon payment in full, Capitol Mall Parking will restore the individual's parking permit. ()

02. Parking Privileges Suspension. ()

a. Capitol Mall Parking may suspend an individual's parking permit and privileges for up to six (6) months for a violation of these rules. ()

b. Any Capitol Mall Parking permit holder, including a temporary parking permit holder, who has been cited for three (3) violations of these rules within six (6) months, may have his parking permit and privileges revoked for up to twelve (12) months. ()

03. Towing and Impounding. ()

a. Capitol Mall Parking or its authorized representative may tow any vehicle from any Capitol Mall parking lot or the 550 W. State Street Parking Garage, belonging to an individual who has been cited for three (3) or more Capitol Mall parking violations within a twelve-month period. The owner of the vehicle will be charged a service fee for releasing the towed and impounded vehicle. ()

b. In the event that the vehicle is considered a security risk, Capitol Mall Parking will make reasonable efforts to locate the owner of the vehicle before it is towed. ()

04. Reactivating a Suspended Permit. A suspended parking permit may be reactivated at the end of or after the applicable suspension period by reapplying for the automatic payroll deduction plan through Capitol Mall Parking and payment in full of any delinquent parking fees. ()

043. SURRENDER OF PARKING PERMIT.

01. Surrender of Permit. When an official, Legislator or Capitol Mall employee no

longer works in the Capitol Mall or no longer needs to utilize Capitol Mall parking, the individual must submit a request to Capitol Mall Parking to cease automatic payroll deduction or billing for Capitol Mall parking. The individual must surrender the parking permit to Capitol Mall Parking within ten (10) days of the effective date of termination. ()

02. Cancellation of Automatic Payroll Deduction. ()

a. Capitol Mall Parking will notify the individual's agency's payroll clerk to cease the monthly parking fee deduction. Capitol Mall Parking will not refund a monthly parking fee after a monthly payroll deduction has been made. ()

b. Agency payroll clerks must receive a written request from Capitol Mall Parking prior to deleting the monthly parking fee from the employee's payroll deduction schedule. ()

044. -- 049. (RESERVED).

050. LOADING ZONE PARKING SPACES.

Capitol Mall Parking will designate and mark a limited number of parking spaces for short-term collection and delivery parking. It is a violation to park in loading zone parking spaces for an unauthorized purpose. ()

051. WAIVER OF RULES.

Pursuant to Section 67-5708, Idaho Code, the administrator for the Division of Public Works may waive any or all of the provisions of these rules if the administrator determines that application could result in discrimination among employees or otherwise violate law. ()

052. -- 999. (RESERVED).