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**IDAPA 11
TITLE 04
CHAPTER 04**

11.04.04 – RULES GOVERNING DISCIPLINARY HEARINGS AND APPEALS

000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

001. TITLE AND SCOPE.

01. Title. These rules of the Idaho State Racing Commission are cited as IDAPA 11.04.04, “Rules Governing Disciplinary Hearings and Appeals.” (3-29-10)

02. Scope. These rules govern disciplinary hearings and appeals in the State of Idaho. (3-29-10)

002. WRITTEN INTPRETATIONS.

There are no written interpretations for these rules. (3-29-10)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal actions of the Racing Commission authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (3-29-10)

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference. (3-29-10)

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. (3-29-10)

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. (3-29-10)

03. Mailing Address. The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. (3-29-10)

04. Telephone Number. The telephone of the office is (208) 884-7080. (3-29-10)

05. Fax Number. The facsimile number of the office is (208) 884-7098. (3-29-10)

06. Website. The Racing Commission’s website at <http://www.isp.idaho.gov/race>. (3-29-10)

006. PUBLIC RECORDS COMPLIANCE AND AVAILABILITY.

These rules are public records and are available for inspection and copying at the Idaho State Racing Commission central office or on the Racing Commission website. (3-29-10)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Racing Act, Section 54-2501, Idaho Code. (3-29-10)

02. Appeal. A request for the Racing Commission or its designee to investigate, consider and review any decisions or rulings of Stewards of a meeting. (3-29-10)

03. Arguments. A fact or statements offered as proof or evidence. (3-29-10)

- 04. Burden of Proof.** The obligation to establish by the preponderance of the evidence that a violation of statute or rules occurred. (3-29-10)
- 05. Calendar Day.** Twenty-four (24) hours ending at midnight. (3-29-10)
- 06. Continuance.** Postponement of adjudicatory proceedings to a future date. (3-29-10)
- 07. De Novo Hearing.** To have the matter heard a new. (3-29-10)
- 08. Disciplinary Action.** A process for dealing with behavior that violates the provisions of these rules. (3-29-10)
- 09. Evidence.** Data presented in proof of the facts in issue and which may include the testimony of witnesses, records, documents, or objects. (3-29-10)
- 10. Exclusion.** The act of preventing a person from entering or remaining on the grounds of any racing association or simulcast facility under the jurisdiction of the Racing Commission. (3-29-10)
- 11. Executive Director.** The person responsible for the administration of the Idaho State Racing Commission. (3-29-10)
- 12. Hearing Officer.** An official appointed by the Idaho State Racing Commission to conduct an investigation or administrative hearing so that the agency can exercise its statutory powers. (3-29-10)
- 13. Horsemen's Bookkeeper.** A bonded racing association employee who manages the horsemen's accounts which covers all monies due horsemen in regards to purses, stakes, rewards, claims and deposits. (3-29-10)
- 14. Licensee.** Any person or entity holding a license from the Racing Commission to engage in racing or a regulated activity. (3-29-10)
- 15. Motions.** A request for a steward or racing commission to make a decision. (3-29-10)
- 16. Notice.** A written or printed announcement from Stewards or the Racing Commission. (3-29-10)
- 17. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (3-29-10)
- 18. Racing Commission.** Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (3-29-10)
- 19. Ruling.** An official decision by the stewards stating the charges against the licensee. (3-29-10)
- 20. Stay.** To delay or stop the effect of a stewards ruling. (3-29-10)
- 21. Steward.** A racing official who presides over a race meet, has jurisdiction over all racing officials, rules on protests and claims of foul, and imposes fines and suspensions. (3-29-10)
- 22. Suspension.** A temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein. (3-29-10)
- 011. ABBREVIATIONS.**
There are no abbreviations used in these rules. (3-29-10)
- 012. -- 019. (RESERVED)**
- 020. APPLICABILITY.**

These rules apply to all proceedings for disciplinary action of licensees and associated proceedings including disqualification. (3-29-10)

021. -- 029. (RESERVED)

030. EXEMPTION FROM THE IDAHO RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL.

01. Findings. In accordance with Section 67-5206(5)(b), Idaho Code, the Racing Commission makes the following findings: (3-29-10)

a. Horse racing is a sport requiring racing officials to make immediate binding decisions affecting the races and participants in the races. (3-29-10)

b. A central element of horse racing is pari-mutuel betting, and public confidence in the outcome of races is critical to the racing industry and the general public. (3-29-10)

c. Racing seasons at certain locations are often very short and involve preliminary and final races requiring quick action in order for disciplinary action to be effective and in order to permit final races to be run without controversy as to the participants and winners. (3-29-10)

d. Nationwide, participants in racing have become accustomed to, and acknowledge the need for, immediate authoritative decisions and quick disciplinary action. (3-29-10)

02. Idaho Rules of Administrative Procedure of the Attorney General. Because of the factors described in Subsection 030.01 of these rules, the Racing Commission adopts IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

a. Proceedings before the Racing Commission are governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

b. Proceedings by the Stewards are governed exclusively by this chapter (IDAPA 11.04.04), and supersede IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

031. PROCEEDINGS BY THE RACING COMMISSION.

De novo hearings and other proceedings before the Racing Commission are governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," insofar as such provisions are not inconsistent with these rules. (3-29-10)

032. -- 039. (RESERVED)

040. DISCIPLINARY ACTION.

Only the Stewards or the Racing Commission have the right to impose a fine or suspension. (3-29-10)

041. WRITTEN REPORT.

The Stewards must report fines or suspensions imposed in the daily written report submitted to the Racing Commission. (3-29-10)

042. FINES.

All fines imposed by the Stewards must be paid to the Horsemen's Bookkeeper immediately after imposition, except: (3-29-10)

01. Otherwise Ordered. As otherwise ordered by the Stewards under these rules; (3-29-10)

02. Stayed by Commission. Stayed by the Racing Commission; or (3-29-10)

03. Stayed by Courts. As stayed by a court of competent jurisdiction. (3-29-10)

043. SUSPENSIONS.

All suspensions for a specified period of time are to be considered in calendar days. The ruling will show the first and the last day of suspension. (3-29-10)

044. -- 049. (RESERVED)

050. SUMMARY SUSPENSION.

If the Stewards determine that a licensee's actions constitute an immediate danger to the public health, safety or welfare, the Stewards may summarily suspend the license pending a hearing. (3-29-10)

01. Entitlement to Hearing. A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three (3) day limit. (3-29-10)

02. Issue at Hearing. The Stewards must conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling. (3-29-10)

051. -- 059. (RESERVED)

060. RIGHTS OF THE LICENSEE.

A licensee who is the subject of a disciplinary hearing conducted by the Stewards is entitled to the following: (3-29-10)

01. Proper Notice. Proper notice of all charges; (3-29-10)

02. Legal Counsel. The right to legal counsel at the licensee's own expense; (3-29-10)

03. Examination of Evidence. The right to examine all evidence to be presented against the licensee; (3-29-10)

04. Defense. The right to present a defense; (3-29-10)

05. Call Witnesses. The right to call witnesses; and (3-29-10)

06. Cross Examination. The right to cross examine witnesses. (3-29-10)

061. -- 069. (RESERVED)

070. PROPER NOTICE OF ALL CHARGES.

The Stewards must provide written notice at least three (3) days before the hearing to a licensee who is the subject of a disciplinary hearing, except as provided for by these rules regarding summary suspensions. The licensee may waive his right to a three-day notice by executing a written waiver. (3-29-10)

071. CONTENT OF NOTICE.

Notice given under Section 070 must include: (3-29-10)

01. Hearing Schedule. A statement of the time, place and nature of the hearing; (3-29-10)

02. Legal Authority. A statement of the legal authority and jurisdiction under which the hearing is to be held; (3-29-10)

03. Violation. A reference to the particular sections of the statutes or rules involved; (3-29-10)

04. Description of Conduct. A short, in plain language of the alleged conduct that has given rise to the disciplinary hearing; (3-29-10)

- 05. Possible Penalties.** The possible penalties that may be imposed; and (3-29-10)
- 06. Rights.** A statement summarizing the rights of the licensee as outlined in Section 060 of these rules. (3-29-10)

072. SERVICE OF NOTICE.

01. Hand Delivery. If possible, the Stewards or their designee may hand deliver the written notice of the disciplinary hearing to the licensee who is the subject of the hearing. (3-29-10)

02. Mail Delivery. If hand delivery is not possible, the Stewards may mail the notice to the licensee's last known address, as found in the Racing Commission's licensing files, by regular mail and by certified mail, return receipt requested. (3-29-10)

03. Disqualification. If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the Stewards must provide notice of the hearing to the owner, managing owner or lessee of the horse in the manner provided by Section 072. (3-29-10)

073. NONAPPEARANCE.

01. Nonappearance After Adequate Notice. Nonappearance of a summoned party after adequate notice is construed as a waiver of the right to a hearing before the Stewards. (3-29-10)

02. Suspension of License. In compliance with these rules the Stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent. (3-29-10)

074. -- 079. (RESERVED)

080. CONTINUANCES.

01. Request for Continuance. Upon receipt of a notice of disciplinary hearing, a licensee may request a continuance of the hearing. (3-29-10)

02. Good Cause. The Stewards may grant a continuance of any hearing for good cause shown. (3-29-10)

03. Order of Continuance. The Stewards may at any time order a continuance on their own motion. (3-29-10)

081. -- 089. (RESERVED)

090. EVIDENCE.

Each witness at a disciplinary hearing conducted by the Stewards must be sworn in by the presiding steward. (3-29-10)

091. RULES OF EVIDENCE.

The Stewards are to allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Stewards have the authority to determine, in their sole discretion, the weight and credibility of any evidence or testimony. The Stewards may admit hearsay evidence if the Stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the Stewards. (3-29-10)

092. BURDEN OF PROOF.

The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Racing Commission rule. (3-29-10)

093. RECORD OF HEARING.

The Stewards must make a tape recording of all disciplinary hearings. A transcript of the recording may be made available at the expense of the requesting person. (3-29-10)

094. -- 099. (RESERVED)

100. RULING.

The issues at a disciplinary hearing must be decided by a majority vote of the Stewards. If the vote is not unanimous, the dissenting steward must include a written statement of the reason(s) for the dissent with the record of the hearing. (3-29-10)

101. FORM OF RULING.

A ruling by the Stewards must be on a form prescribed by the Racing Commission and must include: (3-29-10)

01. Personal Information. The full name, date of birth, last record address, license type and license number of the person who is the subject of the hearing; (3-29-10)

02. Charges. A statement of the charges against the licensee, including a reference to the specific section of the Act or rules of the Racing Commission that the licensee is found to have violated; (3-29-10)

03. Dates. The date of the hearing and the date the ruling was issued; (3-29-10)

04. Penalty. The penalty imposed; (3-29-10)

05. Order of Finish. Any changes in the order of finish or purse distribution; and (3-29-10)

06. Other Information. Any other information required by the Racing Commission. (3-29-10)

07. Signing of Ruling. A ruling must be signed by a majority of the Stewards. (3-29-10)

102. -- 109. (RESERVED)

110. SERVICE OF RULING.

01. Hand Delivery. If possible, the Stewards or their designee may hand deliver a copy of the ruling to the person who is the subject of the ruling. (3-29-10)

02. Mail. If hand delivery is not possible, the Stewards may mail the ruling to the person's last known address, as found in the Racing Commission's licensing files, by regular mail and by certified mail, return receipt requested. (3-29-10)

03. Copy. A copy of the ruling must be sent to the association of Racing Commissioners International or association of Racing Commissioners International Ruling Database. (3-29-10)

04. Disqualification. If the ruling includes the disqualification of a horse, the Stewards must provide a copy of the ruling to the owner of the horse, the horsemen's bookkeeper, the appropriate past performance service(s) and the Association of Racing Commissioners International in the manner provided for in these rules. (3-29-10)

111. -- 119. (RESERVED)

120. NOTICE OF RIGHT OF APPEAL.

A licensee who is the subject of the proceeding must be informed by the Stewards of his right to appeal the ruling at the time he is informed of the ruling. (3-29-10)

121. -- 139. (RESERVED)

140. TRANSFER OF HORSE PROHIBITED.

The transfer of a horse to avoid application of a Racing Commission rule or ruling is prohibited. (3-29-10)

141. -- 149. (RESERVED)

150. APPEALS.

Except as provided in Section 160 of these rules, a licensee aggrieved by a ruling of the Stewards may appeal to the Racing Commission. A licensee who fails to file an appeal by the deadline and in the form required by these rules waives the right of appeal. (3-29-10)

151. TIME FRAME FOR APPEAL.

An appeal must be filed with the Executive Director of the Racing Commission not later than five (5) calendar days after the entry of the ruling. If the Racing Commission determines the appeal to be frivolous, the appellant may be subject to a fine. (3-29-10)

152. FORM OF APPEAL.

01. Form of Appeal. An appeal must be in writing on a form prescribed by the Racing Commission and must include: (3-29-10)

a. The name, address, telephone number and signature of the licensee making the appeal; and (3-29-10)

b. A statement of the basis for the appeal. (3-29-10)

02. Bond. The licensee filing the appeal may be required to furnish a bond in the amount of two hundred dollars (\$200) to cover the administrative costs and which may be forfeited should the appeal be heard. (3-29-10)

153. RECORD FOR APPEAL.

Upon notification by the Racing Commission that an appeal has been filed, the Stewards must forward to the Racing Commission the written record of the proceeding and any evidence or exhibits on which the appeal is based. (3-29-10)

154. PAYMENT OF FINES DURING APPEAL.

If a licensee against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the licensee must pay the fine in accordance with these rules. If the appeal is disposed of in favor of the appellant, the Racing Commission must refund the amount of the fine. (3-29-10)

155. -- 159. (RESERVED)

160. NO APPEAL FROM DISQUALIFICATION FOR INTERFERENCE.

A decision by the Stewards regarding a disqualification for interference during the running of the race is final and may not be appealed to the Racing Commission. (3-29-10)

161. -- 169. (RESERVED)

170. HEARING ON APPEAL.

The hearing of the Racing Commission on appeal is limited to oral argument regarding issues of law and fact as may be found in the record established before the Board of Stewards, except, the Racing Commission may order a de novo hearing if the Racing Commission determines that exceptional circumstances require it. (3-29-10)

171. WRITTEN APPEAL.

01. Written Appeal. With the consent of the appellant, an appeal may be submitted in writing. (3-29-10)

02. Determination. The Racing Commission will determine the matter upon the record submitted to the Racing Commission. (3-29-10)

03. Papers. All papers filed with the Racing Commission are the property of the Racing Commission. (3-29-10)

172. HEARING OFFICER.

The Racing Commission may assign a hearing officer to hear the matter pending before the Racing Commission, pursuant to the IDAPA 04.11.01, "Idaho Rules of Administrative Proceeding of the Attorney General." (3-29-10)

173. WRITTEN ARGUMENTS.

Written arguments and briefs or briefs and motions regarding the appeal will be allowed under such terms as the Racing Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. (3-29-10)

174. MOTIONS.

Requests for postponement and other motions must be filed in writing not later than seven (7) days before the scheduled hearing. The Executive Director may determine whether good cause is shown for the postponement and may grant or deny the request on behalf of the Racing Commission. (3-29-10)

175. -- 179. (RESERVED)

180. RECORD OF PROCEEDINGS.

01. Record of Proceedings. A verbatim record of the proceedings at hearings before the Racing Commission will be maintained either by electrical devices or by stenographic means, as the Racing Commission may direct. (3-29-10)

02. Stenographic Record. If any party to the action requests a stenographic record of the proceedings, the record will be done by stenographic means. (3-29-10)

03. Cost. The requesting party must pay the costs of reporting the proceedings. (3-29-10)

181. FINAL ORDER.

Following the hearing the Racing Commission will issue a final order as provided by Section 67-5246, Idaho Code. The Executive Director may sign the final order on behalf of the Racing Commission Chairman. (3-29-10)

182. -- 199. (RESERVED)

200. STAY OF RULING.

A licensee who has been disciplined by a ruling of the Stewards may apply to the Executive Director for a stay of the ruling. (3-29-10)

201. TIME FRAME FOR APPLICATION.

An application for a stay must be filed with the Racing Commission's Executive Director not later than the deadline for filing an appeal. (3-29-10)

202. FORM OF APPLICATION.

01. Application for Stay. An application for a stay must be in writing and must include: (3-29-10)

a. The name, address, and telephone number of the person requesting the stay; (3-29-10)

b. A statement of the justification for the stay. (3-29-10)

02. Licensee Signature. The application must be signed by the licensee requesting the stay. (3-29-10)

203. GRANT OR DENIAL OF STAY.

The Executive Director may grant a stay for cause. (3-29-10)

01. Licensee Notification. The Executive Director must notify the licensee in writing of the decision. (3-29-10)

02. Rescission of Stay. The Executive Director may rescind a stay granted under this Subsection of these rules for reasonable cause. (3-29-10)

204. EFFECT OF STAY.

The fact that a stay is granted is not a presumption that the ruling by the Stewards is invalid. (3-29-10)

205. -- 349. (RESERVED)

350. EXCLUSION.

The Stewards or Racing Commission may order an individual excluded from all or part of any premises under the regulatory jurisdiction of the Racing Commission if the Stewards, Executive Director, or Racing Commission determine that: (3-29-10)

01. Statutory or Regulatory Exclusion. The individual may be excluded under the statutes or rules of the Racing Commission. (3-29-10)

02. Integrity Exclusion. The individual's presence on racing association grounds is inconsistent with maintaining the honesty and integrity of racing. (3-29-10)

351. HEARING ON EXCLUSION.

An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the Stewards or Racing Commission. (3-29-10)

01. Ordered Separately. If an exclusion is ordered separately, the excluded individual is entitled to a hearing before the Stewards or Racing Commission. (3-29-10)

02. Conduct of Hearing. A hearing on an exclusion is conducted in the same manner as other hearings conducted by the Stewards or Racing Commission. (3-29-10)

03. Effect of Exclusion. If an individual is excluded under these rules, a horse owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction. (3-29-10)

352. -- 399. (RESERVED)

400. RULINGS IN OTHER JURISDICTIONS.

The Racing Commission and the Stewards may honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation, or eligibility of horses. (3-29-10)

401. APPEALS OF RECIPROCAL RULINGS.

Persons subject to rulings in other jurisdictions have the right to request a hearing before the Racing Commission to show cause why such ruling should not be enforced in this jurisdiction. (3-29-10)

01. Request for Hearing. Any request for such hearing must clearly set forth in writing the reasons for the appeal. (3-29-10)

02. Signed. The request must be signed by the person requesting the hearing. (3-29-10)

402. -- 989. (RESERVED)

990. PENALTIES.

Any person violating any of the provisions of these rules is subject to the penalties provided for in Title 54, Chapter 25, Idaho Code and any of the Racing Commission rules. (3-29-10)

991. -- 998. (RESERVED)

999. MINOR VIOLATIONS.

Nothing in these rules 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. (3-29-10)

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