

Dear Senators McKENZIE, Jorgenson & Stennett, and  
Representatives LOERTSCHER, Anderson & Mary Lou Shepherd:

The Legislative Services Office, Research and Legislation, has received the enclosed  
rules of the Idaho State Racing Commission:

1. IDAPA 11.04.02 - Rules Governing Simulcasting -  
Docket No. 11-0402-0801
2. IDAPA 11.04.02 - Rules Governing Simulcasting -  
Docket No. 11-0402-0802
3. IDAPA 11.04.02 - Rules Governing Simulcasting -  
Docket No. 11-0402-0803
4. IDAPA 11.04.13 - Rules Governing The Idaho State Racing Commission -  
Docket No. 11-0413-0801.

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 10-6-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 11-3-08.

\_\_\_\_\_The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee

FROM: Katharine Gerrity, Principal Legislative Research Analyst

DATE: September 17, 2008

SUBJECT: Idaho State Racing Commission

- 1. IDAPA 11.04.02 - Rules Governing Simulcasting - Docket No. 11-0402-0801**
- 2. IDAPA 11.04.02 - Rules Governing Simulcasting - Docket No. 11-0402-0802**
- 3. IDAPA 11.04.02 - Rules Governing Simulcasting - Docket No. 11-0402-0803**
- 4. IDAPA 11.04.13 - Rules Governing The Idaho State Racing Commission - Docket No. 11-0413-0801**

### **1. IDAPA 11.04.02 - Rules Governing Simulcasting**

The Idaho State Police (ISP), State Racing Commission, submits notice of temporary and proposed rule at IDAPA 11.04.02 - Rules Governing Simulcasting. The action repeals the current rule and, as set forth in Section 2 of this memorandum, replaces it with a new chapter. Negotiated rulemaking was not conducted. The temporary rule is effective November 12, 2008. The rulemaking appears to be authorized pursuant to Sections 54-2506 and 54-2508, Idaho Code.

### **2. IDAPA 11.04.02 - Rules Governing Simulcasting**

The Idaho State Police (ISP), State Racing Commission, submits notice of temporary and proposed rule at IDAPA 11.04.02 - Rules Governing Simulcasting. According to the Commission this is a rewrite of the current rule that provides a clear and concise chapter on the

simulcast rules. The Commission notes that it also conforms more closely with model rules of the Association of Racing Commissioners International. The effective date of the temporary rule is November 12, 2008.

Negotiated rulemaking was not conducted but the Commission states that the rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

The rulemaking appears to be authorized pursuant to Sections 54-2506 and 54-2508, Idaho Code.

### **3. IDAPA 11.04.02 - Rules Governing Simulcasting**

The Idaho State Police (ISP), State Racing Commission, submits notice of temporary and proposed rule at IDAPA 11.04.02 - Rules Governing Simulcasting. According to the Commission, virtual racing promotes the purpose of enhancing and protecting the live horse race industry in Idaho by increasing the proceeds paid to the horsemen's groups which contributes to increasing the horsemen's purses in Idaho. The Commission also states that simulcasting allows virtual racing to obtain wagering dollars from out-of-state and interstate wagering sources to help enhance the Idaho horsemen's purses and, the greater the horsemen's purses, the more stable and sound the live horse racing industry will be in Idaho. The rule, by amendments to definitions, provides for virtual horse racing. The Commission indicates that the effective date of the temporary rule is November 17, 2008.

The Commission states that negotiated rulemaking was not conducted but that the rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

We have concerns relating to the constitutionality of this rule as well as the Commission's authority to broaden provisions to allow for virtual horse racing. The statute does not specifically provide for virtual horse racing and therefore the Commission would be, in essence, allowing for such racing by virtue of their interpretation of the statute pursuant to the rule. The Legislature will need to determine whether it considers the Commission's interpretation to include virtual racing reasonable.

### **4. IDAPA 11.04.13 - Rules Governing The Idaho State Racing Commission**

The Idaho State Police (ISP), State Racing Commission, submits notice of temporary and proposed rule at IDAPA 11.04.13 - Rules Governing The Idaho State Racing Commission. According to Commission, this new chapter will provide clear and concise provisions relating to the Commission and conform more closely with the model rules of the Association of Racing Commissioners' International. The effective date of the temporary rule is November 12, 2008.

The Commission states that negotiated rulemaking was not conducted but that the rule was developed with input from a committee comprised of representatives of all segments of the horse racing industry.

We have no specific comments relating to the rule. The rule appears to be authorized by Sections 54-2506 and 54-2508, Idaho Code.

cc: Idaho State Racing Commission, Dennis Jackson  
Idaho State Police, Jeffrey J. Black

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

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0801 (CHAPTER REPEAL)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**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(s) 54-2506 and 54-2508 Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Thursday - October 9, 2008 - 6:30pm to 7:00pm**

**NAMPA CIVIC CENTER - Kasler 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: Repeal current IDAPA 11.04.02, which is being replaced by a new Chapter.

**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: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(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 Dennis Jackson, Executive Director of the 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 October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

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**IDAPA 11.04.02 IS BEING REPEALED IN ITS ENTIRETY.**

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

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0802 (CHAPTER REWRITE)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**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(s) 54-2506 and 54-2508 Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Thursday - October 9, 2008 - 6:30 pm to 7:00 pm**

**NAMPA CIVIC CENTER  
Kasler 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 rewrite provides for a clear and concise chapter on Simulcast Rules. 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: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, formal 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 Dennis Jackson, Executive Director of the 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 October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0802**

**IDAPA 11**  
**TITLE 04**  
**CHAPTER 02**

**IDAHO STATE RACING COMMISSION**

**11.04.02 - RULES GOVERNING SIMULCASTING**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, Idaho Code. (11-12-08)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules is cited as IDAPA 11.04.02, "Rules Governing Simulcasting," of the Idaho State Racing Commission. (11-12-08)T

**02. Scope.** These rules regulate simulcasting within Idaho and all aspects of simulcasting. (11-12-08)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of IDAPA 11.04.02. (11-12-08)T

**003. ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal Racing Commission actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (11-12-08)T

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference into these rules. (11-12-08)T

**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. (11-12-08)T

**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. (11-12-08)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. (11-12-08)T

**04. Telephone Number.** The telephone of the office is (208) 884-7080. (11-12-08)T

**05. Fax Number.** The facsimile number of the office is (208) 884-7098. (11-12-08)T

**06. Website.** The Racing Commission website is: <http://www.isp.state.id.us/race>. (11-12-08)T

**006. PUBLIC RECORDS 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. (11-12-08)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Association Which Accepts the Wager.** The guest association to which the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (11-12-08)T

**02. Authorized User.** A person authorized by the Racing Commission to receive, decode, and use, for legal purposes, the encrypted simulcast signal of pari-mutuel events. (11-12-08)T

**03. Breakage.** The odd cents rounded down to the lowest multiple of ten cents (\$.10) in a positive pool and down to the lowest multiple of five cents (\$.05) in a minus pool. (11-12-08)T

**04. Combined Pools.** The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association. (11-12-08)T

**05. Decoder.** A device or means to convert encrypted audio-visual signals or data into a form recognizable as the original content of the signals. (11-12-08)T

**06. Downlink.** A receiving antenna coupled with an audio-visual signal receiver that is compatible with and capable of receiving simultaneous audio-visual signals or data emanating from a host association. This includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (11-12-08)T

**07. Enclosure, Enclosure-Public.** Includes all enclosed areas of the simulcast wagering facility. (11-12-08)T

**08. Encryption.** The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (11-12-08)T

**09. Foreign Jurisdiction.** A jurisdiction of a foreign country or political subdivision thereof. (11-12-08)T

**10. Guest, Guest Association or Simulcast Operator.** A simulcast licensee authorized by the Racing Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (11-12-08)T

**11. Handle or Gross Handle.** Total amount of money wagered on a race less refunds and cancels. (11-12-08)T

**12. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (11-12-08)T

**13. Host or Host Association.** The racing association conducting a licensed horse racing meet when it is authorized by the Racing Commission to simulcast its racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (11-12-08)T

**14. Hub.** A facility that acts as an intermediary between pari-mutuel wagering facilities for the transmission of wagering data and that is responsible for generating all reports necessary for the reconciliation of payments. (11-12-08)T

**15. Interstate Simulcast Wagering.** (11-12-08)T

**a.** Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association; or (11-12-08)T

**b.** Wagering conducted by a betting system within the state of Idaho on the results of one (1) or more



aces being run at a host association outside the state of Idaho. (11-12-08)T

**16. Intrastate Simulcasting Wagering.** Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (11-12-08)T

**17. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T

**18. Racing Commission.** Three member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T

**19. Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T

**20. Simulcast Facility.** The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events. Such facility must be a part of the license granted to the guest or host association. (11-12-08)T

**21. Simulcast Service Supplier.** (11-12-08)T

**a.** A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment. (11-12-08)T

**b.** It does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (11-12-08)T

**22. Satellite Transponder, Transponder.** Leased space segment time of an earth-orbit communication satellite. (11-12-08)T

**23. Take or Takeout.** Money deducted from mutuel pools that is shared by the track and local and state governing bodies in the form of a tax. (11-12-08)T

**24. Totalisator.** A computer that, directly or indirectly through one (1) or more other totalisators, receives pari-mutuel wagering information, calculates pay-offs for winning tickets and generates reports with respect to such information, and may refer to the linked computers of the hub and the track. (11-12-08)T

**25. Uplink.** An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals or data on Federal Communication Commission-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the uplink. (11-12-08)T

**011. ABBREVIATIONS.**  
There are no abbreviations used in these rules (IDAPA 11.04.02). (11-12-08)T

**012. -- 014. (RESERVED).**

**015. REQUIREMENTS FOR LICENSURE OF A SIMULCAST FACILITY.**

**01. General.** Any racing association or simulcast operator authorized under these rules to conduct pari-mutuel wagering who desires to display the simulcast of pari-mutuel events on which pari-mutuel betting will be permitted, in the manner and subject to the conditions provided for under these rules, may apply to the Racing Commission for a license. (11-12-08)T

**02. Application for License.** The application for a license must be in such form as may be prescribed

by the Racing Commission and must contain such information or other material or evidence as the Racing Commission may require. (11-12-08)T

**03. Daily Simulcast License Fee.** The fee for such license is based upon the weekly handle. (11-12-08)T

**a.** If the handle is greater than thirty thousand dollars (\$30,000), the fee will be one hundred dollars (\$100) per day of simulcast operation payable by the licensee to the Racing Commission. Seventy-five dollars (\$75) of this fee will be paid to the Idaho State Racing Commission and twenty-five (\$25) will be deposited in the Public School Income Fund. (11-12-08)T

**b.** If the weekly handle is at least fifteen thousand dollars (\$15,000), but less than thirty thousand dollars (\$30,000), the fee will be fifty dollars (\$50) per day of simulcast operation payable by the licensee to the Racing Commission. Twenty-five dollars (\$25) of this fee will be deposited in the Public School Income Fund and twenty-five dollars (\$25) will be paid to the Idaho State Racing Commission. (11-12-08)T

**c.** If the weekly handle is less than fifteen thousand dollars (\$15,000), the fee will be twenty-five dollars (\$25) which will be deposited in the Public School Income Fund. (11-12-08)T

**04. Review and Approve.** Before the Racing Commission grants such license, it will review and approve a plan of operation submitted with a license application including, but not limited to, the following information: (11-12-08)T

**a.** A feasibility study denoting the revenue earnings expected from the simulcast facility and the costs expected to operate such a facility. The feasibility study includes: (11-12-08)T

i. The number of simulcast races to be displayed; (11-12-08)T

ii. The types of wagering to be offered; (11-12-08)T

iii. The level of attendance expected and the area from which such attendance will be drawn; (11-12-08)T

iv. The level of anticipated wagering activity; (11-12-08)T

v. The source and amount of revenues expected from other than pari-mutuel wagering; (11-12-08)T

vi. The cost of operating the simulcast facility and the identification of costs to be amortized and the method of amortization of such costs; and (11-12-08)T

vii. The probable impact of the proposed operation on revenues to local government. (11-12-08)T

**b.** The security measures to be employed to protect the facility, to control crowds, to safeguard the transmission of wagering data to effectuate common wagering pools. (11-12-08)T

**c.** The type of data processing, communication and transmission equipment to be utilized. (11-12-08)T

**d.** The description of the management groups responsible for the operation of the simulcast facility. (11-12-08)T

**e.** The system of accounts to maintain a separate record of revenues collected by the simulcast facility, the distribution of such revenues and the accounting of costs relative to the simulcast operation. (11-12-08)T

**f.** The location of the facility and a written confirmation from appropriate local officials that the location of such facility and the number of patrons expected to occupy such facility are in compliance with all applicable local ordinances, along with approval by appropriate county or city officials. (11-12-08)T

**016. REQUIREMENTS FOR LICENSURE OF A SIMULCAST OPERATOR.**

The Racing Commission uses the following decisional criteria in the approval or disapproval of an application for simulcast operator. (11-12-08)T

- 01. General Benefit to the State.** The operator's general benefit to the state of Idaho. (11-12-08)T
- 02. General Benefit to Horse Racing Industry.** The operator's general benefit to the state of Idaho's horse racing industry. (11-12-08)T
- 03. Operator's Integrity.** The operator's integrity, including: (11-12-08)T
  - a.** Individual and corporate conduct; (11-12-08)T
  - b.** Criminal history; and (11-12-08)T
  - c.** Betting and gaming industry conduct. (11-12-08)T
- 04. Operator's Credibility.** The operator's credibility, including: (11-12-08)T
  - a.** Accuracy of a feasibility study; and (11-12-08)T
  - b.** Experience and expertise of the operator in the simulcast industry. (11-12-08)T
- 05. Financial Stability.** The operator's financial stability. (11-12-08)T

**017. -- 025. (RESERVED).**

**026. HOST ASSOCIATION.**

**01. Contract.** Subject to Racing Commission approval of a simulcast contract, a host association licensed by the Racing Commission may simulcast its horse races to intrastate, interstate and out-of-state authorized users for the purpose of pari-mutuel wagering. (11-12-08)T

**02. Content.** A racing association is responsible for the content of its simulcast and must use all reasonable effort to present a simulcast that offers the viewers an exemplary depiction of its racing program, a periodic display of wagering information, and continuity programming between horse racing events. (11-12-08)T

**03. Video.** Unless otherwise permitted by the Racing Commission, every simulcast must contain in its video content a digital display of the actual time of day, the name of the host facility from where it emanates, the number of the horse race being displayed, and the minutes to post. (11-12-08)T

**04. Security Controls.** As a condition of contract approval, or when deemed necessary by the Racing Commission, the host association may be required to provide and maintain security controls, including encryption over its uplink and communications systems. (11-12-08)T

**027. GUEST ASSOCIATIONS.**

**01. Contract Approval.** Guest racing associations that are licensed by the Racing Commission and subject to contract approval by the Racing Commission may receive simulcast races for the purpose of pari-mutuel wagering from one (1) or more host associations. (11-12-08)T

**02. Plan for Testing.** A plan that is subject to approval by the Racing Commission must be submitted by a guest racing association for testing the transmission, encryption and decoding, and data communication to assure proper system function prior to the commencement of each simulcast program or race from a host association. (11-12-08)T

**028. INTERSTATE COMMON POOL WAGERING.**

Subject to contract approval by the Racing Commission, a racing association may participate in common pool wagering by accepting wagers placed in other jurisdictions or by offering wagers on races run in other jurisdictions. Contract approval requirements include, but may not be limited to, the following: (11-12-08)T

**01. Licensing Requirement.** A contract to participate in interstate common pool wagering must include evidence that the authorized user in the other jurisdiction is licensed or otherwise authorized or approved by the pari-mutuel authority or equivalent in that jurisdiction. (11-12-08)T

**02. Pari-Mutuel Systems Requirement.** A contract to participate in interstate common pool wagering must: (11-12-08)T

**a.** Include evidence that the authorized user in the other jurisdiction utilizes a pari-mutuel wagering system fully compliant with requirements for totalisator systems used by licensed racing associations in Idaho; (11-12-08)T

**b.** Specify the regulatory authority responsible for granting a license to the racing association serving as host for purposes of aggregation of common pool wagering; (11-12-08)T

**c.** Specify the name and location of the racing association that is the host for the common pool, and the individuals and contact information for matters relating to the contract and common pool wagering; and (11-12-08)T

**d.** Specify the name of the totalisator company, location of the totalisator facility utilized to receive wagers and aggregate pools for the purpose of common pool wagering and the individuals and contact information for matters relating to the contract and common pool wagering. (11-12-08)T

**03. Access to Reports and Wagering Information Requirement.** A contract to participate in interstate common pool wagering must include evidence that the authorized user in the other jurisdiction will provide full and prompt access to, and cooperation in providing, all reports and information that may be requested by the Racing Commission. This includes wagering transaction data in either a hard copy report or a standard electronic data format acceptable to the Racing Commission. Such requirement apply to all wagering on races run in Idaho and all wagering pools that accept wagers placed from Idaho. (11-12-08)T

**04. Breakage.** The contract must include provisions specifying the distribution of breakage consistent with the requirement for wagers placed in Idaho. (11-12-08)T

**029. NET POOL PRICING.**

**01. Takeout Rates.** If takeout rates are not the same for all jurisdictions and net pool pricing is utilized, the contract must specify net pool pricing. (11-12-08)T

**a.** Individual wagering transactions are deemed to be made at the point of sale in the state where placed unless otherwise specified by statute or court ruling. (11-12-08)T

**b.** Any surcharges or withholdings in addition to the takeout must only be applied in the jurisdiction otherwise imposing such surcharges or withholdings. (11-12-08)T

**c.** In determining whether to approve an interstate common pool which does not include the host track or which includes races from more than one racing association, the Racing Commission will consider and may approve use of a bet type which is not utilized at the host association, application of a takeout rate not in effect at the live event track, or other factors which are presented to the Racing Commission. (11-12-08)T

**d.** The content and format of the visual display of racing and wagering information at facilities in other jurisdictions where wagering is permitted in the interstate common pool need not be identical to the similar information permitted or required to be displayed under IDAPA 11.04.02. (11-12-08)T

- 02. Guest Participation in Interstate Common Pools.** (11-12-08)T
- a.** The Racing Commission may approve a takeout from the pari-mutuel pools identical to that of other jurisdictions participating in a merged pool. (11-12-08)T
- b.** Rules of racing as established for the race in the host state will apply to the merged pool. (11-12-08)T
- c.** The simulcast operator must designate which one of the following procedures it will use if it becomes impossible to successfully merge the corresponding pools into the interstate common pool, and must publish their designated procedure in the printed program: (11-12-08)T
- i.** Compute payouts in accordance with payout prices that would have been in effect if prices for the pool of bets were calculated without regard to wagers placed elsewhere; or (11-12-08)T
- ii.** With permission of the Racing Commission, pay winning tickets at the payout prices at the host track; or (11-12-08)T
- iii.** Declare such accepted bets void and make refunds in accordance with the applicable rules. (11-12-08)T

**030. HOST PARTICIPATING IN INTERSTATE COMMON POOLS.**

**01. Rules of Racing Established.** Rules of racing established for races held in Idaho will also apply to interstate common pools unless the Racing Commission has specifically determined otherwise. (11-12-08)T

**02. When Impossible to Merge Pools.** Any contract for interstate common pools must contain a provision that states that if, for any reason, it becomes impossible to successfully accept placed wagers or to merge corresponding pools into the interstate common pool formed by the pari-mutuel pool host and the Racing Commission's or the pari-mutuel pool host's representative determines that accepting wagers or attempting to effect transfer of pool data from the guest association may endanger the integrity of the pool or the timely processing of payouts, the pari-mutuel pool host will have no liability for guest's wagers or corresponding pools not being accepted into the host pool. (11-12-08)T

**031. -- 034. (RESERVED)**

**035. LICENSES FOR SIMULCAST OPERATORS.**

**01. License.** Every person acting as a simulcast operator within Idaho must procure a license from the Racing Commission and no person will act in the capacity of a simulcast operator without a valid license. Such license may be renewed annually unless the application is denied for any cause that justifies the suspension or revocation of the license for violation of these rules. (11-12-08)T

**02. Responsibilities of Applicant.** Each applicant must: (11-12-08)T

- a.** Submit a financial statement as required by the Idaho State Racing Commission; (11-12-08)T
- b.** Post with the Racing Commission a surety, in the amount and in such form as the Racing Commission may require, that is sufficient to ensure payment of distributable amounts of pari-mutuel pools pursuant to statute, operational costs, salaries, wages, benefits, and related financial obligations; and (11-12-08)T
- c.** Demonstrate experience or adequate knowledge of the conduct of simulcast wagering or pari-mutuel wagering operations. (11-12-08)T

**03. Simulcast License Application.** The simulcast operator intending to conduct wagering on an out-of-state race must file with the Racing Commission a completed simulcast application. The application will be provided and approved by the Racing Commission. At a minimum the application will require the applicant to

- provide the following information: (11-12-08)T
- a. The number of live races projected in the current year; (11-12-08)T
  - b. The number of live races run in the preceding year; (11-12-08)T
  - c. Documentation that the required bond has been posted; (11-12-08)T
  - d. Documentation that the appropriate public liability insurance has been obtained; (11-12-08)T
  - e. Evidence of approval from the appropriate county or city officials; (11-12-08)T
  - f. A signed contract from a local horsemen's group. The horsemen's group must be one that meets the definition of a horsemen's group as defined in Section 54-2502, Idaho Code. The contract must not conflict with any of the provisions of Sections 3001 through 3007 of Title 15 of the United States Code or any other federal laws; (11-12-08)T
  - g. A statement setting forth the date and time it intends to commence accepting wagers on out-of-state race or races; and (11-12-08)T
  - h. Any other written or oral approvals required by the Racing Commission. (11-12-08)T
- 04. Restrictions.** (11-12-08)T
- a. No license will be granted to any person or entity that has failed, refused or neglected to comply with any rule, condition of license, or order of the Racing Commission or its stewards that is reasonably related to its conduct as a simulcast operator. (11-12-08)T
  - b. No license will be granted to any person or entity that has engaged in any activity that is grounds for denial, suspension or revocation of license pursuant to the rules of the Racing Commission or whose general partners, officers, directors, or employees have engaged in any unlawful activity determined to be conduct detrimental to the best interest of horseracing. (11-12-08)T
  - c. Additionally, no license will be granted to a person or entity that has failed, refused or neglected to enter into an agreement with a horsemen's group as defined in Section 54-2502, Idaho Code. (11-12-08)T
- 05. No Limitation.** There will be no limitation as to the number of days a licensee may operate except as may otherwise be provided for within these rules or the Idaho Code. (11-12-08)T
- 036. SIMULCAST PURSE MONEY COLLECTION AND DISTRIBUTION.**
- 01. Designated Purse Monies.** Each simulcast operator licensed by the Racing Commission must remit to the Racing Commission those monies designated by the horsemen's agreement as purse monies. Payment must be made on a timely basis as provided in said agreement which will in no event be greater than thirty (30) days after accrual to the simulcast facility. (11-12-08)T
  - 02. Dual Signature Insured Account.** Each horsemen's group signatory to a horsemen's agreement authorizing simulcasting must open and maintain a dual signature insured account, hereinafter called a "purse accumulation account." (11-12-08)T
  - 03. Deposit into Appropriate Account.** Prior to commencement of the live race meet, the Racing Commission will annually deposit into the appropriate purse accumulation account those funds paid to the Racing Commission by the respective simulcast operator(s). The Racing Commission has the authority to approve more frequent payments, if requested by said horseman's group. (11-12-08)T
  - 04. Sanctions.** In addition to all available sanctions, any person or licensee who receives monies designated as purse monies as described in these rules, and who violates these rules, can be ordered to pay a monetary

penalty as set forth in Section 54-2509(4), Idaho Code, and daily interest accrued thereupon at the rate set by the Idaho State Treasurer. (11-12-08)T

**037. -- 039. (RESERVED).**

**040. DUTIES OF SIMULCAST OPERATOR.**

**01. General.** A simulcast operator conducts and operates a pari-mutuel wagering system at one (1) or more guest associations on the results of horse races being held or conducted and simulcast from the enclosures of one (1) or more host associations pursuant to its agreement with such guest and host association and with the approval of the Racing Commission. (11-12-08)T

**02. Provisions.** A simulcast operator must provide: (11-12-08)T

**a.** Adequate transmitting or receiving equipment that does not interfere with the closed circuit TV system of the host association. All equipment must be of acceptable broadcast quality and meet applicable Federal Communications Commission and Racing Commission rules and orders. Said equipment may include approved microwave transmitters, with appropriate safeguards, as approved by the Racing Commission. (11-12-08)T

**b.** Pari-mutuel terminals, pari-mutuel odds display, modems or switching units enabling pari-mutuel data transmissions, and data communication between the sending and the receiving racing associations. (11-12-08)T

**03. Pari-Mutuel Inspector.** The Racing Commission will appoint at least one (1) state pari-mutuel inspector to monitor all approved simulcast facilities and may require additional pari-mutuel inspectors as is reasonably necessary for the protection of the public interest. The state pari-mutuel inspector, as well as a member or members of the Racing Commission, must: (11-12-08)T

**a.** Be given free access to all of the books, papers and records of the simulcast operator's simulcast operations during normal business hours. (11-12-08)T

**b.** Be empowered to direct the simulcast operator to adopt such rules and to install such methods and systems of operating the mutuel department as may be deemed reasonably necessary so as to ensure compliance with the law and the rules of the Racing Commission. (11-12-08)T

**c.** The state pari-mutuel inspector must report to the Racing Commission any failure of the licensee to comply with the provision hereof or any violation of the law or any of the rules of the Racing Commission which may come to his attention, including in his reports, recommendations with respect to the revocation of the licenses of any employee of the simulcast operator for failure to comply with the rules of the Racing Commission, or for fraud, dishonesty, or incompetency. (11-12-08)T

**04. Video Record.** Upon the request of the Racing Commission the simulcast operator must make its best effort to provide the Racing Commission with a copy of the simulcast race requested. (11-12-08)T

**05. Test Program.** Not less than thirty (30) minutes prior to the commencement of transmission of the racing program for each day or night, the simulcast operator must initiate a test program of its transmitter, encryption and decoding, and data communication to assure proper operation of the system. (11-12-08)T

**06. Locations Listing.** At the request of any representative of the Racing Commission the Racing Association must provide a listing of all locations within this state enabled to receive the simulcast in decoded forms. Failure to do so is grounds for immediate summary suspension of license and immediate cessation of simulcasting activities. (11-12-08)T

**07. Security.** The Racing Association must maintain such security controls over its uplink and communications system as directed by the Racing Commission. (11-12-08)T

**08. Filing.** Every simulcast operator at the request of the Racing Commission must file an annual report of its simulcast operations, and an audited balance sheet and income statement prepared according to Generally

Accepted Accounting Principles.

(11-12-08)T

**09. Compliance.** The simulcast operator must comply with Section 54-2512, Idaho Code. (11-12-08)T

**041. PROHIBITION OF SIMULCAST SIGNAL.**

Pertaining to the simulcasting of greyhound racing, should substantial, competent evidence of cruelty to or misconduct in the treatment of greyhounds occur at a site under the jurisdiction of another state regulatory agency, the Racing Commission will prohibit the retransmission of any and all simulcast signals until appropriate action has been taken by the other state regulatory agency. (11-12-08)T

**042. -- 044. (RESERVED).**

**045. DISTRIBUTION OF DEPOSITS.**

The Racing Commission will distribute deposits generated by simulcast races in accordance with the provisions of Section 54-2507 and 54-2513, Idaho Code, as applicable. (11-12-08)T

**046. CONFLICT OF LAWS.**

In the event of a conflict between the laws of the host track and the laws or rules of the state of Idaho, the laws or rules of the state of Idaho will apply. (11-12-08)T

**047. - 999. (RESERVED).**



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

**11.04.02 - RULES GOVERNING SIMULCASTING**

**DOCKET NO. 11-0402-0803**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is 11/17/2008.

**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(s) 54-2506 and 54-2508, Idaho Code.

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

**Thursday - October 9, 2008 -- 6:30 pm – 7:00 pm**

**Nampa Civic Center - Kasler Room  
311 3<sup>rd</sup> 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:

Virtual Racing promotes the purpose of enhancing and protecting the live horse race industry in Idaho. It does this by increasing the proceeds paid to the horsemen's groups, which contributes to increasing the horsemen's purses in Idaho. In addition, simulcasting allows Virtual Racing to obtain wagering dollars from out-of-state and interstate wagering sources to help enhance the Idaho horsemen's purses. The greater the horsemen's purses, the more stable and sound the live horse racing industry will be in Idaho. Such innovations are needed in Idaho to make racing profitable enough to sustain its live racing industry.

Specifically, the following proposed rules changes are requested and amend the current definitions in IDAPA 11.04.02.010.

(NEW) 14. Horse Race. A contest authorized by the Racing Commission that is among horses, including virtual horses, using the pari-mutuel wagering system at any licensed race track.

(AMENDED) 15. Host or Host Association. The racing association conducting a horse race when it is authorized by the Racing Commission to simulcast its horse racing program. It may also be considered the sending track which means any track from which simulcast signals originate.

(NEW) 28. Virtual Horse. A computer-based, three dimensional graphical race horse, produced in a manner to replicate the characteristics of a living race horse.

**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: There is no 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:

There is no impact to the General Fund.

**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 Dennis Jackson, Executive Director of the 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 October 21, 2008.

DATED this 20<sup>th</sup> day of August, 2008

Dennis Jackson  
Executive Director  
Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700  
208-884-7080 (phone) /208-884-7098 (fax)

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0402-0803**

**010. DEFINITIONS.**

**01. Association That Accepts the Wager.** The guest association to which the bettor contributes his money to the pari-mutuel pool and receives a pari-mutuel ticket. (11-12-08)T

**02. Authorized User.** A person authorized by the Racing Commission to receive, decode, and use, for legal purposes, the encrypted simulcast signal of pari-mutuel events. (11-12-08)T

**03. Breakage.** The odd cents rounded down to the lowest multiple of ten cents (\$.10) in a positive pool and down to the lowest multiple of five cents (\$.05) in a minus pool. (11-12-08)T

**04. Combined Pools.** The pari-mutuel wagers at one (1) or more guest associations being contributed into the pari-mutuel pools of a host association. (11-12-08)T

**05. Decoder.** A device or means to convert encrypted audio-visual signals or data into a form recognizable as the original content of the signals. (11-12-08)T

**06. Downlink.** A receiving antenna coupled with an audio-visual signal receiver that is compatible with and capable of receiving simultaneous audio-visual signals or data emanating from a host association. This includes the electronic transfer of received signals from the receiving antenna to TV monitors within the satellite facility. (11-12-08)T

**07. Enclosure, Enclosure-Public.** Includes all enclosed areas of the simulcast wagering facility. (11-12-08)T

- 08. Encryption.** The scrambling or other manipulation of the audio-visual signals to mask the original content of the signal and so cause such signals to be indecipherable and unrecognizable to any person receiving such signal. (11-12-08)T
- 09. Foreign Jurisdiction.** A jurisdiction of a foreign country or political subdivision thereof. (11-12-08)T
- 10. Guest, Guest Association or Simulcast Operator.** A simulcast licensee authorized by the Racing Commission to offer, sell, cash, redeem or exchange pari-mutuel tickets on races being run at a host association. (11-12-08)T
- 11. Handle or Gross Handle.** Total amount of money wagered on a race less refunds and cancels. (11-12-08)T
- 12. Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (11-12-08)T
- 13. Horse Race.** A contest authorized by the Racing Commission that is between horses, including virtual horses, using the pari-mutuel wagering system at any licensed race track. (11-17-08)T
- 134. Host or Host Association.** The racing association conducting a ~~licensed horse racing meeting~~ race when it is authorized by the ~~Racing~~ Commission to simulcast its ~~horse~~ racing program. It may also be considered the sending track which means any track from which simulcast signals originate. (~~11-12-08~~)T(11-17-08)T
- 145. Hub.** A facility that acts as an intermediary between pari-mutuel wagering facilities for the transmission of wagering data and that is responsible for generating all reports necessary for the reconciliation of payments. (11-12-08)T
- 156. Interstate Simulcast Wagering.** (11-12-08)T
- a.** Wagering conducted by a betting system outside the state of Idaho on the results of one (1) or more races being run at an Idaho host association; or (11-12-08)T
- b.** Wagering conducted by a betting system within the state of Idaho on the results of one (1) or more races being run at a host association outside the state of Idaho. (11-12-08)T
- 167. Intrastate Simulcasting Wagering.** Pari-mutuel wagering at an Idaho guest association on Idaho horse racing events run at an Idaho host association. (11-12-08)T
- 178. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T
- 189. Racing Commission.** Three member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T
- 1920. Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T
- 201. Simulcast Facility.** The physical premises, structure and equipment utilized by a guest or host association for conducting pari-mutuel wagering on horse racing events and permitted pari-mutuel events. Such facility must be a part of the license granted to the guest or host association. (11-12-08)T
- 212. Simulcast Service Supplier.** (11-12-08)T
- a.** A person engaged in providing service, supplies or equipment necessary to the operation of intrastate, interstate or out-of-state simulcast wagering for use by a host association, guest association, simulcast

operator, or authorized user, including pari-mutuel wagering terminals, uplink, downlink, television receivers and related equipment. (11-12-08)T

**b.** It does not include persons authorized by the Federal Communications Commission to provide telephone service or space segment time on satellite transponders. (11-12-08)T

~~223.~~ **Satellite Transponder, Transponder.** Leased space segment time of an earth-orbit communication satellite. (11-12-08)T

~~234.~~ **Take or Takeout.** Money deducted from mutuel pools that is shared by the track and local and state governing bodies in the form of a tax. (11-12-08)T

~~245.~~ **Totalisator.** A computer that, directly or indirectly through one (1) or more other totalisators, receives pari-mutuel wagering information, calculates pay-offs for winning tickets and generates reports with respect to such information, and may refer to the linked computers of the hub and the track. (11-12-08)T

~~256.~~ **Uplink.** An earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals or data on Federal Communication Commission-controlled frequencies, and includes any electronic transfer of the audio-visual signals from within the racing enclosure to the location of the transmitter at the uplink. (11-12-08)T

~~27.~~ **Virtual Horse.** A computer-based, three dimensional graphical race horse, produced in a manner to replicate the characteristics of a living race horse. (11-17-08)T

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

**11.04.13 - RULES GOVERNING THE IDAHO STATE RACING COMMISSION**

**DOCKET NO.11-0413-0801 (NEW CHAPTER)**

**NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is November 12, 2008.

**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(s) 54-2506, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Thursday - October 9, 2008 - 6:00pm to 6:30pm**

**NAMPA CIVIC CENTER  
Kasler 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 the State Racing Commission. 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: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(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 Dennis Jackson, Executive Director of the 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 October 22, 2008.

DATED this 20th day of August, 2008.

Dennis Jackson  
Executive Director  
Phone: 208-884-7080 / Fax: 208-884-7098

Idaho State Racing Commission  
700 S. Stratford Drive  
PO Box 700, Meridian, ID 83680-0700

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0413-0801**

**IDAPA 11**  
**TITLE 04**  
**CHAPTER 13**

**IDAHO STATE RACING COMMISSION**

**11.04.13 - RULES GOVERNING THE IDAHO STATE RACING COMMISSION**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (11-12-08)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules are as IDAPA 11.04.13, "Rules Governing the Idaho State Racing Commission." (11-12-08)T

**02. Scope.** These rules govern the Idaho State Racing Commission. (11-12-08)T

**002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of IDAPA 11.04.13. (11-12-08)T

**003. ADMINISTRATIVE APPEALS.**

Pursuant to Title 67, Chapter 52, Idaho Code, any person may be entitled to appeal racing commission actions authorized under these rules. (11-12-08)T

**004. INCORPORATION BY REFERENCE.**

No documents are incorporated by reference into these rules. (11-12-08)T

**005. 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. (11-12-08)T

**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. (11-12-08)T

**03. Mailing Address.** The mailing address for the central office is Idaho State Racing Commission, P.O. Box 700, Meridian, Idaho 83680-0700. (11-12-08)T

**04. Telephone Number.** The telephone of the office is (208) 884-7080. (11-12-08)T

**05. Fax Number.** The facsimile number of the office is (208) 884-7098. (11-12-08)T

**06. Website.** The Racing Commission website is: <http://www.isp.state.id.us/race/index.html>. (11-12-08)T

**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. (11-12-08)T

**007. -- 008. (RESERVED).**

**010. DEFINITIONS.**

- 01. Advance Deposit Wagering.** A form of pari-mutuel wagering in which a natural person may deposit money in an account with a advanced deposit wagering operator and then use the current balance to pay for pari-mutuel wagering. (11-12-08)T
- 02. Annual Report.** Reports that the Racing Commission prepares and submits to the Governor no later than the March 31st of each year that embody detailed records of all meetings and of the business transacted therein, and all licenses applied for and issued. (11-12-08)T
- 03. Chairman.** The presiding officer of the Racing Commission. (11-12-08)T
- 04. Commissioner.** One (1) of the three (3) members of the Idaho State Racing Commission. (11-12-08)T
- 05. Costs.** Charges and expenses reasonably necessary to carry out the business of the Racing Commission. (11-12-08)T
- 06. 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. (11-12-08)T
- 07. License.** A permission granted by the Racing Commission to engage in any regulated activity. (11-12-08)T
- 08. Meeting.** An assembly of the Racing Commission at the call of the chair or a majority of the members or as otherwise provided by Idaho Code. (11-12-08)T
- 09. Membership.** The members of the Racing Commission appointed by the Governor of the State of Idaho. (11-12-08)T
- 10. Natural Person.** Any person eighteen (18) years of age or older, but does not include any corporation, partnership, limited liability company, trust, or estate. (11-12-08)T
- 11. Person.** Any individual, racing association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, limited liability company or any legal entity, that is recognized by law as the subject of rights and duties. (11-12-08)T
- 12. Quorum.** Two (2) or more members of the Racing Commission. (11-12-08)T
- 13. Race.** A contest between horses for purse, stake or reward run by any racing association and in the presence of a judge or judges. (11-12-08)T
- 14. Race Days.** The number of racing days authorized by the Racing Commission in a racing association license. (11-12-08)T
- 15. Race Meet.** Includes any exhibition of thoroughbred, purebred, or registered horse racing and mule racing and dog racing at which the pari-mutuel system of wagering is used. Singular includes the plural and plural includes the singular; and words importing one (1) gender will be regarded as including all other genders. (Section 54-2502, Idaho Code) (11-12-08)T
- 16. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (11-12-08)T
- 17. Racing Commission.** Three (3) member Idaho State Racing Commission created by Section 54-2503, Idaho Code, or its designee. (11-12-08)T

**18. Simulcast.** The telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location. (11-12-08)T

**19. Simulcast Operator.** A person licensed by the Racing Commission to operate a simulcast wagering system as provided for by these rules. (11-12-08)T

**011. ABBREVIATIONS.**  
There are no abbreviations used in these rules. (11-12-08)T

**012. -- 014. (RESERVED).**

**015. GENERAL AUTHORITY.**

**01. Racing Commission to Regulate Races and Participation.** The Racing Commission will regulate each race meet and the persons who participate in each race meet. (11-12-08)T

**02. Racing Commission to Regulate Simulcast and Advance Deposit Wagering.** The Racing Commission will license and regulate all simulcast operators and activities and advance deposit wagering and activities. (11-12-08)T

**03. Racing Commission to Delegate Powers.** Pursuant to the authority granted in Section 54-2501, Idaho Code, the Racing Commission may delegate to the executive director and the stewards or judges all powers and duties necessary to fully implement the purposes of Section 54-2501, Idaho Code. (11-12-08)T

**016. COSTS AND ANNUAL REPORT.**

**01. Audited and Approved.** Costs necessary to administer the Racing Commission must be audited and approved by the Racing Commission. (11-12-08)T

**02. Annual Report.** The Racing Commission will submit an annual report covering all business transactions and financial statements to the Governor no later than March 31st of each year. (11-12-08)T

**017. -- 019. (RESERVED).**

**020. MEETINGS.**

The Racing Commission will meet at the call of the chair or a majority of the members, or as otherwise provided by statute. Notice of the meetings must be given and the meetings must be conducted in accordance with Idaho's Open Meeting Act, Section 67-2340 through 67-2347, Idaho Code. (11-12-08)T

**021. MEMBER AS A CHAIRMAN.**

The Racing Commission will organize by electing one (1) of its members as a chairman. (11-12-08)T

**022. QUORUM MAJORITY.**

A majority of Commissioners is a quorum. A Racing Commission member may not act in the name of the Racing Commission on any matter without a majority vote of a quorum of the Racing Commission. (11-12-08)T

**023. (RESERVED).**

**024. HORSEMEN'S GROUP.**

For purposes of these rules, whichever group was the recognized horsemen's group in 2004 is hereby designated as the existing horsemen's group. (11-12-08)T

**01. Decertifying an Existing Horsemen's Group - Notice of Intent and Petition.** Upon the filing with the Racing Commission of a notice of intent to decertify an existing horsemen's group by an alternate horsemen's group, the alternate horsemen's group has no more than six (6) months from the date of filing to acquire, on a petition, the signatures of twenty-five percent (25%) of the existing horsemen's group's licensed members.



- (11-12-08)T
- a.** Contents of Notice. The notice of intent shall contain the following: (11-12-08)T
- i.** The name of the alternate horsemen's group; (11-12-08)T
- ii.** The names of the principals of the horsemen's group; (11-12-08)T
- iii.** The date of filing; (11-12-08)T
- iv.** The articles of incorporation and bylaws; and (11-12-08)T
- v.** A copy of the petition as it will be circulated. (11-12-08)T
- b.** No more than one (1) petition by any alternate horsemen's group to decertify an existing horsemen's group will be circulated at any given time. (11-12-08)T
- c.** In addition, the alternate horsemen's group must submit the names of a minimum of fifty (50) members who must be Idaho licensed owners or trainers. (11-12-08)T
- 02. Racing Commission's Receipt of Petition.** (11-12-08)T
- a.** Upon receipt of a petition that meets the criteria set forth in Subsection 024.01 of these rules, the Racing Commission will consider the petition and will validate the signatures found on said petition. Validation includes, but is not limited to, verification of current Idaho licensed owners and trainers and signature verification. (11-12-08)T
- b.** If the validated signatures do not meet the requirements of these rules, the Racing Commission will notify the alternate and the existing horsemen's groups that no further action will be taken on the petition. (11-12-08)T
- 03. Validating Signatures, Setting of Election Date, Conducting an Election.** (11-12-08)T
- a.** If the validated signatures are found to meet these requirements, the Racing Commission will set the date for the election prior to the next regularly scheduled meeting. (11-12-08)T
- b.** A representative of the alternate horseman's group must appear to answer any questions at the meeting at which signatures are validated. (11-12-08)T
- c.** The existing horseman's group must conduct an election among the licensed members. The election results must be reported to the Racing Commission. (11-12-08)T
- d.** A deciding vote of fifty percent plus one (50% + 1) of the ballots returned must be used to determine the one organization to be recognized as the horsemen's group, absent clear and convincing evidence that the election was fraudulent. (11-12-08)T
- 04. Good Cause.** Except for good cause, the Racing Commission will not conduct an election within eighteen (18) months of a prior election among the existing group's licensed members. (11-12-08)T
- 025. (RESERVED).**
- 026. PROHIBITED ACTS.**  
The Commissioners and Racing Commission employees must not: (11-12-08)T
- 01. Financial Interest.** Own a financial interest in a racing association or simulcast operation located in Idaho. (11-12-08)T

**02. Accept Remuneration.** Accept remuneration from a racing association or simulcast operation located in Idaho. (11-12-08)T

**03. Owner, Lessor or Lessee.** Be an owner, lessor or lessee of a horse or a mule that is entered in a race at a licensed race meet in Idaho. (11-12-08)T

**04. Wager.** Commissioners and Racing Commission employees must not wager in any pari-mutuel pool at any facility or through any pari-mutuel system in the State of Idaho. (11-12-08)T

**027. -- 029. (RESERVED).**

**030. POWER OF ENTRY.**

Members of the Racing Commission will have the right to enter and inspect any part of the grounds and facilities of the racing association or simulcast operator. (11-12-08)T

**031. -- 034. (RESERVED).**

**035. EXCLUSION.**

The Racing Commission may order an individual excluded from all or part of any racing association or simulcast operator's grounds under the statutory jurisdiction of the Racing Commission if the stewards or judges or executive director of the Racing Commission determine that: (11-12-08)T

**01. Deemed to Be Detrimental.** The individual is deemed to be detrimental to the best interest of racing or is in violation of Section 54-2509, Idaho Code, or these rules. (11-12-08)T

**02. Honesty and Integrity.** The individual's presence on a racing association or simulcast operator's grounds is inconsistent with maintaining the honesty and integrity of racing. (11-12-08)T

**036. -- 039. (RESERVED).**

**040. ALLOCATION OF RACE DAYS AND RACES.**

The Racing Commission is the sole judge of the number of race days and races for which each racing association is licensed. (11-12-08)T

**041. PUBLIC HEALTH OR SAFETY HAZARD.**

Nothing in these rules is intended to require race days and races to be held if it constitutes a public health or safety hazard. (11-12-08)T

**042. CANCELLATION OF RACE DAYS OR RACES.**

Racing days or races within a racing day specified on a racing association's license may be cancelled under the following conditions: (11-12-08)T

**01. Conditions.** Conditions at the racing facility constitute a health or safety hazard for people using the facility. (11-12-08)T

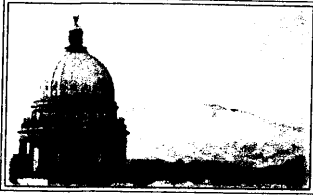
**02. Inclement Weather.** Inclement weather or track conditions constitute a health or safety hazard for track personnel or horses entered to race. (11-12-08)T

**03. Approved Cancellation.** The Racing Commission approved the cancellation due to a health or safety hazard. (11-12-08)T

**04. Advanced Approval.** Races cancelled for any reason other than a health or safety hazard must be approved in advance by the Racing Commission. (11-12-08)T

**05. Rescheduling Cancelled Races.** The Racing Commission will make a good-faith effort to reschedule and approve cancelled races. (11-12-08)T

**043. -- 999. (RESERVED).**



# Legislative Services Office Idaho State Legislature

**Jeff Youtz**  
Director

*Serving Idaho's Citizen Legislature*  
October 29, 2008

Dennis Jackson  
Executive Director  
Idaho State Racing Commission  
P.O. Box 700  
Meridian, ID 83680-0700

Dear Mr. Jackson:

The germane subcommittees for administrative rules review of the Senate State Affairs Committee and the House of Representatives State Affairs Committee held a meeting on October 28, 2008 to review the Idaho State Racing Commission's temporary and proposed administrative rule relating to virtual horse racing contained in Docket No. 11-0402-0803 – Rules Governing Simulcasting.

Section 67-454, Idaho Code, provides that "(u)pon a finding of the same objection by a majority of the members of the subcommittee of each house voting separately, an objection to a rule shall be transmitted to the agency with a concise statement of the reasons for the objection...". Senators McKenzie, Jorgenson and Stennett, along with Representatives Loertscher and Shepherd voted to object to the temporary and proposed rule. Representative Anderson voted against the objection. The reasons for the objection were:

- Article III, Section 20 of the Idaho Constitution provides specific exceptions to the prohibition against gambling in the state, including an exception for "(p)ari-mutuel betting if conducted in conformity with enabling legislation." Agency rulemaking does not constitute "enabling legislation."
- Virtual horse racing is not permitted under current enabling legislation for pari-mutuel betting. Current law, when read in context, limits pari-mutuel betting to races involving live horses. Accordingly, the Commission does not have authority to adopt the rule.
- The issue of virtual horse racing deserves in-depth consideration from the Legislature as a whole.

Sincerely,

  
Katharine Gerrity  
Principal Legislative Research Analyst  
Legislative Services

KAG/

Cc: Germane standing committees  
Office of Administrative Rules

**Mike Nugent, Manager**  
Research & Legislation

**Cathy Holland-Smith, Manager**  
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**Administrative Rule Meeting**  
**October 28, 2008**  
**Idaho Racing Commission**  
**IDAPA 11-04-02 – Rules Governing Simulcasting**  
**Docket No. IDAPA 11-0402-0803**  
**Room 204, Capitol Annex, Boise, Idaho**

In attendance were Germane Joint Subcommittee members from the Senate State Affairs Subcommittee: Co-chair Senator Curt McKenzie and Senator Mike Jorgenson. Participating by telephone conference call was Senator Clint Stennett. Co-chair Representative Tom Loertscher from the House State Affairs Subcommittee was also in attendance at the meeting and Representative Eric Anderson and Representative Mary Lou Shepherd participated by telephone conference call. Legislative Services Office staff present were Katharine Gerrity and Brooke Murdoch.

Others in attendance were: Dennis Jackson and Mike Bosen, Idaho Racing Commission; Mike Gilmore, Idaho Attorney General's Office; Steve Bieri, Rod Nutter, Alan Horowitz and Sheila Schwager, Capitol Racing; Roger Seiber and Jerry Deckard, Capitol West; Tawnja Elison and Kathryn Mooney, Idaho Thoroughbred Association; Brie Koch, Governor's Office; Dave High, Coeur d' Alene Racing, Ltd; Bryan Fischer, Idaho Values Alliance; Nate Shelman, KBOI; Colby Cameron, Sullivan & Reberger; Dan Popkey, Idaho Statesman; Dennis Stevenson and Ed Hawley, Office of Administrative Rules; and John Miller, Associated Press.

The meeting was called to order at 2:00 p.m. by **Co-chair Senator McKenzie** who stated that the purpose of the meeting was to review a temporary and proposed rule by the Idaho Racing Commission, IDAPA 11-0402-0803, concerning virtual horse racing, to determine whether an objection to the rule would be made. **Senator McKenzie** went on to discuss some of the provisions of Section 67-454, Idaho Code.

**Steve Bieri**, owner of Capitol Racing, testified before the Subcommittees, providing them with his perspective of the Commission's authority and the proposed rule. He referenced the October 23<sup>rd</sup> report of Michael Kane, hearing officer for the public hearing that was held in regard to the rule. He noted that, as hearing officer, Mr. Kane determined that the Commission did act within its authority in promulgating the rule, and that the rule is constitutional. He also assured the Subcommittees that there was absolutely no intent to "do an end-run" around the Legislature as some have suggested. He indicated that all those concerned are fully aware that the Legislature is in complete control of the process. He went on to say that the timing of the promulgation of the rule was based on the loss of revenues in the industry. He said that due to the financial problems in the industry, purses will have to be cut. Based on that fact, he said that they want to bring additional

money in, particularly from outside the state of Idaho. **Mr. Bieri** added that he believes that those individuals who are against virtual horse racing have not had an opportunity to actually see what it entails and that once people become familiar with the technology, they are in favor of it. He added that he did not believe that virtual horse racing would constitute an expansion of gaming, that it is a highly regulated process and would, in Idaho, be controlled by the Racing Commission. He also told the Subcommittees that all four horsemen's groups in Idaho support virtual horse racing and submitted a joint letter to the Racing Commission expressing that support.

In questioning Mr. Bieri, **Senator McKenzie** noted that the hearing officer, in his analysis, indicated that the matter constitutes a policy question for the Legislature. He then asked Mr. Bieri whether he thought the Subcommittees are presented with a policy question as to whether they want to have virtual horse racing or whether they are simply presented with the question of whether the agency is acting within its authority. **Mr. Bieri** responded that he believes that it is clear that the action is constitutional in that the Idaho Constitution provides for pari-mutuel betting if conducted in conformity with enabling legislation and that the process they are going through satisfies that provision. He added that virtual horse racing is just another form of a race which is not meant to replace live racing but to supplement and enhance it.

**Senator Jorgenson** asked Mr. Bieri whether virtual horse racing is being conducted in any other states. **Mr. Bieri** responded that it is not but that it is being conducted in places like England, Australia and South Africa. He added that he owns a portion of the virtual racing company and that is why he can bring it to Idaho. He also said that, in his opinion, if Idaho doesn't allow it another state will and they will benefit from it. **Senator Jorgenson** then asked Mr. Bieri whether he has attempted to get any other state to allow it and **Mr. Bieri** responded that he has not made any formal application but that he has talked to some people in other states and has received mixed reactions. He added that people are hesitant until they see how virtual racing works. **Senator Jorgenson** continued by asking whether the revenue would go to the horsemen and whether any would go to the state. **Mr. Bieri** responded that they would anticipate the state participating in some way whereas at the present time, in terms of exporting signals in simulcast, the state does not. **Mr. Bieri** also said that a percentage has not been determined at this time. **Senator Jorgenson** also asked about the bona fides of the people that have created virtual horse racing. **Mr. Bieri** responded that he made an investment in the company and added that the Racing Commission will insist on the process being one with financial security, good communications and integrity in terms of the races.

**Senator McKenzie** then asked Mr. Bieri to explain how the software operates. **Mr. Bieri** responded that the virtual horses have attributes of real horses with over 5,000 virtual horses in the stable at this point. He also said that there is nothing that will indicate, at the start of a race, which horse will win and that you can't fix the race.

**Senator Jorgenson** asked Mr. Bieri to address the decision they made to proceed with a temporary rule rather than waiting for session to begin and going through the process at

that time. **Mr. Bieri** responded that the economy is in such a decline that they felt there was a need for revenue now.

**Tawnja Elison**, representing the Idaho Thoroughbred Association, was the next speaker to address the Subcommittees. She also commented on the fact that the four Idaho horsemen's groups are all in support of virtual horse racing. She added that she believes the law has to be brought up to a 21<sup>st</sup> century standard.

**Representative Loertscher** asked Ms. Elison what the horsemen have been told in terms of what they can expect financially. She indicated that they believe that in simulcast it would be equitable to live races; that they would use the same formula for distribution. She also said that there is no contract at this point and that they have not been given unreasonable expectations. **Mr. Bieri** also added that horsemen get 3.65 percent of the money wagered on simulcast and 9 percent on live races. He added that virtual horse racing would be handled like a live race. He said that they would anticipate anywhere from \$200 to \$2,000 a race but won't know until they start.

**Sheila Schwager** was the next speaker to address the members. Ms. Schwager is legal counsel for Capitol Racing. She referred the Subcommittee members to her letter to Mr. Bosen contained in the hearing officer materials which provides additional information relating to the details of virtual horse racing. She also reiterated a number of determinations made by the hearing officer relating to his finding of constitutionality and the Commission's authority.

**Senator Jorgenson** asked Ms. Schwager about her opinion as to the constitutionality of virtual horse racing in Idaho. **Ms. Schwager** responded that she believes it would be constitutional. He continued by asking whether it requires a leap of faith that virtual horses are real horses. **Ms. Schwager** said that the law provides for the simulcasting of races and they have provided for virtual horse racing by definition in the rule. **Senator Jorgenson** noted his concerns with the blending of real life and virtual reality.

**Senator McKenzie** asked Ms. Schwager about the limits of authority of the Commission and whether she thinks that the definition could be expanded to include any kind of race with any virtual competitor. She responded that the rulemaking authority of the Commission has the gatekeeper of the Governor's Office and then is subject to Legislative review.

**Representative Shepherd** noted that gambling (pari-mutuel betting) is only authorized if controlled by enabling legislation. She asked Ms. Schwager whether she believed there was controlling law. **Ms. Schwager** responded that the law allows the Racing Commission to adopt rules and that the Commission is providing for virtual horse racing by rule. She added that a virtual horse race, although innovative, is just another kind of simulcast race.

**David High** was the next speaker to address the Subcommittees as counsel for Coeur d'Alene Racing. He said that his clients, although interested in virtual horse racing as well,

believe that the matter should proceed through the legislative process rather than through rulemaking. He added that his primary concern is the language of the Idaho Constitution, specifically the requirement of “enabling legislation.”

**Sen. McKenzie** agreed that there clearly isn’t any legislation that covers virtual horse racing, but asked him about the argument that the Commission has broad authority to promulgate rules. **Mr. High** pointed to Mr. Gilmore’s Attorney General Opinion on the matter that states, under current statutes, virtual horse racing is not allowed. He went on to again discuss the meaning of “enabling legislation” in Section 20, Article III of the Idaho Constitution. He said that he believes that phrase is intended to make it difficult to broaden gaming. He acknowledged that the hearing officer reads it differently and found that “enabling legislation” is broader than simply statutes. **Mr. High** agreed in terms of the initiative process but said that he does not believe it would also cover rules. In so noting, he referred the Subcommittees to Section I, Article III of the Constitution. In that section, legislative power is defined as being vested in the Senate and House of Representatives and the term “legislation” does not encompass rules.

**Mr. High** went on to say that the relevant statutes include the terms “horse” and “race” and that these statutes go back to the 1960’s when virtual reality was not in existence. He added that any significant change to the statutes, like the addition of dogs and mules, has been accomplished with legislation, not rule.

**Bryan Fisher** of Idaho Values Alliance was the next speaker. He quoted from the Idaho Constitution in noting to the Subcommittees that gambling in Idaho is contrary to public policy. He stated that he thinks lawmakers recognize the fundamental danger to culture and society that gambling poses, in that it preys on weakness and is regressive, in that poorer families gamble more. He said that expansion of gambling can only be done through enabling legislation and reiterated that his objections were based on moral and constitutional concerns.

**Representative Anderson** indicated that he had not received certain correspondence from legislative members mentioned by Mr. Fisher. He said he hasn’t been contacted by anyone against virtual horse racing. **Senator Jorgenson** said that he also had not received the correspondence until he received his meeting packet. **Representative Anderson** said that his impression of the basis of the meeting was to determine whether the Commission has authority to allow virtual horse racing. He said he was concerned that the Subcommittees have delved into constitutional issues. **Representative Anderson** also added that he doesn’t like to base decisions for Idaho on whether other states have adopted certain practices.

**Senator Jorgenson** commented that, in his opinion, Mr. Bieri in no way attempted to do an end-run around the Legislature, and said those accusations are not the basis of the motion he was about to make. He added that he believes the Commission does not have authority to adopt the rule. He said that the whole topic deserves more consideration and should come directly from the Legislature. **Senator Jorgenson moved to reject the**

**Commission's rule as presented. The motion was seconded by Representative Shepherd.**

**Representative Shepherd** said that she realizes that this would be good for horse racing but doesn't think it should hastily be put in motion. She said that she doesn't view the matter as a moral issue, but strictly an issue of legality and gray area.

**Senator McKenzie** reiterated the motion to oppose the rule and explained the voting process to members. **Representative Anderson** inquired about a substitute motion relating to the matter going to the standing committees of the Legislature to afford a full and broader hearing. **Representative Loertscher** explained that no matter what the outcome of the motion, the matter will go to the full Legislature. He added that it is his understanding that if they make a recommendation to object to the rule, the agency could still proceed with the temporary rule if they choose to and will need to appear before the standing committees on the rule during session. **Representative Anderson** then proceeded to speak in opposition to the motion. He said that he believes that criteria is present to proceed with virtual horse racing and that the Commission's determination that it fits within constitutional criteria and authority are satisfied.

**Representative Loertscher** spoke in favor of the motion stating that as legislators, they enact legislation without knowing what will be available (technology) in the future. He said that they have had to enact laws over time to address technology advances. He doesn't see this issue as any different and he said he believes that enabling legislation is necessary in order to go forward.

**Senator McKenzie** also spoke in favor of the motion stating that the issue before them is not the issue of gambling itself. He said that he doesn't believe that is what the Subcommittees were called for. He said that it is not the policy decision of whether it is appropriate to expand betting or whether this is even an expansion. And in his mind, he said, it is not the actual operation of the gaming. He said that he doesn't think he is in a position to second-guess the Racing Commission or to defer his decision to the opinion of those legislators who oppose virtual horse racing. He said that he believes the issue before them is whether the Commission is acting within their authority – both constitutionally and statutorily. **Senator McKenzie** went on to say that he agrees with Mr. High's comments regarding the constitutional issue involving the phrase "enabling legislation." He said that he is of the opinion that enabling legislation is required to allow a particular form of pari-mutuel betting. He added that, to him, the issue is whether they have already granted that authority under current statutes. He noted Mr. Gilmore's analysis as to whether virtual horse racing would fall under the statutory definition of racing allowed under current statutes. He went on to say that he believes there is a fundamental difference and that they have to look at racing in the context of the whole statute where racing involves live horses. He added that when they have expanded from live horses (for example to dogs) they have done that by statute.

**A roll call vote on the motion was taken with a majority of Subcommittee members from each house voting in favor of the motion. Senators voting in favor of the**



**motion included Senators McKenzie, Jorgenson and Stennett. Representatives voting in favor of the motion included Representative Loertscher and Shepherd. Representative Anderson voted against the motion.**

The meeting was adjourned at 4:20 p.m.