

Dear Senators MCKENZIE, Fulcher, Malepeai, and
Representatives LOERTSCHER, Crane, Smith:

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

IDAPA 38.04.06 - Rules Pertaining To The Rules Governing Use of Exterior of State Property in
Capitol Mall and Other State Facilities (Docket No. 38-0406-1202);

IDAPA 38.04.07 - Rules Pertaining To The Rules Governing Use of Interior of State Property in
Capitol Mall and Other State Facilities (Docket No. 38-0407-1202);

IDAPA 38.04.08 - Rules Pertaining To The Rules Governing Use of Idaho State Capitol Exterior
(Docket No. 38-0408-1202).

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 10/23/2012. 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 11/21/2012.

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 334-4845, or send a written request to the address on the
memorandum attached below.



Jeff Youtz
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

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

FROM: Principal Legislative Research Analyst - Eric Milstead

DATE: October 3, 2012

SUBJECT: Department of Administration

IDAPA 38.04.06 - Rules Pertaining To The Rules Governing Use of Exterior of State Property in Capitol Mall & Other State Facilities (Docket No. 38-0406-1202)

IDAPA 38.04.07 - Rules Pertaining To The Rules Governing Use of Interior of State Property in Capitol Mall & Other State Facilities (Docket No. 38-0407-1202)

IDAPA 38.04.08 - Rules Pertaining To The Rules Governing Use of Idaho State Capitol Exterior (Docket No. 38-0408-1202)

1. The State Department of Administration has submitted temporary and proposed rulemaking at IDAPA 38.04.06 - Rules Governing Use of Exterior of State Property in Capitol Mall & Other State Facilities (Docket No. 38-0406-1202). The temporary and proposed rule provides comprehensive rules governing the use of the exterior of state property located in the Capitol Mall and other state facilities, including properties of the Idaho State Historical Society and Multi-Agency facilities including the Lewiston State Office Building and the Idaho Falls State Office Building.

This rule implements the provisions of House Bill 693 which was passed during the 2012 Legislature. The temporary and proposed rule establishes provisions governing the use of the exterior of Capitol Mall Office properties, the Capitol Annex, Parking Facilities, Other State Properties (Idaho State Historical Properties) and Multi-agency Facilities (Lewiston State Office Building and the Idaho Falls State Office Building). The temporary and proposed rule establishes a number of provisions including: a definitional section (Section 010); provisions governing the use of State Facilities (Section 200), including authorized uses by the public, prohibited uses, state events and exhibits and the priority of uses; a section providing for area closures (section 204); provisions governing restrictions and limitations on uses applying to events, exhibits and public use of the state facilities (Section 300); hours and locations of use (Section 302); landscaping (section 306); fires, candles, flames, posters, banners, signs, etc. (Sections 309 and 310); items subject to search, prohibited items and sound level amplification (Sections 311, 312, and 313); and liability and indemnification (Section 400).

The agency explains that this temporary and proposed rule replaces the temporary rule issued in the spring of 2012. The agency notes that negotiated rulemaking was not conducted in this docket for primarily two reasons: (1) the temporary and proposed rule incorporates many of the public comments submitted on the original temporary rule; and (2) because further agreement between the interested parties is not likely.

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

The temporary rule becomes effective on October 3, 2012.

The temporary and proposed rule appears to be authorized pursuant to section 67-5709, Idaho Code.

2. The State Department of Administration has submitted temporary and proposed rulemaking at IDAPA 38.04.07 - Rules Governing Use of Interior of State Property in Capitol Mall & Other State Facilities (Docket No. 38-0407-1202). The temporary and proposed rule in this docket is a corollary to the temporary and proposed rule in the docket discussed above. Where the above docket dealt with rules governing the exterior of certain state property, the rule in this docket governs the use of the interior of those same properties.

This rule implements the provisions of House Bill 693 which was passed during the 2012 Legislature. The temporary and proposed rule provides comprehensive rules governing the use of the interior of state property located in the Capitol Mall and other state facilities, including properties of the Idaho State Historical Society and Multi-Agency facilities including the Lewiston State Office Building and the Idaho Falls State Office Building. The rule includes a number of provisions governing the use of interior areas of the facilities including, among others: a definitions section (Section 010); authorized uses and prohibited uses (Section 200); restrictions and limitation on use (Section 300); defines uses interfering with access or use of a facility (Section 301); hours and locations of use (Section 302); limits on use of common space (Section 308); and provisions governing prohibited items and provisions dealing with law enforcement and emergencies (Section 310 and 312).

As noted in the docket discussed above, the agency notes that the temporary and proposed rule in this docket replaces a temporary rule issued in the spring of 2012. The agency explains that negotiated rulemaking was not conducted because the rule incorporates public comments submitted on the original temporary rule and because "further consensus between interested parties on the content of the rule is improbable."

The temporary rule becomes effective on October 3, 2012.

The temporary and proposed rule appears to be authorized pursuant to section 67-5709, Idaho Code.

3. The State Department of Administration has submitted temporary and proposed rulemaking at IDAPA 38.04.08 - Rules Governing Use of Idaho State Capitol Exterior (Docket No. 38-0408-1202).

The temporary and proposed rule in this docket establishes provisions governing how the exterior and grounds of the State Capitol may be used for purposes other than public business.

Consistent with the other dockets discussed in this memorandum, this temporary and proposed rule implements the provisions of House Bill 693. Among other provisions, the temporary and proposed provides for: definitions (Section 010); provisions explaining what are "authorized uses by the public," prohibited uses, where state events and exhibits may occur, and the priority of uses (Section 200); provisions governing area closures (Section 204); provisions establishing restrictions and limitations on use and hours and locations of use (Sections 300 and 302); provisions governing the use of posters, placards, banners, signs, etc. (Section 310); and provisions governing items subject to search, prohibited items and sound levels and amplification (Sections 311 and 312 and 313).

Section 400 of the temporary and proposed rule establishes provisions governing the application and issuance of no-fee permits for the use of certain areas of the exterior of the Statehouse. In addition, Sections 401 and 402 of the temporary and proposed rule establish provisions governing the approval, denial and revocation of a use permit. Finally, Section 403 provides an appeals process relating to the denial of a permit application or the revocation of a permit.

The agency notes that negotiated rulemaking was not conducted because the rule incorporates public comment submitted on the original temporary rule and because "further consensus between interested parties ... is improbable."

The effective date of the temporary rule is October 3, 2012.

The temporary and proposed rule appears to be authorized pursuant to section 67-5709, Idaho Code.

cc: Department of Administration
Teresa Luna, Director

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

**38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

DOCKET NO. 38-0406-1202

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 3, 2012.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 because these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1827.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

Teresa Luna
Director
Department of Administration
650 W. State St.
P. O. Box 83720
Boise, ID 83720-0013
Phone: (208) 332-1827
Fax: (208) 334-2307

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR DOCKET NO. 38-0406-1202**

IDAPA 38
TITLE 04
CHAPTER 06

**38.04.06 - RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

000. LEGAL AUTHORITY.

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the state properties in the Capitol Mall and other state facilities. (10-3-12)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." (10-3-12)T

02. Scope. These rules contain the provisions for use of the exterior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Office Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities." Rules governing the use of the exterior of the Capitol are codified under IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department's office. (10-3-12)T

003. ADMINISTRATIVE APPEALS.

These rules do not provide for appeals of the requirements for use of the State Facilities. (10-3-12)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

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

01. Office Hours. The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (10-3-12)T

- 02. Mailing Address.** The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (10-3-12)T
- 03. Street Address.** The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T
- 04. Website Address.** The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T
- 006. PUBLIC RECORDS ACT COMPLIANCE.**
All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T
- 007. SEVERABILITY.**
Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T
- 008. -- 009. (RESERVED)**
- 010. DEFINITIONS.**
- 01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T
- 02. Capitol Annex.** The grounds, exterior of buildings, exterior of improvements, and real property located at 514 West Jefferson Street, Boise, Idaho and occupying block 65 as shown on the Boise City original townsite plat filed in the Ada County Recorder's office in Book 1 on page 1. (10-3-12)T
- 03. Capitol Mall Office Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (10-3-12)T
- 04. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (10-3-12)T
- 05. Department.** The Department of Administration. (10-3-12)T
- 06. Director.** The Director of the Department of Administration or his designee. (10-3-12)T
- 07. Event.** Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held at the State Facilities. As used in this definition, a gathering consists of two (2) or more people. (10-3-12)T
- 08. Exhibit.** Any temporary Commemorative Installation and any attended or unattended display, including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T
- 09. Multi-Agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. (10-3-12)T
- 10. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. (10-3-12)T
- 11. Parking Facilities.** The facilities, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(b), Idaho Code. (10-3-12)T
- 12. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public

that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (10-3-12)T

13. Public Use. Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: (10-3-12)T

a. The transit of individuals through the State Facilities unrelated to an Event or Exhibit; (10-3-12)T

b. Incidental, short-term recreational use of the State Facilities unrelated to an Event or Exhibit; and (10-3-12)T

c. The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

14. Security Personnel. A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T

15. State Events and Exhibits. All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

16. State Facilities. The Capitol Mall Office Properties, the Capitol Annex, the Multi-agency Facilities, the Parking Facilities and the Other State Properties. Use of the phrase "at the State Facilities" shall include the exterior of buildings, exterior of improvements and the grounds and real property comprising the State Facilities. (10-3-12)T

17. State Maintenance and Improvements. Maintenance or improvement of the State Facilities by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (10-3-12)T

011. -- 100. (RESERVED).

101. OTHER STATE PROPERTIES.

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (10-3-12)T

01. Idaho State Historical Society Properties. (10-3-12)T

a. The following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: (10-3-12)T

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (10-3-12)T

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (10-3-12)T

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (10-3-12)T

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (10-3-12)T

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include

the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (10-3-12)T

vi. Pierce Courthouse, located in Pierce, Idaho. (10-3-12)T

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (10-3-12)T

b. The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (10-3-12)T

i. Subsection 010.04. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (10-3-12)T

ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize Private Events or Exhibits and the exclusion of members of the public from attending Private Events and Exhibits. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from a Private Event or Exhibit. (10-3-12)T

iii. Section 302. "Hours and Locations of Use" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. (10-3-12)T

iv. Subsection 305.02. "Domestic Animals" shall apply unless a sign at the property specifies that domestic animals are not permitted. (10-3-12)T

c. The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; commercial use; Public Use; Private Events or Exhibits; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; fireworks displays; and, use of utilities. (10-3-12)T

102. MULTI-AGENCY FACILITIES.

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department. (10-3-12)T

01. Lewiston State Office Building. Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (10-3-12)T

02. Idaho Falls State Office Building. Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (10-3-12)T

103. -- 199. (RESERVED).

200. USE OF STATE FACILITIES.

01. Authorized Uses by the Public. Except as provided otherwise in these rules, the State Facilities are available for use by the public for the following: (10-3-12)T

a. Events. Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. (10-3-12)T

b. Exhibits. Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. (10-3-12)T

c. Public Use. (10-3-12)T

02. Prohibited Uses. The following uses are prohibited at the State Facilities: (10-3-12)T

a. Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: (10-3-12)T

i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (10-3-12)T

ii. Concessions authorized by law. (10-3-12)T

iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. (10-3-12)T

b. Camping. (10-3-12)T

c. Private Events and Exhibits. (10-3-12)T

03. State Events and Exhibits. State Events and Exhibits may occur in any portion of the State Facilities. The Director may waive all or a portion of these rules for a State Event or Exhibit. (10-3-12)T

04. Priority of Uses. State Maintenance and Improvements shall have priority over all other use of the State Facilities. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. (10-3-12)T

201. EVENT AND EXHIBIT DURATION.

The duration of an Event or Exhibit shall not exceed seven (7) consecutive days, including time for set-up and clean-up. An Event or Exhibit may continue to use the State Facilities after a seven (7) consecutive day period if the Event or Exhibit does not use the State Facilities for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Facilities set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Facilities. (10-3-12)T

202. EQUIPMENT AND SUPPLIES.

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. (10-3-12)T

203. ESTABLISHMENT OF PERIMETERS.

Security Personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. (10-3-12)T

204. AREA CLOSURES.

The Director may direct that any portion of the State Facilities be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Facilities has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Facilities closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Facilities. Circumstances presenting an imminent danger of damage to the State Facilities include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (10-3-12)T

205. -- 299. (RESERVED).

300. RESTRICTIONS AND LIMITATIONS ON USE.

The restrictions and limitations on use of the State Facilities set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Facilities. (10-3-12)T

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference with Primary Use of Facility or Real Property. Events, Exhibits, and Public Use of the State Facilities shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the State Facilities include, but are not limited to, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. (10-3-12)T

02. Interference with Access. Events, Exhibits and Public Use of the State Facilities shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Facilities. (10-3-12)T

302. HOURS AND LOCATIONS OF USE.

The hours for Events and Exhibits at the State Facilities are as follows: (10-3-12)T

01. Capitol Mall Office Properties and the Multi-Agency Facilities. The hours of use of the Capitol Mall Office Properties and the Multi-Agency Facilities are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

02. Capitol Annex. The hours of use of the Capitol Mall Annex are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

03. Parking Facilities. The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

04. Maintenance and Improvements. Notwithstanding the hours set forth in Subsections 302.01 and 302.02 of this section, Events, Exhibits and Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (10-3-12)T

303. MOTORIZED VEHICLES.

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (10-3-12)T

304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.

Bicycles, skates, skateboards, and scooters may not be used at the State Facilities. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a State Facility, users must store non-motorized transportation in a designated storage area on the exterior of a State Facility. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (10-3-12)T

305. ANIMALS.

The following shall apply to animals at the State Facilities: (10-3-12)T

01. Wildlife. Unless authorized by the Director no person shall: (10-3-12)T

a. Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the State Facilities. (10-3-12)T

b. No person shall feed, give, or offer food or any noxious substance to a wild animal at the State

Facilities. (10-3-12)T

02. Domestic Animals. (10-3-12)T

a. Domestic animals are not allowed at the State Facilities unless leashed and under the control of the person bringing the animal to the State Facility. (10-3-12)T

b. The person bringing the animal to the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (10-3-12)T

306. LANDSCAPING.

Unless authorized by the Director, no person shall: (10-3-12)T

01. Plants. Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. (10-3-12)T

02. Grass. Dig in or otherwise damage grass areas at the State Facilities. (10-3-12)T

03. Irrigation Equipment. Interfere with, damage or remove irrigation equipment at the State Facilities. (10-3-12)T

04. Landscaping Materials. Move or alter landscaping materials at the State Facilities including, but not limited to, rock, edging materials, and bark or mulch. (10-3-12)T

05. Climbing. Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. (10-3-12)T

307. FOOD AND BEVERAGES.

Consumption of food and beverages at the State Facilities is subject to the following: (10-3-12)T

01. Consumption May Be Prohibited. The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Facilities. (10-3-12)T

02. Alcohol. Alcohol may not be consumed or distributed at the State Facilities. (10-3-12)T

308. SMOKING.

All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. (10-3-12)T

309. FIRES, CANDLES, AND FLAMES.

No fires, candles, or other sources of open flame are permitted at the State Facilities. (10-3-12)T

310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.

01. Electrical Cords. Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (10-3-12)T

02. Railings and Stairways. No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (10-3-12)T

03. Tossing or Dropping Items. No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (10-3-12)T

04. Ingress or Egress. No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Facilities, or to restrict the follow of

individuals using the facility, or to restrict emergency egress or ingress. (10-3-12)T

05. Attaching, Affixing, Leaning, or Propping Materials. Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Facilities not designed for that purpose or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Facilities or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. (10-3-12)T

06. Materials Causing Damage to Exterior Surface. Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the State Facilities or any systems or utilities of the State Facilities including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (10-3-12)T

07. Free Distribution of Literature and Printed Material. All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Facilities that such material is not discarded outside of designated trash receptacles. (10-3-12)T

311. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel or law enforcement may inspect: (10-3-12)T

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

02. Items. Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the State Facilities. (10-3-12)T

312. PROHIBITED ITEMS.

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat, or other item that can be used to injure, damage, or harm persons or property. (10-3-12)T

313. SOUND LEVEL AND AMPLIFICATION.

Sound amplification may not be used at the State Facilities. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Facilities. Security Personnel, law enforcement or a state employee or agent supervising a State Facility may discontinue an Event or Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. (10-3-12)T

314. UTILITY SERVICE.

Events, Exhibits, and the public may not use the utility services of the State Facilities other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Facilities or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (10-3-12)T

315. LAW ENFORCEMENT AND FACILITY EXIGENCY.

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons off of the State Facilities and delay or postpone any Event, Exhibit or other activity until the emergency or threat is abated. (10-3-12)T

316. COMPLIANCE WITH LAW.

All use of the State Facilities shall comply with applicable law including, but not limited to, fire and safety codes. (10-3-12)T

317. HEALTH, SAFETY, AND MAINTENANCE OF STATE FACILITIES.

01. Clean Condition After Use. Users shall leave the State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

02. Items Return to Proper Location. Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. (10-3-12)T

03. Public Health. No person shall excrete human waste at the State Facilities except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (10-3-12)T

04. Fireworks. No person shall possess or use fireworks at the State Facilities. (10-3-12)T

318. -- 399. (RESERVED).

400. LIABILITY AND INDEMNIFICATION.

01. User Retains Liability. Individuals, entities, and organizations using the State Facilities are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Facilities. The state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays at the State Facilities. (10-3-12)T

02. State Liability. Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (10-3-12)T

03. Indemnification. Any individual, entity, or organization permitted to use the State Facilities is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions, or causes of action, together with any and all losses, costs, or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Facilities. (10-3-12)T

04. No Endorsement. Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. (10-3-12)T

401. -- 999. (RESERVED).

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY IN THE CAPITOL MALL AND OTHER STATE FACILITIES

DOCKET NO. 38-0407-1202

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 3, 2012.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 because these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1827.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 11th day of September, 2012.

Teresa Luna
Director
Department of Administration
650 W. State St.
P. O. Box 83720
Boise, ID 83720-0013
Phone: (208) 332-1827
Fax: (208) 334-2307

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR DOCKET NO. 38-0407-1202**

**IDAPA 38
TITLE 04
CHAPTER 07**

**38.04.07 - RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

000. LEGAL AUTHORITY.

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the State Properties in the Capitol Mall and other state facilities. (10-3-12)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.07, "Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities." (10-3-12)T

02. Scope. These rules contain the provisions for use of the interior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. The interiors of such facilities occupied by a tenant under lease may be subject to additional requirements imposed by the tenant. Rules governing the exterior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the use of the exterior of the Idaho State Capitol are codified under IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department's office. (10-3-12)T

003. ADMINISTRATIVE APPEALS.

These rules do not provide for appeals of the requirements for use of the Interior State Facilities. (10-3-12)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

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

01. Office Hours. The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal

holidays. (10-3-12)T

02. Mailing Address. The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013. (10-3-12)T

03. Street Address. The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T

04. Website Address. The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T

007. SEVERABILITY.

Pursuant to IDAPA 44.01.01, "Rules of the Office of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T

008. -- 009. (RESERVED)

010. DEFINITIONS.

01. Camping. Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T

02. Capitol Annex. The interior of improvements located at 514 West Jefferson Street, Boise, Idaho. (10-3-12)T

03. Capitol Mall Office Properties. The interior of improvements set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (10-3-12)T

04. Common Space. The portion of the Interior State Facility that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tennant Space and restrooms not accessed through Tennant Space. Common Space does not include Tenant Space or any area marked "private," "no admission," "staff only" or similarly designated as not open to the public. (10-3-12)T

05. Department. The Department of Administration. (10-3-12)T

06. Director. The Director of the Department of Administration or his designee. (10-3-12)T

07. Interior State Facilities. The interior spaces within the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Multi-agency Facilities, and the Other State Properties. (10-3-12)T

08. Multi-Agency Facilities. The interior of buildings and improvements set forth in Section 102 of these rules. (10-3-12)T

09. Other State Properties. The interior of buildings and improvements set forth in Section 101 of these rules. (10-3-12)T

10. Parking Facilities. The interior of improvements set forth in Section 67-5709(2)(b), Idaho Code. (10-3-12)T

11. Security Personnel. A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T

12. State Business Day. Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (10-3-12)T

13. Tenant Space. The portion of the Interior State Facilities occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. (10-3-12)T

011. -- 100. (RESERVED)

101. OTHER STATE PROPERTIES.

These rules shall apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (10-3-12)T

01. Idaho State Historical Society Properties. (10-3-12)T

a. The interior of the following properties owned or operated by the Idaho State Historical Society shall be Other Properties under these rules: (10-3-12)T

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (10-3-12)T

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (10-3-12)T

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (10-3-12)T

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (10-3-12)T

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (10-3-12)T

vi. Pierce Courthouse, located in Pierce, Idaho. (10-3-12)T

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (10-3-12)T

b. The following sections of these rules shall apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (10-3-12)T

i. Subsection 010.04. "Director" shall mean the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (10-3-12)T

ii. Subsection 200.01. "Authorized Uses by the Public" shall apply except that the Director may authorize public or private uses of the interior of the Idaho Historical Society Properties and the exclusion of members of the public from attending such events. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from the interior of the Idaho Historical Society Properties. (10-3-12)T

iii. Section 302. "Hours and Locations of Use" shall apply as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. (10-3-12)T

c. The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; authorized uses; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; and, use of utilities. (10-3-12)T

102. MULTI-AGENCY FACILITIES.

These rules shall apply to the following Multi-agency Facilities managed and administered by the Department:

(10-3-12)T

01. Lewiston State Office Building. Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (10-3-12)T

02. Idaho Falls State Office Building. Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (10-3-12)T

103. -- 199. (RESERVED)**200. USE OF INTERIOR STATE FACILITIES.**

01. Authorized Uses by the Public. Public access to the Interior State Facilities is limited to the conduct of business with a tenant. Public access to the Tenant Space is limited to the conduct of business with the tenant. (10-3-12)T

02. Prohibited Uses. The following uses are prohibited at the Interior State Facilities: (10-3-12)T

a. Events. The Interior State Facilities shall not be used by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. (10-3-12)T

b. Exhibits. The Interior State Facilities shall not be used by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T

c. Commercial Activity. The Common Space shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service in the Common Space. (10-3-12)T

201. -- 299. (RESERVED)**300. RESTRICTIONS AND LIMITATIONS ON USE.**

Except as otherwise provided, the restrictions and limitations on use of the Interior State Facilities set forth in Sections 301 through 399 of these rules shall apply to all use of the Interior State Facilities. (10-3-12)T

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference With Primary Use of Facility or Real Property. No person shall interfere with the primary use of the Interior State Facilities. The primary uses of the Interior State Facilities include but are not limited to public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use Interior State Facilities and the conduct of business by a tenant of a state facility. (10-3-12)T

02. Interference With Access. No person shall block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Interior State Facilities. (10-3-12)T

302. HOURS AND LOCATIONS OF USE.

01. Capitol Mall Office Properties and Multi-Agency Facilities. The hours for public access to the interior of the Capitol Mall Office Properties and the Multi-agency Facilities are 8 a.m. to 5 p.m. on State Business Days. (10-3-12)T

02. Capitol Annex. The Capitol Annex is closed to public access. (10-3-12)T

03. Parking Facilities. The hours of use of the Parking Facilities shall be governed by IDAPA

38.04.04, "Capitol Mall Parking Rules."

(10-3-12)T

303. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.

Bicycles, skates, skateboards, scooters, and other non-motorized transportation may not be used in the Interior State Facilities. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a state facility, users must store non-motorized transportation in a designated storage area on the exterior of a state facility. Child strollers and wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this Section.

(10-3-12)T

304. ANIMALS.

Animals are not allowed at the Interior State Facilities unless the animal is a service animal necessary to assist persons with disabilities or an animal in the service of law enforcement. Service animals must be leashed and under the control of the person bringing the animal to the Interior State Facilities. The person bringing the animal to the Interior State Facilities shall have in his possession the equipment necessary to remove the animal's urine and fecal matter and shall immediately remove all urine and fecal matter deposited by the animal.

(10-3-12)T

305. FOOD AND BEVERAGES.

Consumption of food and beverages at the Interior State Facilities is subject to the following:

(10-3-12)T

01. Consumption May Be Prohibited. The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Interior State Facilities.

(10-3-12)T

02. Alcohol. Alcohol may not be consumed or distributed in the Common Space.

(10-3-12)T

306. SMOKING.

Smoking is not allowed in the Interior State Facilities.

(10-3-12)T

307. FIRES, CANDLES, AND FLAMES.

No fires, candles or other sources of open flame are permitted in the Interior State Facilities.

(10-3-12)T

308. LIMITS ON USE OF COMMON SPACE.

The following provisions apply to the Common Space.

(10-3-12)T

01. Electrical Cords. Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard.

(10-3-12)T

02. Railings and Stairways. No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways.

(10-3-12)T

03. Tossing or Dropping Items. No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground.

(10-3-12)T

04. Ingress or Egress. No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Interior State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress.

(10-3-12)T

05. Attaching, Affixing, Leaning or Propping Materials. Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any interior surface of the Common Space not designed for that purpose. No items may be leaned or propped against any interior surface of the Common Space.

(10-3-12)T

06. Materials Causing Damage to Interior Surface. Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface in the Common Space or any systems or utilities of the Interior State Facilities, including but not limited to fire suppression systems, drains, ventilation systems, and lighting systems.

(10-3-12)T

309. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel and law enforcement may inspect: (10-3-12)T

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

02. Items. Items brought to the Interior State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Interior State Facilities. (10-3-12)T

310. PROHIBITED ITEMS.

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities; bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat or other item that can be used to injure, damage, or harm persons or property at the Interior State Facilities. (10-3-12)T

311. UTILITY SERVICE.

The public may not use the utility services of the Interior State Facilities except restrooms. (10-3-12)T

312. LAW ENFORCEMENT AND FACILITY EXIGENCY.

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons out of the Interior State Facilities and delay or postpone any activity until the emergency or threat is abated. (10-3-12)T

313. COMPLIANCE WITH LAW.

All use of the Interior State Facilities shall comply with applicable law, including but not limited to fire and safety codes. (10-3-12)T

314. MAINTENANCE OF INTERIOR STATE FACILITIES.

01. Clean Condition After Use. Users shall leave the Interior State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

02. Items Return to Proper Location. Users shall return all items, including but not limited to movable furniture and trash receptacles to their location at the conclusion of use. (10-3-12)T

315. -- 999. (RESERVED)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR

DOCKET NO. 38-0408-1202

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 3, 2012.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-1604 and 67-5709, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2012.

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:

These rules set forth how state properties may be used for purposes other than the conduct of public business. The rules establish the allowed uses and set parameters of use to ensure the safety of persons and property. These rules replace temporary rules issued in the spring of 2012. These rules incorporate many of the comments received in response to the original temporary rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Section 67-5709, Idaho Code, directs that the Department issue rules within thirty (30) days of the enactment of revisions in the 2012 legislative session. These rules incorporate changes arising from public comment on temporary rules issued in response to the Legislature's direction.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

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 because these rules incorporate public comment submitted on the original temporary rules and because further consensus between interested parties on the content of the rules is improbable.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Teresa Luna, Director, at (208)332-1827.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2012.

DATED this 10th day of September, 2012.

Teresa Luna
Director
Department of Administration
650 W. State St.
P. O. Box 83720
Boise, ID 83720-0013
Phone: (208) 332-1827
Fax: (208) 334-2307

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR DOCKET NO. 38-0408-1202**

IDAPA 38
TITLE 04
CHAPTER 08

38.04.08 - RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR

000. LEGAL AUTHORITY.

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities. (10-3-12)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38.04.08, "Rules Governing Use of Idaho State Capitol Exterior." (10-3-12)T

02. Scope. These rules contain the provisions for use of the exterior of the Idaho State Capitol. Rules governing the exterior of the other state facilities are codified under IDAPA 38.04.06, "Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities." Rules governing the interior of the Capitol Mall properties, other state properties, and the multi-agency facilities are codified under IDAPA 38.04.07, "Rules Governing Use of Interior State Property in the Capitol Mall and Other State Facilities." Rules governing parking are codified under IDAPA 38.04.04, "Capitol Mall Parking Rules." (10-3-12)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Department's office. (10-3-12)T

003. ADMINISTRATIVE APPEALS.

These rules provide for appeals of the denial of a Permit under Section 403 of these rules. (10-3-12)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (10-3-12)T

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

01. Office Hours. The Department is open from 8 a.m. to 5 p.m. except Saturday, Sunday, and legal holidays. (10-3-12)T

02. Mailing Address. The Department's mailing address is P.O. Box 83720, Boise, Idaho 83720-0013.

(10-3-12)T

03. Street Address. The Department's principal place of business is located at 650 West State Street, Boise, Idaho 83702-5972. (10-3-12)T

04. Website Address. The Department's website address is <http://adm.idaho.gov/>. (10-3-12)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (10-3-12)T

007. SEVERABILITY.

Pursuant to IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator," all administrative rules in Idaho are presumed severable unless specifically provided to the contrary. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of any remaining portion. (10-3-12)T

008. -- 009. (RESERVED).

010. DEFINITIONS.

01. Camping. Any activity prohibited under Section 67-1613, Idaho Code. (10-3-12)T

02. Commemorative Installation. Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (10-3-12)T

03. Department. The Department of Administration. (10-3-12)T

04. Director. The Director of the Department of Administration or his designee. (10-3-12)T

05. Event. Any press conference, performance, ceremony, presentation, meeting, rally, reception, demonstration, protest, educational tour or gathering of people held on the State Capitol Exterior. As used in this definition, a rally is a gathering of two (2) or more people. (10-3-12)T

06. Exhibit. Any temporary Commemorative Installation and any attended or unattended display including, but not limited to, equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (10-3-12)T

07. Jefferson Steps. The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. (10-3-12)T

08. Permit. A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. A Permit serves as a reservation to use a portion of the State Capitol Exterior with the priority for use set forth in Subsection 200.04 of these rules. (10-3-12)T

09. Private Event or Private Exhibit. Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (10-3-12)T

10. Public Use. Use that is not an Event, Private Event, Exhibit, Private Exhibit or use by a public officer, official, employee, contractor, agency, board or commission for state of Idaho business. Public Use includes, but is not limited to, the following: (10-3-12)T

a. The transit of individuals through the State Capitol Exterior unrelated to an Event or Exhibit; (10-3-12)T

b. Incidental, short-term recreational use of the State Capitol Exterior unrelated to an Event or Exhibit; and (10-3-12)T

c. The conduct of public business with any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

11. Security Personnel. A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (10-3-12)T

12. State Business Day. Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (10-3-12)T

13. State Capitol Exterior. The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder's office in book 1 on page 1. The State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. (10-3-12)T

14. State Events and Exhibits. All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (10-3-12)T

15. State Maintenance and Improvements. Maintenance or improvement of the State Capitol Exterior by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (10-3-12)T

011. -- 199. (RESERVED)

200. USE OF STATE CAPITOL EXTERIOR.

01. Authorized Uses by the Public. Except as provided otherwise in these rules, the State Capitol Exterior is available for use by the public for the following: (10-3-12)T

a. Events. Events shall be held only in the locations and during the hours set forth in these rules. Events shall not exclude any member of the public from attending the Event. (10-3-12)T

b. Exhibits. Exhibits shall be held only in the locations and during the hours set forth in these rules. Exhibits shall not exclude any member of the public from attending the Exhibit. (10-3-12)T

c. Public Use. (10-3-12)T

02. Prohibited Uses. The following uses are prohibited in the State Capitol Exterior: (10-3-12)T

a. Commercial Activity. The State Capitol Exterior shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service on the State Capitol Exterior. (10-3-12)T

b. Camping. (10-3-12)T

c. Private Events and Private Exhibits. (10-3-12)T

03. State Events and Exhibits. State Events and Exhibits may occur in any portion of the State Capitol Exterior. The Director may waive all or a portion of these rules for a State Event or Exhibit. (10-3-12)T

04. Priority of Uses. State Maintenance and Improvements shall have priority over all other use of the State Capitol Exterior. State Events and Exhibits shall have priority over public Events and Exhibits, and Public Use. Events and Exhibits held under a Permit shall have priority over other public Events and Exhibits and Public Use. (10-3-12)T

201. EVENT AND EXHIBIT DURATION.

The duration of an Event or Exhibit on the State Capitol Exterior, including time for set-up and clean-up, shall not exceed seven (7) consecutive days. An Event or Exhibit may continue to use the State Capitol Exterior after a seven (7) consecutive day period if the Event or Exhibit does not use the State Capitol Exterior for twenty-four (24) hours or more between each seven (7) consecutive day period. Events and Exhibits shall not continue beyond the hours for Event or Exhibit use of the State Capitol Exterior set forth in Section 302 of these rules. Exhibits must be removed at the earlier of the conclusion of the Event or the daily conclusion of the hours for Event and Exhibit use of the State Capitol Exterior. (10-3-12)T

202. EQUIPMENT AND SUPPLIES.

Except as provided in these rules, the Department will not provide equipment or supplies for use on the State Capitol Exterior. Where requested in a Permit application for use of the Jefferson Street Steps, the Department may provide a podium and a public address system. (10-3-12)T

203. ESTABLISHMENT OF PERIMETERS.

Security personnel and law enforcement may establish perimeters separating participants in Exhibits and Events. Participants in and observers of any Event or Exhibit shall observe perimeters set pursuant to this section. (10-3-12)T

204. AREA CLOSURES.

The Director may direct that any portion of the State Capitol Exterior be closed for Events, Exhibits and Public Use upon a finding that the closed portion of the State Capitol Exterior has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Capitol Exterior closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Capitol Exterior. Circumstances presenting an imminent danger of damage to the State Capitol Exterior include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (10-3-12)T

205. -- 299. (RESERVED).

300. RESTRICTIONS AND LIMITATIONS ON USE.

The restrictions and limitations on use of the State Capitol Exterior set forth in Sections 301 through 399 of these rules shall apply to all Events, Exhibits, and Public Use of the State Capitol Exterior. (10-3-12)T

301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.

01. Interference With Primary Use of State Capitol Exterior. Events, Exhibits, and Public Use of the State Capitol Exterior shall not interfere with the primary use of the Idaho State Capitol or the adjacent real property and improvements. The primary use of the Idaho State Capitol includes, but is not limited to, the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the Idaho State Capitol or the State Capitol Exterior. (10-3-12)T

02. Interference With Access. Events, Exhibits, and Public Use of the State Capitol Exterior shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Capitol Exterior. (10-3-12)T

302. HOURS AND LOCATIONS OF USE.

01. Hours. The hours for Events and Exhibits on the State Capitol Exterior are as follows: (10-3-12)T

a. General Hours. The general hours for Events and Exhibits are 7 a.m. to 9 p.m. during the months of March through October and 7 a.m. to 6 p.m. during the months of November through February. (10-3-12)T

b. Legislative Sessions. When either house of the legislature or a legislative committee is in session prior to or following general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the session and closed thirty (30) minutes after adjournment of the legislative body conducting business. (10-3-12)T

c. Public Events in the State Capitol. When any Event is publicly scheduled in the interior of the Idaho State Capitol outside the general hours for an Event or Exhibit, the State Capitol Exterior will be open for an Event or Exhibit thirty (30) minutes before commencement of the Event and closed thirty (30) minutes after the published time for the conclusion of the Event. (10-3-12)T

d. Jefferson Street Steps. The hours for Events and Exhibits at the Jefferson Street Steps are 6 a.m. to 11:59 p.m. Events and Exhibits shall not occur on the Jefferson Street Steps between the hours of 12 a.m. and 5:59 a.m. (10-3-12)T

e. Notwithstanding the hours set forth in Paragraphs 302.01.a., 302.01.b., 302.01.c., and 302.01.d. of this section, Events and Exhibits shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (10-3-12)T

02. Locations. In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, all Events, Exhibits and Public Use on the State Capitol Exterior shall be on the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior, and shall be at least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. Events or Exhibits may use the Jefferson Street Stairs for podiums, equipment, standing, and seating, subject to compliance with fire and safety codes. No persons shall place items on, sit or stand on stairways other than the Jefferson Street Steps. (10-3-12)T

303. MOTORIZED VEHICLES.

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (10-3-12)T

304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.

Bicycles, skates, skateboards, and scooters may not be used on the State Capitol Exterior. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior, users must store non-motorized transportation in a designated storage area on the State Capitol Exterior. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (10-3-12)T

305. ANIMALS.

The following shall apply to animals on the State Capitol Exterior: (10-3-12)T

01. Wildlife. Unless authorized by the Director no person shall: (10-3-12)T

a. Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the State Capitol Exterior. (10-3-12)T

b. No person shall feed, give or offer food or any noxious substance to a wild animal on the State Capitol Exterior. (10-3-12)T

- 02. Domestic Animals.** (10-3-12)T
- a.** Domestic animals are not allowed on the State Capitol Exterior unless leashed and under the control of the person bringing the animal to the State Capitol Exterior. (10-3-12)T
- b.** The person bringing the animal to the State Capitol Exterior shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (10-3-12)T
- 306. LANDSCAPING.**
- No person other than state employees or contractors designated by the Director shall: (10-3-12)T
- 01. Plants.** Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the State Capitol Exterior. (10-3-12)T
- 02. Grass.** Dig in or otherwise damage grass areas on the State Capitol Exterior. (10-3-12)T
- 03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment on the State Capitol Exterior. (10-3-12)T
- 04. Landscaping Materials.** Move or alter landscaping materials on the State Capitol Exterior including, but not limited to, rock, edging materials, and bark or mulch. (10-3-12)T
- 05. Climbing.** Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements on the State Capitol Exterior. (10-3-12)T
- 307. FOOD AND BEVERAGES.**
- Consumption of food and beverages on the State Capitol Exterior is subject to the following: (10-3-12)T
- 01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Capitol Exterior. (10-3-12)T
- 02. Alcohol.** Alcohol may not be consumed or distributed on the State Capitol Exterior. (10-3-12)T
- 308. SMOKING.**
- All persons shall observe the smoke free entrance notices and shall smoke only in designated areas of the State Capitol Exterior. (10-3-12)T
- 309. FIRES, CANDLES, AND FLAMES.**
- No fires, candles or other sources of open flame are permitted on the State Capitol Exterior. (10-3-12)T
- 310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**
- 01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (10-3-12)T
- 02. Railings.** No items may be placed on railings and no persons shall sit or stand on railings. (10-3-12)T
- 03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of the Idaho State Capitol or improvements on the grounds of the State Capitol Exterior to another level or to the ground. (10-3-12)T
- 04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Capitol Exterior, or to restrict the follow of

individuals using the facility, or to restrict emergency egress or ingress. (10-3-12)T

05. Attaching, Affixing, Leaning or Propping Materials. Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Capitol Exterior or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Capitol Exterior or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. (10-3-12)T

06. Materials Causing Damage to Surfaces. Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface on the State Capitol Exterior or any systems or utilities of the State Capitol Exterior including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (10-3-12)T

07. Free Distribution of Literature and Printed Material. All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Capitol Exterior that such material is not discarded outside of designated trash receptacles. (10-3-12)T

311. ITEMS SUBJECT TO SEARCH.

To enhance security and public safety, Security Personnel and law enforcement may inspect: (10-3-12)T

01. Packages and Bags. Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (10-3-12)T

02. Items. Items brought onto the State Capitol Exterior, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property on the State Capitol Exterior. (10-3-12)T

312. PROHIBITED ITEMS.

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Capitol Exterior: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Capitol Exterior immediately remove from the State Capitol Exterior any club, bat, or other item that can be used to injure, damage, or harm persons or property. (10-3-12)T

313. SOUND LEVEL AND AMPLIFICATION.

Sound amplification may not be used on the State Capitol Exterior unless authorized by a Permit. Sound levels, whether amplified or not, must not cause a disruption to the primary use of the State Capitol Exterior. Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior may discontinue an Event, Exhibit or Public Use if they request that the sound level be reduced and those in attendance do not reduce the sound level. (10-3-12)T

314. UTILITY SERVICE.

Events, Exhibits, and the public may not use the utility services of the State Capitol Exterior other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of an Event or Exhibit authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Capitol Exterior or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (10-3-12)T

315. LAW ENFORCEMENT AND FACILITY EXIGENCY.

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the State Capitol Exterior and delay or postpone any Event, Exhibit, Public Use or other activity until the emergency or threat is abated. (10-3-12)T

316. COMPLIANCE WITH LAW.

All use of the State Capitol Exterior shall comply with applicable law including, but not limited to, fire and safety codes. (10-3-12)T

317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.

01. Clean Condition After Use. Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. (10-3-12)T

02. Items Return to Proper Location. Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the Event or Exhibit. (10-3-12)T

03. Public Health. No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (10-3-12)T

04. Fireworks. No person shall possess or use fireworks on the State Capitol Exterior. (10-3-12)T

318. -- 399. (RESERVED).

400. PERMITS.

01. Use Without a Permit. A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants desiring to obtain a Permit for use of the State Capitol Exterior outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the State Capitol Exterior, subject to the provisions of these rules, on a first-come, first used basis. (10-3-12)T

02. Permit Areas, Hours and Duration. (10-3-12)T

a. The Director will consider and grant Permits only for Event or Exhibit use of the Jefferson Street Steps. (10-3-12)T

b. The Director will issue Permits reserving use of the Jefferson Street Steps only between the hours of 7 a.m. and 6 p.m. on State Business Days. (10-3-12)T

c. The duration of a Permit will not exceed four (4) consecutive hours. (10-3-12)T

03. Application Period. Permit applications must be received and complete at least five (5) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications submitted more than six (6) months prior to the requested date of the Permit. (10-3-12)T

04. Validity. Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. (10-3-12)T

05. Distribution. Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps during any period of time. (10-3-12)T

06. Application Requirements. Applications for a Permit shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. (10-3-12)T

07. Fees and Costs. There is no fee for a Permit. Individuals, entities, and organizations may be

charged for direct costs as set forth in the Permit including, but not limited to, the following: trash collection, janitorial services, and security services. (10-3-12)T

08. Conditions. The Director may impose reasonable conditions on the use of the State Capitol Exterior in the Permit for the purpose of protecting persons and property. Conditions may include the acquisition of liability insurance and a bond as security for costs arising from the use. (10-3-12)T

09. Transferability. Permits are non-transferable. (10-3-12)T

401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.

01. Period for Approval or Denial. The Department will approve or deny a complete application within two (2) State Business Days of the submission of the application. The failure of the Department to issue a Permit within (2) State Business Days of the submission of a complete application shall be deemed a denial of the application. (10-3-12)T

02. Basis for Denial. Permits may be denied for one (1) or more of the following: (10-3-12)T

a. A Permit has been granted for all or part of the requested location during all or part of the requested time period. (10-3-12)T

b. A public entity or official will be using all or part of the requested location during all or part of the requested time period. (10-3-12)T

c. The requested use would violate any provision of these rules or applicable law. (10-3-12)T

d. These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. (10-3-12)T

e. The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. (10-3-12)T

f. The Permit applicant has not certified that the applicant will comply with these rules or applicable law. (10-3-12)T

g. The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. (10-3-12)T

h. The individual, organization or entity submitting the application: (10-3-12)T

i. Failed to pay costs or damages arising from an earlier use of any state facility; (10-3-12)T

ii. Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; (10-3-12)T

iii. Violated the terms of prior Permits issued to the individual, organization or entity; or (10-3-12)T

iv. Violated any applicable law in the course of a previous Event or Exhibit. (10-3-12)T

i. The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the State Capitol Exterior due to advocacy of: (10-3-12)T

i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; (10-3-12)T

ii. The willful damage or destruction, or seizure and subversion of public property; (10-3-12)T

iii. The forcible disruption or impairment of or interference with the regularly schedule functions of the state of Idaho; (10-3-12)T

iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or (10-3-12)T

v. Other disorders of a violent nature. (10-3-12)T

402. REVOCATION OF A PERMIT.

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. (10-3-12)T

403. APPEALS.

01. Time for Appeal. The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods. (10-3-12)T

a. Seven (7) State Business Days following the written denial of an application for a Permit. (10-3-12)T

b. Seven (7) State Business Days following the revocation of a Permit. (10-3-12)T

c. Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Subsection 402.01 of these rules. (10-3-12)T

02. Requesting an Appeal. The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the address set forth in Section 005 of these rules. Electronic delivery shall not be deemed a physical copy. The written request shall contain the following: (10-3-12)T

a. The name, address, and contact information of the appellant; (10-3-12)T

b. A concise statement of the reason the appeal should be granted; (10-3-12)T

c. Whether the appellant requests informal disposition to expedite the contested case; and (10-3-12)T

d. A description of the Permit sought. (10-3-12)T

03. Informal Disposition. If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. (10-3-12)T

04. Contested Cases. If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in Title 67, Chapter 52, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (10-3-12)T

05. Judicial Review. Judicial review of orders issued in an appeal is provided as set forth in Title 67, Chapter 52, Idaho Code. (10-3-12)T

404. -- 499. (RESERVED).

500. LIABILITY AND INDEMNIFICATION.

01. User Retains Liability. Individuals, entities, and organizations using the State Capitol Exterior are responsible and liable for all suits, damages, claims or liabilities arising from use of the State Capitol Exterior. The

state of Idaho shall have no liability for injury to private property, including posters, placards, banners, signs, equipment, tables, materials, and displays on the State Capitol Exterior. (10-3-12)T

02. State Liability. Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (10-3-12)T

03. Indemnification. Any individual, entity or organization permitted to use the State Capitol Exterior is deemed to agree to indemnify the state of Idaho from and against all claims, demands, actions or causes of action, together with any and all losses, costs or related expenses asserted by any group or persons for bodily injury or damage to property arising out of or in any way connected with the use of the State Capitol Exterior. (10-3-12)T

04. No Endorsement. The grant of a Permit and any action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in an Event or Exhibit. (10-3-12)T

501. -- 999. (RESERVED).