

# **Agenda Item #1**



**FILED:**

January 20, 2023

**STATE OF INDIANA  
OFFICE OF ADMINISTRATIVE LAW PROCEEDINGS**

FINAL AGENCY AUTHORITY: Indiana Horse Racing Commission

**PETITIONER: ERIK N. ESQUEDA  
RESPONDENT: INDIANA HORSE RACING COMMISSION STAFF  
OALP CAUSE NUMBER: HRC-2210-002003  
UNDERLYING ACTION OR ORDER NUMBER: IG-2022-2822**

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**RECOMMENDED ORDER OF DEFAULT JUDGMENT**

Pursuant to IC § 4-21.5-3-24, it is recommended that an Order of Default Judgment be issued by the Indiana Horse Racing Commission (the “Commission”) in favor of Respondent and against Petitioner and sanctions imposed on Petitioner as specified hereunder. The grounds for this Recommended Order of Default Judgment are set forth below. All previously issued Orders with respect to this matter are hereby vacated.

1. On or about September 26, 2022, pursuant to Indiana Horse Racing Stewards Ruling No. IG-2022-2822 (the “Stewards Ruling”) Petitioner was fined \$500 and suspended for twelve days by the Stewards under 71 IAC 7.5-6-5(f)(9) for striking a horse more than three times in succession without giving the horse a chance to respond during the tenth race at Horseshoe Indianapolis on September 22, 2022. Petitioner timely filed an appeal of the Stewards Ruling and the matter was assigned to Administrative Law Judge Michael Buker (“ALJ Buker”) on October 4, 2022. Petitioner served his twelve day suspension which began on October 10, 2022 and ended on October 27, 2022. According to the Stewards Ruling, this was Petitioner’s eighth offense of the racing meet.
2. Petitioner has represented himself at all times during this appeal. On October 6, 2022, an initial telephonic prehearing conference was conducted with Petitioner, co-counsel for Respondent, Mr. Matthew Eggiman and Mr. Dale Pennycuff and ALJ Buker (the “Initial Conference”) pursuant to IC 4-21.5-3-18 and -19. During the Initial Conference, and as set forth in the First Scheduling Order which is hereby incorporated to this Recommended Order, Mr. Esqueda was advised of the following: (1) numerous deadlines, processes, technicalities and other requirements are connected with the pre-hearing, hearing and post-hearing aspects of this matter (each aspect was briefly described to Petitioner) about which Petitioner may want to consult an attorney; (2) ex-parte communications (i.e., communication with ALJ Buker conducted without the presence of both parties) are strictly prohibited; (3) an unrepresented party, such as Mr. Esqueda, has a right to be represented

Recommended Order of Default Judgment (Esqueda)

by counsel or other authorized representative of his choosing; and (4) an unrepresented party, such as Mr. Esqueda, will be held to the same standard of proof and other legal standards as a represented party.<sup>1</sup> Mr. Esqueda was further advised (a) litigation such as this can be technical and complex, (b) failure to adhere to the various requirements and timeframes with respect to the pre-hearing, hearing and post-hearing processes could result in exclusion of evidence offered by Mr. Esqueda from being considered at an evidentiary hearing, and (c) in the event of an ultimate appeal to an Indiana trial court by Mr. Esqueda, the record established at the Hearing generally will be relied upon by the Indiana trial court; i.e., an Indiana trial court may refuse to consider evidence if it was not properly admitted at the evidentiary hearing.

3. On his initial appeal request form filed on September 28, 2022, Mr. Esqueda did not request a stay of his suspension. ALJ Buker advised Mr. Esqueda that, provided the applicable deadline had not passed, he could request a stay of his suspension in which case, if granted, the suspension would not be required to be served until an evidentiary hearing was conducted. At no time did Mr. Esqueda request a stay of the penalties set forth in the Stewards Ruling.
4. Respondent filed written discovery requests on or before the due date of October 21, 2022. According to Respondent, Petitioner did not respond by the due date of November 23, 2022 with respect to any of Respondent's discovery requests.
5. Petitioner did not file any discovery or deposition requests in this matter.
6. Petitioner did not file either a Preliminary Witness and Exhibit list (due on October 21, 2022) or a Final Witness and Exhibit list (due on December 2, 2022) in this matter.
7. On December 19, 2022, Petitioner failed to attend the final prehearing conference for this matter and did not notify either ALJ Buker or Respondent with respect thereto.
8. On December 20, 2022, ALJ Buker issued a Proposed Default Order under IC § 4-21.5-3-24(a). The Proposed Default Order provided that if Petitioner did not file a response within seven days (i.e., by December 27, 2022), a Default Order would be issued under IC § 4-21.5-3-24.
9. As of the date of this Recommended Order, Petitioner has not filed a response to the Proposed Default Order.

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<sup>1</sup> During the Initial Conference in response to a question from Mr. Esqueda, he was informed he could retain an attorney at any point during this matter and, in the event he determined to retain counsel, his attorney would need to file an appearance in this matter.

10. Indiana Code § 4-21.5-3-24(a) provides that at any stage of a proceeding, if a party fails to attend or participate in a prehearing conference, hearing, or other stage of the proceeding or takes no action on a matter for a period of sixty (60) days, then the administrative law judge may issue a notice of proposed default, including a statement of the grounds to the parties.
11. Petitioner failed to attend or participate in a prehearing conference, hearing or other stage of this proceeding when he failed to attend the December 19, 2022 final prehearing conference. Accordingly, a Proposed Default Order, including a statement of the grounds therefor, was issued under IC § 4-21.5-3-24 on December 20, 2022.
12. Indiana Code § 4-21.5-5-4 provides that “a person may file a petition for judicial review ... only after exhausting all administrative remedies available.... A person who (1) fails to timely object to an order or timely petition for review of an order within the period prescribed by this article; or (2) is in default under this article; has waived the person’s right to judicial review under this chapter.”
13. Indiana Code § 4-21.5-3-24(c) provides that if a party fails to respond to a proposed default order within seven days, the Administrative Law Judge shall issue an order of default. Petitioner failed to timely object to the Proposed Default Order. Accordingly, it is recommended that an Order of Default Judgment be entered against him, in which case, Petitioner also will have waived his right to judicial review under IC § 4-21.5-5-4.

### **Recommended Order**

It is recommended the Commission issue an Order of Default Judgment in favor of Respondent and against Petitioner.

It is further recommended the Commission enter an order to provide that Petitioner is in default under IC § 4-21.5-3-24, and thus, Petitioner has failed to exhaust his administrative remedies and has waived his right to judicial review under IC § 4-21.5-5-4.

It is further recommended the Commission enter judgment against Petitioner that requires Petitioner to pay the \$500 fine set forth in the Stewards Ruling.

Pursuant to IC § 4-21.5-3-29(3), Petitioner or any party hereto has fifteen (15) days following the receipt of this Recommended Order of Default Judgment to file written exceptions with the Commission.

IT IS SO RECOMMENDED THIS 20<sup>th</sup> DAY OF JANUARY 2023.

/s/ Michael Buker  
\_\_\_\_\_  
Hon. Michael Buker  
Administrative Law Judge  
Office of Administrative Proceedings

**Distributed to Parties:**

Mr. Erik N. Esqueda – Petitioner, served by ALP E-Service email at [ENEJockey777@gmail.com](mailto:ENEJockey777@gmail.com).

Indiana Horse Racing Commission Staff (Agency) – Respondent, served by Co-Counsel Dale L. Pennycuff by ALP E-Service email at [dpennycuff@hrc.in.gov](mailto:dpennycuff@hrc.in.gov) and Co-Counsel Matthew E. Eggiman, by ALP EService email at [meggiman1@hrc.in.gov](mailto:meggiman1@hrc.in.gov).

Recommended Order of Default Judgment (Esqueda)

# **Agenda Item #2**

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into between the Indiana Horse Racing Commission (“Commission”), by Deena Pitman (“Director Pitman”), Executive Director of the Indiana Horse Racing Commission Staff (“Commission Staff”) and Nicole D. Wettstein (“Wettstein”), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and Wettstein shall be referred to herein as “the Parties.” This Agreement is subject to the review and approval of the Commission.

### RECITALS

1. The Indiana Horse Racing Commission (“IHRC”) is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. At all times relevant to this Settlement Agreement, Wettstein was licensed as a veterinarian with the IHRC.
3. As a licensee of the IHRC, Wettstein is subject to IHRC rules and regulations.
4. As a licensee, Wettstein is required to be knowledgeable of all IHRC rules and regulations.
5. 71 IAC 8.5-5-2 prohibits the possession and/or use of drugs, substances, or medications that have not been approved by the United States Food and Drug administration (FDA); possession of non-FDA approved compounds, where there are FDA approved, commercially available medications to appropriately treat a horse; possession of improperly compounded substances which contain non-FDA approved ingredients; and possession of drugs that do not meet the labeling requirements established 71 IAC 8.5-5-2(j).
6. On or about July 5, 2022, a search was conducted of Barn #15, Tack Room “L”, at the Horseshoe Indianapolis in Shelbyville, Indiana, which was under the control of Wettstein, in which substances were found in violation of 71 IAC 8.5-5- 2.
7. Following the determination that Wettstein was in possession of substances that violated 71 IAC 8.5-5-2, the Stewards issued a ruling (Ruling No. IG-2022-2874) suspending Wettstein for a period of sixty (60) days at the Horseshoe Indianapolis, beginning November 7, 2022, and extending through January 5, 2023. The Stewards further fined Wettstein five-thousand dollars (\$5,000).
8. Wettstein timely filed her appeal on November 14, 2022.
9. The Office of Administrative Law Proceedings (“OALP”) assigned ALJ Michael Buker to the matter.

10. The evidentiary hearing is set for April 5, 2023. Following additional information gathering by Commission Staff, settlement negotiations were entered on or about February 1, 2023.

11. Now, in full and complete resolution of all further administrative proceedings involving Wettstein relative to Steward's Ruling No. IG-2022-2874 and the violation referenced above, the Commission Staff and Wettstein agree to the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

1. Commission Staff maintains that it has sufficient evidence to prove by a preponderance of the evidence that Wettstein committed the violation charged in the Ruling. Wettstein contests the same and maintains that she has sufficient evidence to prove by a preponderance of the evidence that she did not commit the violation charged in the Ruling.
2. This agreement does not cover any violations that may be discovered that are not referenced in Steward's Ruling No. IG-2022-2874.
3. The parties stipulate that judgment be entered against Wettstein solely for violation of IHRC rule 71 IAC 8.5-5-2 and state "For violation of IHRC rule 71 IAC 8.5-5-2, 'Prohibited Practices,' Dr. Nicole Wettstein agrees to the penalty of a sixty-day suspension and a five thousand dollar (\$5,000) fine. The suspension time has already been served and the fine has been paid. In consideration, Wettstein agrees to dismiss with prejudice, withdraw and/or waive all related pending legal and administrative proceedings including any related appeals, and release all claims and potential claims against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees relating to the Commission actions that are the subject of this Settlement Agreement. Wettstein specifically agrees to release and forever discharge any claims and/or complaints against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees and/or the stewards arising from, relating to, or in any way connected with the issues associated with the Commission Staff's initiation and/or pursuit of the underlying disciplinary action against Wettstein.
4. The Parties specifically agree that this Agreement shall be governed by applicable Indiana regulations and any failure to comply with those rules is subject to enforcement by the Stewards and/or the Commission.
5. Wettstein and Commission Staff acknowledge that this Agreement is subject to the approval of the Indiana Horse Racing Commission.



6. The Commission will enter a ruling consistent with this Agreement which will make clear that the sanction of the sixty-day suspension has been served and the fine has been paid.
7. Should Wettstein breach this Agreement, this Agreement shall be deemed void, and the Commission Staff may commence proceedings related to the alleged violation as though the Agreement never existed.
8. Any waiver of any provision of this Agreement must be in writing and must be approved by the Commission or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any provision hereof (whether or not similar) or a continuing waiver.
9. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
10. This Agreement shall be deemed executed in the State of Indiana and shall be governed and construed in accordance with the laws of Indiana, without regard to its choice of law provisions, and all claims relating to or arising out of this Agreement, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Indiana, without regard to its choice of law provisions. Exclusive jurisdiction and venue over all disputes arising out of or in connection with this Agreement shall be brought only in a state court of competent jurisdiction located in Marion County, Indiana.
11. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.
12. Wettstein represents that she has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has had the right to consult with her own counsel, and agrees to be bound by its terms. Wettstein acknowledges that she has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

2/9/2023

Date

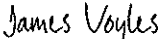
DocuSigned by:



Nicole D. Wettstein

Witnessed and Approved:

DocuSigned by:



James H. Voyles, Jr., Counsel for Nicole Wettstein

DocuSigned by:



Tyler D. Helmond, Counsel for Nicole Wettstein

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

2-10-2023

Date



Deena Pitman, Executive Director

Approved as to form:



David Rothenberg, General Counsel

# **Agenda Item #3**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between the Indiana Horse Racing Commission ("Commission"), by Deena Pitman ("Director Pitman"), Executive Director of the Indiana Horse Racing Commission Staff ("Commission Staff") and Melanie Wrenn ("Ms. Wrenn"), a licensee subject to regulation by the Commission. Collectively, the Commission Staff and Ms. Wrenn shall be referred to herein as "the Parties." This Agreement is subject to the review and approval of the Commission.

### RECITALS

1. The Indiana Horse Racing Commission ("IHRC") is the administrative agency in the State of Indiana that regulates horse racing pursuant to provisions of the Indiana Code, Title 4, Article 31.
2. At all times relevant to this Settlement Agreement, Ms. Wrenn was licensed as an owner and trainer with the IHRC.
3. As a licensee of the IHRC, Ms. Wrenn is subject to IHRC rules and regulations.
4. As a licensee, Ms. Wrenn is required to be knowledgeable of all IHRC rules and regulations.
5. After a hearing on October 21, 2022, the Judges at Harrah's Hoosier Park issued ruling HP-2022-2889 on or about November 17, 2022.
6. The judges found Ms. Wrenn violated 71 IAC 8-1-1.5(a) & (b)(1), 71 IAC 5-3-2(a) & (b), 71 IAC 5-3-3(a)(5), (14), (15) & (31), 71 IAC 5-3-3.1, and 71 IAC 8-1-4.1(a) when, on September 13, 2022, the horse "Helpoftheseason," in which she was the listed trainer, was administered the substance Flunixin via injection by an IHRC licensed veterinarian. The horse "Helpoftheseason" was scheduled to, and in fact did, race that day, September 13, 2022.
7. Ms. Wrenn states that she spoke with IHRC investigators on the Friday after the race.
8. The Judges issued a penalty consisting of a one-hundred eighty (180) day suspension. Ms. Wrenn is required to serve ninety (90) days of the suspension, and she will be put on probation for the remaining ninety (90) days, which will be suspended provided that she does not receive any additional equine positive tests during the probationary period.
9. Ms. Wrenn timely filed her appeal on or about November 21, 2022.
10. The Office of Administrative Law Proceedings ("OALP") assigned ALJ Brian Hahn ("ALJ Hahn") to the matter on or about November 30, 2022.

11. ALJ Hahn scheduled a pre-hearing teleconference for December 5, 2022.
12. At that pre-hearing teleconference, the parties agreed to meet and discuss potential settlement opportunities.
13. Parties met via telephone on January 10, 2023, to discuss potential settlement opportunities. Parties agreed to continue discussions into the following week.
14. A second pre-hearing teleconference with ALJ Hahn occurred on January 17, 2023. Parties informed ALJ Hahn that settlement negotiations were ongoing.
15. Now, in full and complete resolution of any and all further administrative proceedings involving Ms. Wrenn relative to Judges' Ruling No. HP-2022-2889 and the violations referenced above, the Commission Staff and Ms. Wrenn agree to the terms and conditions set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the promises and covenants to be performed as set forth herein, the Parties agree as follows:

16. Licensee, Melanie Wrenn, agrees that Commission Staff can prove the following rules were violated: 71 IAC 8-1-1.5(a) & (b)(1), 71 IAC 5-3-2(a) & (b), 71 IAC 5-3-3(a)(5), (14), (15) & (31), 71 IAC 5-3-3.1, and 71 IAC 8-1-4.1(a).
17. These violations occurred when Ms. Wrenn failed to supervise a groom, licensed by the Indiana Horse Racing Commission, who presented an in-today horse to an IHRC licensed veterinarian for treatment at Harrah's Hoosier Park on September 13, 2022.
18. This agreement does not cover any violations that may be discovered that are not referenced in Judges' Ruling No. HP-2022-2889.
19. Ms. Wrenn agrees to dismiss with prejudice, withdraw and/or waive all related pending legal and administrative proceedings including any related appeals, and release all claims and potential claims against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees relating to the Commission actions that are the subject of this Settlement Agreement. Ms. Wrenn specifically agrees to release and forever discharge any claims and/or complaints against the Commission, the Commission Staff and/or its current or former representatives, agents and/or employees and/or the stewards arising from, relating to, or in any way connected with the issues associated with the Commission Staff's initiation and/or pursuit of the underlying disciplinary action against Ms. Wrenn.

20. The Parties specifically agree that this Agreement shall be governed by applicable Indiana regulations and any failure to comply with those rules is subject to enforcement by the Judges and/or the Commission.
21. Ms. Wrenn and Commission Staff acknowledge that this Agreement is subject to the approval of the Indiana Horse Racing Commission.
22. Ms. Wrenn agrees to the following conditions on her 2023 IHRC owner/trainer license as changes to her trainer operations for 2023 and beyond to mitigate the penalty set forth by the Judges in paragraph seven (7) above:
  - a. Ms. Wrenn will post in-today signs on the assigned stalls by 8:00 a.m. for any horse she trains that is scheduled to race that day.
  - b. Ms. Wrenn will use a clearly and easily identifiable halter tag by 10:00 a.m. for any horse she trains that is scheduled to race that day.
  - c. Ms. Wrenn will create group texts with herself and her key employees, specifically Claude Faucher, Kevin Dokey, Peter Wrenn, and any veterinarian treating her horses that day, in order to give direction regarding in-today horses she trains and any other racing stable matters.
  - d. If any of the employees listed in the above condition no longer work for Ms. Wrenn, she will update the group text list with a different or new employee.
  - e. When any horse trained by Ms. Wrenn is to receive treatment, Ms. Wrenn will send a text that includes the name of the horse, the treatment that is to be given, and the name of the IHRC licensed veterinarian she has identified to give that treatment. These texts will be sent by 11:00 a.m. on the day of the treatment.
23. The Commission agrees to reduce her sentence to seventy-five (75) days suspension, beginning on November 14, 2022, and ending on January 28, 2023.
24. Ms. Wrenn agrees that any violation of the conditions listed in paragraph twenty-one (21) above could result in further suspension of her license.
25. Any waiver of any provision of this Agreement must be in writing and must be approved by the Commission or the Commission Staff. No waiver of any provision of this Agreement shall constitute either a waiver of any provision hereof (whether or not similar) or a continuing waiver.
26. If and to the extent any provision of this Agreement is held invalid or unenforceable at law, such provision will be deemed stricken from the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
27. This Agreement shall be deemed executed in the State of Indiana, and shall be governed and construed in accordance with the laws of Indiana, without regard to its choice of law provisions, and all claims relating to or arising out of this Agreement,

or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of Indiana, without regard to its choice of law provisions. Exclusive jurisdiction and venue over any and all disputes arising out of or in connection with this Agreement shall be brought only in a state court of competent jurisdiction located in Marion County, Indiana.


28. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, fully enforceable counterpart of all purposes, but all of which constitute one and the same instrument.

29. Ms. Wrenn represents that she has carefully read and reviewed the foregoing Agreement, acknowledges its contents, has the right to consult with counsel, and agrees to be bound by its terms. Ms. Wrenn acknowledges that she has voluntarily entered into this Agreement as of the date and year herein set forth.

IN WITNESS HEREOF, the Parties have executed this Agreement on the dates listed below.

I swear, under penalties for perjury, that the foregoing representations that have been made by me are true and correct.

2-13-23  
Date

  
\_\_\_\_\_  
Melanie Wrenn (pro se)

ON BEHALF OF THE INDIANA HORSE RACING COMMISSION:

2-13-23  
Date

  
\_\_\_\_\_  
Deena Pitman, Executive Director

Approved as to form:

  
\_\_\_\_\_  
Matt Eggiman, Deputy General Counsel

# **Agenda Item #4**



## TITLE 71 INDIANA HORSE RACING COMMISSION

### Notice of Intent to Readopt

LSA Document #23-91

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

**OVERVIEW:** Rules to be readopted without changes are as follows:

71 IAC 6-3-2	Conditions
71 IAC 8-8	Postmortem; Disposal of a Dead Horse
71 IAC 8-9.1	Veterinarian's List
71 IAC 8.5-1-6	Program information
71 IAC 8.5-7	Postmortem; Disposal of a Dead Horse
71 IAC 8.5-9	Accident on Track
71 IAC 8.5-13-3	Refusal to test
71 IAC 8.5-13-4.1	Finding of normal levels
71 IAC 8.5-13-5	Option to determine normal level
71 IAC 8.5-13-6	Penalties
71 IAC 8.5-13-7	Presence of horse in ship-in barn
71 IAC 8.5-13-8	Presence of caretaker with horse
71 IAC 13.5-5-1	Indiana Bred Preference
71 IAC 14-4-5	Distribution of proceeds

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to the Small Business Regulatory Coordinator for this rule (see IC 4-22-2-28.1):

David Rothenberg  
General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian Street, Suite 175  
Indianapolis, IN 46202  
(317) 232-0399  
[Drothenberg@rhc.IN.gov](mailto:Drothenberg@rhc.IN.gov)

Statutory authority: IC 4-31-3-9; IC 4-35-7-12.

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 650-0126  
[MaJaworowski@iedc.IN.gov](mailto:MaJaworowski@iedc.IN.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

# TITLE 71 INDIANA HORSE RACING COMMISSION

## Notice of Intent to Readopt

LSA Document #23-71

Readopts rules in anticipation of IC 4-22-2.5-2, providing that an administrative rule adopted under IC 4-22-2 expires January 1 of the seventh year after the year in which the rule takes effect unless the rule contains an earlier expiration date. Effective 30 days after filing with the Publisher.

**OVERVIEW:** Rules to be readopted without changes are as follows:

71 IAC 2-10	Exclusion of Patrons
71 IAC 6-1-1	General provisions
71 IAC 6-1-4	Excusing claimed horse
71 IAC 6.5-1-2	Claiming of horses
71 IAC 6.5-1-3	Claim certificate
71 IAC 6.5-1-4	Prohibitions
71 IAC 8-1-4.1	Nonsteroidal anti-inflammatory drugs (NSAIDs)
71 IAC 8-1-4.2	Threshold levels
71 IAC 8-1-5.5	Bleeding from nostrils
71 IAC 8-1-7.1	Multiple medication violations
71 IAC 8-1-9	Environmental contaminants and substances of human use
71 IAC 8-3-1	Laboratory reports
71 IAC 8-3-3	Selection of horses tested
71 IAC 8-3-4	Taking of samples
71 IAC 8-3-5	Out of competition testing
71 IAC 8-4-1	Collection procedures
71 IAC 8-4-3	Administrative procedures prior to split sample testing
71 IAC 8-6-2	Prohibited practices
71 IAC 8-10-6	Penalties
71 IAC 8-11-2	Licensee subject to testing; positive sample results
71 IAC 8-11-4	Refusal or failure to be tested
71 IAC 8.5-1-4.1	Nonsteroidal anti-inflammatory drugs (NSAIDs)
71 IAC 8.5-1-4.2	Threshold levels
71 IAC 8.5-1-9	Environmental contaminants and substances of human use
71 IAC 8.5-2-1	Laboratory reports
71 IAC 8.5-2-3	Selection of horses tested
71 IAC 8.5-2-4	Taking of samples
71 IAC 8.5-2-5	Out of competition testing
71 IAC 8.5-3-1	Collection procedures
71 IAC 8.5-3-3	Administrative procedures prior to split sample testing
71 IAC 8.5-5-2	Prohibited practices
71 IAC 8.5-10-6	Penalties
71 IAC 8.5-11-4	Refusal or failure to be tested
71 IAC 9-2.5-1	Wagering rules
71 IAC 14-4-4	Breeder award
71 IAC 14.5-2-1.5	Embryo transfer registration
71 IAC 14.5-3-1	Owner award
71 IAC 14.5-3-2	Breeder award
71 IAC 14.5-3-3	Stallion owner award
71 IAC 14.5-5	Indiana Bred or Foaled Preference

Requests for any part of this readoption to be separate from this action must be made in writing within 30 days of this publication. Send written comments to the Small Business Regulatory Coordinator for this rule (see IC 4-22-2-28.1):

David Rothenberg  
General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian Street, Suite 175  
Indianapolis, IN 46202  
(317) 232-0399  
[Drothenberg@rhc.IN.gov](mailto:Drothenberg@rhc.IN.gov)

Statutory authority: IC 4-31-3-9; IC 4-35-7-12.

For purposes of IC 4-22-2-28.1, the Small Business Ombudsman designated by IC 5-28-17-6 is:

Matthew Jaworowski  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 650-0126  
[MaJaworowski@iedc.IN.gov](mailto:MaJaworowski@iedc.IN.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in IC 5-28-17-6, specifically IC 5-28-17-6(9), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

# **Agenda Item #5**

# PROPOSED CHANGES TO THE INDIANA ADMINISTRATIVE CODE - 2023

## Medication Rules

### **71 IAC 8-1-1.5 Medication**

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 1.5. (a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1 or IC 4-31-2.1 [~~IC 4-31-2 was repealed by P.L.105-2022, SECTION 1, effective July 1, 2022.~~], except as provided for in this rule.

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:

- (1) injection;
- (2) jugging;
- (3) oral administration;
- (4) tube;
- (5) rectal infusion or suppository;
- (6) inhalation; or
- (7) any other means;

within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions. The prohibition also includes, but is not limited to, the topical, oral, or nasal administration of compounds, such as Traileze, Vapol, Vicks vapor-rub, wind-aid, exhale ease, or containing methylsalicylate, camphor, potassium iodide, or products containing "caine" derivatives or dimethylsulfoxide (DMSO).

(c) Substances or metabolites thereof which are contained in equine feed or feed supplements that do not contain pharmacodynamic or chemotherapeutic agents are not considered foreign substances if consumed **by the horse's free choice** in the course of normal dietary intake (eating and drinking).

(d) The prohibition in subsection (b) notwithstanding, the use of nebulizers are permitted on an entered horse within twenty-four (24) hours of the scheduled post time for the horse's race until the horse's arrival in the paddock provided their use is restricted to water and saline solutions only.

(e) Topical dressings such as leg paints, liniments, ointments, salves, hoof dressings, and antiseptics which do not contain anesthetics or a pharmacodynamic or a chemotherapeutic agent may be administered at any time prior to a horse's arrival in the paddock. (*Indiana Horse Racing Commission; 71 IAC 8-1-1.5; emergency rule filed Apr 3, 2013, 10:37 a.m.: 20130410-IR071130133ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; emergency rule filed May 7, 2014, 2:24 p.m.: 20140514-IR-071140142ERA; readopted filed Oct 7, 2020, 2:27 p.m.: 71 IAC 8-1-2 Foreign substances prohibited Authority: IC 4-31-3-9 Affected: IC 4-31-12 20201104-IR-071200406RFA; emergency rule filed \_\_\_\_\_*)

### **71 IAC 8.5-1-1.5 Medication**

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 1.5. (a) No horse participating in a race or entered in a race shall carry in its body any foreign substance as defined in 71 IAC 1 or IC 4-31-2.1 [~~IC 4-31-2 was repealed by P.L.105-2022, SECTION 1, effective July 1, 2022.~~], except as provided for in this rule.

(b) No substance, foreign or otherwise, shall be administered to a horse entered to race by:

- (1) injection;
- (2) jugging;
- (3) oral administration;
- (4) tube;
- (5) rectal infusion or suppository;
- (6) inhalation; or
- (7) any other means;

within twenty-four (24) hours prior to the scheduled post time for the first race except furosemide as provided for in this rule. The prohibitions in this section include, but are not limited to, injection or jugging of vitamins, electrolyte solutions, and amino acid solutions. The prohibition also includes, but is not limited to, the topical, oral, or nasal administration of compounds, such as Traileze, Vapol, Vicks vapor-rub, wind-aid, exhale ease, or containing methylsalicylate, camphor, potassium iodide, or products containing "caine" derivatives or dimethylsulfoxide (DMSO).

(c) Substances or metabolites thereof which are contained in equine feed or feed supplements that do not contain pharmacodynamic or chemotherapeutic agents are not considered foreign substances if consumed **by the horse's free choice** in the course of normal dietary intake (eating and drinking).

(d) The prohibition in subsection (b) notwithstanding, the use of nebulizers are permitted on an entered horse within twenty-four (24) hours of the scheduled post time for the horse's race until the horse's arrival in the paddock provided their use is restricted to water and saline solutions only.

(e) Topical dressings such as leg paints, liniments, ointments, salves, hoof dressings, and antiseptics which do not contain anesthetics or a pharmacodynamic or a chemotherapeutic agent may be administered at any time prior to a horse's arrival in the paddock. (*Indiana Horse Racing Commission; 71 IAC 8.5-1-1.5; emergency rule filed Apr 3, 2013, 10:37 a.m.: 20130410-IR071130133ERA; emergency rule filed May 7, 2014, 2:24 p.m.: 20140514-IR-071140142ERA; readopted filed Oct 7, 2020, 2:27 p.m.: 20201104-IR-071200406RFA; emergency rule filed \_\_\_\_\_*)

## **71 IAC 8-6-2 Prohibited practices**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 2. (a) The possession or use, or both, of a drug, substance, or medication, specified in subdivisions (1) through (12) on the premises of a facility under the jurisdiction of the commission is prohibited. The following drugs or substances include those for which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:

- (1) Erythropoietin.
- (2) Darbepoetin.
- (3) Oxyglobin.
- (4) Hemopure.
- (5) Snake venom.
- (6) Snail venom.
- (7) Ractopamine.
- (8) Zilpaterol.
- (9) Aminimidazole carboxamide ribonucleotide (AICAR).
- (10) My-inositol trispyrophosphate (ITPP).
- (11) Equine growth hormone.
- (12) Thymosin beta.

(b) The use of extracorporeal shock wave therapy (ESWT) or radial pulse wave therapy (RPWT) shall not be permitted unless the following conditions are met:

- (1) Any treated horse shall not be permitted to race or breeze for a minimum of ten (10) days following treatment and will be placed on the veterinarian's list for ten (10) days.
- (2) A list of horses that have received ESWT treatment within the last ten (10) days shall be posted in the race office and be accessible to drivers and horsemen during normal business hours and be made available to other regulatory jurisdictions.
- (3) The use of ESWT or RPWT machines shall be limited to practicing veterinarians.
- (4) Any ESWT or RPWT machines on the association grounds must be registered with and approved by the commission or its designee before use.
- (5) All ESWT or RPWT treatments must be reported to the official veterinarian **and the presiding judge** on the prescribed form not later than the time prescribed by the official veterinarian.
- (6) The trainer shall report all ESWT or RPWT treatments to the official veterinarian and the presiding judge within twenty-four (24) hours of treatment.**
- (7) ~~(6)~~ A horse that receives any such treatment without full compliance with this section and similar rules in any other jurisdiction in which the horse was treated shall be placed on the **judge's steward's** list.
- (8) ~~(7)~~ Any person participating in the use of ESWT or RPWT or the possession of ESWT or RPWT machines, or both, in violation of this rule shall be considered to have committed a prohibited practice and is subject to a Class A Penalty.**

(c) The possession or use, or both, of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use (human or animal) is forbidden without prior permission of the commission. For purposes of this rule, the term "drug" means any substance, food or nonfood, that is used to treat, cure, mitigate, or prevent a disease and any nonfood substance that is intended to affect the structure or function of the animal. The term includes any substance administered by injection, other than vaccines licensed by the United States Department of Agriculture (USDA).

(d) While on the premises of a facility under the jurisdiction of the commission, veterinarians may only possess drugs, including compounds described in subsection (e), in amounts commensurate with the needs of horses with which the veterinarian has a veterinarian-client-patient relationship as that term is defined in 888 IAC 1.1-5-1(2).

(e) Notwithstanding subsection (c), veterinarians may possess compounded drugs with the restrictions listed in subdivisions (1) through (4). Compounding includes any manipulation of a drug beyond that stipulated on the drug label, including, but not limited to, mixing, diluting, concentrating, or creating oral suspensions or injectable solutions as follows:

- (1) Compounds may only be prescribed to or prepared for horses with which the veterinarian has a veterinarian-client-patient relationship.
- (2) Compounded drugs may only be made from other FDA approved drugs.
- (3) Veterinarians may not possess compounds where there are FDA approved, commercially available drugs that can appropriately treat the horse.
- (4) Compounded drugs must be in containers that meet the prescription labeling requirements in subsections (i) and (j).

Combining two (2) or more substances with pharmacologic effect constitutes the development of a new drug. This may only be done in accordance with state and local laws and must contain FDA approved medications, if available.

(f) The possession of any drug not approved by the FDA for distribution in the United States is prohibited, unless the veterinarian can show proof of prior authorization from the FDA Center for Veterinary Medicine that has been obtained on a single patient basis only. The authorization must be maintained in the animal health record. A copy of the authorization must be available for immediate inspection.

(g) Extra-label administration of drugs, including use for indication or at dosage levels, frequencies, or routes of administration other than those stated in the labeling, is permitted for FDA

approved drugs only. Extra-label use must meet the prescription labeling requirements in subsections (i) and (j).

(h) A veterinarian shall not possess any drug that is not labeled pursuant to the requirements of subsection (i) or (j).

(i) Drugs possessed by practicing veterinarians on the premises of a facility under the jurisdiction of the commission that have not yet been prescribed or dispensed to horses with which the veterinarian has a veterinarian-client-patient relationship must be affixed with the manufacturer's label, which must include:

- (1) recommended or usual dosage;
- (2) route for administration, if it is not for oral use;
- (3) quantity or proportion of each active ingredient;
- (4) names of inactive ingredients, if for other than oral use;
- (5) an identifying lot or control number;
- (6) manufacturer, packer, or distributor's name and address; and
- (7) net quantity contents.

If any information as described in this subsection is not included on the manufacturer's label, but instead is on the manufacturer's package insert, the package insert must be maintained on the veterinarian's truck.

(j) When issuing a prescription for or dispensing a drug to a horse with which the veterinarian has a veterinarian-client-patient relationship, the veterinarian must affix or cause to be affixed a label that sets forth the following:

- (1) Name and address of the veterinarian.
- (2) Name and address of the client.
- (3) Name of the horse.
- (4) Date of prescription or dispensing of drug, or both.
- (5) Directions for use, including dose and duration directions, and number of refills.
- (6) Name and quantity of the drug (or drug preparation, including compounds) prescribed or dispensed.
- (7) For compounded drugs, the established name of each active ingredient.
- (8) Any necessary cautionary statements.

**(k) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription, must have been validly prescribed by a duly licensed veterinarian and be in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:**

- (1) The name of the product;**
- (2) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;**
- (3) The name of each patient (horse) for whom the product is intended or prescribed;**
- (4) The doses, dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and**
- (5) The name of the person (trainer) to whom the product was dispensed.**

~~(l)~~ (l) The practice, administration, or application of a treatment, procedure, therapy, or method identified in this subsection, which is performed on the premises of a facility under jurisdiction of the commission or in any horse scheduled to compete in a race under the jurisdiction of the commission and that may endanger the health and welfare of the horse or endanger the safety of the rider or driver, or the use of which may adversely affect the integrity of racing is prohibited: Intermittent hypoxic treatment by external device. (*Indiana Horse Racing Commission; 71 IAC 8-6-2; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1920; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2220; emergency rule filed Mar 12, 2008, 1:53 p.m.: 20080326-IR-071080191ERA, eff Mar 11, 2008 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-191(E) was filed with the Publisher March 12, 2008.]*;



*emergency rule filed Mar 19, 2009, 11:07 a.m.: 20090401-IR-071090195ERA, eff Mar 12, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 3, 2011, 11:50 a.m.: 20110309-IR-071110100ERA; emergency rule filed May 7, 2014, 2:27 p.m.: 20140514-IR-071140143ERA, eff May 15, 2014; emergency rule filed Mar 17, 2017, 1:04 p.m.: 20170322-IR-071170167ERA; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA; **emergency rule filed \_\_\_\_\_**)*

## **71 IAC 8.5-5-2 Prohibited practices**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 2. (a) The possession or use, or both, of a drug, substance, or medication, specified in subdivisions (1) through (12) on the premises of a facility under the jurisdiction of the commission is prohibited. The following drugs or substances include those for which a recognized analytical method has not been developed to detect and confirm the administration of such substance, or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider, or the use of which may adversely affect the integrity of racing:

- (1) Erythropoietin.
- (2) Darbepoetin.
- (3) Oxyglobin.
- (4) Hemopure.
- (5) Snake venom.
- (6) Snail venom.
- (7) Ractopamine.
- (8) Zilpaterol.
- (9) Aminimidazole carboxamide ribonucleotide (AICAR).
- (10) My-inositol trispyrophosphate (ITPP).
- (11) Equine growth hormone.
- (12) Thymosin beta.

(b) The use of extracorporeal shock wave therapy (ESWT) or radial pulse wave therapy (RPWT) shall not be permitted unless the following conditions are met:

- (1) Any treated horse shall not be permitted to race or breeze for a minimum of ten (10) days following treatment and will be placed on the veterinarian's list for ten (10) days.
- (2) A list of horses that have received ESWT treatment within the last ten (10) days shall be posted in the race office and be accessible to the jockeys, their agents, and horsemen during normal business hours and be made available to other regulatory jurisdictions.
- (3) The use of ESWT or RPWT machines shall be limited to practicing veterinarians.
- (4) Any ESWT or RPWT machines on the association grounds must be registered with and approved by the commission or its designee before use.
- (5) All ESWT or RPWT treatments must be reported to the official veterinarian **and the stewards** on the prescribed form not later than the time prescribed by the official veterinarian.
- (6) The trainer shall report all ESWT or RPWT treatments to the official veterinarian and the stewards within twenty-four (24) hours of treatment.**
- ~~(7) (6)~~ A horse that receives any such treatment without full compliance with this section and similar rules in any other jurisdiction in which the horse was treated shall be placed on the steward's list.
- ~~(8) (7)~~ Any person participating in the use of ESWT or RPWT or the possession of ESWT or RPWT machines, or both, in violation of this rule shall be considered to have committed a prohibited practice and is subject to a Class A Penalty.

(c) The possession or use, or both, of a drug, substance, or medication on the premises of a facility under the jurisdiction of the commission that has not been approved by the United States Food and Drug Administration (FDA) for any use (human or animal) is forbidden without prior permission of the commission. For purposes of this rule, the term "drug" means any substance, food or nonfood, that is used to treat, cure, mitigate, or prevent a disease and any nonfood substance that is intended to affect the structure or function of the animal. The term includes any substance administered by injection, other than vaccines licensed by the United States Department of Agriculture (USDA).

(d) While on the premises of a facility under the jurisdiction of the commission, veterinarians may only possess drugs, including compounds described in subsection (e), in amounts commensurate with the needs of horses with which the veterinarian has a veterinarian-client-patient relationship as that term is defined in 888 IAC 1.1-5-1(2).

(e) Notwithstanding subsection (c), veterinarians may possess compounded drugs with the restrictions listed in subdivisions (1) through (4). Compounding includes any manipulation of a drug beyond that stipulated on the drug label, including, but not limited to, mixing, diluting, concentrating, or creating oral suspensions or injectable solutions as follows:

- (1) Compounds may only be prescribed to or prepared for horses with which the veterinarian has a veterinarian-client-patient relationship.
- (2) Compounded drugs may only be made from other FDA approved drugs.
- (3) Veterinarians may not possess compounds where there are FDA approved, commercially available drugs that can appropriately treat the horse.
- (4) Compounded drugs must be in containers that meet the prescription labeling requirements in subsections (i) and (j).

Combining two (2) or more substances with pharmacologic effect constitutes the development of a new drug. This may only be done in accordance with state and local laws and must contain FDA approved medications, if available.

(f) The possession of any drug not approved by the FDA for distribution in the United States is prohibited, unless the veterinarian can show proof of prior authorization from the FDA Center for Veterinary Medicine that has been obtained on a single patient basis only. The authorization must be maintained in the animal health record. A copy of the authorization must be available for immediate inspection.

(g) Extra-label administration of drugs, including use for indication or at dosage levels, frequencies, or routes of administration other than those stated in the labeling, is permitted for FDA approved drugs only. Extra-label use must meet the prescription labeling requirements in subsections (i) and (j).

(h) A veterinarian shall not possess any drug that is not labeled pursuant to the requirements of subsection (i) or (j).

(i) Drugs possessed by practicing veterinarians on the premises of a facility under the jurisdiction of the commission that have not yet been prescribed or dispensed to horses with which the veterinarian has a veterinarian-client-patient relationship must be affixed with the manufacturer's label, which must include:

- (1) recommended or usual dosage;
- (2) route for administration, if it is not for oral use;
- (3) quantity or proportion of each active ingredient;
- (4) names of inactive ingredients, if for other than oral use;
- (5) an identifying lot or control number;
- (6) manufacturer, packer, or distributor's name and address; and
- (7) net quantity contents.

If any information as described in this subsection is not included on the manufacturer's label, but instead is on the manufacturer's package insert, the package insert must be maintained on the veterinarian's truck.

(j) When issuing a prescription for or dispensing a drug to a horse with which the veterinarian has a veterinarian-client/patient relationship, the veterinarian must affix or cause to be affixed a label that sets forth the following:

- (1) Name and address of the veterinarian.
- (2) Name and address of the client.
- (3) Name of the horse.
- (4) Date of prescription or dispensing of drug, or both.
- (5) Directions for use, including dose and duration directions, and number of refills.
- (6) Name and quantity of the drug (or drug preparation, including compounds) prescribed or dispensed.
- (7) For compounded drugs, the established name of each active ingredient.
- (8) Any necessary cautionary statements.

**(k) Any drug or medication which is used or kept on association grounds and which, by federal or state law, requires a prescription, must have been validly prescribed by a duly licensed veterinarian and be in compliance with the applicable state statutes. All such allowable medications must have a prescription label which is securely attached and clearly ascribed to show the following:**

- (1) The name of the product;**
- (2) The name, address, and telephone number of the veterinarian prescribing or dispensing the product;**
- (3) The name of each patient (horse) for whom the product is intended or prescribed;**
- (4) The doses, dosage, duration of treatment, and expiration date of the prescribed or dispensed product; and**
- (5) The name of the person (trainer) to whom the product was dispensed.**

~~(k)(l)~~ The practice, administration, or application of a treatment, procedure, therapy, or method identified in this subsection, which is performed on the premises of a facility under jurisdiction of the commission or in any horse scheduled to compete in a race under the jurisdiction of the commission and that may endanger the health and welfare of the horse or endanger the safety of the rider or driver, or the use of which may adversely affect the integrity of racing is prohibited: Intermittent hypoxic treatment by external device. (*Indiana Horse Racing Commission; 71 IAC 8.5-5-2; emergency rule filed Aug 20, 2002, 3:00 p.m.: 26 IR 57; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2386; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1921; emergency rule filed Mar 10, 2006, 11:00 a.m.: 29 IR 2226; errata filed Apr 10, 2006, 2:00 p.m.: 29 IR 2546; emergency rule filed Mar 12, 2008, 1:53 p.m.: 20080326-IR-071080191ERA, eff Mar 11, 2008 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-191(E) was filed with the Publisher March 12, 2008.]; emergency rule filed Mar 19, 2009, 11:07a.m.: 20090401-IR-071090195ERA, eff Mar 12, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 3, 2011, 11:50 a.m.: 20110309-IR-071110100ERA; emergency rule filed May 7, 2014, 2:27 p.m.: 20140514-IR-071140143ERA, eff May 15, 2014; emergency rule filed Mar 17, 2017, 1:04 p.m.: 20170322-IR-071170167ERA; emergency rule filed Dec 11, 2020, 4:14 p.m.: 20201223-IR-071200625ERA; emergency rule filed \_\_\_\_\_)*

### **71 IAC 8-1-7.1 Multiple medication violations**

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 7.1. (a) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-C, as provided in the most recent version

of the ARCI Uniform Classification Guidelines for Foreign **Substances**  ~~[*sic, Substances*]~~ or similar state regulatory guidelines, may be assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Noncontrolled Therapeutic Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days.	1 for first violation with an additional ½ point for each additional violation within 365 days.
Class D	0	0

(b) The points assigned to a medication violation by the judges or commission ruling, shall be included in ARCI official database. The ARCI shall record points consistent with subsection (a) when appropriate, a designation that points have been suspended or the medication violation. Points assigned by such regulatory ruling shall reflect in the case of multiple positive tests as described in subsection (d), whether they constitute a single violation. The judges' or commission ruling may be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(c) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the judges or the commission in its determination to subject the trainer to the mandatory enhanced penalties by the judges or the commission as provided in this section.

(d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the judges or commission may treat each substance as an individual violation for which points will be assigned, depending on the facts and circumstances of the case.

(e) The official ARCI record shall be used to advise the judges or commission of a trainer's past record of violations and cumulative points. Nothing in this section shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(f) The judges or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(g) In addition to the penalty for the underlying offense, the following enhancements may be imposed upon a licensed trainer based upon the cumulative points contained in his or her official ARCI record:

Points	Suspension in Days
5 – 5.5	15 to 30
6 – 8.5	30 to 60
9 – 10.5	90 to 180
11 – or more	180 to 360

Multiple medication violation penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

- (1) has had more than one (1) medication violation for the relevant time period; and
- (2) exceeds the permissible number of points.

(h) The suspension periods in subsection (g) shall run consecutive to any suspension imposed for the underlying offense.

(i) The judges' or commission's ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon the judges' or commissions' review of a trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(j) Points shall expire as follows:

Penalty Classification	Time to Expire
------------------------	----------------

A	3 years
B	2 years
C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed. (*Indiana Horse Racing Commission; 71 IAC 8-1-7.1; emergency rule filed May 7, 2014, 2:27 p.m.: 20140514-IR-071140143ERA, eff May 15, 2014; emergency rule filed Jul 3, 2014, 11:57 a.m.: 20140709-IR-071140251ERA; emergency rule filed Mar 17, 2017, 1:04 p.m.: 20170322-IR-071170167ERA; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA; emergency rule filed \_\_\_\_\_*)

**71 IAC 8.5-1-7.1 Multiple medication violations**

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 7.1. (a) A trainer who receives a penalty for a medication violation based upon a horse testing positive for a Class 1-5 medication with Penalty Class A-C, as provided in the most recent version of the ARCI Uniform Classification Guidelines for Foreign Substances or similar state regulatory guidelines, may be assigned points as follows:

Penalty Class	Points if Controlled Therapeutic Substance	Points if Noncontrolled Therapeutic Substance
Class A	N/A	6
Class B	2	4
Class C	½ for first violation with an additional ½ point for each additional violation within 365 days.	1 for first violation with an additional ½ point for each additional violation within 365 days.
Class D	0	0

(b) The points assigned to a medication violation by the judges or commission ruling, shall be included in ARCI official database. The ARCI shall record points consistent with subsection (a) when appropriate, a designation that points have been suspended or the medication violation. Points assigned by such regulatory ruling shall reflect in the case of multiple positive tests as described in subsection (d), whether they constitute a single violation. The judges' or commission ruling may be posted on the official website of the commission and within the official database of the ARCI. If an appeal is pending, that fact shall be noted in such ruling. No points shall be applied until a final adjudication of the enforcement of any such violation.

(c) A trainer's cumulative points for violations in all racing jurisdictions shall be maintained by the ARCI. Once all appeals are waived or exhausted, the points shall immediately become part of the trainer's official ARCI record and shall be considered by the judges or the commission in its determination to subject the trainer to the mandatory enhanced penalties by the judges or the commission as provided in this section.

(d) Multiple positive tests for the same medication incurred by a trainer prior to delivery of official notice by the commission may be treated as a single violation. In the case of a positive test indicating multiple substances found in a single post-race sample, the judges or commission may treat each substance as an individual violation for which points will be assigned, depending on the facts and circumstances of the case.

(e) The official ARCI record shall be used to advise the judges or commission of a trainer's past record of violations and cumulative points. Nothing in this section shall be construed to confer upon a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired as provided by applicable law.

(f) The judges or commission shall consider all points for violations in all racing jurisdictions as contained in the trainer's official ARCI record when determining whether the mandatory enhancements provided in this regulation shall be imposed.

(g) In addition to the penalty for the underlying offense, the following enhancements may be imposed upon a licensed trainer based upon the cumulative points contained in his or her official ARCI record:

<u>Points</u>	<u>Suspension in Days</u>
5 – 5.5	15 to 30
6 – 8.5	30 to 60
9 – 10.5	90 to 180
11 – or more	180 to 360

Multiple medication violation penalties are not a substitute for the current penalty system and are intended to be an additional uniform penalty when the licensee:

- (1) has had more than one (1) medication violation for the relevant time period; and
- (2) exceeds the permissible number of points.

(h) The suspension periods in subsection (g) shall run consecutive to any suspension imposed for the underlying offense.

(i) The judges' or commission's ruling shall distinguish between the penalty for the underlying offense and any enhancement based upon the judges' or commissions' review of a trainer's cumulative points and regulatory record, which may be considered an aggravating factor in a case.

(j) Points shall expire as follows:

<u>Penalty Classification</u>	<u>Time to Expire</u>
A	3 years
B	2 years
C	1 year

In the case of a medication violation that results in a suspension, any points assessed expire on the anniversary date of the date the suspension is completed. (*Indiana Horse Racing Commission; 71 IAC 8.5-1-7.1; emergency rule filed May 7, 2014, 2:27 p.m.: 20140514-IR-071140143ERA, eff May 15, 2014; emergency rule filed Jul 3, 2014, 11:57 a.m.: 20140709-IR-071140251ERA; emergency rule filed Mar 17, 2017, 1:04 p.m.: 20170322-IR-071170167ERA; emergency rule filed Dec 11, 2020, 4:14 p.m.: 20201223-IR-071200625ERA; emergency rule filed \_\_\_\_\_*)

## Rules of the Race

### **71 IAC 7.5-2-2 Scratches**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 2. (a) A scratch is the act of withdrawing an entered horse from a contest after the closing of entries.

(b) The scratch of a horse after closing shall be made by the owner, trainer, or their licensed designee with permission from the stewards.

(c) A horse may be scratched from a stakes race for any reason at any time up until forty-five (45) minutes prior to that race.

(d) No horse may be scratched from an overnight race without approval of the stewards.

(e) In overnight races, horses that are physically disabled or sick shall be permitted to be scratched first. Should horses representing more than eight (8) betting interests in the daily double or exotic wagering races, or horses representing more than eight (8) betting interests in any other overnight race, remain in after horses with physical excuses have been scratched, then owners or trainers may be permitted at scratch time to scratch horses without physical excuses down to such respective minimum numbers for such races. This privilege shall be determined by lot if an excessive number of owners or trainers wish to scratch their horses.

(f) Entry of any horse which has been scratched or excused from starting by the stewards because of a physical disability or sickness shall not be accepted until the expiration of a minimum of five (5) calendar days after such horse was scratched or excused and the horse has been removed from the veterinarian's list by the official veterinarian.

(g) The stewards will review all cases in which a horse is drawn into the body of a race at a licensed facility under the jurisdiction of the commission, while appearing in the entries in another racing jurisdiction during the entry period in Indiana. For the purpose of this rule, the entry period begins ~~when on the day~~ the horse is entered in Indiana and ends at 11:59 p.m. on the day the horse is **scheduled entered** to race in Indiana. It shall be a violation of these rules for a licensee to scratch a horse in Indiana and race that horse in another jurisdiction during the entry period **and for five (5) calendar days thereafter**. Violations of this subsection, absent mitigating circumstances, shall be subject to a fine by the stewards. This subsection shall not apply to handicap and stake races, nor to horses on the also eligible list. (*Indiana Horse Racing Commission; 71 IAC 7.5-2-2; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2867, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3407; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2892; errata filed Jun 20, 1996, 9:50 a.m.: 19 IR 3114; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404- IR-071070030RFA; emergency rule filed Mar 3, 2011, 11:50 a.m.: 20110309-IR-071110100ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; emergency rule filed Mar 15, 2019, 2:42 p.m.: 20190320-IR-071190167ERA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed Mar 3, 2022, 3:55 p.m.: 20220316-IR-071220070ERA; emergency rule filed \_\_\_\_\_*)

## 71 IAC 7.5-6-1 Equipment

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 1. (a) All riding crops are subject to inspection and approval by the stewards, **their designee**, and the clerk of scales.

(1) Riding crops shall **be soft padded, with a shaft and a smooth foam cylinder**, ~~have shaft and flap~~ and will be **permitted** ~~allowed~~ in flat racing including training, only **under the following conditions** as follows:

(A) maximum weight of eight (8) ounces;

(B) maximum length, **including smooth foam cylinder**, of thirty (30) inches;

(C) **minimum** ~~maximum~~ shaft diameter ~~of the shaft~~ of three-eighths (3/8) inch; and

(D) shaft contact area must be smooth, with no protrusion or raised surface and covered by shock absorbing material that gives a compression factor of at least one (1) millimeter throughout its circumference; **and-**

**(E) no binding within seven (7) inches of the end of the shaft.**

(2) The **smooth foam cylinder flap** is the only allowable attachment to the shaft and must meet these specifications:

(A) **maximum** length beyond the end of the shaft ~~a maximum~~ of one (1) inch;

(B) ~~with a~~ minimum **diameter** of eight-tenths (0.8) inch and a maximum **diameter** of one and six-tenths (1.6) inches;

(C) no reinforcements or additions beyond the end of the shaft **or the soft foam cylinder**;

(D) **shall be made of shock absorbing material with a compression factor of at least five (5) millimeters throughout its circumference** ~~no binding within seven (7) inches of the end of the shaft~~; and

(E) **shall be made of a waterproof, ultraviolet resistant, and chemical resistant foam material that is durable and preserves its shock absorption during use under all**

**conditions; shock absorbing characteristics similar to those of the contact area of the shaft, and**

**(F) shall be replaced after reasonable wear and tear is visibly evident.**

(b) No bridle shall exceed two (2) pounds.

(c) A horse's tongue may be tied down with clean bandages, gauze, or a tongue strap.

(d) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter and the stewards. Any request for such a change must be stated at entry. Blinkers and cheek pieces may not be used at the same time.

(e) The use of Gelocast or like materials, or both, as a racing bandage or the use of Gelocast or like materials, or both, in conjunction with traditional materials to form a racing bandage is prohibited.

(f) Any nontraditional material incorporated into a racing bandage must be approved by the official veterinarian, or his or her designee. (*Indiana Horse Racing Commission; 71 IAC 7.5-6-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2870, eff Jul 1, 1995; emergency rule filed Jun 22, 1998, 5:13 p.m.: 21 IR 4234; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2781; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2384; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1919; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Mar 19, 2009, 11:07 a.m.: 20090401-IR-071090195ERA, eff Mar 12, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 3, 2011, 11:50 a.m.: 20110309-IR-071110100ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; emergency rule filed Mar 15, 2019, 2:42 p.m.: 20190320-IR-071190167ERA; errata filed Mar 29, 2019, 10:12 a.m.: 20190403-IR-071190167ACA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA; **emergency rule filed \_\_\_\_\_**)*

#### **71 IAC 7.5-6-5 Post to finish**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 5. (a) The following shall apply to starting the race:

(1) The starter is responsible for assuring that each participant receives a fair start.

(2) If, when the starter dispatches the field, any door at the front of the starting gate stalls should not open properly due to a mechanical failure or malfunction or should any action by any starting personnel directly cause a horse to receive an unfair start, the stewards may declare the horse a nonstarter.

(3) Should a horse, not scratched prior to the start, not be in the starting gate stall thereby causing it to be left when the field is dispatched by the starter, the horse shall be declared a nonstarter by the stewards.

(4) Should an accident or malfunction of the starting gate, or other unforeseeable event compromise the fairness of the race or the safety of race participants, the stewards may declare individual horses to be nonstarters, exclude individual horses from one (1) or more pari-mutuel pools, or declare a no contest and refund all wagers except as otherwise provided in the rules involving multi-race wagers.

(b) The following shall apply to interference, jostling, or striking during the race:

(1) A jockey shall not ride carelessly or willfully so as to permit the jockey's mount to interfere with, impede, or intimidate any other horse in the race.

(2) No jockey shall carelessly or willfully jostle, strike, or touch another jockey or another jockey's horse or equipment.

(3) No jockey shall unnecessarily cause the jockey's horse to shorten its stride so as to give the appearance of having suffered a foul.



(c) The following shall apply to maintaining a straight course during the race:

(1) When the way is clear in a race, a horse may be ridden to any part of the course, but if any horse swerves, or is ridden to either side, so as to interfere with, impede, or intimidate any other horse, it may be a foul.

(2) The offending horse may be disqualified if, in the opinion of the stewards, the foul altered the finish of the race, regardless of whether the foul was accidental, willful, or the result of careless riding.

(3) If the stewards determine the foul was intentional, or due to careless riding, the jockey may be held responsible.

(4) In a straightaway race, every horse must maintain position as nearly as possible in the lane in which it starts. If a horse is ridden, drifts, or swerves out of its lane in such a manner that it interferes with, impedes, or intimidates another horse, and it may result in the disqualification of the offending horse.

(d) The following shall apply to disqualifications during the race:

(1) When the stewards determine that a horse shall be disqualified for interference, they may place the offending horse behind such horses as in their judgment it interfered with, or they may place it last.

(2) If a horse is disqualified for a foul, any horse or horses with which it is coupled as an entry may also be disqualified.

(3) When a horse is disqualified for interference in a time trial race, for the purposes of qualifying only, it shall receive the time of the horse it is placed behind plus one one-hundredth (1/100) of one (1) second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

(4) Possession of any electrical or mechanical stimulating or shocking device by a jockey, horse owner, trainer, or other person authorized to handle or attend to a horse shall be prima facie evidence of a violation of these rules and is sufficient grounds for the stewards to scratch or disqualify the horse.

(5) The stewards may determine that a horse shall be unplaced for the purpose of purse distribution and time trial qualification.

(e) All horses shall be ridden out in every race. A jockey shall not ease up or coast to the finish, without reasonable cause, even if the horse has no apparent chance to win prize money. A jockey shall give a best effort during a race, and each horse shall be ridden to win.

**(f) A jockey or exercise rider who uses a riding crop during a race or workout shall do so only in a professional manner consistent with maintaining focus and concentration of the horse for safety of horses and riders, or for encouragement to achieve optimal performance. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone or applied by anyone to a horse at any time on the grounds of the association, whether in a race or otherwise.** The following shall also apply to use of riding crops during the race:

~~(1) A rider may: Although the use of a riding crop is not required, any jockey who uses a riding crop during a race shall do so only in a manner consistent with exerting his/her best efforts to win.~~

**(A) use the crop on the hindquarters to activate and focus the horse. When the crop is used, a rider shall allow the horse a chance to respond before using the crop again. At the beginning of each race meeting, the stewards will define the maximum total number of strikes permitted, the maximum number of successive strikes permitted before giving the horse a chance to respond, and the number of strides that constitute a chance to respond;**

**(B) tap the horse on the shoulder with the crop while both hands are holding on to the reins and both hands are touching the horse's neck;**

**(C) show or wave the crop to the horse without physically contacting the horse; and**

- (D) use the crop to preserve the safety of horses and riders.**
- ~~(2) A rider may not: In all races where a jockey will ride without a riding crop, an announcement of such fact shall be made over the public address system.~~
- (A) raise the crop with the rider's wrist above the rider's helmet when using the crop;**
- (B) injure the horse with the crop or leave any physical marks, such as welts, bruises, lacerations;**
- (C) use the crop on any part of the horse's body other than the shoulders or hindquarters;**
- (D) use the crop at any time from paddock to post, or after the finish of the race other than to avoid a dangerous situation or preserve the safety of horses and riders;**
- (E) use the crop if the horse has obtained its maximum placing;**
- (F) use the crop persistently even though the horse is showing no response;**
- (G) use a crop on a two (2) year-old horse before April 1st of each year other than to avoid a dangerous situation or preserve the safety of horses and riders; and**
- (H) strike another horse or person with the crop.**
- ~~(3) In any race in which a jockey will ride without a crop, that fact shall be declared at entry, indicated in the official program, and an announcement of that fact shall be made over the public address system. No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone or applied by anyone to a horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.~~
- ~~(4) Licensees who misuse or overuse the riding crop shall be subject to a fine, suspension of their license, or both; penalties for repeat offenses during one race meeting shall be progressive, up to and including license revocation. Riding crops shall not be used on two-year-old horses before April 1 of each year.~~
- ~~(5) The riding crop shall only be used for safety, correction, and encouragement and be appropriate, proportionate, and professional, taking into account the rules of racing herein. However, stimulus provided by the use of the riding crop shall be monitored so as not to compromise the welfare of the horse.~~
- ~~(6) Use of the riding crop varies with each particular horse and the circumstances of the race.~~
- ~~(7) Except for extreme safety reasons, all riders should comply with the following when using the riding crop:~~
- ~~(A) initially showing the horse the riding crop or tapping the horse with the riding crop down, giving it time to respond before hitting it;~~
- ~~(B) having used the riding crop, giving the horse a chance to respond before using it again; and~~
- ~~(C) using the riding crop in rhythm with the horse's stride.~~
- ~~(8) Allowing the horse a chance to respond can be:~~
- ~~(A) pausing the use of the riding crop on the horse before resuming again; or~~
- ~~(B) pushing on the horse with a rein in each hand; or~~
- ~~(C) showing the horse the riding crop without making contact; or~~
- ~~(D) moving the riding crop from one hand to the other.~~
- ~~(9) At the beginning of each race meet, the stewards shall establish a maximum number of successive strikes before the rider must give the horse a minimum number of successive strides.~~
- ~~(5) (10) Prohibited use of the riding crop includes, but is not limited to, striking a horse:~~
- ~~(A) on the head, flanks, or any other part of its body other than the shoulders or hindquarters, except when necessary to control a horse;~~
- ~~(B) during the post parade or after the finish of the race, except when necessary to control the horse;~~

- (C) excessively;
- (D) when the horse is clearly out of the race or has obtained its maximum placing;
- (E) persistently even though the horse is showing no response under the riding crop;
- (F) causing whip marks, welts, or breaks in the skin; or
- (G) striking another person or horse.

(g) After the race, horses will be subject to inspection by an official veterinarian looking for cuts, welts, or bruises in the skin. Any adverse findings shall be reported to the stewards.

(h) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions.

(i) If a horse leaves the racecourse during a race, it shall be disqualified.

(j) The following shall apply to the order of finish:

(1) The official order of finish shall be decided by the stewards with the aid of the photo finish camera and, in the absence of the photo finish film strip, the video replay. The photo finish and video player are only aids in the stewards' decision. The decision of the stewards shall be final in all cases.

(2) The nose of the horse shall determine the placement of the horse in relationship to other horses in the race.

(k) The following shall apply to returning after the finish:

(1) After a race has been run, the jockey shall ride promptly to the place designated by the stewards, dismount, and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

(2) If a jockey is prevented from riding to the designated unsaddling area because of an accident or illness to the jockey or the horse, the jockey may walk or be transported to the scales, or may be excused from weighing in by the stewards.

(l) The following shall apply to unsaddling:

(1) Only persons authorized by the stewards may assist the jockey with unsaddling the horse after the race.

(2) No one shall place a covering over a horse before it is unsaddled.

(m) Weighing in:

(1) A jockey shall weigh in at no less than the same weight at which he/she weighed out and if under that weight, and after consideration of mitigating circumstances by the board of stewards, his/her mount may be disqualified from any portion of the purse money.

(2) In the event of a disqualification, all monies wagered on the horse shall be refunded unless the race has been declared official.

(3) A jockey's weight shall include clothing, boots, saddle, and its attachments and any other equipment except the bridle, bit, blinkers, number cloth, and over-girth, reins, and breast collar.

(4) Upon approval of the stewards, the jockeys may be allowed up to three (3) pounds more than published weights to account for inclement weather clothing and equipment.

(5) The post-race weight of jockeys includes any sweat, dirt, and mud that have accumulated on the jockey, jockey's clothing, jockey's safety equipment, and over-girth. This accounts for additional weight, depending on specific equipment, as well as weather, track, and racing conditions.

(n) The following shall apply to dead heats:

(1) When two (2) horses run a dead heat for first place, all purses or prizes to which the first and second horses would have been entitled shall be divided equally between them. This subdivision applies in dividing all purses or prizes whatever the number of horses running a dead heat and whatever places for which the dead heat is run.

(2) In a dead heat for first place, each horse involved shall be deemed a winner and liable to penalty for the amount it shall receive.

(3) When a dead heat is run for second place and an objection is made to the winner of the race, and sustained, the horses which ran a dead heat shall be deemed to have run a dead heat for first place.

(4) If the dividing owners cannot agree as to which of them is to have a cup or other prize which cannot be divided, the question shall be determined by lot by the stewards.

(o) The following shall apply to time trials:

(1) Except in cases where the starting gate physically restricts the number of horses starting, each time trial shall consist of no more than ten (10) horses.

(2) The time trials shall be raced under the same conditions as the finals. If the time trials are conducted on the same day, the horses with the ten (10) fastest times shall qualify to participate in the finals. If the time trials are conducted on two (2) days, the horses with the first five (5) fastest times on the first day and the horses with the five (5) fastest times on the second day shall qualify to participate in the finals.

(3) If the association's starting gate has less than ten (10) stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate post positions.

(4) In the time trials, horses shall qualify on the basis of time and order of finish. The times of the horses in the time trial will be determined to the limit of the timer. The only exception is when two (2) or more horses have the same time in the same trial heat, in which case the order of finish shall also determine the preference in qualifying for the finals. Should two (2) or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying positions, then a draw by public lot shall be conducted as directed by the stewards.

(5) Except in the case of a disqualification, under no circumstances shall a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial.

(6) Should a horse be disqualified for interference during the running of a time trial, it shall receive the time of the horse it is immediately placed behind plus one one-hundredth (1/100) of one (1) second, or the maximum accuracy of the electronic timing device. No adjustments will be made in the times recorded in the time trials to account for head-wind, tail-wind, off-track, or other conditions.

(7) Should a malfunction occur with electronic times on any time trials, finalists from that time will then be determined by official hand timing operated by three (3) official and disinterested persons. The average of the three (3) hand times will be utilized for the winning time unless one (1) of the hand times is clearly incorrect. In such cases, the average of the two (2) accurate hand times will be utilized for the winning time.

*(Indiana Horse Racing Commission; 71 IAC 7.5-6-5; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2872, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3409; emergency rule filed Jun 22, 2000, 3:05 p.m.: 23 IR 2781; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Mar 19, 2009, 11:07 a.m.: 20090401-IR-071090195ERA, eff Mar 12, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 23, 2010, 1:27 p.m.: 20100331-IR-071100170ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225- IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA; emergency rule filed Oct 6, 2022, 3:34 p.m.: 20221012-IR-071220305ERA; **emergency rule filed \_\_\_\_\_**)*

### **71 IAC 7-3-7 Driving rules**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 7. (a) A leading horse is not to be more than four (4) feet from the inside rail/pylons except after selecting its position in the home stretch. Neither the driver of the first horse nor any other driver in the race shall do any of the following, which shall be considered a violation of driving rules:

- (1) Change either to the right or left during any part of the race when another horse is so near that, in altering the position, the horse behind is compelled to shorten its stride or the driver of the horse behind is forced to pull the horse out of its stride.
- (2) Jostle, strike, hook wheels, or interfere with another horse or driver.
- (3) Cross sharply in front of a horse or cross over in front of a field of horses in a reckless manner, endangering other drivers.
- (4) Swerve in or out or pull up quickly.
- (5) Crowd a horse or driver by putting a wheel under the horse or driver.
- (6) Carry a horse out.
- (7) Sit down in front of a horse or take up abruptly in front of other horses so as to cause confusion or interference among trailing horses.
- (8) Let a horse pass inside or outside needlessly or otherwise help another horse to improve its position in the race.
- (9) Commit any act that shall impede the progress of another horse or cause it to break.
- (10) Change course after selecting a position in the homestretch, swerve in or out, or bear in or out in such a manner as to interfere with another horse or cause it to break.
- (11) Drive in a careless or reckless manner.
- (12) Maintaining a position of half in and half out or failing to make a reasonable effort to advance when pulling to the outside.
- (13) Lay off a normal place and leave a hole when it is well within a horse's capacity to keep the hole closed when there is no strategic reason to do so.
- (14) If any of the violations in this subsection are committed by a person driving a horse coupled as an entry in the betting, the judges shall set both horses back if, in their opinion, the violation helped improve the entry's finishing position. Otherwise, penalties may be applied individually to the drivers of any entry.
- (15) Drivers must set and maintain a pace comparable to the class in which the driver is racing or the horse's abilities.
- (16) Drivers at any point in the race after the start who use the outrider or starting gate to assist in getting control of their horse ~~may~~ shall be placed last by the judges.
- (17) Turn the horse abruptly after the finish of the race in order to return to the paddock or the barn area.

(b) All complaints by drivers of any foul driving or other misconduct during the heat must be made at the termination of the heat, unless the driver is prevented from doing so by an accident or injury. Any driver desiring to enter a claim of foul or other complaint of violation of this section must, before dismounting, indicate to the judges or patrol judge his or her desire to enter such claim or complaint and forthwith upon dismounting shall proceed to the telephone or judges' stand where and when such claim, objection, or complaint shall be immediately entered. The judges shall not cause the official sign to be displayed until such claim, objection, or complaint has been entered and considered.

(c) If any horse loses a piece of equipment during a race and that equipment bothers another horse or horses, it may be considered interference by the horse responsible for the lost equipment pursuant to 71 IAC 5-3-3(a)(19).

(d) In case of interference, collision, or violation of any of the restrictions in subsections (a), (b), and (c), the offending horse may be placed back one (1) or more positions in that heat or dash. In the event such collision or interference prevents any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver shall be fined or suspended, or both. In the event a horse is set back under this subsection, it must be placed behind the horse with whom it interfered. An interference that occurs to a horse or horses not in contention that did not affect the

outcome of a race to that horse or any other horse as it applies to purse money won may not be grounds for a disqualification. Although, the driver causing the interference may still be penalized.

(e) If there is any purse money for which horses have started but were unable to finish due to interference or an accident, or both, all unoffending horses who did not finish will share equally in such purse money.

(f) A driver shall not:

- (1) fail to display competitive urging or cease driving while in contention in the home stretch;
- (2) race in an inconsistent manner;
- (3) drive in an unsatisfactory manner due to lack of effort;
- (4) drive in an unsatisfactory manner due to carelessness; or
- (5) drive in such a manner as to have the horse remain classified or eligible to the same or easier conditions.

(g) If the judges determine that any of the actions in subsection (f) were such that they compromised the integrity of racing or were to aid or perpetrate a fraud, then the licensee may be summarily suspended pending a judges hearing.

(h) Anyone acting in concert with the driver to so effect the outcome of the race or races may be summarily suspended pending a judges hearing.

(i) A driver shall not fail to participate in the post parade at the prescribed time unless excused by the judges. (*Indiana Horse Racing Commission; 71 IAC 7-3-7; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1161; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2913; emergency rule filed Jun 8, 1999, 9:31 a.m.: 22 IR 3130, eff May 26, 1999 [ IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the secretary of state. LSA Document #99-108(E) was filed with the secretary of state June 8, 1999.]; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2108; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2749; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Mar 12, 2008, 1:53 p.m.: 20080326-IR071080191ERA, eff Mar 11, 2008 [ IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-191(E) was filed with the Publisher March 12, 2008.]; emergency rule filed Mar 19, 2009, 11:07 a.m.: 20090401-IR-071090195ERA, eff Mar 12, 2009 [ IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-195(E) was filed with the Publisher March 19, 2009.]; emergency rule filed Mar 23, 2010, 1:27 p.m.: 20100331-IR-071100170ERA; emergency rule filed Mar 8, 2012, 11:43 a.m.: Nov 26, 2013, 11:25 a.m.: 20120321-IR-071120117ERA; readopted filed 20131225-IR-071130345RFA; emergency rule filed Mar 30, 2016, 12:18 p.m.: 20160406-IR071160138ERA; emergency rule filed Mar 15, 2019, 2:42 p.m.: 20190320-IR-071190167ERA; errata filed Mar 29, 2019, 10:12 a.m.: 20190403-IR-071190167ACA; readopted filed Aug 28, 2019, 1:23 p.m.: Dec 5, 2019, 1:56 p.m.: 20190925-IR-071190319RFA; emergency rule filed 20191211-IR-071190646ERA; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA; emergency rule filed Dec 9, 2021, 2:22 p.m.: 20211215-IR-071210525ERA; **emergency rule filed \_\_\_\_\_**)*

## Miscellaneous Rules

### **71 IAC 6.5-1-1 General provisions**

Authority: IC 4-31-6-9

Affected: IC 4-31

Sec. 1. (a) A person entering a horse in a claiming race warrants that the title to the horse is free and clear of any existing claim or lien, either as security interest mortgage, bill of sale, or lien of any kind, unless before entering the horse, the written consent of the holder of the claim or lien has been filed with

the stewards and the racing secretary and its entry approved by the stewards. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for the horse.

~~(b) Every horse claimed shall race for the account of the owner at the time of entry, but title to a claimed horse shall be vested in the successful claimant at the time the horse leaves the starting gate and is declared an official starter. If a horse suffers a fatality during the running of a race, or is euthanized on the racetrack following the race, any claim submitted on that horse will be declared void. If a claimed horse is vanned off the racetrack following the race (at the discretion of a commission approved veterinarian), that horse will be taken to the test barn. The successful claimant or trainer may request the claim be voided by the stewards within one (1) hour of the official off time of the race, except that the claim shall not be declared void if the horse is vanned off the track due to an issue that is nonrelated to lameness as determined by the commission approved veterinarian. In the event the claim is voided by the stewards, the horse will be returned to the custody of the original owner. However, the successful claimant may request on the claim blank at the time the successful claimant makes the claim that the horse be tested for the presence of equine infectious anemia via a Coggins test or other test as approved by the official veterinarian. Should this test prove positive, it shall be cause for voiding the claim. The expense of the test and the maintenance of the horse during the period requested for the test shall be the responsibility of the successful claimant, unless the test proves positive, wherein the owner or owners of the horse at the time of entry shall be responsible.~~

**(c) All claimed horses shall go to the test barn for the collection of biological samples, and for observation by the Racing Veterinarian.**

**(d) A claim shall be voided, and ownership of the horse retained by the owner at the time of entry, if:**

- (1) the horse dies on the racetrack;**
- (2) the horse is euthanized before leaving the racetrack;**
- (3) the horse is vanned off the racetrack at the direction of the Racing Veterinarian;**
- (4) the Racing Veterinarian determines within one (1) hour of the race that the horse will be placed on the Veterinarians' List as physically distressed, medically compromised, unsound, or lame before the horse is released to the successful claimant; and**
- (5) the biological samples collected confirm the presence of a prohibited substance.**

**(e) The claim shall not be voided if, prior to the race in which the horse is claimed, the claimant elects to claim the horse regardless of whether the Racing Veterinarian determines that the horse will be placed on the Veterinarians' List or the horse's biological samples confirm the presence of a prohibited substance.**

**(f) ~~(e)~~ An in-foal filly or mare shall be eligible to be entered into a claiming race only if all of the following conditions are fulfilled:**

- (1) Full disclosure of such fact is on file with the racing secretary and such information is posted in the racing secretary's office.**
- (2) The stallion service certificate has been deposited with the racing secretary's office.**
- (3) All payments due for the service in question and for any live progeny resulting from that service are paid in full.**
- (4) The release of the stallion service certificate to the successful claimant at the time of claim is guaranteed.**

**(g) ~~(f)~~ The stewards may set aside and order rescission of a claim for any horse from a claiming race run in this jurisdiction upon a showing that any party to the claim committed a prohibited action, as specified in section 4 of this rule, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of this article. Should the stewards order a rescission of a claim, they may make a further order for the costs of maintenance and care of the horse as they may deem appropriate. (*Indiana Horse Racing Commission; 71 IAC 6.5-1-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2861, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3405; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR071130345RFA;***

*readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed Dec 11, 2020, 4:14 p.m.: 20201223-IR-071200625ERA; emergency rule filed Mar 3, 2022, 3:55 p.m.: 20220316-IR-071220070ERA; emergency rule filed \_\_\_\_\_)*

#### **71 IAC 14.5-3-2 Breeder award**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 2. (a) A breeder award is the award paid to the breeder of a registered Indiana bred quarter horse that places first, second, or third in any race, except claiming races when entered for a claiming price of less than five thousand dollars (\$5,000) or any speed index race, at a licensed pari-mutuel racetrack located in Indiana.

(b) In the event of multiple breeders, the award will be paid to the individual designated as the recipient on the foal application. It is the responsibility of the designated recipient to distribute these monies to the remaining breeders.

(c) For Indiana bred races, the amount of the award is ~~twelve and one-half~~ **seventeen and one-half** percent (172.5%) of the gross purse, and distribution is:

(1) fifty percent (50%) awarded to the winner, not to exceed five thousand dollars (\$5,000);

(2) thirty percent (30%) awarded to second place, not to exceed three thousand dollars (\$3,000);  
and

(3) twenty percent (20%) awarded to third place, not to exceed two thousand dollars (\$2,000).

(d) For open overnight races and open stakes, the amount of the award is ~~twelve and one-half~~ **seventeen and one-half** percent (172.5%) of the gross purse, and distribution is:

(1) fifty percent (50%) awarded to the winner, not to exceed five thousand dollars (\$5,000);

(2) thirty percent (30%) awarded to second place, not to exceed three thousand dollars (\$3,000);  
and

(3) twenty percent (20%) awarded to third place, not to exceed two thousand dollars (\$2,000).

(e) Awards will be paid by the commission.

(f) For breeder awards earned January 1, 2013, and thereafter, the recipient is the owner of the dam at the time of the dam's registration with the breed development program. (*Indiana Horse Racing Commission; 71 IAC 14.5-3-2; emergency rule filed Nov 15, 2000, 11:40 a.m.: 24 IR 1037; errata filed Feb 9, 2001, 3:38 p.m.: 24 IR 2091; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:27 a.m.: 25 IR 2539; emergency rule filed Jan 24, 2008, 10:58 a.m.: 071080056ERA, eff Jan 23, 2008 [ 20080206-IRIC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #08-56(E) was filed with the Publisher January 24, 2008.]; errata filed Feb 18, 2008, 2:03 p.m.: 20080305-IR071080056ACA; emergency rule filed Apr 4, 2013, 1:05 p.m.: 20130410-IR-071130134ERA; emergency rule filed Feb 3, 2017, 2:24 p.m.: 20170208-IR-071170051ERA; emergency rule filed Jun 1, 2020, 1:57 p.m.: filed Mar 2, 2021, 3:10 p.m.: 20200610-IR-071200295ERA; emergency rule 20210310-IR-071210076ERA; emergency rule filed Mar 3, 2022, 3:55 p.m.: 20220316-IR071220070ERA; emergency rule filed \_\_\_\_\_)*)

#### **71 IAC 5.5-1-16 License restrictions, limitations, and conditions**

Authority: IC 4-31-6-2

Affected: IC 4-31

Sec. 16. (a) The commission or its designee, for cause, may restrict, limit, or place conditions, including probationary status, on any license at the time of issuance.

(b) **No person, unless currently licensed and in good standing as a jockey, exercise rider, pony person, trainer, assistant trainer, or outrider, may be mounted on horseback while on**



**association grounds. The Stewards, with good cause and in consultation with the Outrider, may grant temporary and limited exemptions to this subsection for specific individuals. Such an exemption shall be in writing and clearly identify the individual and the dates and times during which the exemption is valid.** *(Indiana Horse Racing Commission; 71 IAC 5.5-1-16; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2852, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Oct 3, 2013, 2:08 p.m.: Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed*

\_\_\_\_\_)

**From:** [Eggiman, Matt](#)  
**To:** [Eggiman, Matt](#)  
**Subject:** IHRC Proposed Rule Changes  
**Date:** Tuesday, February 14, 2023 4:34:20 PM  
**Attachments:** [2023 Proposed Changes - 71 IAC - ToSend.docx](#)

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Good Afternoon Everyone:

Attached are the proposed rule changes for the March 2023 commission meeting. The changes involve medication rules, rules of the race, quarter horse breeder award rules, and other miscellaneous rules. Any and all comments on the rule changes are certainly welcome, but given the short timeframe, we request any comments be returned by **noon on Friday, February 24, 2023**. Please feel free to contact me directly with your comments and any questions.

Sincerely,

Matt

**Matthew M. Eggiman**

Deputy General Counsel  
Indiana Horse Racing Commission  
1302 North Meridian Street, Suite 175  
Indianapolis, Indiana 46202  
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**From:** [Eggiman, Matt](#)  
**To:** [Eggiman, Matt](#)  
**Subject:** IHRC Re-adopts and an additional proposed rule change  
**Date:** Monday, March 13, 2023 1:56:52 PM  
**Attachments:** [Notice of Intent to Readopt 23-91.docx](#)  
[Notice of Intent to Readopt 23-71.docx](#)

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Good Afternoon Everyone:

As some of you may be aware, each year there are a batch of rules that are set to expire because all Indiana administrative rules, regardless of agency, expire after seven years. With that said, the State allows for a process by which the rules are readopted, so long as the language remains identical, and no substantive changes are made. The attached documents include the rules that will be up for re-adoption at the March 21, 2023, commission meeting.

Please feel free to contact me directly with your comments.

Again, please keep in mind that the rule language is identical to what is already in the rules, and none of the readoptions are permitted to include any change. Therefore, the impact to the horsemen and racetracks should be minimal.

Below is one additional proposed rule change for the March 21 meeting. This rule change is an addition to the proposed rule changes I emailed on February 14, 2023. Any and all comments on the rule change are certainly welcome, but given the short timeframe, we request any comments be returned by **close of business on Friday, March 17, 2023**. Again, feel free to contact me directly with any comments or questions.

ADDITIONAL PROPOSED RULE CHANGE:

### **71 IAC 7-3-15 Hopples; head pole, restrictions**

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 15. (a) The use of hobbles from race to race shall be in the sole discretion of the trainer; ~~subject to receiving approval from the judges, and not precipitate qualifying the horse.~~ **However, any addition or subtraction of hobbles shall require a successful attempt requalifying the horse.**

(b) The entry of the horse shall state whether such horse will use hobbles or not. ~~Failure to include a change when entering the horse disallows any addition or subtraction of hobbles for the race.~~ Every change in a horse's use of hobbles must be included in the program.

(c) No horse shall be permitted to wear a head pole protruding beyond its nose. (*Indiana Horse Racing Commission; 71 IAC 7-3-15; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1163; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2410; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: emergency rule filed Mar 8, 2012, 11:43 a.m.: 20070404-IR-071070030RFA; 20120321-IR-071120117ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA; emergency rule filed Dec 9, 2021, 2:22 p.m.: 20211215-IR-071210525ERA; emergency rule filed \_\_\_\_\_*)

Sincerely,

Matt

**Matthew M. Eggiman**

Deputy General Counsel

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