
TITLE 71 INDIANA HORSE RACING COMMISSION

Emergency Rule
LSA Document #07-461(E)

DIGEST

Adds [71 IAC 1-1-67.5](#) and [71 IAC 1-1-71.5](#) to define "out of competition testing". Amends [71 IAC 7.5-5-1](#) concerning horses ineligible. Amends [71 IAC 8-3-1](#) concerning laboratory reports. Amends [71 IAC 8-3-3](#) concerning selection of horses tested. Amends [71 IAC 8-3-4](#) concerning taking of samples. Adds [71 IAC 8-3-5](#) concerning out of competition testing. Amends [71 IAC 8-4-1](#) concerning collection procedures. Amends [71 IAC 8-4-3](#) concerning administrative procedures prior to split sample testing. Amends [71 IAC 8.5-2-1](#) concerning laboratory reports. Amends [71 IAC 8.5-2-3](#) concerning selection of horses tested. Amends [71 IAC 8.5-2-4](#) concerning taking of samples. Adds [71 IAC 8.5-2-5](#) concerning out of competition testing. Amends [71 IAC 8.5-3-1](#) concerning collection procedures. Amends [71 IAC 8.5-3-3](#) concerning administrative procedures prior to split sample testing. Repeals [71 IAC 8-12](#) and [71 IAC 8.5-12](#). Effective July 18, 2007. *NOTE: [IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. This document was filed with the Publisher July 23, 2007.*

[71 IAC 1-1-67.5](#); [71 IAC 1-1-71.5](#); [71 IAC 7.5-5-1](#); [71 IAC 8-3-1](#); [71 IAC 8-3-3](#); [71 IAC 8-3-4](#); [71 IAC 8-3-5](#); [71 IAC 8-4-1](#); [71 IAC 8-4-3](#); [71 IAC 8-12](#); [71 IAC 8.5-2-1](#); [71 IAC 8.5-2-3](#); [71 IAC 8.5-2-4](#); [71 IAC 8.5-2-5](#); [71 IAC 8.5-3-1](#); [71 IAC 8.5-3-3](#); [71 IAC 8.5-12](#)

SECTION 1. [71 IAC 1-1-67.5](#) IS ADDED TO READ AS FOLLOWS:

[71 IAC 1-1-67.5](#) "Out of competition testing" defined**Authority:** [IC 4-31-3-9](#)**Affected:** [IC 4-31](#)

Sec. 67.5. "Out of competition testing" means that the commission may test horses at any time and at any location within the state of Indiana for any prohibited substances, practices, and procedures set forth in [71 IAC 8.5-2-5](#).

(Indiana Horse Racing Commission; [71 IAC 1-1-67.5](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.])

SECTION 2. [71 IAC 1-1-71.5](#) IS ADDED TO READ AS FOLLOWS:

[71 IAC 1-1-71.5](#) "Out of competition testing" defined**Authority:** [IC 4-31-3-9](#)**Affected:** [IC 4-31](#)

Sec. 71.5. "Out of competition testing" means that the commission may test horses at any time and at any location within the state of Indiana for any prohibited substances, practices, and procedures set forth in [71 IAC 8-3-5](#).

(Indiana Horse Racing Commission; [71 IAC 1-1-71.5](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.])

SECTION 3. [71 IAC 7.5-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 7.5-5-1](#) Horses ineligible**Authority:** [IC 4-31-3-9](#)**Affected:** [IC 4-31](#)

Sec. 1. (a) A horse is ineligible to start in a race when:

- (1) it is not stabled on the grounds of the association or present by the time established by the commission;
- (2) its breed registration certificate is not on file with the racing secretary or horse identifier, unless the racing secretary has submitted the certificate to the appropriate breed registry for correction;
- (3) it is not fully identified and tattooed on the inside of the upper lip or identified by any other method approved by the appropriate breed registry and the commission;
- (4) it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate, or altered lip tattoo or other identification method approved by the appropriate breed registry and the commission;
- (5) it is wholly or partially owned by a disqualified person or a horse is under the direct or indirect training or management of a disqualified person;
- (6) it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;
- (7) the stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race;
- (8) its name appears on the starter's list, stewards' list, or veterinarian's list;
- (9) it is a first time starter and has not been approved to start by the starter;
- (10) it is owned in whole or in part by an undisclosed person or interest;
- (11) it lacks sufficient official published workouts or race past performances;
- (12) it has been entered in a stakes race and has subsequently been transferred with its engagements unless the racing secretary has been notified of such prior to the start;
- (13) it is subject to a lien which has not been approved by the stewards and filed with the horsemen's bookkeeper;
- (14) it is subject to a lease not filed with the stewards;
- (15) it is not in sound racing condition;
- (16) it has had a surgical neurectomy performed on a heel nerve, which has not been approved by the official veterinarian;
- (17) it has been trachea tubed to artificially assist breathing;
- (18) it has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;
- (19) it has impaired eyesight in both eyes;
- (20) it is barred or suspended in any recognized jurisdiction;
- (21) it does not meet the eligibility conditions of the race;
- (22) its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;
- (23) its owners, lessors, lessees, or trainer have not completed the licensing procedures required by the commission;
- (24) it is by an unknown sire or out of an unknown mare; or
- (25) there is no negative test certificate for equine infectious anemia issued within the preceding twelve (12) months attached to its breed registration certificate;
- (26) it has shoes (racing plates) which have toe grabs with a height greater than four (4) millimeters (fifteen thousand seven hundred forty-eight hundred-thousandths (0.15748) inches) on the front hooves.**

(b) The stewards may consider extenuating circumstances in determining ineligibility of a horse with respect to subdivisions [subsection] (a)(1) and (a)(2).

(Indiana Horse Racing Commission; [71 IAC 7.5-5-1](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2870, eff Jul 1, 1995; emergency rule filed Aug 9, 1995, 10:30 a.m.: 18 IR 3408; 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.])

SECTION 4. [71 IAC 8-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-3-1](#) Laboratory reports

Sec. 1. A finding by a chemist at a commission-approved equine drug testing laboratory that a test sample taken from a horse contains a drug or its metabolites or analogs, or any substance foreign to the natural horse, or furosemide, or phenylbutazone in excess of the commission-approved tolerance levels shall be prima facie evidence that such foreign substance has been administered to the horse either internally or externally in violation of this rule. It is presumed that:

- (1) the sample of urine, saliva, blood, or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question, its integrity is preserved;
- (2) all accompanying procedures of collection, preservation, transfer to the laboratory, and analysis of the sample are correct and accurate; and
- (3) the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which it was entered **or in a case of out of competition testing, when the test sample was taken;**

with the burden on the trainer, assistant trainer, or other responsible person to prove otherwise at any hearing in regard to the matter conducted by the judges or the commission.

(Indiana Horse Racing Commission; [71 IAC 8-3-1](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1171; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2916; 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 5. [71 IAC 8-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-3-3](#) Selection of horses tested

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The judges, commission veterinarians, a member of the commission, or the executive director of the commission may order a blood test or urine test, or both, on a horse for the purpose of analysis.

(b) A blood specimen or urine specimen, or both, shall be taken from the following horses after the running of each race:

- (1) The horse that finishes first in each race.
- (2) Any other horses designated by the judges, commission veterinarian, a member of the commission, or the executive director of the commission.

(c) The judges and commission veterinarian shall designate for the taking of such a specimen a horse that races markedly contrary to form.

(d) The provisions of this section do not apply to [71 IAC 8-3-5](#) [section 5 of this rule].

(Indiana Horse Racing Commission; [71 IAC 8-3-3](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1171; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2081; 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 6. [71 IAC 8-3-4](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-3-4](#) Taking of samples

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 4. (a) Blood, urine, saliva, or other samples shall be:

(1) taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for such purposes;

(2) taken in a detention area approved by the commission, unless the official veterinarian or judges approves otherwise;

(3) witnessed, confirmed, or acknowledged by the trainer of the horse being tested or his or her authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them;

(4) sent to racing laboratories approved and designated by the commission in such manner as the commission or its designee may direct; and

(5) in the custody of the official veterinarian, his or her assistants, or other persons approved by **the executive director or** the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory.

No person shall tamper with, adulterate, add to, break the seal of, remove, or otherwise attempt to so alter or violate any sample required to be collected by this rule, except for the addition of preservatives or substances necessarily added by the commission-approved laboratory for preservation of the sample or in the process of analysis.

(b) The commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

(c) The fact that purse money has been distributed shall not be deemed a finding that no chemical substance has been administered in violation of the provisions of this rule to the horse earning such purse money.

(d) The provisions of subsections a (2) and a (3) [subsection (a)(2) and (a)(3)] do not apply to [71 IAC 8-3-5](#) [section 5 of this rule].

(Indiana Horse Racing Commission; [71 IAC 8-3-4](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1171; 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 7. [71 IAC 8-3-5](#) IS ADDED TO READ AS FOLLOWS:

[71 IAC 8-3-5](#) Out of competition testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 5. (a) Any horse on the grounds at a racetrack under the jurisdiction of the commission, or stabled off association grounds while under the care or control of trainer or owner licensed by the commission, is subject to testing for blood and/or gene doping agents without advance notice. This rule does not apply to therapeutic medications approved by the FDA for use in the horse.

(b) Horses to be tested shall be selected at the discretion of the executive director or judges.

(c) The executive director or judges may order any horse of a licensed trainer to report to a track under the jurisdiction of the commission for out of competition testing. The trainer is responsible to have the horse(s) available at the designated time and location.

(d) A commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time, take a urine, blood, or hair sample from a horse for this

purpose.

(e) Prohibited substances, practices, and procedures are defined as:

- (1) blood doping agents including, but not limited to, erythropoietin (EPO), darbepoetin, Oxyglobin, Hemopure, Aranesp, or any substance that abnormally enhances the oxygenation of body tissues;
- (2) gene doping agents or the nontherapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia; and
- (3) the presence of any substance at anytime described in (1) or (2) above [subdivision (1) or (2)] is prohibited and is a violation of this rule.

(f) The trainer, owner, and/or their designees shall cooperate with the commission veterinarian or any licensed veterinarian or licensed veterinary technician authorized by the commission or any commission employee by:

- (1) assisting in the immediate location and identification of the horse selected for out of competition testing;
- (2) providing a stall or safe location to collect the samples;
- (3) assisting in properly procuring the samples; and
- (4) obeying any instruction necessary to accomplish the provision of this rule.

The executive director or judges may summarily suspend, exclude, and/or otherwise penalize any licensee or other person who does not fully cooperate with a commission employee or representative while taking action to enforce this rule.

(g) The collection of blood or urine samples under this rule shall be divided in three (3) parts to be analyzed as follows:

- (1) approved primary laboratory for screening;
- (2) approved primary laboratory for confirmation; and
- (3) approved laboratory for split sample testing.

The commission shall approve the laboratories for screening, confirmation, and split sample testing.

(h) In the absence of extraordinary mitigation [sic] circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (e) of this rule [subsection (e)].

(i) Unless otherwise noted, the other provisions of this article apply to out of competition testing.

(Indiana Horse Racing Commission; 71 IAC 8-3-5; emergency rule filed Jul 23, 2007, 9:16 a.m.):

20070808-IR-071070461ERA, eff Jul 18, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 8. [71 IAC 8-4-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-4-1](#) Collection procedures

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 1. (a) All collection procedures shall be done in accordance with chain of custody guidelines.

(b) Before sending a sample from a horse to a testing laboratory, the commission veterinarian or a designated employee shall divide the specimen into two (2) parts.

(c) The commission veterinarian shall attempt to collect a minimum of fifty (50) milliliters of urine. The primary testing laboratory shall receive a minimum of fifty (50) milliliters of urine. The commission veterinarian shall collect a minimum of thirty (30) milliliters of blood, which shall be divided into two (2) portions, one (1) of which shall be forwarded to the primary laboratory. A urine specimen shall not be split if less than fifty (50) milliliters is collected from horses. In such instances, the commission is entitled to submit the entire urine specimen for testing or detain the horse an adequate amount of time until it can be obtained. If an insufficient volume of urine is obtained, the

trainer and owner are not entitled to a split sample.

(d) If the split sample testing laboratory determines that there is insufficient sample volume to make a specific identification of the sample contents, or if an act of God, power failure, accident, labor strike, or any other event beyond the control of the commission or its representatives prevents the split sample from being tested, then the results of tests performed by the primary laboratory shall be considered prima facie evidence of the condition of the horse.

(e) The commission veterinarian shall retain the part of the urine specimen and the part of the blood specimen that is not sent to the primary laboratory.

(f) If the retained part of a specimen is sent for testing, the commission veterinarian shall arrange for the transportation of the specimen in a manner that ensures the integrity of the sample.

(g) Blood samples shall be ~~mixed and centrifuged and the plasma separated~~ and stored frozen.

(h) The provisions of subsections (b) and (c) do not apply to [71 IAC 8-3-5](#).

(Indiana Horse Racing Commission; [71 IAC 8-4-1](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1172; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1504; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2385; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 9. [71 IAC 8-4-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8-4-3](#) Administrative procedures prior to split sample testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The results of all tests performed by the primary ~~laboratory~~ **laboratory(s)** are confidential and shall only be communicated to the commission, judges, owner, and trainer. The trainer shall be responsible for promptly notifying the owner of a horse of a positive test as reported by the primary laboratory.

(b) The trainer or owner of a horse for which a positive result on a drug test is returned may request that the judges submit the retained part of the specimen for testing in accordance with this section. The specimen must be tested by a laboratory that is identified on the list of approved laboratories maintained by the commission and acceptable to the following:

- (1) The commission.
- (2) The primary laboratory.

The request must be in writing and must be delivered to the judges not later than seventy-two (72) hours after the trainer has received notice of a positive test result. Notice of a positive test result may be communicated verbally to the trainer. Failure to request testing of a split sample within seventy-two (72) hours shall constitute a waiver of the right. The split sample laboratory shall be contacted by a representative of the commission to request acceptance of a split sample. The trainer or owner may choose any laboratory on the commission maintained **applicable** list to test the sample. However, the commission or executive director may limit the choice of laboratory for the detection of specific drugs.

(c) The trainer or owner may elect to waive his or her right to testing of a split sample.

(d) The owner or trainer of a horse who submits a specimen for drug testing is entitled to be present or have a representative present at any time that the retained part of the specimen is prepared for storage or is tested.

(e) The owner or trainer of a horse who submits a specimen for testing to a split sample laboratory must execute a hold harmless agreement for the split sample laboratory and an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing. The agreements shall remain in the hands of the judges of the state in which the positive was reported.

(f) The trainer or owner may request that negative control samples be tested with the split sample. The identities of the negative control samples and the split sample shall be known only to the commission.

(g) The presence of a drug or drug metabolite in any quantity, excluding phenylbutazone, flunixin, ketoprofen, and furosemide, is sufficient for a finding of a positive test.

(Indiana Horse Racing Commission; [71 IAC 8-4-3](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1173; emergency rule filed Aug 10, 1994, 3:30 p.m.: 17 IR 2916; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1504; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2157; emergency rule filed Jun 22, 1998, 5:05 p.m.: 21 IR 4231; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jul 28, 2006, 11:17 a.m.: [20060809-IR-071060278ERA](#), eff Aug 1, 2006; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 10. [71 IAC 8.5-2-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-2-1](#) Laboratory reports

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 1. A finding by a chemist at a commission-approved equine drug testing laboratory that a test sample taken from a horse contains a drug or its metabolites or analogs, or any substance foreign to the natural horse, or furosemide, or phenylbutazone in excess of the commission-approved tolerance levels shall be prima facie evidence that such foreign substance has been administered to the horse either internally or externally in violation of this rule. It is presumed that:

- (1) the sample of urine, saliva, blood, or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question, its integrity is preserved;
- (2) all accompanying procedures of collection, preservation, transfer to the laboratory, and analysis of the sample are correct and accurate; and
- (3) the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which it was entered **or, in a case of out of competition testing, when the test sample was taken;**

with the burden on the trainer, assistant trainer, or other responsible person to prove otherwise at any hearing in regard to the matter conducted by the stewards or the commission.

(Indiana Horse Racing Commission; [71 IAC 8.5-2-1](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2882, 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 11. [71 IAC 8.5-2-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-2-3](#) Selection of horses tested

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The stewards, commission veterinarians, a member of the commission, or the executive director of the commission may order a blood test or urine test, or both, on a horse for the purpose of analysis.

(b) A blood specimen or urine specimen, or both, shall be taken from the following horses after the running of each race:

(1) The horse that finishes first in each race.

(2) Any other horses designated by the stewards, commission veterinarian, a member of the commission, or the executive director of the commission.

(c) The stewards and commission veterinarian shall designate for the taking of such a specimen a horse that races markedly contrary to form.

(d) The provisions of this section do not apply to [71 IAC 8.5-2-5](#) [section 5 of this rule].

(Indiana Horse Racing Commission; [71 IAC 8.5-2-3](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2882, 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 12. [71 IAC 8.5-2-4](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-2-4](#) Taking of samples

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 4. (a) Blood, urine, saliva, or other samples shall be:

(1) taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for such purposes;

(2) taken in a detention area approved by the commission unless the official veterinarian or stewards approves otherwise;

(3) witnessed, confirmed, or acknowledged by the trainer of the horse being tested or his or her authorized representative or employee and may be witnessed by the owner, trainer, or other licensed person designated by them;

(4) sent to racing laboratories approved and designated by the commission in such manner as the commission or its designee may direct; and

(5) in the custody of the official veterinarian, his or her assistants, or other persons approved by **the executive director or** the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory.

No person shall tamper with, adulterate, add to, break the seal of, remove, or otherwise attempt to so alter or violate any sample required to be collected by this rule, except for the addition of preservatives or substances necessarily added by the commission-approved laboratory for preservation of the sample or in the process of analysis.

(b) The commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

(c) The fact that purse money has been distributed shall not be deemed a finding that no chemical substance has been administered in violation of the provisions of this rule to the horse earning such purse money.

(d) The provisions of subsections a (2) and a (3) [subsection (a)(2) and (a)(3)] do not apply to [71 IAC 8.5-2-5](#) [section 5 of this rule].

(Indiana Horse Racing Commission; [71 IAC 8.5-2-4](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2882, 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 Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 13. [71 IAC 8.5-2-5](#) IS ADDED TO READ AS FOLLOWS:

[71 IAC 8.5-2-5](#) Out of competition testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 5. (a) Any horse on the grounds at a racetrack under the jurisdiction of the commission, or stabled off association grounds while under the care or control of trainer or owner licensed by the commission, is subject to testing for blood and/or gene doping agents without advance notice. This rule does not apply to therapeutic medications approved by the FDA for use in the horse.

(b) Horses to be tested shall be selected at the discretion of the executive director or stewards.

(c) The executive director or stewards may order any horse of a licensed trainer to report to a track under the jurisdiction of the commission for out of competition testing. The trainer is responsible to have the horse(s) available at the designated time and location.

(d) A commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time take a urine, blood, or hair sample from a horse for this purpose.

(e) Prohibited substances, practices, and procedures are defined as:

- (1)** blood doping agents including, but not limited to, erythropoietin (EPO), darbepoetin, Oxyglobin, Hemopure, Aranesp, or any substance that abnormally enhances the oxygenation of body tissues;
- (2)** gene doping agents or the nontherapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia; and
- (3)** the presence of any substance at anytime described in (1) or (2) above *[subdivision (1) or (2)]* is prohibited and is a violation of this rule.

(f) The trainer, owner, and/or their designees shall cooperate with the commission veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, or any commission employee by:

- (1)** assisting in the immediate location and identification of the horse selected for out of competition testing;
- (2)** providing a stall or safe location to collect the samples;
- (3)** assisting in properly procuring the samples; and
- (4)** obeying any instruction necessary to accomplish the provision of this rule.

The executive director or stewards may summarily suspend, exclude, and/or otherwise penalize any licensee or other person who does not fully cooperate with a commission employee or representative while taking action to enforce this rule.

(g) The collection of blood or urine samples under this rule shall be divided in three (3) parts to be analyzed as follows:

- (1)** approved primary laboratory for screening;
- (2)** approved primary laboratory for confirmation; and
- (3)** approved laboratory for split sample testing.

The commission shall approve the laboratories for screening, confirmation, and split sample testing.

(h) In the absence of extraordinary mitigation *[sic]* circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (e) of this rule *[subsection (e)]*.

(i) Unless otherwise noted, the other provisions of this article apply to out of competition testing.

(Indiana Horse Racing Commission; [71 IAC 8.5-2-5](#); emergency rule filed Jul 23, 2007, 9:16 a.m.):

[20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule

SECTION 14. [71 IAC 8.5-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-3-1](#) Collection procedures

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 1. (a) All collection procedures shall be done in accordance with chain of custody guidelines.

(b) Before sending a sample from a horse to a testing laboratory, the commission veterinarian or a designated employee shall divide the specimen into two (2) parts.

(c) The commission veterinarian shall attempt to collect a minimum of fifty (50) milliliters of urine. The primary testing laboratory shall receive a minimum of fifty (50) milliliters of urine. The commission veterinarian shall collect a minimum of thirty (30) milliliters of blood, which shall be divided into two (2) portions, one (1) of which shall be forwarded to the primary laboratory. A urine specimen shall not be split if less than fifty (50) milliliters is collected from horses. In such instances, the commission is entitled to submit the entire urine specimen for testing or detain the horse an adequate amount of time until it can be obtained. If an insufficient volume of urine is obtained, the trainer and owner are not entitled to a split sample.

(d) If the split sample testing laboratory determines that there is insufficient sample volume to make a specific identification of the sample contents, or if an act of God, power failure, accident, labor strike, or any other event beyond the control of the commission or its representatives prevents the split sample from being tested, then the results of tests performed by the primary laboratory shall be considered prima facie evidence of the condition of the horse.

(e) The commission veterinarian shall retain the part of the urine and blood specimen that is not sent to the primary laboratory.

(f) If the retained part of a specimen is sent for testing, the commission veterinarian shall arrange for the transportation of the specimen in a manner that ensures the integrity of the sample.

(g) Blood samples shall be centrifuged and stored frozen.

(h) The provisions of subsections (b) and (c) do not apply to [71 IAC 8.5-2-5](#).

(Indiana Horse Racing Commission; [71 IAC 8.5-3-1](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2883, eff Jul 1, 1995; emergency rule filed Aug 23, 2001, 9:58 a.m.: 25 IR 121; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2386; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 15. [71 IAC 8.5-3-3](#) IS AMENDED TO READ AS FOLLOWS:

[71 IAC 8.5-3-3](#) Administrative procedures prior to split sample testing

Authority: [IC 4-31-3-9](#)

Affected: [IC 4-31-12](#)

Sec. 3. (a) The results of all tests performed by the primary ~~laboratory~~ **laboratory(s)** are confidential and shall only be communicated to the commission, stewards, owner, and trainer. The trainer shall be responsible for promptly notifying the owner of a horse of a positive test as reported by the primary laboratory.

(b) The trainer or owner of a horse for which a positive result on a drug test is returned may request that the stewards submit the retained part of the specimen for testing in accordance with this section. The specimen must be tested by a laboratory that is identified on the list of approved laboratories maintained by the commission and acceptable to the following:

- (1) The commission.
- (2) The primary laboratory.

The request must be in writing and must be delivered to the stewards not later than seventy-two (72) hours after the trainer has received notice of a positive test result. Notice of a positive test result may be communicated verbally to the trainer. Failure to request testing of a split sample within seventy-two (72) hours shall constitute a waiver of the right. The split sample laboratory shall be contacted by a representative of the commission to request acceptance of a split sample. The trainer or owner may choose any laboratory on the commission maintained **applicable** list to test the sample. However, the commission or executive director may limit the choice of laboratory for the detection of specific drugs.

(c) The trainer or owner may elect to waive his or her right to testing of a split sample.

(d) The owner or trainer of a horse who submits a specimen for drug testing is entitled to be present or have a representative present at any time that the retained part of the specimen is prepared for storage or is tested.

(e) The owner or trainer of a horse who submits a specimen for testing to a split sample laboratory must execute a hold harmless agreement for the split sample laboratory and an agreement that the results of the split sample laboratory can be introduced as evidence in any hearing. The agreements shall remain in the hands of the stewards of the state in which the positive was reported.

(f) The trainer or owner may request that negative control samples be tested with the split sample. The identities of the negative control samples and the split sample shall be known only to the commission.

(g) The presence of a drug or drug metabolite in any quantity, excluding phenylbutazone, flunixin, ketoprofen, and furosemide, is sufficient for a finding of a positive test.

(Indiana Horse Racing Commission; [71 IAC 8.5-3-3](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2883, eff Jul 1, 1995; emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2157; emergency rule filed Jun 22, 1998, 5:08 p.m.: 21 IR 4232; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Jul 28, 2006, 11:17 a.m.: [20060809-IR-071060278ERA](#), eff Aug 1, 2006; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jul 23, 2007, 9:16 a.m.: [20070808-IR-071070461ERA](#), eff Jul 18, 2007 [[IC 4-22-2-37.1](#) establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]

SECTION 16. THE FOLLOWING ARE REPEALED: [71 IAC 8-12](#); [71 IAC 8.5-12](#).

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