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**TITLE 71 INDIANA HORSE RACING COMMISSION****Emergency Rule**  
LSA Document #18-370(E)

## DIGEST

Amends [71 IAC 3-2-9](#) regarding the judge's list. Amends [71 IAC 3.5-2-9](#) regarding the steward's list. Amends [71 IAC 8-3-5](#) regarding out of competition testing. Amends [71 IAC 8-4-1](#) regarding sample collection procedures. Amends [71 IAC 8-11-2](#) regarding a licensee subject to testing and positive sample results. Adds [71 IAC 8.5-1-2.1](#) regarding clenbuterol being prohibited in quarter horses. Amends [71 IAC 8.5-2-5](#) regarding out of competition testing. Amends [71 IAC 8.5-3-1](#) regarding sample collection procedures. Adds [71 IAC 8.5-8-1.5](#) regarding the veterinarian's list for a quarter horse clenbuterol positive. Adds [71 IAC 9-2.1](#) regarding advance deposit wagering definitions. Adds [71 IAC 9-2.2](#) regarding advance deposit wagering. Amends [71 IAC 9-2.5-1](#) regarding wagering rules. Amends [71 IAC 11-1-12](#) regarding contracts with a permit holder and approval by the commission or executive director. Effective August 29, 2018.

[71 IAC 3-2-9](#); [71 IAC 3.5-2-9](#); [71 IAC 8-3-5](#); [71 IAC 8-4-1](#); [71 IAC 8-11-2](#); [71 IAC 8.5-1-2.1](#); [71 IAC 8.5-2-5](#); [71 IAC 8.5-3-1](#); [71 IAC 8.5-8-1.5](#); [71 IAC 9-2.1](#); [71 IAC 9-2.2](#); [71 IAC 9-2.5-1](#); [71 IAC 11-1-12](#)

SECTION 1. [71 IAC 3-2-9](#) IS AMENDED TO READ AS FOLLOWS:

**[71 IAC 3-2-9](#) Judge's list**

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

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

Sec. 9. (a) The judges shall maintain a judge's list of the horses that are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health and safety of the participants and for the protection of the wagering public. The reasons for a horse to be placed on the judge's list and ordered to qualify shall include, but not be limited to, the following on a fast or good track:

- (1) Making a break in a qualifying race.
- (2) Making a break in a race following a qualifying race, if on the list for breaks, unless finishing first, second, or third. Two (2) year old nonwagering purse races for three hundred dollars (\$300) or less shall be considered a qualifying race.
- (3) Poor performance or failure to go in a qualifying time.
- (4) Poor performance in a qualifying race regardless of going in qualifying time.
- (5) Making breaks in two (2) consecutive starts unless finishing first, second, or third in one (1) of the two (2).
- (6) Being scratched sick or lame in two (2) consecutive ~~programmings~~ **programs**.
- (7) Numerous bad lines in its last six (6) starts regardless of being consecutive on finishing first, second, or third.
- (8) Poor performance while competing in a race followed by a break later in that race.

**(b) Any horse on the veterinarian's list shall also be considered to be on the judge's list and ineligible to race until removed.**

**(c) Any horse that has tested positive for a foreign substance in violation of these rules that has not been cleared by the official veterinarian or judges shall be considered to be on the judge's list and ineligible to race until removed.**

~~(b)~~ **(d)** Horses racing at all county fair race tracks that return to pari-mutuel race tracks to compete must have a clean charted line in qualifying time within thirty (30) days or they must requalify. Time allowances for half-mile tracks shall be set by the race secretary at the pari-mutuel track, except as indicated in the conditions of the Indiana sires stakes.

~~(c)~~ **(e)** Horses that are on the judge's list or are not eligible to compete due to the qualifying standards at the Indiana pari-mutuel race track may be allowed to compete in "paid in events" if they have a clean line in qualifying time in the last thirty (30) days (race date to race date) unless declared ineligible under subsection ~~(f)~~ **(h)** or ~~(g)~~ **(i)**.

~~(e)~~ **(f)** The judges may place a horse on the judge's list when there exists a question as to the exact identification, ownership, or trainer of a horse.

~~(e)~~ **(g)** A horse may not be released from the judge's list without permission of the judges.

~~(f)~~ **(h)** Qualifying standards shall not be waived for non-Indiana late closers, Indiana sire stakes finals, late closer finals, and all "paid in events" if there exists a compromise with the health and safety of the participants in those races.

~~(g)~~ **(i)** Horses that are placed on the vet's or judge's list as sick, lame, or injured for a specified number of days, which includes the race date or are required to qualify before racing by the vet or starter, shall not be eligible to race under subsection ~~(e)~~: **(e)**.

*(Indiana Horse Racing Commission; [71 IAC 3-2-9](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1129; emergency rule filed Apr 9, 1998, 1:18 p.m.: 21 IR 3377; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2097; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Mar 27, 2002, 10:25 a.m.: 25 IR 2534; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Jan 21, 2004, 2:30 p.m.: 27 IR 1911; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2754; emergency rule filed May 10, 2005, 3:20 p.m.: 28 IR 2745; emergency rule filed Jan 25, 2006, 10:30 a.m.: 29 IR 1955; emergency rule filed Mar 20, 2007, 1:43 p.m.: [20070404-IR-071070198ERA](#), eff Mar 16, 2007 [[IC 4-22-2-37.1](#)] establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-198(E) was filed with the Publisher March 20, 2007.]; 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](#); emergency rule filed Mar 3, 2011, 11:50 a.m.: [20110309-IR-071110100ERA](#); emergency rule filed Mar 8, 2012, 11:43 a.m.: [20120321-IR-071120117ERA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Mar 30, 2016, 12:18 p.m.: [20160406-IR-071160138ERA](#); emergency rule filed Jun 10, 2016, 11:11 a.m.: [20160615-IR-071160257ERA](#); emergency rule filed Feb 3, 2017, 2:24 p.m.: [20170208-IR-071170051ERA](#); emergency rule filed Mar 17, 2017, 1:04 p.m.: [20170322-IR-071170167ERA](#); emergency rule filed Apr 30, 2018, 3:54 p.m.: [20180502-IR-071180203ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

SECTION 2. [71 IAC 3.5-2-9](#) IS AMENDED TO READ AS FOLLOWS:

### **[71 IAC 3.5-2-9](#) Steward's list**

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

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

Sec. 9. (a) The stewards shall maintain a steward's list of the horses that are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the race track that may endanger the health and safety of other participants in racing.

**(b) Any horse on the veterinarian's list shall also be considered to be on the steward's list and ineligible to race until removed.**

**(c) Any horse that has tested positive for a foreign substance in violation of these rules that has not been cleared by the official veterinarian or stewards shall be considered to be on the steward's list and ineligible to race until removed.**

~~(b)~~ **(d)** The stewards may place a horse on the steward's list when there exists a question as to the exact identification, ownership, or trainer of said horse.

~~(e)~~ **(e)** A horse that has been the subject of a finding by a commission-approved laboratory that the antibody of erythropoietin or darbepoietin was present in the sample taken from the horse shall be placed on the steward's

list. Such horse shall not be released from the steward's list unless and until it has tested negative by a commission-approved laboratory for the antibodies of erythropoietin or darbepoietin.

(d) (f) A horse may not be released from the steward's list without permission of the stewards.

*(Indiana Horse Racing Commission; [71 IAC 3.5-2-9](#); emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2831, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; emergency rule filed Feb 21, 2003, 4:15 p.m.: 26 IR 2380; emergency rule filed Apr 21, 2004, 3:45 p.m.: 27 IR 2754; readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); readopted filed Nov 26, 2013, 11:25 a.m.: [20131225-IR-071130345RFA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

SECTION 3. [71 IAC 8-3-5](#) IS AMENDED 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 eligible to race in Indiana under this subsection is subject to testing without advance notice for prohibited substances, practices, and procedures as specified in subsection (f), while the horse is located on the grounds of 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 under the restrictions listed in subsection (e). A horse is eligible to race in Indiana if it is listed:

- (1) on an owner's or trainer's license application; or
- (2) a stall application, nomination list; or
- (3) on the horse sign-in sheet at any time during the meet; or
- (4) has raced at any Indiana race meet during the calendar year.

A horse shall be presumed eligible if it is a racing breed, at least two (2) years old and an Indiana bred or sired horse. The owner of such an Indiana bred or sired horse may render the horse ineligible for the testing as described in this regulation by indicating in writing the Indiana bred or sired horse is not intended to race in Indiana, pursuant to subsection (b) below provided that the owner of such an Indiana bred or sired horse provides such written notice to the office of the commission thirty (30) days before the horse turns two (2) years old or within thirty (30) days after the owner acquires the horse. In this event, the horse shall be deemed ineligible for racing in Indiana as provided for in subsection (b) below.

(b) If a horse to be tested is not covered under subsection (a), the executive director or judges may nevertheless test any such horse as eligible to race in Indiana for prohibited substances, practices, and procedures specified in subsection (f), unless the owner or trainer or other authorized representative or designee of such horse immediately represents in writing that the horse is not intended to be, and will not be, raced in Indiana for a minimum of three hundred sixty-five (365) days. If the owner, trainer, or other authorized representative or designee so represents, the horse shall be deemed ineligible for racing in Indiana for no less than three hundred sixty-five (365) days from that date. This three hundred sixty-five (365) day ineligibility to race in Indiana shall follow the horse even if sold or transferred to another owner or trainer. An owner or trainer may, however, consent to the collection of a sample from a horse selected for testing under this rule, even if the horse is not presently intended to be raced in Indiana, and if such horse tests negative, it will remain eligible to race in Indiana.

(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 or horses available at the designated time and location. In the event that a horse is ordered to report to a track pursuant to the authority granted by this subsection, a licensed trainer is entitled to reimbursement by the commission for mileage (at the current rate paid by the state of Indiana as specified in the current Indiana financial management circular) to and from the location where the horse was stabled when the horse was ordered to report to the track. Under no circumstances will a trainer be entitled to reimbursement for mileage in excess of the actual mileage to the track from the place where the horse was stabled when ordered to report and from the track to the place where the horse is first stabled following the testing. The trainer is not entitled to receive reimbursement from the commission for any other expense relating to any order under this subsection to report to a track for out of competition testing.

(d) The official veterinarian, a licensed veterinarian authorized by the commission, a veterinary technician under the direct supervision of the official veterinarian, or a licensed veterinarian authorized by the commission may take a urine, blood, or hair sample from a horse for testing as provided for in this section.

(e) Unless sample collection occurs on the grounds of a racetrack or other location within Indiana under the commission's jurisdiction, the commission's representatives must arrive for the taking of blood, urine, or hair samples from an eligible horse as defined in ~~subsections~~ **subsection** (a) or (b), only between the hours of 7:00 a.m. and noon, after announcing their presence at the premises where the horse(s) to be tested is (are) located and showing their credentials to collect samples from the horse(s) selected for testing for prohibited substances, practices, and procedures as specified in subsection (f). The commission's representatives or designees will request to meet with the trainer or owner of the selected horse(s). If neither is available, the collection will be deferred until the trainer and/or owner, or their representative or designee, becomes reasonably available, but the collection must occur not later than one (1) hour after the commission's designee arrives at the premises in the case of an eligible horse under subsection (a), and not later than two (2) hours in the case of an eligible horse under subsection (b). If the collection does not occur within the time provided for in this subsection, any horse that would have been subject to testing and eligible to race in Indiana will be deemed to be ineligible for racing in Indiana pursuant to the provisions of subsections (a) and (b). In addition, the owner and/or trainer of the horses may be subject to any other sanctions allowed by Indiana law and regulations, including, but not limited to, a fine, suspension, and/or summary suspension. It is a defense to any action brought against an owner and/or trainer for sanctions or as a result of any declaration a horse is ineligible because the sample collection did not occur within the time provided for by this subsection that good cause existed that prohibited the owner, trainer, and/or their representative or designee from complying with the time limits set forth in this subsection. The owner, trainer, and/or their representative or designee has the burden of proving the good cause defense by a preponderance of the evidence.

(f) Prohibited substances, practices, and procedures are defined as the following:

- (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.
- (3) Naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, or synthetic analogues of derivatives of venoms.
- (4) Substances capable of producing a repartitioning effect that are not FDA-approved for use in horses, including, but not limited to, ractopamine, zilpaterol, or any similar agent.
- (5) AAS (androgenic-anabolic steroids) other than endogenous concentrations of the naturally occurring substances as defined in [71 IAC 8-1-8](#) or AAS in a horse placed on the veterinarian's list in accordance with [71 IAC 8-1-8\(f\)](#); and
- (6) Cobalt in excess of the threshold provided in [71 IAC 8-1-9](#). In the event a sample from a horse results in cobalt in excess of the threshold, the horse shall be placed on the veterinarian's list until the concentration of cobalt in serum has fallen below the designated threshold, or until the conclusion of the race meet. However, horses testing at a concentration of one hundred (100) parts per billion shall be placed on the veterinarian's list for a minimum of thirty (30) days.
- (7) The presence in a horse of any substance at anytime listed in subdivision (1), (2), (3), (4), or (5) in an eligible as defined in subsections (a) and (b) above is prohibited and is a violation of this rule.

(g) The trainer and/or his/her designees shall cooperate with the official 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 eligible horse selected for out of competition testing; and
- (2) providing a stall or safe location to collect the samples.

The executive director or judges may summarily suspend, exclude, and/or otherwise penalize any trainer and/or other authorized representative or designee who does not fully cooperate with a commission employee or representative in assisting and identifying an eligible horse or providing a safe stall to collect samples in a timely fashion. If any such person is summarily suspended, excluded, or otherwise penalized, she/he shall be entitled to a hearing in accordance with Indiana law and regulations. A summary suspension, exclusion, or sanctions for failure to cooperate shall not issue, however, if a horseman meets his or her burden to establish the good cause defense set forth under subsection (e). This provision does not apply to an owner or trainer who timely provides written notice under subsection (a) or (b) that a horse sought to be tested is not intended to be raced in Indiana and thereby renders the horse ineligible pursuant to subsection (b).

(h) The collection of blood or urine or hair samples under this rule shall be collected as provided by [71 IAC 8-4-1](#) and 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 as chosen by the owner or trainer.

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

(i) The collection of hair samples under this rule shall be collected as provided by [71 IAC 8-4-1](#) and shall be analyzed as follows:

- (1) approved primary laboratory for screening; and
- (2) approved primary laboratory for confirmation.

The commission shall approve the primary laboratories for screening and confirmation. A hair sample shall be ineligible for split sample testing.

(j) In the absence of extraordinary mitigating circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (f)(1) and (f)(2). ~~of this rule.~~ The Association of Racing Commissioners International, Inc. Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule will be considered for violations of (f)(3), (f)(4), and (f)(5) [subsection (f)(3), (f)(4), and (f)(5)] ~~of this rule~~ with additional penalties for any drug not FDA approved for use in horses.

(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.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); 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 Sep 10, 2012, 2:01 p.m.: [20120912-IR-071120525ERA](#); emergency rule filed May 7, 2014, 2:27 p.m.: [20140514-IR-071140143ERA](#), eff May 15, 2014; emergency rule filed Sep 15, 2014, 12:44 p.m.: [20140924-IR-071140352ERA](#), eff Jan 1, 2015; emergency rule filed Mar 16, 2015, 3:29 p.m.: [20150325-IR-071150071ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))

SECTION 4. [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 an equine sample to the primary testing laboratory, the official veterinarian or a designated commission employee shall divide the specimen into two (2) parts provided a sufficient amount is collected.

(c) The official veterinarian or designated commission employee shall attempt to collect a minimum of fifty (50) milliliters of urine. A urine specimen shall not be split if less than fifty (50) milliliters is collected from the horse. 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) The official veterinarian, a licensed veterinarian authorized by the commission, or a veterinary technician under the direct supervision of a commission authorized 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.

(e) The official veterinarian, a licensed veterinarian authorized by the commission, or a ~~veterinary technician under the direct supervision of a commission authorized veterinarian~~ **designated commission employee** shall collect a minimum of a hair sample that is at least the same size in diameter as a standard pencil. **A hair sample shall be ineligible for split sample testing.**

(f) 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.

(g) The official veterinarian or his/her designee shall retain the part of the urine specimen and/or the part of the blood specimen that is not sent to the primary laboratory.

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

(i) Blood samples shall be centrifuged.

(j) The provisions of subsections (b), (c), and (d) 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.]; emergency rule filed Mar 3, 2011, 11:50 a.m.: [20110309-IR-071110100ERA](#); emergency rule filed Apr 5, 2013, 3:50 p.m.: [20130410-IR-071130135ERA](#); emergency rule filed Feb 21, 2018, 2:58 p.m.: [20180228-IR-071180112ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

SECTION 5. [71 IAC 8-11-2](#) IS AMENDED TO READ AS FOLLOWS:

**[71 IAC 8-11-2](#) Licensee subject to testing; positive sample results**

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

**Affected:** [IC 4-31-8-4](#)

Sec. 2. A permit holder shall provide an alcohol breath testing device that is approved by the commission and operated by a person certified to use such a device. All drivers, judges, starters, the paddock judge, horse identifier, photo finish technician, test barn veterinarian, racing veterinarian, outriders, and drivers of starting gates shall submit to a breath test prior to the beginning of their duties at each program in which they participate. Any licensee on the track surface during training hours or any licensee scheduled to drive in a qualifying race is subject to testing at the discretion of the judges. In addition, the racing secretary, the judges, the commission director of security, or the track chief of security may order a licensee to submit to a breath test at any time there is reason to believe the licensee may have consumed sufficient alcohol to cause the licensee to fail a breath test. A positive test result as defined by ~~[71 IAC 8.5-11-1](#)~~ **section 1(b) of this rule** shall be prima facie evidence that there has been a violation of ~~[71 IAC 8.5-11-1](#)~~ **of [sic] section 1 of this rule**. In the event of such positive test, it is presumed that:

- (1) the breath sample tested is taken from the person and its integrity has been preserved;
- (2) all accompanying procedures of collection and analysis of this sample are correct and accurate; and
- (3) the report issued by the commission pertains to the sample taken from the person in question correctly reflects the condition of the person at the time of the sample was given.

With respect to the presumptions set forth in this section, the burden is on the person against whom the test is offered to prove otherwise at any hearing in regard to the matter which is conducted by the stewards or by the commission.

(Indiana Horse Racing Commission; [71 IAC 8-11-2](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1177; emergency rule filed Feb 24, 2000, 2:32 p.m.: 23 IR 1671, eff Feb 24, 2000; errata filed Mar 13, 2000, 7:36 a.m.: 23 IR 1656; 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; errata filed Aug 11, 2006, 11:15 a.m.; [20060830-IR-071060278ACA](#); readopted filed Mar 23, 2007, 11:31 a.m.: [20070404-IR-071070030RFA](#); emergency rule filed Jan 25, 2012, 12:20 p.m.: [20120201-IR-071120056ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))

SECTION 6. [71 IAC 8.5-1-2.1](#) IS ADDED TO READ AS FOLLOWS:

**[71 IAC 8.5-1-2.1](#) Clenbuterol prohibited in quarter horses**

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

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

**Sec. 2.1. (a) No quarter horse participating in a race shall carry in its body clenbuterol in excess of the threshold provided in section 4.2(5) of this rule. A finding by the chemist or commission designee that clenbuterol in excess of the threshold is present in the test sample shall be prima facie evidence that clenbuterol was administered and carried in the body of the horse while participating in a race. Such a finding shall also be taken as prima facie evidence that the trainer and his or her agents responsible for the care or custody of the horse have been negligent in the handling or care of the horse.**

**(b) Upon a finding of a violation of this section, whether by pre-race testing or post-race testing, the owners or lessees of the horse from which the specimen was obtained shall forfeit any purse money and any trophy or award. If the purse money, trophy, or award is associated with a qualifying race, a positive test for clenbuterol shall render the horse ineligible for any subsequent related race.**

**(c) In the event a sample from a quarter horse results in clenbuterol in excess of the threshold, the quarter horse shall be placed on the veterinarian's list as provided in [71 IAC 8.5-8-1.5](#).**

(Indiana Horse Racing Commission; [71 IAC 8.5-1-2.1](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))

SECTION 7. [71 IAC 8.5-2-5](#) IS AMENDED 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 eligible to race in Indiana under this subsection is subject to testing without advance notice for prohibited substances, practices, and procedures as specified in subsection (f), while the horse is located on the grounds of a racetrack under the jurisdiction of the commission, or stabled off association grounds while under the care or control of a trainer or owner licensed by the commission under the restrictions listed in subsection (e). A horse is eligible to race in Indiana if it is listed:

- (1) on an owner's or trainer's license application; or
- (2) a stall application, nomination list; or
- (3) on the horse sign-in sheet at any time during the meet; or
- (4) has raced at any Indiana race meet during the calendar year.

A horse shall be presumed eligible if it is a racing breed, at least two (2) years old and an Indiana bred or sired horse. The owner of such an Indiana bred or sired horse may render the horse ineligible for the testing as described in this regulation by indicating in writing the Indiana bred or sired horse is not intended to race in Indiana, pursuant to subsection (b) below provided that the owner of such an Indiana bred or sired horse provides such written notice to the office of the commission thirty (30) days before the horse turns two (2) years old or within thirty (30) days after the owner acquires the horse. In this event, the horse shall be deemed ineligible for racing in Indiana as provided for in subsection (b) below.

(b) If a horse selected to be tested is not covered under subsection (a), the executive director or stewards may

nevertheless test any such horse as eligible to race in Indiana for prohibited substances, practices, and procedures specified in subsection (f), unless the owner or trainer or other authorized representative or designee of such horse immediately represents in writing that the horse is not intended to be, and will not be, raced in Indiana for a minimum of three hundred sixty-five (365) days. If the owner, trainer, or other authorized representative or designee so represents, the horse shall be deemed ineligible for racing in Indiana for no less than three hundred sixty-five (365) days from that date. This three hundred sixty-five (365) day ineligibility to race in Indiana shall follow the horse even if sold or transferred to another owner or trainer. An owner or trainer may, however, consent to the collection of a sample from a horse selected for testing under this rule, even if the horse is not presently intended to be raced in Indiana, and if such horse tests negative, it will remain eligible to race in Indiana.

(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 or horses available at the designated time and location. In the event that a horse is ordered to report to a track pursuant to the authority granted by this subsection, a licensed trainer is entitled to reimbursement by the commission for mileage (at the current rate paid by the state of Indiana as specified in the current Indiana financial management circular) to and from the location where the horse was stabled when the horse was ordered to report to the track. Under no circumstances will a trainer be entitled to reimbursement for mileage in excess of the actual mileage to the track from the place where the horse was stabled when ordered to report and from the track to the place where the horse is first stabled following the testing. The trainer is not entitled to receive reimbursement from the commission for any other expense relating to any order under this subsection to report to a track for out of competition testing.

(d) The official veterinarian, a licensed veterinarian authorized by the commission or a veterinary technician under the direct supervision of the official veterinarian, or a licensed veterinarian authorized by the commission may take a urine, blood, or hair sample from a horse for testing as provided for in this section.

(e) Unless sample collection occurs on the grounds of a racetrack or other location within Indiana under the commission's jurisdiction, the commission's representatives must arrive for the taking of blood, urine, or hair samples from an eligible horse as defined in ~~subsections~~ **subsection** (a) or (b), only between the hours of 7:00 a.m. and noon, after announcing their presence at the premises where the horse(s) to be tested is (are) located and showing their credentials to collect samples from the horse(s) selected for testing for prohibited substances, practices, and procedures as specified in subsection (f). The commission's representatives or designees will request to meet with the trainer or owner of the selected horse(s). If neither is available, the collection will be deferred until the trainer and/or owner, or their representative or designee, becomes reasonably available, but the collection must occur not later than one (1) hour after the commission's designee arrives at the premises in the case of an eligible horse under subsection (a), and not later than two (2) hours in the case of an eligible horse under subsection (b). If the collection does not occur within the time provided for in this subsection, any horse that would have been subject to testing and eligible to race in Indiana will be deemed to be ineligible for racing in Indiana pursuant to the provisions of subsections (a) and (b). In addition, the owner and/or trainer of the horses may be subject to any other sanctions allowed by Indiana law and regulations, including, but not limited to, a fine, suspension, and/or summary suspension. It is a defense to any action brought against an owner and/or trainer for sanctions or as a result of any declaration a horse is ineligible because the sample collection did not occur within the time provided for by this subsection that good cause existed that prohibited the owner, trainer, and/or their representative or designee from complying with the time limits set forth in this subsection. The owner, trainer, and/or their representative or designee has the burden of proving the good cause defense by a preponderance of the evidence.

(f) Prohibited substances, practices, and procedures are defined as the following:

- (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.
- (3) Naturally produced venoms, synthetic analogues of venoms, derivatives of venoms, or synthetic analogues of derivatives of venoms.
- (4) Substances capable of producing a repartitioning effect that are not FDA-approved for use in horses, including, but not limited to, ractopamine, zilpaterol, or any similar agent.
- (5) AAS (androgenic-anabolic steroids) other than endogenous concentrations of the naturally occurring substances as defined in [71 IAC 8.5-1-8](#) or AAS in a horse placed on the veterinarian's list in accordance with



[71 IAC 8.5-1-8\(f\)](#); and

(6) Cobalt in excess of the threshold provided in [71 IAC 8.5-1-9](#). In the event a sample from a horse results in cobalt in excess of the threshold, the horse shall be placed on the veterinarian's list until the concentration of cobalt in serum has fallen below the designated threshold, or until the conclusion of the race meet. However, horses testing at a concentration of one hundred (100) parts per billion shall be placed on the veterinarian's list for a minimum of thirty (30) days.

**(7) Clenbuterol in excess of the threshold provided in [71 IAC 8.5-1-4.2\(5\)](#) for a quarter horse. In the event a sample from a quarter horse results in clenbuterol in excess of the threshold, the quarter horse shall be placed on the veterinarian's list as provided in [71 IAC 8.5-8-1.5](#).**

~~(7) (8)~~ The presence in a horse of any substance at any time listed in ~~subdivision (f)(1), (f)(2), (f)(3), (f)(4), or (f)(5)~~ **subdivision (1), (2), (3), (4), or (5)** in an eligible as defined in subsections (a) and (b) above is prohibited and is a violation of this rule.

(g) The trainer and/or his/her designees shall cooperate with the official 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 eligible horse selected for out of competition testing; and
- (2) providing a stall or safe location to collect the samples.

The executive director or stewards may summarily suspend, exclude, and/or otherwise penalize any trainer and/or other authorized representative or designee who does not fully cooperate with a commission employee or representative in assisting and identifying an eligible horse or providing a safe stall to collect samples in a timely fashion. If any such person is summarily suspended, excluded, or otherwise penalized, she/he shall be entitled to a hearing in accordance with Indiana law and regulations. A summary suspension, exclusion, or sanctions for failure to cooperate shall not issue, however, if a horseman meets his or her burden to establish the good cause defense set forth under subsection (e). This provision does not apply to an owner or trainer who timely provides written notice under subsection (a) or (b) that a horse sought to be tested is not intended to be raced in Indiana and thereby renders the horse ineligible pursuant to subsection (b).

(h) The collection of blood ~~or urine or hair~~ samples under this rule **shall be collected as provided by [71 IAC 8.5-3-1](#)** and 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 as chosen by the owner or trainer.

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

**(i) The collection of hair samples under this rule shall be collected as provided by [71 IAC 8.5-3-1](#) and shall be analyzed as follows:**

- (1) approved primary laboratory for screening; and**
- (2) approved primary laboratory for confirmation.**

**The commission shall approve the primary laboratories for screening and confirmation. A hair sample shall be ineligible for split sample testing.**

~~(j)~~ **(j)** In the absence of extraordinary mitigating circumstances, a minimum penalty of a ten (10) year suspension will be assessed for any violation of subsection (f)(1) and (f)(2). ~~of this rule.~~ The Association of Racing Commissioners International, Inc. Uniform Classification Guidelines for Foreign Substances and Recommended Penalties and Model Rule will be considered for violations of (f)(3), (f)(4), and (f)(5) [~~subsection (f)(3), (f)(4), and (f)(5)~~] ~~of this rule~~ with additional penalties for any drug not FDA approved for use in horses.

*(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 upon filing with the Publisher. LSA Document #07-461(E) was filed with the Publisher July 23, 2007.]; errata filed Aug 14, 2007, 1:28 p.m.: [20070829-IR-071070461ACA](#); 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 Sep 10, 2012, 2:01 p.m.: [20120912-IR-071120525ERA](#); emergency rule filed May 7, 2014, 2:27 p.m.: [20140514-IR-071140143ERA](#), eff May 15, 2014; emergency rule filed Sep 15, 2014, 12:44 p.m.: [20140924-IR-071140352ERA](#), eff Jan 1, 2015; emergency rule filed Mar 16, 2015,*

SECTION 8. [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 an equine sample to the primary testing laboratory, the official veterinarian or a designated commission employee shall divide the specimen into two (2) parts provided a sufficient amount is collected.

(c) The official veterinarian or a designated commission employee shall attempt to collect a minimum of fifty (50) milliliters of urine. A urine specimen shall not be split if less than fifty (50) milliliters is collected from the horse. 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) The official veterinarian, a licensed veterinarian authorized by the commission, or a veterinary technician under the direct supervision of a commission authorized 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.

(e) The official veterinarian, a licensed veterinarian authorized by the commission, or a ~~veterinary technician under the direct supervision of a commission authorized veterinarian~~ **designated commission employee** shall collect a minimum of a hair sample that is at least the same size in diameter as a standard pencil. **A hair sample shall be ineligible for split sample testing.**

(f) 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.

(g) The official veterinarian or his/her designee shall retain the part of the urine and/or blood specimen that is not sent to the primary laboratory.

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

(i) Blood samples shall be centrifuged.

(j) The provisions of subsections (b), (c), and (d) 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.]; emergency rule filed Mar 3, 2011, 11:50 a.m.: [20110309-IR-071110100ERA](#); emergency rule filed Apr 5, 2013, 3:50 p.m.: [20130410-IR-071130135ERA](#); emergency rule filed Feb 21, 2018, 2:58 p.m.: [20180228-IR-071180112ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

SECTION 9. [71 IAC 8.5-8-1.5](#) IS ADDED TO READ AS FOLLOWS:

**[71 IAC 8.5-8-1.5](#) Veterinarian's list for quarter horse clenbuterol positive**

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

Affected: [IC 4-31](#)

Sec. 1.5. (a) The official veterinarian shall maintain a list of all quarter horses with clenbuterol in excess of the threshold provided in [71 IAC 8.5-1-4.2\(5\)](#).

(b) A quarter horse shall not be removed from the veterinarian's list until a biological sample of hair tested by a commission approved laboratory determines clenbuterol is not in excess of the threshold limit provided in [71 IAC 8.5-1-4.2\(5\)](#).

(c) Hair samples shall be collected as provided in [71 IAC 8.5-3-1](#) for collection procedures or [71 IAC 8.5-2-5](#) for out of competition testing.

(d) The trainer or owner requesting hair sample testing shall pay all costs.

(e) The trainer or owner requesting hair sample testing shall make full payment prior to hair sample collection.

(f) The quarter horse may be removed from the veterinarian's list once a commission approved laboratory determines clenbuterol in hair is below the threshold limit provided in [71 IAC 8.5-1-4.2\(5\)](#).

(g) If the hair test results determine a quarter horse is above the threshold limit, the trainer or owner may request another hair sample test in accordance with this section at a later date.

*(Indiana Horse Racing Commission; [71 IAC 8.5-8-1.5](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

SECTION 10. [71 IAC 9-2.1](#) IS ADDED TO READ AS FOLLOWS:

**Rule 2.1. Advance Deposit Wagering Definitions**

*NOTE: Agency cited as Rule 2, which was renumbered by the Publisher as Rule 2.1.*

**[71 IAC 9-2.1-1](#) Applicability**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31](#)

Sec. 1. The definitions in this rule apply through this article.

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-1](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-1](#), which was renumbered by the Publisher as [71 IAC 9-2.1-1](#).*

**[71 IAC 9-2.1-2](#) "Account holder" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-2](#)

Sec. 2. "Account holder" means an Indiana resident who has established an advance deposit wagering account.

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-2](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-6](#), which was renumbered by the Publisher as*

**[71 IAC 9-2.1-3](#) "Advance deposit wagering" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-3](#)

**Sec. 3. "Advance deposit wagering" means a system of pari-mutuel wagering in which wagers of account holder are debited and payouts are credited to an account established by the account holder, regardless of whether the wagers are made in person, by telephone, or through communication by other electronic means.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-3](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-2](#), which was renumbered by the Publisher as [71 IAC 9-2.1-3](#).*

**[71 IAC 9-2.1-4](#) "Advance deposit wagering account" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-4](#)

**Sec. 4. "Advance deposit wagering account" means an account for advance deposit wagering held by a licensed SPMO.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-4](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-5](#), which was renumbered by the Publisher as [71 IAC 9-2.1-4](#).*

**[71 IAC 9-2.1-5](#) "Advance deposit wagering terms and agreement" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31](#)

**Sec. 5. "Advance deposit wagering terms and agreement" refers to a plan by an SPMO, subject to commission approval, detailing how a licensed SPMO will operate an advance deposit account wagering system in Indiana.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-5](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-11](#), which was renumbered by the Publisher as [71 IAC 9-2.1-5](#).*

**[71 IAC 9-2.1-6](#) "Communication by other electronic means" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-5](#); [IC 35-45-5-1](#)

**Sec. 6. "Communication by other electronic means" means communication by any electronic communication device, including any of the following:**

- (1) A personal computer or other device enabling communication through the Internet.
- (2) A private network.
- (3) An interactive television.
- (4) A wireless communication technology.
- (5) An interactive computer service (as defined in [IC 35-45-5-1](#)).
- (6) Any other technology approved by the commission.

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-6](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-9](#), which was renumbered by the Publisher as [71 IAC 9-2.1-6](#).*

**[71 IAC 9-2.1-7](#) "Confidential information" defined**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31](#)

**Sec. 7. As used in this article, "confidential information" includes the following:**

- (1) the amount of money credited to, debited from, or present in any particular account holder's account;
- (2) the amount of money wagered by a particular account holder on any races or series of races;
- (3) the account number and secure means of personal identification of an account holder;
- (4) the identities of particular entries on which an account holder is wagering or has wagered;
- (5) the account holder's Social Security number;
- (6) unless otherwise authorized by the account holder, the name, address, and other information in possession of the licensed SPMO that would identify the account holder to anyone other than the commission, the commission's designees, and the licensed SPMO; and
- (7) credit and debit card information provided by an account holder.

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-7](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-10](#), which was renumbered by the Publisher as [71 IAC 9-2.1-7](#).*

#### [71 IAC 9-2.1-8](#) "Licensed SPMO" defined

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-6](#)

**Sec. 8. "Licensed SPMO" means a secondary pari-mutuel organization licensed under this article.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-8](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-4](#), which was renumbered by the Publisher as [71 IAC 9-2.1-8](#).*

#### [71 IAC 9-2.1-9](#) "Net source market fee" defined

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-18](#)

**Sec. 9. "Net source market fee" means the difference between:**

- (1) the amount of the source market fee received by a permit holder from a licensed SPMO; minus
- (2) the amount of expenses incurred by the permit holder under this article.

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-9](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-8](#), which was renumbered by the Publisher as [71 IAC 9-2.1-9](#).*

#### [71 IAC 9-2.1-10](#) "Secondary pari-mutuel organization" or "SPMO" defined

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-7](#)

**Sec. 10. "Secondary pari-mutuel organization" or "SPMO" means an entity that offers advance deposit wagering.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-10](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-3](#), which was renumbered by the Publisher as [71 IAC 9-2.1-10](#).*

#### [71 IAC 9-2.1-11](#) "Source market fee" defined

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-8](#); [IC 4-31-7.5-10](#)

**Sec. 11. "Source market fee" means the amount of an advance deposit wager made on any race:**  
**(1) through a licensed SPMO; and**  
**(2) by an individual whose principal residence is within Indiana at the time the wager is made;**  
**that a permit holder is entitled to receive from the licensed SPMO under the terms of the contract required by [IC 4-31-7.5-10](#) between the licensed SPMO and each permit holder.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-11](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2-7](#), which was renumbered by the Publisher as [71 IAC 9-2.1-11](#).*

SECTION 11. [71 IAC 9-2.2](#) IS ADDED TO READ AS FOLLOWS:

## **Rule 2.2. Advance Deposit Wagering**

*NOTE: Agency cited as Rule 2.1, which was renumbered by the Publisher as Rule 2.2.*

### **[71 IAC 9-2.2-1](#) Purpose**

**Authority:** [IC 4-31-7.5-11](#)

**Affected:** [IC 4-31-7.5-1](#)

**Sec. 1. (a) Advance deposit wagering is permitted in Indiana, subject to [IC 4-31-7.5](#) and this article.**

**(b) These rules have been enacted to:**

- (1) recognize changes in technology for pari-mutuel wagering and to retain for the Indiana horse racing industry a part of revenues generated by Indiana residents on wagers placed with secondary pari-mutuel organizations;**
- (2) to ensure that advance deposit wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity;**
- (3) to establish application, license, and operational criteria to conduct advance deposit wagering activities in order to ensure the protection of the public interest; and**
- (4) to ensure that the process for the issuance of licenses relating to advance deposit wagering is fair and equitable.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-1](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-1](#), which was renumbered by the Publisher as [71 IAC 9-2.2-1](#).*

### **[71 IAC 9-2.2-2](#) Licensing of secondary pari-mutuel organization**

**Authority:** [IC 4-31-7.5-11](#)

**Affected:** [IC 4-31-7.5-15](#)

**Sec. 2. (a) The commission may issue to a secondary pari-mutuel organization a license to offer advance deposit wagering to Indiana residents if the commission:**

- (1) finds that the applicant satisfies the requirements of this article; and**
- (2) approves the contract submitted under section 6 of this rule.**

**(b) The term of a license issued under this article is one (1) year.**

**(c) The annual license renewal fee is one thousand dollars (\$1,000).**

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-2](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-2](#), which was renumbered by the Publisher as [71 IAC 9-2.2-2](#).*

### **[71 IAC 9-2.2-3](#) Application submission and reimbursement of costs**

**Authority:** [IC 4-31-7.5-11](#)

**Sec. 3. (a) A secondary pari-mutuel organization applying for a license under this article must submit a complete application on a form prescribed by the commission that contains the following information:**

- (1) the applicant's legal name;**
- (2) the location of the applicant's principal office;**
- (3) the names, addresses, and dates of birth of all shareholders, directors, officers, and other persons owning or controlling an interest in the SPMO with the degree of ownership or type of interest shown. Corporations, partnerships, or other legal entities which own or control a beneficial interest in the applicant, either directly or through other corporations or legal entities, shall similarly file with the application a list showing the names, addresses, and dates of birth of all officers, directors, stockholders, and other persons owning or controlling a beneficial interest in the legal entities, with the degree of ownership or type of interest pertaining to the ownership or interest;**
- (4) if the applicant is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in paragraph (3) of this subsection [subdivision (3)] shall be required from the directors of the membership organization, or the directors and officers of the publicly traded corporation, in lieu of the shareholders;**
- (5) a copy of the organizational documents of the applicant;**
- (6) the names of the racetracks the applicant, or its agent, has contracts or other agreements with that allow the applicant to provide advance deposit wagering;**
- (7) financial information that demonstrates that the SPMO has the financial resources to operate advance deposit wagering and provides a detailed budget that shows anticipated revenue, expenditures and cash flows by month, projected for the term of the license sought;**
- (8) written evidence of the approval to conduct advance deposit wagering that the organization has received from the appropriate regulatory authority in each state where the secondary pari-mutuel organization is licensed;**
- (9) a copy of a proposed contract executed by the applicant and each permit holder to satisfy the requirements of section 5 of this article [sic];**
- (10) a copy of the bond, irrevocable letter of credit, or other undertaking referenced in section 5 of this rule;**
- (11) a plan of operation including all standard operating procedures related to wagers, wagering accounts, security of wagering systems, security of confidential information, policies for ensuring no underage persons engage in wagering and account payouts;**
- (12) a detailed budget showing on a monthly basis anticipated revenue, expenditures and cash flows, from the SPMO's operation during the initial license period;**
- (13) a proposed version of the advance deposit wagering terms and agreement to be provided to account holders;**
- (14) a nonrefundable application fee of five thousand dollars (\$5,000); and**
- (15) any other information required by the commission.**

**(b) The commission may retain professional services, conduct investigations, or request additional information from the applicant for a license as it deems appropriate in determining whether to grant a license to an SPMO.**

**(c) The commission may require an applicant to pay any costs incurred by the commission for background checks, investigation, and professional fees related to the review and/or consideration of the license application that exceed five thousand dollars (\$5,000).**

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-3](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-3](#), which was renumbered by the Publisher as [71 IAC 9-2.2-3](#).*

#### **[71 IAC 9-2.2-4](#) SPMO license criteria and commission action**

**Authority: [IC 4-31-7.5-11](#)**

**Affected: [IC 4-31-7.5](#)**

**Sec. 4. (a) The commission may issue a license under [IC 4-31-7.5](#) if the commission determines that the applicant meets all of the requirements under [IC 4-31-7.5](#) and this article and, that on the basis of all the facts before it, the following is shown:**

- (1) the applicant is qualified and financially able to operate advance deposit wagering in the state of Indiana;
- (2) advance deposit wagering in Indiana will be operated in accordance with all applicable laws and rules; and
- (3) the issuance of a license will ensure that advance deposit wagering will be conducted with the highest of standards and the greatest level of integrity, and ensure the protection of the public interest.

(b) In reviewing an application, the commission may consider any information, data, reports, findings, factors, or indices available which it considers important or relevant to its determination of whether an applicant is qualified to hold an SPMO license under [IC 4-31-7.5](#), including, without limitation, the following:

- (1) the integrity of the applicant, its partners, directors, officers, and policymakers, including, but not limited to, the following:
  - (A) Criminal record.
  - (B) Whether a party to litigation over business practices, disciplinary actions over a business license or permit or refusal to renew a license or permit.
  - (C) Proceedings in which unfair labor practices, discrimination, or government regulation of advance deposit wagering was an issue or bankruptcy proceedings.
  - (D) Failure to satisfy judgments, orders, or decrees.
  - (E) Delinquency in filing of tax reports or remitting taxes.
  - (F) Any other indices related to the integrity of the applicant which the commission considers important or relevant to its determination;
- (2) the financial strength of the applicant;
- (3) the management ability of the applicant;
- (4) the experience of the applicant;
- (5) compliance with applicable statutes and regulations;
- (6) whether licensing the SPMO would be in the best interest of the public health, safety, and welfare in the state; and
- (7) the potential effect on revenue to the state and Indiana horse racing constituents.

(c) The commission may grant or deny an SPMO license subject to conditions specified by the commission and agreed to by the applicant.

(d) The commission may require changes in the proposed plan of operations and/or advance deposit wagering terms and agreement as a condition of granting a license. A licensed SPMO shall not make subsequent material changes in the plan of operations and/or advance deposit wagering terms and agreement unless ordered by the commission or until approved by the commission after receiving a written request.

(e) A licensed SPMO shall file a license renewal request for the upcoming calendar year by Nov. 1 of the preceding year. The license renewal request must be accompanied by a cashier's check or certified check payable to the commission in the amount of one thousand dollars (\$1,000) as a nonrefundable annual license fee. In addition, the licensed SPMO must submit a letter detailing any requested changes in the commission approved plan of operations and/or advance deposit wagering terms and agreement.

(f) A license issued under this article is neither transferable nor assignable, including by operation of law, without the prior written consent of the commission.

(g) Any action that suspends or otherwise prohibits a licensed SPMO from operating in another state may be used as grounds for a suspension of its Indiana SPMO license.

(h) All employees working on behalf of a licensed SPMO that are officers, directors, managers and/or involved in Indiana advance deposit wagering must hold an Indiana commission license.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-4](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-4](#), which was renumbered by the Publisher as [71 IAC 9-2.2-4](#).*



**[71 IAC 9-2.2-5](#) Bond or irrevocable letter of credit**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5](#)

Sec. 5. (a) A licensed SPMO shall provide a bond or irrevocable letter of credit in an amount set by the commission for the purpose of ensuring that payments to the commission and to Indiana account holders are made. In the alternative, a licensed SPMO may provide other means of assurance of such payment including, but not limited to, evidence of bond(s), irrevocable letter(s) of credit, or other forms of financial guarantees posted and in good standing with regulatory authorities in other jurisdictions, which shall be subject to the approval of the commission. Any bond, letter of credit, or other assurance of payment acceptable to the commission provided by the licensed SPMO shall run to the Indiana horse racing commission as obligee, and shall be for the benefit of the commission and any account holder who suffers a loss by reason of the licensed SPMO's violation of [IC 4-31-7.5](#) or this rule.

(b) In determining the amount of the bond, the commission shall consider the monthly payments due to the commission pursuant to section 6 of this rule and the projected total value of all balances in Indiana advance deposit wagering accounts held by the licensed SPMO. The bond shall be the greater of fifty thousand dollars (\$50,000) or the full projected value of all balances in Indiana advance deposit wagering accounts plus the amount due to the permit holder and the commission in a monthly period pursuant to section 6 of this rule.

(c) The bond, letter of credit, or other assurance of payment shall be conditioned on the obligor as licensee faithfully complying with [IC 4-31-7.5](#) and this article. The bond shall be continuous and may be canceled by the surety only upon the surety giving written notice to the executive director of its intent to cancel the bond. The notice of cancellation shall be effective no sooner than thirty (30) days after the notice is received by the executive director. In the event of cancellation of the bond, letter of credit, or other assurance of payment the licensed SPMO shall file a new bond, letter of credit, or other assurance of payment prior to the effective date of the cancellation notice.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-5](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-5](#), which was renumbered by the Publisher as [71 IAC 9-2.2-5](#).*

**[71 IAC 9-2.2-6](#) Contract with permit holder**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-10](#)

Sec. 6. (a) A licensed SPMO may accept advance deposit wagers for races conducted within or outside Indiana. Advance deposit wagers made under this chapter are considered to have been made in Indiana.

(b) A licensed SPMO must have a single written contract signed by each permit holder. The contract must be approved by the commission. The contract must:

- (1) specify the manner in which the amount of the source market fee is determined for each permit holder;
- (2) govern all other aspects of the business relationship between the licensed SPMO and each permit holder; and
- (3) contain a provision reserving all rights of horsemen's associations under the federal Interstate Horse Racing Act (15 U.S.C. 3001 et seq.).

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-6](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-6](#), which was renumbered by the Publisher as [71 IAC 9-2.2-6](#).*

**[71 IAC 9-2.2-7](#) Payment to commission by permit holder and allocation of net source market fee**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-18](#)

**Sec. 7. (a) Each permit holder shall not later than the end of each month pay to the commission as an advance deposit wagering fee an amount equal to sixty percent (60%) of the net source market fee received from a licensed SPMO during the preceding month.**

**(b) The commission shall use twenty-five percent (25%) of the revenue received from advance deposit wagering fees under subsection (a) to promote horse racing at the state fair and county fairs.**

**(c) The commission shall use seventy-five percent (75%) of the revenue received to promote and encourage Indiana horse owner and horse trainer participation at a permit holder's horse racing facility as follows:**

**(1) Eight percent (8%) of the revenue described shall be distributed to the horsemen's association representing quarter horses.**

**(2) Forty-six percent (46%) of the revenue shall be distributed to the horsemen's association representing standardbred owners and trainers.**

**(3) Thirty-six and eight-tenths percent (36.8%) of the revenue shall be distributed to the horsemen's association representing thoroughbred owners and trainers.**

**(4) Nine and two-tenths percent (9.2%) of the revenue shall be distributed to the horsemen's association representing thoroughbred owners and breeders.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-7](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-7](#), which was renumbered by the Publisher as [71 IAC 9-2.2-7](#).*

#### **[71 IAC 9-2.2-8](#) Advance deposit wagering accounts**

**Authority: [IC 4-31-7.5-11](#)**

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

**Sec. 8. (a) An established advance deposit wagering account is necessary to place advance deposit wagers. An account may only be established with a licensed SPMO.**

**(b) An advance deposit wagering account shall be established in person at a racetrack or off track betting facility licensed by the commission before any wagering shall be conducted. An advance deposit wagering account shall only be established in the name of a natural person and is nontransferable.**

**(c) Any person prohibited from wagering under commission rules shall be prohibited from establishing an advance deposit wagering account or placing a wager.**

**(d) To establish an advance deposit wagering account, an application form must be signed or otherwise authorized in a manner acceptable to the commission and include:**

**(1) the applicant's full legal name;**

**(2) principal residence address;**

**(3) mailing address, e-mail address, when available;**

**(4) telephone number;**

**(5) Social Security number;**

**(6) proper identification or certification demonstrating that the applicant is at least twenty-one (21) years of age;**

**(7) completed W-9 form;**

**(8) whether the account holder wants to use a credit card to make deposits to their account;**

**(9) signature of applicant; and**

**(10) any additional information required by the commission.**

**(e) Each account shall have a unique identifying account number. The identifying account number may be changed at any time by the licensed SPMO provided the account holder is given notice in writing fifteen (15) days prior to the change.**

**(f) The account holder shall receive at the time the account is approved:**

- (1) his or her unique account identification number;
- (2) a secure personal identification code to be used when the account holder is placing an advance deposit wager; the account holder has the right to change this code at any time;
- (3) a copy of the advance deposit wagering rules, the advance deposit wagering terms and agreement, and such other information and material that is pertinent to the operation of the account;
- (4) notice that the account holder must be at least twenty-one (21) years of age, and that individuals under the age of twenty-one (21) shall not open, own, or have access to the account; and
- (5) such other information as the licensed SPMO or the commission may deem appropriate.

(g) The principal residential address provided in writing by the account holder at the time of application or as updated in subsection (j) is deemed to be the proper address for the purposes of mailing checks, statements of account, account withdrawals, notices, or other appropriate correspondence. The mailing of checks or other correspondence to the address given by the account holder shall be at the sole risk of the account holder.

(h) The licensed SPMO may close or refuse to open an account for what it deems good and sufficient reason and shall order an account closed if it is determined that information that was used to open an account was false, or that the account has been used in violation of these rules.

(i) Any disputes between an account holder and a licensed SPMO shall follow the dispute resolution procedures contained in the licensed SPMO's terms of agreement as approved by the commission. If the licensed SPMO fails to resolve the dispute, the commission may take appropriate action including claims against the bond or other form of financial security.

(j) An account holder must update any changes to the account holder's contact information, including, but not limited to, the account holder's permanent address and e-mail address. All updates must be made in writing (on a form provided by the licensed SPMO) or online, and must be submitted to the SPMO within thirty (30) days of the change.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-8](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-8](#), which was renumbered by the Publisher as [71 IAC 9-2.2-8](#).*

#### **[71 IAC 9-2.2-9](#) Duties of licensed SPMO**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-12](#)

Sec. 9. (a) A licensed SPMO shall verify each application submitted for an advance deposit wagering account with respect to name, principal residence address, and date of birth by either an independent service provider or another means which meets or exceeds the reliability, security, accuracy, privacy, and timeliness provided by an independent service provider. If there is a discrepancy between the application submitted and the information provided by the verification described above or if no information on the applicant is available from such verification process, another individual reference service may be accessed or another technology meeting the requirements described above may be used to verify the information provided. If the applicant's information cannot be verified, the licensed SPMO shall not establish an account.

(b) A licensed SPMO shall allow the commission or its designee access to its premises to visit, investigate, and place expert accountants and other persons it deems necessary for the purpose of ensuring that its enabling statutes, its rules, and the advance deposit wagering terms of agreement are strictly complied with.

(c) A licensed SPMO that accept wagers shall upon request of the commission provide a full accounting and verification of the source of the wagers, and a detailed wagering information file that includes, but is not limited to, dollar amount wagered, pool on which the wager was placed, race number and racing venue, zone, breed, zip code of the account holder, time wagering stopped, and time of the wager in the form of a daily mutuel data download to the commission's designated database.

(d) A licensed SPMO shall give access to the commission, or its designee, for review and audit of all records as set forth in section 11 of this rule.

(e) A licensed SPMO shall record by means of the appropriate electronic media all wagering transactions or other wagering communications through the account wagering system, and the records of such communications shall be kept by the account wagering center for at least a period of one (1) year. These records shall be made available to commissioners, employees, and designees of the commission upon request.

(f) No employee or agent of a licensed SPMO shall divulge any confidential information related to the placing of any wager or to the operation of the licensed SPMO, except to the account holder as required by these rules, the commission, and as otherwise required by state or federal law.

(g) A licensed SPMO shall make available to all account holders contact information for a recognized problem-gambling support organization.

(h) A licensed SPMO shall not disseminate, or cause to disseminate, advance deposit wagering advertising that it determines to be deceptive to the public. A licensed SPMO shall state in all advertising in the state of Indiana that residents under the age of twenty-one (21) are not permitted to open, own, or have access to an advance deposit wagering account.

(i) If the licensed SPMO is located in Indiana, no account shall be established for any natural person under the age of twenty-one (21).

(j) Each manager, employee, or agent of a licensed SPMO has a duty to comply with the rules of the commission at all times and acknowledge that the rules are a condition under which the permits are granted.

(k) A licensed SPMO shall comply with all applicable federal laws including, but not limited to, Internal Revenue Service (IRS) requirements for reporting and withholding proceeds from advance deposit wagers by account holders and shall send to account holders subject to IRS reporting or withholding a Form W2-G summarizing the information for tax purposes following a winning wager being deposited into an account. Upon written request, the licensed SPMO shall provide account holders with summarized tax information on advance deposit wagering activities.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-9](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-9](#), which was renumbered by the Publisher as [71 IAC 9-2.2-9](#).*

#### **[71 IAC 9-2.2-10](#) Administration of advance deposit wagering accounts**

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31](#)

Sec. 10. (a) Each account holder's advance deposit wagering account shall be administered in accordance with the advanced wagering deposit terms of agreement submitted by the licensed SPMO and approved by the commission, including, but not limited to:

- (1) deposits;
- (2) credits to accounts;
- (3) debits to accounts;
- (4) withdrawals;
- (5) minimum deposit; and
- (6) fees, if any, per wager.

(b) Credits to an account after the initial establishment of the account may be made as follows:

- (1) Deposits to an account by an account holder may be made in the following forms:

- (A) cash, which may be deposited at outlets designated by the licensed SPMO;
- (B) check, money order, or negotiable order of withdrawal given or sent to a licensed SPMO;
- (C) charges made to an account holder's credit card or debit card upon the direct and personal instruction of the account holder, if the use of the card has been approved by the licensed SPMO;
- (D) transfer by means of an electronic funds transfer from a monetary account controlled by an account holder to his/her account, said account holder to be liable for any charges imposed by the transmitting or receiving entity with such charges to be deducted from the account; or

(2) Funds so deposited will be made available for wagering use in accordance with financial institution funds availability schedules.

(3) Credit for winnings from wagers placed with funds in an account and credit for account wagers on entries that are scratched shall be posted to the account by the authorized advance deposit wagering service provider.

(c) Debits to an account shall be made as follows:

(1) upon receipt by the licensed SPMO of an advance deposit wager, the licensed SPMO shall debit the account in the amount of the wager; or

(2) for fees for service or other transaction-related charges by the licensed SPMO.

(d) A licensed SPMO may close accounts for violation of its terms of agreement or other appropriate reasons approved by the commission's executive director.

(e) A licensed SPMO may close accounts in which there has been no activity for at least six (6) months, returning funds remaining therein to the account holder at his/her last known principal residential address.

(f) In the event an account holder is deceased, funds accrued in the account shall be released to the decedent's legal representative upon receipt of a copy of a valid death certificate, tax releases or waivers, probate court authorizations, or other documents required by applicable laws.

(g) The licensed SPMO shall not accept wagers from an account holder in an amount in excess of the account balance.

(h) Checks, money orders, and other negotiable instruments shall be posted to the credit of the account holder in accordance with financial institution funds availability schedules.

(i) Monies deposited with the licensed SPMO for account wagering shall not bear any interest to the account holder.

(j) Notwithstanding any other rules, a licensed SPMO may at any time declare account wagering closed for receiving wagers on any pari-mutuel pool, race, group of races, racetrack or closed for all wagering. Anytime account wagering is closed during normal wagering hours by the licensed SPMO a written report must be filed with the commission within forty-eight (48) hours.

(k) A licensed SPMO has the right at any time and for what it deems good and sufficient reason to refuse to accept all or part of any wager.

(l) Except where the licensed SPMO or its employees or agents act without good faith or fail to exercise ordinary care, the licensed SPMO shall not be responsible for any loss arising from the use by any other person or persons of an account holder's account. The account holder must immediately notify the licensed SPMO of a breach of the account's security.

(m) Payment on winning pari-mutuel wagers and credits for account wagers on entries which are scratched shall be posted to the credit of the account holder as soon as practicable after the race is declared official.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-10](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-10](#), which was renumbered by the Publisher*

### [71 IAC 9-2.2-11](#) Audit and filing requirements

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-16](#)

Sec. 11. (a) A licensed SPMO shall be prepared to fully account, consistent with generally accepted accounting principles (GAAP) to the commission or its designee at any time for all receipts, disbursements, and balances of any monies paid and received pursuant to [IC 4-31-7.5](#). In connection therewith, the licensed SPMO shall be responsible for the following:

- (1) Maintaining a receipts ledger and sufficient documentation to support each receipt of funds.
- (2) Maintaining a monthly reconciliation between its records and depository statements.
- (3) Directing its depository institution or institutions to provide account balance confirmations and documentation of deposits and expenditures to the commission upon request.
- (4) Filing all required federal and state tax returns required on distributions, making required withholdings, and maintaining a copy of all tax returns on file available to commission representatives.
- (5) Making all distributions to any person by check or electronic transfer. No distributions shall be made in cash unless the commission or its executive director has approved the distribution.
- (6) Filing all required Internal Revenue Service reports and maintaining a copy of the report on file or audit.

(b) A licensed SPMO shall provide to the commission or its designee full access to its records for review and audit.

(c) A licensed SPMO must file with the commission an annual financial statement audited by an independent certified public accountant no later than March 31st after the close of the calendar year.

(d) A licensed SPMO must file with its renewal application to the commission an unaudited balance sheet and profit and loss statement.

(e) A licensed SPMO must file with the commission any tax audit report received from the IRS, department of state revenue, or other federal or state agency auditing the SPMO.

(f) A licensed SPMO shall create standard operating procedures regarding all wagering monies received and distributed, including, but not limited to, a description of its:

- (1) method of accounting;
- (2) method of auditing;
- (3) internal controls; and
- (4) reporting procedures;

for all wagering accounts.

(g) The commission may require period audits of wagering accounts by an independent certified accountant.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-11](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-11](#), which was renumbered by the Publisher as [71 IAC 9-2.2-11](#).*

### [71 IAC 9-2.2-12](#) Enforcement and penalties

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5](#); [IC 4-31-13](#)

Sec. 12. (a) Any violations of this chapter may result in disciplinary action as outlined in [IC 4-31-13](#) and 71 IAC.

(b) The commission or its designee may suspend or revoke a license issued to an SPMO, withdraw approval of a contract between a permit holder and a licensed SPMO, impose fines and/or impose civil penalties, if the licensed SPMO:

- (1) violates any of the requirements of [IC 4-31-7.5](#) or these rules;
- (2) fails to provide a bond or irrevocable letter of credit as provided in sec. *[sic, section]* 5 of this rule;
- (3) fails to make payments in a timely manner as required by the contract with the permit holder and/or these rules;
- (4) fails to comply with any conditions on the license imposed by the commission;
- (5) has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level. This includes, but is not limited to, failure to make required payments to other state regulatory agencies;
- (6) poses a threat to the effective regulation of wagering or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of wagering activities, as demonstrated through the prior activities, criminal record, reputation, habits, or associations;
- (7) fails to provide at the office of the commission any information required under the commission's rules within the time required, or if no maximum time has been established respecting the particular kind of information by other rule, then within thirty (30) days after receiving a written request therefore from the commission or its staff;
- (8) commits, or has committed, any other act that the executive director determines constitutes a sufficient reason in the public interest for denying, suspending, or revoking licenses or approval of agreements.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-12](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-12](#), which was renumbered by the Publisher as [71 IAC 9-2.2-12](#).*

#### [71 IAC 9-2.2-13](#) Unlicensed secondary pari-mutuel organizations

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-16](#)

Sec. 13. A secondary pari-mutuel organization that is not licensed under this chapter *[sic]* may not accept a wager from an individual whose physical location is within Indiana at the time the wager is made.

*(Indiana Horse Racing Commission; [71 IAC 9-2.2-13](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-13](#), which was renumbered by the Publisher as [71 IAC 9-2.2-13](#).*

#### [71 IAC 9-2.2-14](#) Action by permit holder against unlicensed secondary pari-mutuel organizations

Authority: [IC 4-31-7.5-11](#)

Affected: [IC 4-31-7.5-19](#)

Sec. 14. (a) A permit holder has a right of action against a secondary pari-mutuel organization that accepts a wager in violation of section 7 of this article *[sic]*.

(b) If the permit holder prevails in an action filed under this section, the permit holder is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter *[sic]*.
- (2) Compensatory damages equal to any actual damage proven by the permit holder. If the permit holder does not prove actual damage, the permit holder is entitled to presumptive damages of five hundred dollars (\$500) for each wager placed in violation of this chapter *[sic]*.
- (3) The permit holder's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(c) A secondary pari-mutuel organization that accepts a wager in violation of section 7 of this article *[sic]* submits to the jurisdiction of Indiana courts for purposes of this article.

(Indiana Horse Racing Commission; [71 IAC 9-2.2-14](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-14](#), which was renumbered by the Publisher as [71 IAC 9-2.2-14](#).

SECTION 12. [71 IAC 9-2.5-1](#) IS AMENDED TO READ AS FOLLOWS:

**[71 IAC 9-2.5-1](#) Wagering rules**

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

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

Sec. 1. (a) Wagering on credit is prohibited.

(b) All pari-mutuel tickets must be paid for in full at the time the ticket is issued from the totalizator system with:

- (1) U.S. currency;
- (2) winning pari-mutuel tickets;
- (3) refunded pari-mutuel tickets; or
- (4) by a commission-approved totalizator voucher system.

(c) Account wagering, other than a ~~commission-approved totalizator voucher system or mobile wagering~~, **that approved by the commission**, is prohibited.

(d) Licensees shall not make a wager based upon instructions received by telephone, facsimile, or similar device.

(e) In the event that the mutuel machine fails to lock at the commencement of a race, no licensee shall knowingly issue any tickets from his or her terminal or any other terminal. Nor shall any licensee assist any individual in procuring such tickets. Any failure to lock on time shall be immediately reported to the mutuel manager or the satellite facility manager and the commission.

(Indiana Horse Racing Commission; [71 IAC 9-2.5-1](#); emergency rule filed Mar 25, 1997, 10:00 a.m.: 20 IR 2061; emergency rule filed Feb 13, 1998, 10:00 a.m.: 21 IR 2426; 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 Dec 31, 2012, 11:27 a.m.: [20130109-IR-071120674ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))

SECTION 13. [71 IAC 11-1-12](#) IS AMENDED TO READ AS FOLLOWS:

**[71 IAC 11-1-12](#) Contracts with a permit holder; approval by commission or executive director**

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

**Affected:** [IC 4-31-5](#); [IC 4-31-6-1](#); [IC 4-35](#)

Sec. 12. (a) The following contracts must be approved by the commission or the executive director:

- (1) contracts for management;
- (2) contracts for totalizator services;
- (3) contracts with horsemen's associations; and
- (4) a contract or a series of contracts between a permit holder and a related party that exceeds fifty thousand dollars (\$50,000), other than a contract for employment; **and**
- (5) a contract or transaction, or a series of contracts or transactions, between a permit holder and any party that equals or exceeds fifty million dollars (\$50,000,000) in value.**

(b) "Related party" means:

- (1) An individual or business entity having a pecuniary interest in a permit holder, or an affiliate thereof if the permit holder or affiliate is not a publicly held company.
- (2) A holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.



- (3) A key person of a permit holder or an affiliate thereof.
- (4) An affiliate of a permit holder.
- (5) A relative of a holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.
- (6) A relative of a key person of a permit holder or an affiliate thereof.
- (7) A relative of an affiliate of a permit holder.
- (8) A trust for the benefit of or managed by a permit holder or an affiliate or a key person thereof.
- (9) Another person who is able to control or significantly influence the management or operating policies of a permit holder or an affiliate thereof.

**(c) The commission, an agent of the commission, or the executive director may review, at any time prior to execution or thereafter, a contract or transaction entered into by a permit holder or permit applicant upon demand.**

**(d) Commission authority to review contracts as provided in subsection (c) shall not be limited by the provisions listed in subsection (a). The commission shall have discretion to review any contract or transaction that may impact the horse racing industry in Indiana.**

~~(e)~~ **(e)** Any contract required to be approved by the commission or the executive director shall be submitted to for approval within seven (7) days of the execution of the contract. The commission or the executive director may refuse to approve a contract in **subsection (a)** if it is determined that the contract is not in the best interest of horse racing and pari-mutuel wagering.

**(f) A contract or transaction entered into by a permit holder or permit applicant that has not been submitted to the commission or executive director for approval as provided for in subsection (d) [redesignated subsection (e) by the Publisher] shall contain a provision indicating that the commission may subsequently disapprove of the contract.**

~~(g)~~ **(g)** A contract or transaction entered into by a permit holder that exceeds the total dollar amount of fifty thousand dollars (\$50,000) shall be a written contract.

~~(e) The commission reserves the right to terminate any contract executed by a permit holder that is not in compliance with [IC 4-31](#), [IC 4-35](#), or this title.~~

**(h) The commission is required to maintain the integrity of the commission and the horse racing industry and act in the best interest of the state of Indiana. In consideration of the aforementioned goals, when entering contracts or transactions, permit holders and permit applicants shall:**

- (1) promote this policy by entering into contracts and transactions in accordance with [IC 4-31](#), [IC 4-35](#), and this title; and**
- (2) be held accountable for contracts and transactions entered into under this rule.**

**(i) The commission is not undertaking the policy of approving contracts, but will maintain oversight over contracts and transactions entered into by permit holders and permit applicants. The commission reserves the right to disapprove of and terminate a contract that does not:**

- (1) comply with [IC 4-31](#), [4-35](#) [[IC 4-35](#)], or this title; or**
- (2) maintain the integrity and protect the highest standards of the horse racing industry.**

*(Indiana Horse Racing Commission; [71 IAC 11-1-12](#); emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1212; errata filed Mar 9, 1994, 2:50 p.m.: 17 IR 1622; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2086; 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-IR-071130345RFA](#); emergency rule filed Apr 17, 2015, 3:15 p.m.: [20150422-IR-071150105ERA](#); emergency rule filed Aug 29, 2018, 11:12 a.m.: [20180905-IR-071180370ERA](#))*

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