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**TITLE 71 INDIANA HORSE RACING COMMISSION**

**Emergency Rule**  
LSA Document #22-238(E)

DIGEST

Adds [71 IAC 9-2.1-5.5](#) to define "affiliate". Amends [71 IAC 9-2.2-3](#) regarding secondary pari-mutuel organization (SPMO) application submission and reimbursement costs. Amends [71 IAC 9-2.2-4](#) regarding SPMO license criteria and commission action. Effective July 22, 2022.

[71 IAC 9-2.1-5.5](#); [71 IAC 9-2.2-3](#); [71 IAC 9-2.2-4](#)

SECTION 1. [71 IAC 9-2.1-5.5](#) IS ADDED TO READ AS FOLLOWS:

**[71 IAC 9-2.1-5.5](#) "Affiliate" defined**

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

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

**Sec. 5.5. "Affiliate" means an organization, company, firm, individual, or other entity that conducts advanced [*sic, advance*] deposit wagering with or on behalf of a licensed SPMO through a marketing, service, or other similar agreement.**

*(Indiana Horse Racing Commission; [71 IAC 9-2.1-5.5](#); emergency rule filed Jul 22, 2022, 11:47 a.m.: [20220727-IR-071220238ERA](#))*

SECTION 2. [71 IAC 9-2.2-3](#) IS AMENDED TO READ AS FOLLOWS:

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

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

**Affected:** [IC 4-31-7.5-13](#); [IC 4-31-7.5-14](#)

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 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 6 of this rule.
- (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, and policies for ensuring no underage persons engage in wagering and account payouts.

**(12) A list of any affiliates or potential affiliates of the SPMO. The list must contain the following information about any affiliates or potential affiliates, and the SPMO and any affiliates must meet the following guidelines:**

**(A) The name and web address of the affiliate.**

**(B) The name and web address of the affiliate's site where advanced *[sic, advance]* deposit wagering will occur, if different from subdivision (A).**

**(C) The person or companies involved in the affiliate agreement.**

**(D) The location of the affiliate's principal office.**

**(E) The names, addresses, and dates of birth of all shareholders, directors, officers, and other persons owning or controlling an interest in the affiliate 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 affiliate, 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.**

**(F) If the affiliate is a corporation ultimately owned by a not-for-profit entity without any shareholders, or is a publicly traded corporation, the information required in subdivision (D) 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.**

**(G) A copy of the organizational documents of the affiliate.**

**(H) That the affiliate site agreement is clearly noted as either a marketing or service agreement.**

**(I) Account holders using the affiliate site will be account holders of the licensed SPMO, subject to the same verification process and account operational procedures as any other account holder of said SPMO licensee.**

**(J) The wagers placed through the affiliate site will be processed through equipment owned and operated by the licensed SPMO.**

**(K) The licensed SPMO will incorporate all advanced *[sic, advance]* deposit wagering of the affiliate site into the source market fee of the licensed SPMO.**

**(L) The affiliate site will be branded in some form to indicate to the account holder that they will be wagering through systems operated by the licensed SPMO. The commission reserves the right to approve or deny any affiliate sites. Additionally, the commission may determine a total monthly advanced *[sic, advance]* deposit wagering amount at which an affiliate site may need to apply for its own SPMO license.**

~~(12)~~ **(13)** 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)~~ **(14)** A proposed version of the advance deposit wagering terms and agreement to be provided to account holders.

~~(14)~~ **(15)** A nonrefundable application fee of five thousand dollars (\$5,000).

~~(15)~~ **(16)** 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 or consideration, or both, 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](#); emergency rule filed Dec 5, 2019, 1:56 p.m.: [20191211-IR-071190646ERA](#); emergency rule filed Jul 22, 2022, 11:47 a.m.: [20220727-IR-071220238ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-3](#), which was renumbered by the Publisher as [71 IAC 9-2.2-3](#).*

SECTION 3. [71 IAC 9-2.2-4](#) IS AMENDED TO READ AS FOLLOWS:

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

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

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.
- (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 that 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, **and affiliates**, 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 that 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.
- (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 or advance deposit wagering terms and agreement, or both, as a condition of granting a license. A licensed SPMO shall not make subsequent material changes in the plan of operations or advance deposit wagering terms and agreement, or both, 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 November 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 or advance deposit wagering terms and agreement, or both.

(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, and managers who are involved in Indiana advance deposit wagering must hold an Indiana commission license. All other employees working on behalf of a licensed SPMO who are involved in Indiana advance deposit wagering must hold an Indiana commission license. However, the commission or commission's designee may, at their discretion, allow a licensed SPMO to forgo licensing of some individuals involved in advance deposit wagering in Indiana provided

that:

- (1) those individuals are licensed and in good standing with appropriate regulatory authorities in the jurisdiction from which they are operating; and
- (2) an individual that is the direct supervisor of the unlicensed individuals holds 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](#); emergency rule filed Jun 1, 2020, 1:57 p.m.: [20200610-IR-071200295ERA](#); emergency rule filed Jul 22, 2022, 11:47 a.m.: [20220727-IR-071220238ERA](#)) NOTE: Agency cited as [71 IAC 9-2.1-4](#), which was renumbered by the Publisher as [71 IAC 9-2.2-4](#).*

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