TITLE 71 INDIANA HORSE RACING COMMISSION

Emergency Rule
LSA Document #09-870(E)

DIGEST

Adds 71 IAC 1-1-47.1 concerning the horse industry trust account. Adds 71 IAC 1.5-1-45.1 concerning the horse industry trust account. Amends 71 IAC 4-2-1 concerning the insurer of the race meeting. Amends 71 IAC 4-2-3 concerning financial reports. Adds 71 IAC 4-2-7 concerning purse monies. Amends 71 IAC 4.5-2-1 concerning the insurer of the race meeting. Amends 71 IAC 4.5-2-3 concerning financial reports. Effective October 26, 2009. *NOTE: IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. This document was filed with the Publisher October 29, 2009.*

71 IAC 1-1-47.1; 71 IAC 1.5-1-45.1; 71 IAC 4-2-1; 71 IAC 4-2-3; 71 IAC 4-2-7; 71 IAC 4.5-2-1; 71 IAC 4.5-2-3

SECTION 1. 71 IAC 1-1-47.1 IS ADDED TO READ AS FOLLOWS:

71 IAC 1-1-47.1 "Horse industry trust account" defined

Authority: IC 4-31-3-9
Affected: IC 4-31; IC 5-13-9.5

Sec. 47.1. "Horse industry trust account" means an interest bearing account established by an association in a fiduciary capacity for the deposit and dispersal of funds that are the property of a horsemen's association representing the owners and trainers of a designated breed racing at Indiana pari-mutuel facilities at a financial institution that is qualified to receive public monies pursuant to IC 5-13-9.5.

(Indiana Horse Racing Commission; 71 IAC 1-1-47.1; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 2. 71 IAC 1.5-1-45.1 IS ADDED TO READ AS FOLLOWS:

71 IAC 1.5-1-45.1 "Horse industry trust account" defined

Authority: IC 4-31-3-9
Affected: IC 4-31; IC 5-13-9.5

Sec. 45.1. "Horse industry trust account" means an interest bearing account established by an association in a fiduciary capacity for the deposit and dispersal of funds that are the property of a horsemen's association representing the owners and trainers of a designated breed racing at Indiana pari-mutuel facilities at a financial institution that is qualified to receive public monies pursuant to IC 5-13-9.5.

(Indiana Horse Racing Commission; 71 IAC 1.5-1-45.1; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 3. 71 IAC 4-2-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-2-1 Insurer of the race meeting

Authority: IC 4-31-3-9
Affected: IC 4-31; IC 4-35-7-12

Sec. 1. (a) Approval of a race meeting by the commission does not establish the commission as the insurer or

guarantor of the safety or physical condition of the association's facilities or purse of any race.

(b) An association shall agree to indemnify, save, and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(c) An association shall provide the commission with a certificate of liability insurance as required by the commission.

(d) An association shall maintain in an approved depository those amounts deducted from the pari-mutuel handle for distribution for the purposes specified in the Act and these rules.

(e) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari-mutuel handle are distributed according to the Act and these rules and not otherwise.

(f) An association and its officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, **IC 4-35-7-12,** these rules, association rules, and race conditions.

(Indiana Horse Racing Commission; 71 IAC 4-2-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1134; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 4. 71 IAC 4-2-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4-2-3 Financial reports

Authority: IC 4-31-3-9
Affected: IC 4-31-13-6; IC 4-35-7-12

Sec. 3. (a) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Act, **IC 4-35-7-12,** these rules, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race meeting.

(b) An association shall file the following:
(1) A copy of all tax returns.
(2) A balance sheet.
(3) A profit and loss statement.

(c) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format which conforms with the requirements set out in the permit.

(d) An association shall file an annual consolidated financial statement, audited by independent certified public accountants, for the track and the simulcast operations, with the commission no later than March 31 after the close of its fiscal year, which reflects operations during the preceding calendar year. The audit must be in a format which conforms with the requirements set out in the permit application. The commission, upon good cause shown, may extend the time for filing.

(e) An association shall file with the commission a copy of any tax audit report received from the Internal Revenue Service, Indiana department of revenue, or any other federal or state agency auditing the association.

(Indiana Horse Racing Commission; 71 IAC 4-2-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1134; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2837, eff Jul 1, 1995; emergency rule filed Mar 25, 1996,

10:15 a.m.: 19 IR 2071; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 5. 71 IAC 4-2-7 IS ADDED TO READ AS FOLLOWS:

71 IAC 4-2-7 Purse monies

Authority: IC 4-31-3-9; IC 4-35-7-12
Effective: IC 4-31-5; IC 4-35

Sec. 7. (a) An association, its officers, director, officials, and employees shall ensure that distributions for purses mandated by IC 4-31, IC 4-35, 71 IAC 12, and contracts with any horsemen's association are made as provided for by statute. With the exception of purse money that it may owe as a result of the sale (export) of its simulcast signal, the association shall insure that any purse monies that it is obligated by statute regulation or contract to pay are deposited, before the fifteenth day of each month, based upon wagering from the previous month at the association's race tracks and/or off-track betting facilities, into the appropriate horse industry trust account as set forth herein. With respect to purse monies that an association is contractually obligated to pay as a result of a contract with a horsemen's association for the sale (export) of its simulcast signal, the association shall deposit those funds into the appropriate account as set forth herein within five (5) days of receipt or settlement by the association.

(b) An association is required to deposit and maintain the funds referenced in subsection (a) of this rule in separate horse industry trust accounts for each of the three (3) breeds racing at Indiana pari-mutuel facilities (standardbred, thoroughbred, and quarter horse). The funds deposited and maintained in those three (3) separate horse industry trust accounts shall be held and maintained separate from each other and separate from all other funds held and maintained by the association. The comingling *[sic]* of these funds with any other funds held or maintained by the association is strictly prohibited. This provision notwithstanding, an association may advance funds to a horse industry trust account from an operational account in order to make payment of purses that have been earned, and then receive reimbursement as soon as there are available funds in that horse industry trust account.

(c) The association shall issue a purse fund activity report (for each of the three (3) breeds racing in Indiana) no later than the fifteenth day of each month. Each report shall include a summary of both the prior month's activity as well as the year-to-date amounts deposited and dispersed from each horse industry trust account. The report shall include an itemized statement of receipts and expenditures for the prior month and shall be electronically delivered both to the horsemen's association representing the owners and trainers of a particular breed and to the commission. The format of the report is subject to the approval of the commission or its executive director.

(d) The association shall also provide no later than the fifteenth day of each month a copy of the bank statement for each horse industry trust account referenced herein to the commission and the horsemen's association representing the owners and trainers of the breed that benefits from the monies contained in that horse industry trust account.

(e) Any breach of the obligations or requirements of this section or the requirements set forth in IC 4-35-7-12, including any misuse, misdirection, or misappropriation of funds specifically referenced in IC 4-35-7-12, may be considered a violation of this article and may subject the association and its officers, directors, and employees to penalties that may include, but are not limited to:
(1) the issuance of a warning to the association;
(2) the imposition of a civil penalty upon the association up to but not to exceed one million dollars ($1,000,000);
(3) the suspension of a permit issued under IC 4-31-5 to conduct a pari-mutuel wagering horse racing meeting in Indiana; or
(4) any other sanction that may be imposed by the commission.

(f) Subject to the review and approval of the commission, any association and any horsemen's association may contract for additional provisions governing a horse industry trust account specified in this section, but only to the extent that such contractual provisions are consistent with, and do not conflict with, the rules set forth in this section and 71 IAC 11-1-12.

(g) The effective date of this section will be November 15, 2009. To the extent that an unfunded liability of the association to the purse account of one (1) or more of the breeds identified in this section has accrued prior to the effective date, those monies are due to be paid by the association to a particular horse industry trust account on or before July 1, 2010.

(Indiana Horse Racing Commission; 71 IAC 4-2-7; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 6. 71 IAC 4.5-2-1 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-2-1 Insurer of the race meeting

Authority: IC 4-31-3-9
Affected: IC 4-31; IC 4-35-7-12

Sec. 1. (a) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(b) An association shall agree to indemnify, save, and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(c) An association shall provide the commission with a certificate of liability insurance as required by the commission.

(d) An association shall maintain in an approved depository, those amounts deducted from the pari-mutuel handle for distribution for the purposes specified in the Act and these rules.

(e) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari-mutuel handle are distributed according to the Act and these rules and not otherwise.

(f) An association and its officers shall ensure that all purse monies, disbursements, and appropriate nomination race monies are available to make timely distribution in accordance with the Act, **IC 4-35-7-12,** these rules, association rules, and race conditions.

(Indiana Horse Racing Commission; 71 IAC 4.5-2-1; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2840, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

SECTION 7. 71 IAC 4.5-2-3 IS AMENDED TO READ AS FOLLOWS:

71 IAC 4.5-2-3 Financial reports

Authority: IC 4-31-3-9
Affected: IC 4-31-13-6; IC 4-35-7-12

Sec. 3. (a) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Act, **IC 4-35-7-12,** these rules, the conditions and nomination race program of the race meeting, and the obligations incurred in the daily operation of the race

meeting.

(b) An association shall file the following:
(1) A copy of all tax returns.
(2) A balance sheet.
(3) A profit and loss statement.

(c) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format which conforms with the requirements set out in the permit.

(d) An association shall file an annual consolidated financial statement, audited by independent certified public accountants, for the track and simulcast operations, with the commission no later than March 31 after the close of its fiscal year, which reflects operations during the preceding calendar year. The audit must be in a format which conforms with the requirements set out in the permit application. The commission, upon good cause shown, may extend the time for filing.

(e) An association shall file with the commission a copy of any tax audit report received from the Internal Revenue Service, Indiana department of revenue, or any other federal or state agency auditing the association.

(Indiana Horse Racing Commission; 71 IAC 4.5-2-3; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2840, eff Jul 1, 1995; emergency rule filed May 20, 1996, 10:00 a.m.: 19 IR 2890; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Oct 29, 2009, 11:33 a.m.: 20091104-IR-071090870ERA, eff Oct 26, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-870(E) was filed with the Publisher October 29, 2009.])

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