

Change sheet:

As a result of the written comments received during and after the public hearing, Commission staff made the highlighted changes to the following proposed rule Sections:

1. Staff removed from the final rule 71 IAC 1.5-1-52.

2. 71 IAC 1-1-47 IS READOPTED TO READ AS FOLLOWS:

71 IAC 1-1-47 "Horse" defined

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 47. "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing **with the USTA or CTA**; specifically, an entire male five (5) years of age and older.

3. 71 IAC 5-1-6 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5-1-6 Consent to search and seizure

Authority: IC 4-31-6-2; **IC 4-31-13-4**

Affected: IC 4-31-13-4

Sec. 6. By acceptance of a license or by engaging in activities that require a license by the commission, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, controlled substances, paraphernalia, or devices in violation of state or federal law or these rules. Any seized drugs, medication, or other materials may be forwarded by the commission or its agents to the official chemist for analysis. The analysis of materials seized under the provisions of this section is not subject to 71 IAC 8-4.

4. SECTION 15. 71 IAC 5-1-12 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5-1-12 License refusal

Authority: IC 4-31-6-2

Affected: IC 4-31

Sec. 12. The commission, the judges, or the executive director as the commission's designee may refuse to issue a license. The decision to refuse a license is treated as a withdrawal of the license application without prejudice and is not reported to the ARCI. If an applicant is refused, the applicant may reapply for a license. If an applicant contests a license refusal, the judges (or an administrative law judge if the judges are unavailable) shall conduct a hearing pursuant to the procedures provided for in 71 IAC 10 **and IC 4-21.5**. Nonetheless, the hearing on a license refusal is not considered to be a disciplinary action. If the judges affirm the decision to refuse a license application, the refusal shall be treated as the denial of the application, consistent with these rules.

5. SECTION 18. 71 IAC 5-2-6 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5-2-6 Owner – positive tests

Authority: IC 4-31-6-2; IC 4-31-13-1

Affected: IC 4-31-6-6

Sec. 6. (a) Owner(s) of horses testing positive on more than one (1) occasion within the preceding five (5) years for a prohibited substance other than phenylbutazone, flunixin, or ketoprofen, may, at the discretion of the executive director or the judges, be required to stable all horses participating in a race meet upon the grounds of the association and/or be required to place all horses in the detention barn on the day before and/or the day of its scheduled race. A positive test under this section shall include violations in Indiana and in other jurisdictions.

(b) Special consideration shall be given to positive tests for Class 1, 2, or 3 drugs as listed in the Association of Racing Commissioners International's Uniform Classification Guidelines of Foreign Substances, **as revised by the ARCI in August 1996 and any other subsequent revision effective after said date, which are incorporated by reference herein, copies of which are available at the commission office.** Special consideration shall also be given to TC02 violations, blood gas violations, and to findings of any drug, medication, or foreign substance administered within twenty-four (24) hours of a horse's scheduled race.

6. SECTION 19. 71 IAC 5.5-1-6 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5.5-1-6 Consent to search and seizure

Authority: IC 4-31-6-2; **IC 4-31-13-4**

Affected: IC 4-31-13-4

Sec. 6. By acceptance of a license or by engaging in activities that require a license by the commission, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, controlled substances, paraphernalia, or devices in violation of state or federal law or these rules. Any seized drugs, medication, or other materials may be forwarded by the commission or its agents to the official chemist for analysis. The analysis of materials seized under the provisions of this section is not subject to 71 IAC 8.5-3.

7. SECTION 21. 71 IAC 5.5-1-12 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5.5-1-12 License refusal

Authority: IC 4-31-6-2

Affected: IC 4-31

Sec. 12. The commission, the stewards, or the executive director as the commission's designee may refuse to issue a license. The decision to refuse a license is treated as a withdrawal of the license application without prejudice and is not reported to the ARCI. If an applicant is refused, the applicant may reapply for a license. If an applicant contests a license refusal, the stewards (or an administrative law judge if the stewards are unavailable) shall conduct a hearing pursuant to the procedures provided for in 71 IAC 10 **and IC 4-21.5.**

Nonetheless, the hearing on a license refusal is not considered to be a disciplinary action. If the stewards affirm the decision to refuse a license application, the refusal shall be treated as the denial of the application, consistent with these rules.

8. SECTION 22. 71 IAC 5.5-1-13 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5.5-1-13 License denial

Authority: IC 4-31-6-2

Affected: IC 4-31

Sec. 13. If an applicant contests the basis of the denial of a license application not later than fifteen (15) days after notice is served, an administrative law judge shall conduct a hearing pursuant to the procedures provided for in 71 IAC 10 **and IC 4-21.5**. Nonetheless, a hearing challenging the denial of a license application is not considered to be a disciplinary action. The commission may formally deny an application in accordance with these rules. An application that is denied shall be reported:

- (1) in writing to the applicant stating the reasons for denial and the date when a reapplication may be submitted; and
- (2) to the USTA and the ARCI, which shall then advise other racing jurisdictions.

9. SECTION 25. 71 IAC 5.5-2-6 IS READOPTED TO READ AS FOLLOWS:

71 IAC 5.5-2-6 Owner – positive tests

Authority: IC 4-31-6-2; IC 4-31-13-1

Affected: IC 4-31-6-6

Sec. 6. (a) Owner(s) of horses testing positive on more than one (1) occasion within the preceding five (5) years for a prohibited substance other than phenylbutazone, flunixin, or ketoprofen, may, at the discretion of the executive director or the stewards, be required to stable all horses participating in a race meet upon the grounds of the association and/or be required to place all horses in the detention barn on the day before and/or the day of its scheduled race. A positive test under this section shall include violations in Indiana and in other jurisdictions.

(b) Special consideration shall be given to positive tests for Class 1, 2, or 3 drugs as listed in the Association of Racing Commissioners International's Uniform Classification Guidelines of Foreign Substances, **as revised by the ARCI in August 1996 and any other subsequent revision effective after said date, which are incorporated by reference herein, copies of which are available at the commission office.** Special consideration shall also be given to TC02 violations, blood gas violations, and to findings of any drug, medication, or foreign substance administered within twenty-four (24) hours of a horse's scheduled race.

10. SECTION 26. 71 IAC 8-1-2 IS READOPTED TO READ AS FOLLOWS:

71 IAC 8-1-2 Foreign substances prohibited

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 2. (a) No horse participating in a race shall carry in its body any foreign substance except as provided by these rules. A finding by the chemist or commission designee that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance 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. The prohibition and allowance of foreign substances in this article shall apply to qualifying races.

(b) Upon the finding of a violation of this section, the owners or lessees of the horse from which the specimen was obtained shall forfeit any purse money and any trophy or award. However, forfeiture of any purse, trophy, or award for an overage of phenylbutazone, flunixin, ketoprofen, or furosemide in violation of these rules shall be consistent with Recommended Penalties of the Association of Racing Commissioners, International, **as revised by the ARCI in August 1996 and any other subsequent revision effective after said date, which are incorporated by reference herein, copies of which are available at the commission office.**

11. SECTION 30. 71 IAC 8.5-1-2 IS READOPTED TO READ AS FOLLOWS:

71 IAC 8.5-1-2 Foreign substances prohibited

Authority: IC 4-31-3-9

Affected: IC 4-31-12

Sec. 2. (a) No horse participating in a race shall carry in its body any foreign substance except as provided by these rules. A finding by the chemist or commission designee that a foreign substance is present in the test sample shall be prima facie evidence that such foreign substance 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, the owners or lessees of the horse from which the specimen was obtained shall forfeit any purse money and any trophy or award. However, forfeiture of any purse, trophy, or award for an overage of phenylbutazone, flunixin, ketoprofen, or furosemide in violation of these rules shall be consistent with recommended penalties of the Association of Racing Commissioners, International, **as revised by the ARCI in August 1996 and any other subsequent revision effective after said date, which are incorporated by reference herein, copies of which are available at the commission office.**

12. SECTION 53. 71 IAC 10-3-9 IS READOPTED TO READ AS FOLLOWS:

71 IAC 10-3-9 Discovery

Authority: IC 4-31-3-9

Affected: IC 4-31-13

Sec. 9. (a) On written request by a party, the administrative law judge may issue a subpoena ~~addressed to a sheriff or any constable~~ to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. A motion for a subpoena to compel the production of books, records, papers, or other objects shall:

- (1) be addressed to the appropriate person;
- (2) be verified; and
- (3) specify the books, records, papers, or other objects desired and the relevant and material facts to be proved by them.

(b) All motions for discovery shall be subject to the civil procedures statutes of this jurisdiction.

13. SECTION 57. 71 IAC 10-3-13 IS READOPED TO READ AS FOLLOWS:

71 IAC 10-3-13 Reporters and transcripts

Authority: IC 4-31-3-9

Affected: IC 4-21.5-3-25; IC 4-31-13

Sec. 13. (a) If necessary, the commission shall engage a court reporter to make a stenographic record of a hearing. ~~The commission may allocate the cost of the reporter and transcript among the parties.~~

(b) If a person requests a transcript of the stenographic record, the commission may assess the cost of preparing the transcript to the person under IC 4-21.5-3-25.

(c) A party may challenge an error made in transcribing a hearing by noting the error in writing and suggesting a correction not later than ten (10) days after the date the transcript is filed with the commission. The party claiming errors shall serve a copy of the suggested corrections on each party of record, the court reporter, and the administrative law judge. If proposed corrections are not objected to before the fifteenth day after the date the corrections were filed with the commission, the administrative law judge may direct that the suggested corrections be made and the manner of making them. If the parties disagree on the suggested corrections, the administrative law judge shall determine whether to change the record.

14. SECTION 68. 71 IAC 10-5-3 IS READOPTED TO READ AS FOLLOWS:

71 IAC 10-5-3 Reinstatement

Authority: IC 4-31-3-9; IC 4-31-6-9

Affected: IC 4-21.5-3-15; IC 4-31-5-1; IC 4-31-6-6; IC 4-31-13-1

Sec. 3. (a) An attorney whose ability to appear is suspended or revoked under section 2(a) of this rule shall automatically be reinstated to practice before the review officer, hearing officer, or commission at the time the attorney's professional license is reinstated.

(b) An attorney whose ability to appear is suspended or revoked under section 2 of this rule may be reinstated by the commission upon a showing of good cause. An applicant for

reinstatement shall be afforded a hearing before the commission upon application. ~~The commission may require that the applicant for reinstatement pay the reasonable costs of the proceeding.~~

(c) If the commission referred an attorney to a disciplinary commission or agency under section 2 of this rule, the attorney shall not be reinstated to practice before the commission before any disciplinary action initiated as a result of the referral has been completed.

In addition, Commission staff has removed 71 IAC 8-1-7 and 71 IAC 8.5-1-7 from the final rule because those rules were substantively changed and adopted by emergency rule in September 2014.