

## PART VIII. STATE HORSE RACING COMMISSION

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### Authority

The temporary provisions of this Part VIII issued under the Race Horse Industry Reform Act (3 Pa.C.S. §§ 9301—9374), unless otherwise noted.

### Source

The temporary provisions of this Part VIII adopted October 18, 2019, effective October 19, 2019, 49 Pa.B. 6221, unless otherwise noted.

### Cross References

This part cited in 58 Pa. Code § 1001a.13 (relating to wagering limited to simulcasting facility).

### Subpart A. GENERAL PROVISIONS

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### CHAPTER 171. PRELIMINARY PROVISIONS— TEMPORARY REGULATIONS

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#### § 171.1. Purpose.

The purpose of this part is to facilitate the implementation of the Race Horse Industry Reform Act (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

**§ 171.2. Construction of the regulations.**

(a) The Commission's regulations shall be liberally construed to secure the just, speedy and efficient determination of every action, proceeding or issue presented to which it is applicable. The Commission or its presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of a party.

(b) The Commission or its presiding officer at any stage of an action or proceeding may waive or temporarily suspend a requirement of this part when necessary or appropriate, if the waiver or temporary suspension does not adversely affect a substantive right of a party.

(c) These liberal construction provisions apply with particularity in proceedings involving pro se litigants.

(d) Section (a) supersedes 1 Pa. Code § 31.2 (relating to liberal construction).

**§ 171.3. Jurisdiction.**

(a) The General Assembly has declared that the Commission has exclusive jurisdiction and regulatory authority over all racing related matters within the scope of its powers under the Race Horse Industry Reform Act (act) (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

(b) The sport of horse racing, including pari-mutuel wagering and racing activities is heavily regulated and nothing contained in this part shall be construed to limit the powers, authority and duties of the Commission as provided in the act.

**§ 171.4. General powers of the Commission.**

(a) Under the Race Horse Industry Reform Act (act) (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform), the Commission will have the power to supervise all horse race meetings in this Commonwealth at which pari-mutuel wagering and racing activities are conducted. The Commission shall have the power to enact appropriate rules and regulations necessary to effectuate the purposes and provisions of the act and to prevent circumvention or evasion thereof.

(b) The rules of racing, as set forth in this part apply to all persons, whether licensed or not, who conduct horse race meetings, operate pari-mutuel wagering systems within this Commonwealth, conduct business operations associated with horse racing and breeding or who otherwise engage directly or indirectly in pari-mutuel wagering and racing activities within this Commonwealth. All persons shall be charged with knowledge of and be conclusively bound by the provisions hereof.

(c) The rules of racing shall also apply to every participant in or patron of a licensed horse meeting and each shall be charged with notice of and be conclusively bound by the provisions of these regulations.

(d) Each license issued by the Commission is specifically granted upon the condition that the licensee shall accept, observe and obey the rules and regulations of the Commission. All licensees are charged with the responsibility of reporting apparent violations of these rules to the Commission and cooperating in an investigation into the same.

(e) The Commission or its designee may rescind or modify a penalty or decision regarding an infraction of the rules imposed or issued by the Board of Judges or the Board of Stewards and may institute investigative or adjudicative proceedings on the Commission's own motion to properly exercise and discharge its statutory responsibilities.

#### § 171.5. General definitions.

(a) The following words and phrases, when used in this part, shall have the following meanings given to them, unless the context clearly indicates otherwise:

*Account*—An account for account wagering with a specific identifiable record of deposits, wagers and withdrawals established by an account holder and managed by the licensed racing entity or secondary pari-mutuel organization.

*Account holder*—An individual who successfully completed an application and for whom the licensed racing entity or the secondary pari-mutuel organization has opened an account.

*Act*—The Race Horse Industry Reform Act (act of October 28, 2016) (P.L. 913, No. 114), 3 Pa.C.S. §§ 9301—9374 (relating to race horse industry reform).

*Advance deposit account wagering system*—A system by which wagers are debited and payouts are credited to an advance deposit account held by a licensed racing entity or secondary pari-mutuel organization on behalf of a person.

*Advance deposit wagering—ADW*—A form of gambling on the outcome of horse races in which bettors must fund their account before being allowed to place bets. ADW may be conducted outline or by phone.

*Appeal*—A request for the Commission or its designee to investigate, consider and review any decisions or rulings of the Board of Stewards or Board of Judges, Bureau Directors or other Commission staff.

*Applicant*—A person who, on his own behalf or on behalf of another, applies for permission to engage in an act or activity which is regulated under the provisions of this part. If the applicant is a person other than an individual, the Commission shall determine the associated persons whose qualifications are necessary as a precondition to the licensing of the applicant.

*Arrest*—Detaining, holding or taking into custody by police or other law enforcement authorities for the alleged commission of an offense.

*Authorized agent*—A person licensed by the Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

*Backside area*—An area of the racetrack enclosure that is not generally accessible to the public and which includes, but is not limited to, a facility commonly referred to as a barn, paddock enclosure, track kitchen, recreation hall, backside employee quarters and training track and roadways providing access to the area. The term does not include an area of the racetrack enclosure which is generally accessible to the public, including the various buildings commonly referred to as the grandstand or the racing surface and walking ring.

*Breakage*—The odd cents of redistributions to be made on contributions to pari-mutuel pools exceeding a sum equal to the next lowest multiple of ten.

*Bureau Director*—The Director of the Bureau of Standardbred Horse Racing and the Director of the Bureau of Thoroughbred Horse Racing.

*Carryover*—The non-distributed pool moneys which are retained and added to a corresponding pool in accordance with these rules.

*Clean letter of credit*—A letter of credit which is available to the beneficiary against presentation of a draft or receipt.

*Commission*—The State Horse Racing Commission.

*Commission staff*—Employees of the Commission, under the direct supervision of Bureau Directors, who perform various administrative, licensing, enforcement and investigative duties and functions. This term may include licensing staff, investigative staff or enforcement staff.

*Commissioner*—An individual appointed to and sworn in as a member of the Commission in accordance with section 9311(b) of the act, 3 Pa.C.S. § 9311(b) (relating to State Horse Racing Commission).

*Confidential information*—Materials that are not available to the public.

*Contest*—A competitive racing event on which pari-mutuel wagering is conducted.

*Controlled substance*—Any substance included in the five classification schedules under section 811 of the Controlled Substance Act of 1970 (21 U.S.C.A. § 811).

*Conviction*—A finding of guilt or a plea of guilty or nolo contendere, whether or not a judgment of sentence has been imposed as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction that has been expunged or overturned or for which an individual has been pardoned or an order of accelerated rehabilitative disposition.

*Department*—The Department of Agriculture.

*Ejection or refusal of admission*—The ejection or refusal of admission by a licensed racing entity or the Commission from the racetrack enclosure or any other area under the jurisdiction of the Commission.

*Electronic wagering*—A method of placing or transmitting a legal wager by an individual in this Commonwealth through telephone, electromechanical, computerized system or any other form of electronic media approved by the Commission and accepted by a secondary pari-mutuel organization or a licensed racing entity or the licensed racing entity's approved off-track betting system located in this Commonwealth.

*Evergreen clause*—A term in a letter of credit providing for automatic renewal of the letter of credit.

*Ex parte communication*—An off-the-record communication engaged in or received by a Commissioner of the Commission regarding the merits of, or any fact in issue relating to, a pending matter before the Commission or which may reasonably be expected to come before the Commission in a contested on-the-record proceeding. The term shall not include:

(1) An off-the-record communication by a Commissioner, the Department of Revenue, Pennsylvania State Police, Attorney General or other law enforcement official, prior to the beginning of the proceeding solely for the purpose of seeking clarification or correction to evidentiary materials intended for use in the proceedings.

(2) A communication between the Commission or a Commissioner and legal counsel.

*Exhibition race*—A race on which no wagering is permitted or conducted.

*Felony*—An offense under the laws of the Commonwealth or the laws of another jurisdiction, punishable by imprisonment for more than 5 years.

*Final order*—One of the following:

(1) An action by the Commission which approves, issues, renews, revokes, suspends, conditions, or denies issuance or renewal of a license.

(2) An action by the Commission which affects personal or property rights, privileges, immunities, duties, liabilities or obligations and disposes of all proper claims by or against parties before the Commission.

(3) An action by the Commission which is designated by the Commission as final.

*Financial interest*—An ownership, property, leasehold or other beneficial interest in an entity. The term shall not include an interest which is held or deemed to be held in any of the following:

(1) Securities that are held in a pension plan, profit-sharing plan, individual retirement account, tax-sheltered annuity, a plan established under section 457 of the Internal Revenue Code of 1986 (Pub.L. No. 99-514) (26 U.S.C.A. § 457), or any successor provision, deferred compensation plan whether qualified or not qualified under the Internal Revenue Code of 1986, or any successor provision or other retirement plan that:

(i) Is not self-directed by the individual.

(ii) Is advised by an independent investment adviser who has sole authority to make investment decisions with respect to contributions made by the individual to these plans.

(2) A tuition account plan organized and operated under section 529 of the Internal Revenue Code of 1986 (Pub.L. No. 99-514) (26 U.S.C.A. § 529) that is not self-directed by the individual.

(3) A mutual fund where the interest owned by the mutual fund in a licensed racing entity does not constitute a controlling interest as defined in 4 Pa.C.S. § 1103 (relating to definitions).

*Forfeit*—A specified amount of money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the Board of Judges or the Board of Stewards or the Commission.

*Horse race meeting*—A specified period and dates each year during which a licensed racing entity is authorized to conduct live racing or pari-mutuel wagering as approved by the Commission.

*Horse racing*—Standardbred horse racing and Thoroughbred horse racing.

*Horsemen's organization*—A trade association which represents the majority of owners and trainers who own and race horses at a racetrack.

*Immediate family*—A spouse, parent, brother, sister or child.

*Irrevocable clean letter of credit*—A clean letter of credit which cannot be canceled or amended unless there is an agreement to cancel or amend among all parties to the letter of credit.

*Judges or Stewards*—Shall refer to the Board of Judges for the Standardbred racing industry or Board of Stewards for the Thoroughbred racing industry respectively.

*Land mile*—A unit of distance equal to 1,609.3 meters or 5,280 feet, as measured in a straight line.

*Licensed racetrack or racetrack*—

(1) The physical facility and grounds for which a person has obtained a license from the Commission to conduct live Thoroughbred or Standardbred race meetings with pari-mutuel wagering or

(2) The physical land-based location at which live horse racing is conducted, even if not owned by the person.

*Licensed racing entity*—Any person that has obtained a license to conduct live Thoroughbred or harness horse race meetings with pari-mutuel wagering from the Commission.

*Licensee*—The holder of a license issued under this part.

*Nominal change in ownership*—The sale, pledge, encumbrance, execution of an option agreement or other transfer of less than 5% of the equity securities or other ownership interest of a person whose percentage ownership does not affect the decisions of the licensed racing entity.

*Nonprimary location*—Any facility in which pari-mutuel wagering is conducted by a licensed racing entity under this part other than the racetrack where live racing is conducted. Also known as an off-track wagering location.

*On-the-record proceedings*—A matter that comes before the Commission or its presiding officer by way of application, complaint, petition, appeal, decision or other proceeding for which a formal record is created and upon which the Commission bases its order and adjudication.

*Ownership interest*—Owning or holding, or being deemed to hold, debt or equity securities or other ownership interest or profit interest.

*Pari-mutuel wagering*—A form of wagering, including manual, electronic, computerized and other forms as approved by the Commission, on the outcome of a horse racing event in which all wagers are pooled and held by a licensed racing entity or secondary pari-mutuel organization for distribution of the total amount, less the deductions authorized by law, to holders of winning tickets.

*Person*—Any natural person, corporation, foundation, organization, business trust, estate, limited liability company, license corporation, trust, partnership, limited liability partnership, association or any other form of legal business entity.

*Primary market area of a racetrack*—The land area included in a circle drawn with the racetrack as the center and a radius of 35 land miles.

*Principal*—Any of the following individuals associated with a partnership, trust association, limited liability company or corporation:

- (1) The chairman and each member of the board of directors of a corporation.
- (2) Each partner of a partnership and each participating member of a limited liability company.
- (3) Each trustee and trust beneficiary of an association.
- (4) The president or chief executive officer and each other officer, manager and employee who has policy-making or fiduciary responsibility within the organization.
- (5) Each stockholder or other individual who owns, holds or controls, either directly or indirectly, 5% or more of stock or financial interest in the collective organization.
- (6) Any employee, agent, guardian, personal representative, lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation.

*Racetrack enclosure*—With respect to each licensed racing entity, shall be deemed to include at least one primary racetrack location at which horse race meetings authorized to be conducted, including the grandstand, frontside and backside facilities and all primary, nonprimary, contiguous and noncontiguous locations of the licensed racing entity which are specifically approved by the Commission for conducting the pari-mutuel system of wagering on the results

of horse racing held at the meetings or race meetings conducted by another licensed racing entity or transmitted to these locations by simulcasting.

*Racing vendor*—A person who provides goods or services to a licensed racing entity or other licensed racing entity directly related to racing or the racing product, as determined by the Commission.

*Secondary market area of a racetrack*—The land area included in a circle drawn with the racetrack as the center and a radius of 50 land miles, not including the primary market area of the racetrack.

*Secondary pari-mutuel organization—SPMO*—A licensed entity, other than a licensed racing entity, that offers and accepts pari-mutuel wagers. A person or entity that provides to a licensed racing entity hardware, software, equipment, content or services used to manage, conduct, operate or record pari-mutuel wagering activity by or from residents of this Commonwealth shall not be deemed to be a secondary pari-mutuel organization solely by virtue of the provision of the assets or services.

*Simulcast*—Live video and audio transmission of a race and pari-mutuel information for the purpose of pari-mutuel wagering at locations other than the racetrack where the race is run.

*Standardbred horse racing or harness racing*—A form of horse racing in which the horses participating are attached “in harness” to a sulky or other similar vehicle and race at a specific gait, either a trot or pace.

*Substantial change in ownership*—The sale, pledge, encumbrance, execution of an option agreement or another transfer of 5% or more of the equity securities or other ownership interest of a person whose percentage ownership affects the decisions of the licensed racing entity.

*Thoroughbred horse racing*—The form of horse racing in which each participating horse is mounted by a jockey, is duly registered with The Jockey Club of New York and engages in horse racing on the flat, which may include a steeplechase or hurdle race.

*Totalisator*—A computer system used to pool wagers, record sales, calculate payoffs and display wagering data on a display device that is located at a pari-mutuel facility or nonprimary location.

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