

CHAPTER 4
PRACTICE AND PROCEDURE
BEFORE THE RACING AND GAMING COMMISSION

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

GENERAL PROVISIONS

491—4.1(99D,99F) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“*Administrator*” means the administrator of the commission.

“*Board*” means either the board of stewards or gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

“*Bookmaker*” means a person engaged in bookmaking as defined in Iowa Code section 725.13.

“*Commission*” means the Iowa racing and gaming commission.

“*Commissioner*” means any member of the Iowa racing and gaming commission.

“*Contested case*” means a proceeding, including licensing, in which the legal rights, duties or privileges of a party are required by constitution or statutes to be determined by the commission after an opportunity for an evidentiary hearing.

“*Gaming official*” means any person authorized by the administrator to perform regulatory functions related to racing, gambling games at pari-mutuel racetracks or riverboat gambling.

“*License*” means the whole or any part of any permit, certificate, approval, registration, charter, or similar form of permission to engage in any occupation or activity related to racing or gaming required by the commission.

“*Pari-mutuel license*” means a license issued to a nonprofit corporation or association for the operation of pari-mutuel racing.

“*Party*” means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, including intervenors.

“*Person*” means any individual, estate, trust, fiduciary, partnership, corporation, association, government subdivision or agency, or public or private organization of any character or any other covered by the Iowa administrative procedure Act other than an agency.

“*Related party*” means any officer or director of the operator or member of the nonprofit group who has any economic or beneficial ownership interest in any other party with whom the operator is seeking to negotiate a contract.

“*Steward*” means one of three individuals appointed as a steward or judge at a racetrack in accordance with the rules of the commission.

“*Tout*” means a person other than a licensed tip sheet concessionaire who obtains for or sells to others information on horses, dogs, stables, kennels, jockeys, or other aspects of a race meeting of potential use to bettors.

491—4.2(99D,99F) Computation of time, filing of documents. In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in the Code.

4.2(1) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.2(2) In all cases where the time for the filing of a protest or an appeal or the performance of any other act shall be fixed by law, the time so fixed by law shall prevail over the time fixed in these rules.

491—4.3(99D,99F) Gaming officials—duties. Gaming officials shall have the following powers and duties.

4.3(1) Regulate and control all individuals licensed by the commission.

4.3(2) Have control over and free access to all places and equipment within the boat, racetrack enclosures or support facilities under the control of the licensee, with the exception specified in Iowa Code section 99F.6(8) "b."

4.3(3) Order the exclusion or ejection from the boat, racetrack or support facilities any person who is disqualified for corrupt practices from any boat or racetrack in Iowa or any gaming jurisdiction.

4.3(4) Take notice of any questionable conduct with or without complaint and investigate promptly and render a report to the commission office when there is reasonable cause to believe that the holder of a license has committed an act or engaged in conduct in violation of statute or rules of the commission.

4.3(5) Report all complaints as soon as received by them and make prompt report of their investigation and decision to the commission office.

4.3(6) Conduct an investigation, to include a signature check of all electronic chips, on all slot machines or video games of chance jackpots that are more than \$50,000, and have the authority to withhold or require the award of any slot machine jackpot, in writing, when conditions indicate that action is warranted.

4.3(7) Have the authority to sanction for violation of rules persons who are not holders of a license or occupational license and who have allegedly violated commission rules, orders, or final orders, or the Iowa riverboat gambling Act, or whose presence in a casino is allegedly undesirable. These persons are subject to the authority of the board and the commission, to the procedures and rights accorded to a license holder under this chapter, and to the sanctions allowed by law including a fine and expulsion from all casinos in the state.

4.3(8) Suspend a license until the outcome is known of any pending charges if conviction of those charges would disqualify the licensed individual.

4.3(9) Suspend a license pending the outcome of a board hearing when the official has reasonable cause to believe that a violation of a law or rule has been committed and that continued performance of that individual in a licensed capacity would be injurious to the best interests of gaming.

491—4.4(99D,99F) Duties of the board. The board shall have the:

4.4(1) Power to interpret the rules and to decide all questions not specifically covered by them.

4.4(2) Power to determine all questions arising with reference to the conduct of gaming.

4.4(3) Authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority.

4.4(4) Authority to suspend the license of any license holder when the official has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

491—4.5(99D,99F) Disciplinary measures by commission. Upon the finding of a violation of these rules, or an attempted violation, the commission may:

4.5(1) Deny, suspend, revoke or declare void any license applied for or issued by the commission, or fine a licensee or a holder of an occupational license.

4.5(2) Upon a hearing de novo of the matter determined by the gaming officials, the commission may affirm, reverse, or revise the gaming officials' ruling in all respects.

4.5(3) Cause any person, licensed or unlicensed, whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of gaming, to be excluded or ejected from any grounds owned or controlled by boat or track operators for any length of time the commission may deem the presence of that individual injurious to the honesty and integrity of racing or gaming. This rule should not be construed to limit in any way the right of the boat or track operator to eject or exclude any person for any reason, other than race, color, creed, sex or national origin.

491—4.6(99D,99F) Board meetings. Whenever the board has reasonable cause to believe that the holder of a license has committed an act or engaged in conduct in violation of statute or rules of the commission, the following procedures will apply:

1. License holders and those persons addressed by numbered paragraph "8" of this rule shall be immediately subject to such intermediate conditions, limitations, and restrictions as the board decides necessary to protect the public safety, health, and welfare and to ensure the integrity of racing or gaming.

2. Within seven days of the matter coming to the attention of the board, the board shall schedule a meeting to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder at which all board members or their appointed representatives shall be present in person or by teleconference; however, the license holder may request a continuance for good cause and the continuance need not necessarily stay any intermediate sanction.

3. The summons given to the license holder shall give adequate notice of the time, place and purpose of the board's meeting, and shall specify by number the statutes or rules allegedly violated.

4. Every person called to testify before the board is entitled to have counsel or an observer of the person's choosing present at the meeting; however, the counsel or observer may only participate under conditions or in a manner the board directs. The board is not required to permit cross-examination of witnesses appearing before the board.

5. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

6. No special announcement of the meeting or of the alleged infraction of rules shall be made until after the board meeting, when the board shall transmit a signed written decision to the commission office and to the license holder containing the board's findings and the penalty imposed.

7. Duty of disclosure. It is the duty and obligation of every licensee to make full disclosure to the commission, at a hearing before the commission, or to the board, at a meeting before the board, of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board or the commission at any hearing on any relevant matter within the authority of the board or the commission, except in the proper exercise of a legal privilege. No person shall falsely testify before the board or the commission.

8. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules, orders, or final orders, or the Iowa pari-mutuel wagering Act, or whose presence at a track or on a riverboat is allegedly undesirable, are subject to the authority of the board and the commission, to the procedures and rights accorded to a license holder under this chapter, and to the sanctions allowed by law including a fine and expulsion from all tracks or licensed riverboats in the state.

491—4.7(99D,99F) Penalties. The board may eject the license holder, either from the racetrack or riverboat, under its jurisdiction, suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to \$1000, or both. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing and gaming commission. If the punishment so imposed is not, in the opinion of the board, sufficient, they shall so report to the commission. All fines and suspensions imposed will be promptly reported to the boat or racetrack licensee and commission in writing. When the holder of an occupational license is suspended at one location, the suspension shall immediately become effective at all locations under the jurisdiction of the commission.

4.7(1) Fines must be paid within ten calendar days of receipt of the ruling, by the end of business hours at any commission office. Nonpayment or late payment may result in an immediate license suspension. All fines are to be paid by the individual assessed the fine.

4.7(2) If the fine is appealed to the board, the appeals process will not stay the fine. The fine will be due as defined in subrule 4.7(1).

4.7(3) If the party is successful in the appeal, the amount of the fine will be refunded to the party as soon as possible after the date the decision is rendered.

4.7(4) Refunds due under subrule 4.7(3) will be mailed to the party's current address on record.

4.7(5) When a racing animal or the holder of an occupational license is suspended by the board at one location, the suspension shall immediately become effective at all other facilities under the jurisdiction of the commission until the case in question is decided by the commission.

491—4.8(99D,99F) Stays of board decisions.

4.8(1) A person who has been disciplined by a ruling of the board may apply to the administrator for a stay of the ruling, pending action on an appeal by the commission.

4.8(2) An application for a stay must be filed with the administrator not later than the deadline for filing an appeal.

4.8(3) An application for a stay must be in writing and include:

a. The name, address and telephone number and signature of the person requesting the stay; and

b. A statement of the justification for the stay.

4.8(4) On a finding of good cause, the administrator may grant the stay. The administrator shall notify the person in writing of the decision. The administrator may rescind a stay granted under this rule for good cause.

4.8(5) The fact that a stay is granted is not a presumption that the ruling by the board is invalid.

4.8(6) It is the position of the commission that any situation which impugns the integrity of racing or gaming or the pari-mutuel system or brings that integrity into question has a serious adverse effect on the public welfare.

491—4.9(99D,99F) Effect of another jurisdiction's orders. The commission or board may take appropriate action against a license holder or other person who has been ruled off a track or gaming establishment in another jurisdiction, to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or gaming establishments and shall be subject to the same appeal procedures.

491—4.10(99D,99F) Hearings before the commission. The following types of hearings may be heard by the commission.

1. Contested cases.
2. Any hearing initiated by the racing and gaming commission upon its own motion, pursuant to any matter within its jurisdiction.
3. Any hearing initiated by any person upon written request received by the commission, pursuant to any matter within its jurisdiction.

491—4.11(99D,99F) Contested case proceedings before the commission—general. These rules on contested cases shall apply to the following types of proceedings:

1. A ruling by the board referring a matter to the commission for any additional sanctions the commission may deem necessary.
2. An appeal by the license holder, either in whole or in part, of a ruling by the board.
3. A proceeding instituted by the commission to review a board decision or to take up any other matter on its own motion or complaint of the administrator.
4. Any other situation in which an evidentiary hearing is required by constitution or statute before commission action.

All hearings before the commission will be de novo in accordance with the requirements of the Iowa administrative procedure Act and these rules for contested cases.

491—4.12(99D,99F) Appeal from board's decisions. License holders adversely affected by a decision of the board may seek review of the decision by filing a notice of appeal within 72 hours of the decision. The notice of appeal shall contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

491—4.13(99D,99F) Refusal by a board to approve license. Whenever the board or administrator's designee refuses to approve an application for a license, the person to whom a license has been denied may request a hearing before the commission. The request should be in writing and should be made within 72 hours of the decision. The board may also refuse to grant a license or summarily suspend a license of an association employee for failing to return a division of criminal investigation background form in a timely manner as determined by the administrator.

491—4.14(99D,99F) Subpoenas. The administrator is authorized to issue subpoenas, including subpoenas duces tecum, requiring witnesses at contested case proceedings before the commission.

491—4.15(99D,99F) Notice of hearing. Upon receipt of a notice of appeal, or upon action initiated by a complaint of the administrator or by a motion of the commission, the administrator shall by certified mail with return receipt requested, or in accordance with the rules regarding actual or personal service of original notice in a civil action, serve a notice of hearing upon all parties to a contested case. If the case involves an appeal from a board's decision, a copy of the notice of hearing, with required attachments, shall be delivered to the board. The notice of hearing shall comply with the Iowa administrative procedure Act. A copy of the notice of appeal or complaint by the administrator, where applicable, shall be attached to the notice of hearing. When action is initiated by a motion of the commission, a statement setting forth the nature and grounds of the motion shall be attached.

491—4.16(99D,99F) Discovery. Generally, the rules of discovery applicable to civil actions in Iowa district court are applicable to contested case proceedings before the commission. The administrator is permitted to lengthen or shorten times for discovery and to make any reasonable modification of normal discovery procedures when time or other circumstances require.

491—4.17(99D,99F) Time of hearing. Contested case proceedings regarding granting or the suspension of occupational licenses may be conducted at the next regular meeting of the commission or at a special meeting, but in any event no later than 30 days after filing of the application with the administrator, unless the parties agree to a continuance.

Contested case proceedings on appeal from the board's decisions may be conducted after the next regular meeting of the commission or at a special meeting, but in any event shall be conducted as expeditiously as possible after receipt by the commission of a notice of appeal.

Contested case proceedings on complaint of the administrator or motion of the commission may be conducted at any regular or special meeting of the commission in its discretion.

The commission may delegate to an administrative law judge its authority under the Iowa administrative procedure Act and these rules to conduct contested case proceedings and other hearings to the extent and manner provided by Iowa Code sections 17A.11 to 17A.15. The administrative law judge shall have the authority granted under these rules to the commission, the chair, the vice-chair and administrator in regard to the conduct of proceedings and decision making to the extent permitted by the Iowa administrative procedure Act unless specifically limited by the commission. A decision by the administrative law judge shall be treated in the manner prescribed by Iowa Code section 17A.15. Further review by the commission of an administrative law judge's decision may be requested in writing by any party, or the administrator, or by the commission. A request for further consideration of an administrative law judge's decision shall be filed with the commission's principal office no later than ten days from the date of the administrative law judge's decision. A request for further consideration of an administrative law judge's decision by a party or the administrator shall specify those portions of the decision which are to be reviewed and the reasons for disagreement with the decision.

In all of the above contested case proceedings, continuances may be granted for good cause shown.

491—4.18(99D,99F) Conduct of proceedings. A proceeding shall be conducted by the chair or vice-chair who, among other things, shall:

1. Open the record and receive appearances;
2. Administer oaths and issue subpoenas;
3. Enter the notice of hearing into the record;
4. Receive testimony and exhibits presented by the parties;
5. In the officer's discretion, interrogate witnesses;
6. Rule on objections and motions;
7. Issue an order containing findings of fact and conclusions of law.

4.18(1) Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing may be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or transcription shall be filed with and maintained by the department for at least five years from the date of the decision.

4.18(2) If a party fails to appear in a contested case proceeding after proper service of notice, the chair or vice-chair may, upon the officer's own motion or upon the motion of the party who has appeared, adjourn the hearing or proceed with the hearing and make a decision in the absence of the party.

4.18(3) Contemptuous conduct by any person appearing at a hearing shall be grounds for that person's exclusion from the hearing by the chair or vice-chair.

4.18(4) Commission hearings reviewing a decision of an administrative law judge or designated hearing officer shall be based upon the record made before the administrative law judge or hearing officer, and such other evidence the commission in its discretion agrees to hear. Commission hearings are considered to be de novo hearings.

491—4.19(99D,99F) Rules of evidence. In evaluating evidence, the commission's experience, technical competence, and specialized knowledge may be utilized.

491—4.20(99D,99F) Oath. All testimony presented before the commission shall be given under oath which the chair or vice-chair has authority to administer.

491—4.21(99D,99F) Evidence having probative value. Although the commission is not bound to follow the technical common law rules of evidence, a finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial.

4.21(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The commission shall give effect to the rules of privilege recognized by law.

4.21(2) Evidence not provided to a requesting party by subpoena, through discovery or during any informal procedures shall not be admissible at the hearing.

4.21(3) Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form by the commission.

4.21(4) Objections to evidentiary offers may be made at the hearing.

491—4.22(99D,99F) Copies of evidence. A copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, if the original is not readily available or if there is no objection. Upon request, the parties shall be given an opportunity to compare the copy with the original, if available. When an original is admitted in evidence, a copy may be substituted later for the original or such part as may be material or relevant upon leave granted in the discretion of the chair or vice-chair.

491—4.23(99D,99F) Official notice. The commission may take official notice of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the commission. Parties shall be notified at the earliest practicable time, either before or during the hearing, or by reference in preliminary reports, preliminary decisions or otherwise, of the facts proposed to be noticed and their source, including any staff memoranda or data. The parties shall be afforded an opportunity to contest such facts prior to the issuance of the decision in the contested case proceeding unless the commission determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.

491—4.24(99D,99F) Presentation of evidence and testimony. In any hearing, each party shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testified on behalf of an adverse party. A person whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for redirect examination and recross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

491—4.25(99D,99F) Offer of proof. An offer of proof may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

491—4.26(99D,99F) Motions. After commencement of contested case proceedings, appropriate motions may be filed by any party with the administrator should facts requiring such motion come to the knowledge of the party. All motions shall state the relief sought and the grounds upon which the motions are based.

4.26(1) Motions made prior to a hearing shall be in writing and a copy served on all parties and attorneys of record. Such motions may be ruled on by the administrator. The administrator shall rule on the motion by issuing an order. A copy of the motion with the ruling noted shall be mailed to the parties and attorneys of record. Motions may be made orally during the course of a hearing; however, the administrative law judge or hearing officer may request that it be reduced to writing and filed.

4.26(2) To avoid a hearing on a motion, it is advisable to secure the consent of the opposite party prior to filing the motion. If consent of the opposite party to the motion is not obtained, a hearing on the motion may be scheduled and the parties notified. The burden will be on the party filing the motion to show good cause why the motion should be granted.

4.26(3) The party making the motion may attach affidavits deemed essential to the disposition of the motion, which shall be served with the motion and to which the opposite party may reply with counter affidavits. Types of motions include but are not limited to:

- a. Motion for continuance.
- b. Motion for dismissal.
- c. Motion for judgment.
- d. Motion to delete confidential matter in the decision.

491—4.27(99D,99F) Briefs. At any time, whether upon the request of any party or not, the commission may require the filing of briefs on any of the issues prior to or at the time of hearing or at a subsequent time. If briefs have been filed prior to a hearing, the parties should be prepared to make oral arguments as to the law set forth in the briefs at the conclusion of a hearing if the administrative law judge or hearing officer so directs. Two copies of all briefs shall be filed.

491—4.28(99D,99F) Service. All papers or documents required by law or these rules to be filed with the administrator, with the opposing party or other person shall be served by personal service or by certified mail return receipt requested unless another rule specifically refers to another method. All notices required by law or these rules to be served on parties or persons by the commission shall be served by personal service or certified mail return receipt requested.

491—4.29(99D,99F) Standards of conduct. All persons appearing in any proceeding before the commission in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Iowa. If any person does not conform, the commission may decline to permit that person to appear in a representative capacity in any future proceeding before the commission.

***491—4.30(99D,99F) Alcohol and drug testing rule.**

4.30(1) Alcohol prohibition/Breathalyzer test. Licensees or employees of any entity associated with the conduct of racing or gaming on duty or in a restricted area while on the premises of a licensed racetrack or riverboat shall not have present within their system any amount of alcohol in excess of .05 percent. Acting with reasonable cause, a designated commission representative may direct any licensee or employee to submit to a Breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of .05 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day. If the results show a reading of .10 percent alcohol content or more, the licensee or employee is subject to fine or suspension by the administrator's designee. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

Licensees or employees of any entity associated with the conduct of racing or gaming while on duty or in a restricted area on the grounds of a licensed racetrack or riverboat shall not have present within their system any amount of alcohol which would constitute legal impairment (.05%). Acting with reasonable cause, the stewards or a designated commission representative may direct any licensee or employee to submit to a Breathalyzer test. The licensee or employee shall, when so directed, submit to examination. If the results show a reading of .05 percent alcohol content or more, the licensee or employee shall not be permitted to continue duties for that day. For a second violation, the licensee or employee shall not be permitted to continue duties for that day and then be subject to fine or suspension by the stewards or commission. For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis (below).

4.30(2) Drug prohibition/body fluid test. Licensees or employees of any entity associated with the conduct of racing or gaming while on the grounds of a licensed racetrack or riverboat shall not have present within their system any controlled substance as listed in Schedules I to V of the U.S. Code Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription legend drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of professional practice. Acting with reasonable cause a designated commission representative may direct the licensees or employees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases the designated commission representative may prohibit the licensee or employee from participating in racing or gaming until the licensee or employee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee or employee who refuses to provide the samples herein described shall be in violation of these rules and shall be subject to disciplinary action by the commission. All confirmed positive test costs and any related expenses shall be paid for by the licensee or employee. Negative tests shall be at the expense of the commission.

*Objection filed by Administrative Rules Review Committee 4/9/91; renewed 2/3/92 and 4/5/93. See Objection at end of Ch 4.

4.30(3) Procedures following positive chemical analysis.

a. After professional evaluation, if the licensee's or employee's condition proves nonaddictive and not detrimental to the best interest of racing or gaming and the licensee or employee can produce a negative test result and agrees to further testing at the discretion of the designated commission representative to ensure unimpairment, the licensee or employee may be allowed to participate in racing or gaming.

b. After professional evaluation, should the licensee's or employee's condition prove addictive or detrimental to the best interest of racing or gaming, the licensee or employee shall not be allowed to participate in racing or gaming until the licensee or employee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the administrator. The licensee or employee must also agree to further testing at the discretion of the administrator or designee to ensure unimpairment.

c. For a second violation, a licensee or employee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

491—4.31(99D,99F) Commission approval of contracts and business arrangements. No operator shall enter into any contract or business arrangement, verbal or written, with any related party, or in which the term exceeds three years or the total value of the contract exceeds \$50,000, without first submitting advance written notice thereof to the commission and obtaining commission approval therefor.

4.31(1) Purpose of contract review. The commission conducts reviews of contracts in order to serve the public interests that:

- a. Gaming is free from criminal and corruptive elements.
- b. Gaming-related funds are directed to the lawful recipient.
- c. Gaming profits are not improperly distributed.

4.31(2) Related parties. Other contract submittal requirements notwithstanding, contracts negotiated between the operator and a related party must be accompanied by an economic and qualitative justification.

4.31(3) Review criteria. The commission shall approve all contracts that, in their opinion, represent a normal business transaction. The commission may deny approval of any contract which, in their sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This rule does not prohibit the commission from changing the approved ownership or beneficial interest.

491—4.32(99D,99F) Labor organization registration required. Each labor organization, union or affiliate representing or seeking to represent employees licensed by the commission and employed by a racetrack or licensed excursion boat operator shall register with the commission annually.

4.32(1) Registration exemption. The administrator may exempt any labor organization, union or affiliate from registration requirements where it is found that such labor organization, union or affiliate:

- a. Is not the certified bargaining representative of any employee licensed under this chapter or employed by a racetrack or licensed excursion boat operator; and

b. Is neither involved nor seeking to be involved actively, directly, or substantially in the control or direction of the representation of any such employee.

Such exemption shall be subject to revocation upon disclosure of information which indicates that the affiliate does not meet or no longer meets the standards for exemption.

4.32(2) Registration statement. In order to register, a labor organization, union or affiliate shall file with the commission a "Labor Organization Registration Statement." This requirement shall be completed and approved by the administrator prior to the labor organization's becoming the certified bargaining representative for employees occupationally licensed to work for a racetrack or an excursion boat gambling entity.

Said statement shall be in the form prescribed by the commission and shall include, without limitation, the following:

- a.* The names of all labor organizations affiliated with the registrant;
- b.* Information as to whether the registrant is involved or seeking to be involved actively, directly, or substantially in the control or direction of the representation of any employee licensed by the commission and employed by a racetrack or licensed excursion boat operator;
- c.* Information as to whether the registrant holds, directly or indirectly, any financial interest whatsoever in the racetrack or licensed excursion boat whose employees it represents;
- d.* The names of any pension and welfare systems maintained by the registrant and all officers and agents of such systems;
- e.* The names of all officers, agents, and principal employees of the registrant; and
- f.* All written assurances, consents, waivers, and other documentation required of a registrant by the commission.

4.32(3) Registration renewal. A labor organization registration shall be effective for one year. Any such registration may be renewed upon filing of an updated "Labor Organization Registration Statement" no later than 120 days prior to the expiration of the current registration. The commission shall act upon such application for renewal no later than 30 days prior to the date of expiration of the current registration.

4.32(4) Continuing duty to disclose. Every registered labor organization shall be under a continuing duty to promptly disclose any change in the information contained in the "Labor Organization Registration Statement" or as otherwise requested by the commission.

4.32(5) Federal reports exception. Notwithstanding the reporting requirements imposed by this chapter and the rules of the commission, no labor organization, union affiliate or person shall be required to furnish any information which is included in a report filed by any labor organization, union, affiliate or person with the Secretary of Labor, pursuant to 29 U.S.C., Section 431 et seq., (Labor-Management Reporting and Disclosure Act) or 29 U.S.C., Section 1001 et seq., (Employee Retirement Income Security Act) if a copy of such report, or if the portion thereof containing such information, is furnished to the commission pursuant to the aforesaid federal provisions.

4.32(6) Qualification of officers, agents, and principal employees. Every officer, agent, and principal employee of a labor organization, union or affiliate required to register with the commission pursuant to this chapter and the rules of the commission shall be qualified in accordance with criteria contained in 491—13.6(99D,99F) and 491—13.10(99D,99F).

4.32(7) Qualification procedure.

a. In order to be qualified, every officer, agent and principal employee of a labor organization, union or affiliate required to register with the commission pursuant to the regulations of the commission shall file with the commission a "Labor Organization Individual Disclosure Form," which shall be completed, signed, and filed in accordance with the requirements of this chapter, provided, however, that such a form need not be filed by an officer of a national or international labor organization where that officer exercises no authority, discretion or influence over the operation of such labor organization with regard to any employment matter relating to employees licensed under the Act and employed by a racetrack, an excursion boat or boat operator; and further provided that any such officer of a national or international labor organization may be directed by the commission to file a "Labor Organization Individual Disclosure Form" or to provide any other information in the same manner and to the same extent as may be required of any other officer of a labor organization which is required to register under this chapter.

b. Each officer, agent or principal employee required to file a "Labor Organization Individual Disclosure Form" shall do so initially at the time the pertinent labor organization, union or affiliate applies or should apply for registration or at the time the individual is elected, appointed or hired, whichever is later.

c. Following an initial finding of qualification, each qualified individual who has filed an initial "Labor Organization Individual Disclosure Form" shall annually file with the commission a properly completed, updated "Labor Organization Individual Disclosure Form."

4.32(8) Waiver of disqualification criteria. Notwithstanding the qualification requirements as to any such officer, agent or principal employee, the commission may waive any disqualification criteria upon a finding that the interests of justice so require.

4.32(9) Interest in a racetrack, an excursion gambling boat or excursion gambling boat license prohibited. Neither a labor organization, union or affiliate nor its officers, and agents not otherwise individually licensed under the Act and employed by a racetrack or an excursion gambling boat licensee may hold any financial interest whatsoever in the licensee whose employees they represent.

4.32(10) Failure to comply—consequences.

a. No labor organization, union or affiliate required to register with the commission shall receive any dues from or on behalf of or administer any pension, welfare funds from or on behalf of any licensed employee of a racetrack, an excursion boat or its agent:

(1) If the said labor organization, union, or affiliate shall fail to properly register with the commission or provide all information requested by the commission in accordance with the provisions of this chapter or the rules of the commission;

(2) If any officer, agent or principal employee of such labor organization, union or affiliate shall fail to qualify in accordance with the provisions of this chapter or the regulations of the commission; or

(3) If the said labor organization, union, affiliate or any officer or agent thereof shall hold a prohibited interest in a racetrack, an excursion gambling boat or an excursion gambling boat licensee.

b. Nothing herein shall be construed to limit the right of the commission to impose any sanctions or take any action authorized by this chapter or Iowa Code chapters 99D and 99F.

491—4.33(99D,99F) Failure to pay child support. Failure to pay child support shall result in license revocation, suspension, denial or nonrenewal.

4.33(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with R.C.P. 56.1. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

4.33(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

4.33(3) It is the responsibility of the administrator or commission representative to issue the notice required by Iowa Code section 252J.8.

4.33(4) Licensees and license applicants shall keep the agency informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the agency copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

4.33(5) All agency fees for applications, license renewal or reinstatement must be paid by licensees or applicants before a license will be issued, renewed or reinstated after the agency has denied the issuance or renewal of a license, or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

4.33(6) In the event a licensee or applicant timely files a district court action following service of an agency notice pursuant to Iowa Code sections 252J.8 and 252J.9, the agency shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the agency to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the agency shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

491—4.34(99D,99F) Retention, storage and destruction of books, records and documents.

4.34(1) Except as otherwise provided, all original books, records and documents pertaining to the licensee's operations shall be:

- a.* Prepared and maintained in a complete and accurate form.
- b.* Retained, in Iowa, at a site approved by the administrator until audited.
- c.* Held immediately available for inspection by the commission during business hours of operations.
- d.* Organized and indexed in such a manner to provide immediate accessibility to the commission.

4.34(2) For the purpose of this rule, "books, records and documents" shall be defined as any book, record or document pertaining to, prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records.

4.34(3) All original books, records and documents may be copied and stored on microfilm, microfiche or other suitable media system approved by the administrator.

4.34(4) No original book, record or document, or suitable media copy, may be destroyed by a licensee, for three years, without the prior approval of the administrator.

These rules are intended to implement Iowa Code chapters 99D and 99F.

- [Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
- [Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
- [Filed 6/19/87, Notice 5/6/87—published 7/15/87, effective 8/20/87]
- [Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
- [Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
- [Filed 2/17/89, Notice 1/11/89—published 3/8/89, effective 4/12/89]
- [Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]
- [Filed 2/15/91, Notice 1/12/91—published 3/6/91, effective 4/10/91]
- [Filed 12/6/91, Notice 10/16/91—published 12/25/91, effective 1/29/92]
- [Filed emergency 12/12/91—published 1/8/92, effective 12/12/91]
- [Filed 2/12/92, Notice 1/8/92—published 3/4/92, effective 4/8/92]
- [Filed 10/30/92, Notice 9/16/92—published 11/25/92, effective 1/6/93]
- [Filed 12/18/92, Notice 10/14/92—published 1/6/93, effective 2/10/93]
- [Filed emergency 2/5/93—published 3/3/93, effective 2/5/93]
- [Filed emergency 3/22/93—published 4/14/93, effective 3/22/93]◊
- [Filed emergency 4/19/93—published 5/12/93, effective 4/19/93]
- [Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
- [Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
- [Filed 7/23/93, Notice 5/12/93—published 8/18/93, effective 9/22/93]
- [Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
- [Filed 11/17/95, Notice 9/13/95—published 12/6/95, effective 1/10/96]
- [Filed 1/23/96, Notice 12/6/95—published 2/14/96, effective 3/20/96]
- [Filed 1/17/97, Notice 11/6/96—published 2/12/97, effective 3/19/97]
- [Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
- [Filed 9/19/97, Notice 8/13/97—published 10/8/97, effective 11/12/97]

OBJECTION

At its April 8, 1991*, meeting the Administrative Rules Review Committee voted to object to the provisions of 491 IAC 4.27(99D)**, on the grounds this rule is unreasonable. In essence, the rule prohibits licensees or employees of a horse or dog track from having an alcohol level of .05, or in some cases .10. The committee's first concern is that it is unnecessary to limit consumption by licensees who are not actually working at the track; such as an owner who is present in a restricted area simply as an observer. Secondly, the committee believes that the level is unreasonably low for licensees who are not actually working. A .05 level can be achieved with as little as three beers; such a blood level would still allow the person to operate a motor vehicle, but the rule would prohibit that person from being in an unrestricted area of the track. The third problem is the accuracy of the test. The rule provides for the use of the "Breathalyzer." This device is used by police officers to get an initial reading, used only as justification to seek the more accurate blood or urine specimen. The Breathalyzer itself is not accurate enough to provide a reliable alcohol level.

*At its meeting held February 3, 1992, the Administrative Rules Review Committee voted to renew the Objection to 491 IAC 4.27(99D). Objection reinstated IAC Supplements 2/19/92 and 4/28/93.

**Rule 491—4.27(99D) was renumbered as 491—4.30(99D) IAC 10/8/97.