

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

Proposing rule making related to updates to racing and gaming rules and providing an opportunity for public comment

The Racing and Gaming Commission hereby proposes to amend Chapter 1, “Organization and Operation,” Chapter 2, “Rule Making and Declaratory Orders,” Chapter 5, “Track, Gambling Structure, and Excursion Gambling Boat Licensees’ Responsibilities,” Chapter 8, “Pari-Mutuel Wagering, Simulcasting and Advance Deposit Wagering,” Chapter 11, “Gambling Games,” Chapter 12, “Accounting and Cash Control,” Chapter 13, “Sports Wagering,” and Chapter 14, “Fantasy Sports Contests,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 99D.7, 99E.3 and 99F.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapters 99D, 99E and 99F.

Purpose and Summary

- Items 1 and 2 implement changes required by 2020 Iowa Acts, House File 2389.
- Item 3 clarifies how sports wagering net receipts are reported.
- Item 4 requires a disaster recovery plan for electronic wagering accounts.
- Item 5 requires reserves for electronic wagering accounts.
- Item 6 terminology is updated for a person under the age of 21.
- Item 7 modifies the definition of “implement of gaming” to include electronic wagering accounts.
- Item 8 implements new requirements for gambling games of chance.
- Item 9 includes cashless wagers.
- Item 10 adds a new definition of “electronic wagering account.”
- Item 11 clarifies requirements for operation of electronic wagering accounts.
- Item 12 clarifies that notification to the Commission about certain incidents needs to be in writing.
- Item 13 removes unnecessary language.
- Item 14 restructures subrule 13.2(9) to account for the removal of paragraph 13.2(9)“a.”
- Item 15 clarifies that a vendor of retail sports wagering operations shall complete an audit.
- Item 16 clarifies revenue reporting requirements.
- Item 17 requires sports wagering advertisements to include a link to the rules for customers.
- Item 18 addresses how revenue is allocated when in-person registration is not required for online sports wagering.
- Item 19 clarifies segregation of funds for player accounts and operational funds.
- Item 20 addresses how revenue is allocated when in-person registration is not required for online sports wagering.
- Item 21 clarifies requirements for audits.
- Item 22 authorizes a third individually branded website.
- Item 23 clarifies when a fantasy sports contest is determined promotional in nature for tax reporting.
- Item 24 clarifies revenue reporting requirements.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on December 8, 2020. Comments should be directed to:

Barb Blake
Iowa Racing and Gaming Commission
1300 Des Moines Street
Des Moines, Iowa 50309
Email: barb.blake@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

December 8, 2020
9 a.m.

Commission Office, Suite 100
1300 Des Moines Street
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 491—1.8(17A,99D,99F) as follows:

491—1.8(17A,99D,99F) Granting of a waiver. For purposes of this rule, a waiver ~~or variance~~ means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity. ~~For simplicity, the term “waiver” shall include both a waiver and a variance.~~

1.8(1) to 1.8(19) No change.

1.8(20) Submission of waiver information. All orders granting or denying a waiver petition shall be submitted to the legislative services agency through the Internet site established pursuant to Iowa Code section 17A.9A for such submissions within 60 days of the granting or denial of the petition.

~~1.8(20)~~ **1.8(21)** *Summary reports.* Semiannually, the commission shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

~~1.8(21)~~ **1.8(22)** *Cancellation of a waiver.* A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

a. to c. No change.

~~1.8(22)~~ **1.8(23)** *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

~~1.8(23)~~ **1.8(24)** *Defense.* After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

~~1.8(24)~~ **1.8(25)** *Judicial review.* Judicial review of the commission's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

ITEM 2. Adopt the following **new** subrule 2.18(5):

2.18(5) *Copies to administrative rules review committee.* Petitions for rule making and the disposition of such petitions shall be provided to the administrative rules review committee.

ITEM 3. Amend subparagraph **5.4(10)“d”(1)** as follows:

(1) A tax is imposed on the sports wagering net receipts received each fiscal year from sports wagering. “Sports wagering net receipts” means the gross receipts less winnings paid to wagerers on sports wagering on a cash accounting basis. Voided and canceled transactions are not considered receipts for the purpose of this calculation. Any offering used to directly purchase a wager shall be considered receipts for the purpose of this calculation.

ITEM 4. Adopt the following **new** paragraph **5.4(14)“e”**:

e. Any licensee that offers electronic wagering accounts, as defined by rule 491—12.1(99F), must prepare a disaster recovery plan that addresses off-site backups or equivalent. All disaster recovery plans shall incorporate industry standards for retention and storage of wagering account information and shall be subject to review as part of the network security risk assessment required by subrule 5.4(21).

ITEM 5. Adopt the following **new** subrule 5.4(22):

5.4(22) *Cashless wagering reserves.* A reserve in the form of cash or cash equivalents segregated from operational funds shall be maintained to cover the entirety of a licensee's electronic wagering account liability. The reserve shall equal or exceed the licensee's wagering account liability as of the last day in the previous quarter. An accounting of this reserve shall be made available for inspection to the commission upon request. The method of reserve shall be submitted to and approved by the administrator prior to implementation.

ITEM 6. Amend subrule 8.2(21) as follows:

8.2(21) ~~*Minors prohibited from Underage wagering prohibited.*~~ No ~~minor~~ person under the age of 21 shall be permitted by any licensed facility to purchase or cash a pari-mutuel ticket.

ITEM 7. Amend rule **491—11.1(99F)**, definition of “Implement of gambling,” as follows:

“*Implement of gambling*” means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a ~~slot machine~~ gambling game; facilitate the operation of an electronic wagering account as defined by rule 491—12.1(99F); or be integral to the conduct of a commission-authorized gambling game.

ITEM 8. Rescind subrule 11.5(4) and adopt the following **new** subrule in lieu thereof:

11.5(4) Gambling games of chance involving prizes awarded to participants through promotional activities at a facility may be conducted by the licensee providing the following:

a. Rules shall be made available to participants for review prior to registering. Rules shall include, at a minimum, all conditions registered players must meet to qualify to enter or participate in the event, available prizes or awards, and distribution of prizes or awards based on specific outcomes.

b. All gambling games are conducted in a fair and honest manner, and all rules are followed. Changes to rules shall not be made after participants have registered.

c. Results shall be made available for the registered players to review at the same location at which or in the same manner in which players registered. Results shall include, at a minimum, name of the event, date of the event, total number of entries, total prize pool, and amount paid for each winning category.

d. No entry fees shall be permitted.

e. All employees of the facility shall be prohibited from participation.

f. Such games shall be limited to participants 21 years of age or older.

g. There is compliance with all other federal, state and local laws and rules outside of the commission's jurisdiction.

h. Outcomes for gambling games shall be determined on the designated gaming floor, approved pursuant to 491—subrule 5.4(17), and outcomes shall be immediately or simultaneously displayed by a device or devices on the designated gaming floor.

i. In determining adjusted gross receipts pursuant to Iowa Code section 99F.11, the facility may consider all nonmonetary consideration expended by a participant and the nonmonetary consideration shall at least equal the value of prizes awarded.

ITEM 9. Amend paragraph **11.7(2)“a”** as follows:

a. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout or by making a cashless wager using an approved wagering device.

ITEM 10. Adopt the following **new** definition of “Electronic wagering account” in rule **491—12.1(99F)**:

“Electronic wagering account” means an individual player's account established by an authorized facility into which a player can deposit funds for the purpose of wagering on authorized gambling devices.

ITEM 11. Adopt the following **new** rule 491—12.16(99F):

491—12.16(99F) Electronic wagering accounts.

12.16(1) A facility may be allowed to offer on-premises electronic wagering accounts for patrons enrolled at that facility. Prior to offering any electronic wagering accounts, the facility shall submit additional internal controls, approved by a commission representative in accordance with rule 491—12.3(99F), that include the following for operation of an account:

a. Limitation of one active account per individual player.

b. Details on how a player will be identified and the methods required to access funds in the account.

c. Process to easily and prominently impose limitations for wagering parameters including, but not limited to, deposits and wagers. Upon receipt, any self-imposed limitations must be employed correctly and immediately as indicated to the player. No changes can be made reducing the severity of the self-imposed limitations for at least 24 hours. If the wagering account includes access to wagering account information, this process must include the capability to notify the player for self-imposed limitations.

12.16(2) The following requirements apply to the maintenance of funds associated with a player account:

a. A facility shall not have access to funds in a player's account, except to debit the account for a wager made by the player, to remit funds to the player at the player's request, or as otherwise authorized by the commission.

b. Methods of transfer or deposit into a player's account shall be limited to currency transactions with a casino cashier, or transfers from a participating gaming machine or designated kiosk, unless otherwise approved by the commission. Direct transfers utilizing registered bank accounts are permitted, but transfers to a player's wagering account shall not be allowed while a patron is on the designated gaming floor, as approved pursuant to 491—subrule 5.4(17).

c. Positive player identification, including any personal identification number (PIN) entry or other approved secured methods, must be completed before the withdrawal of any moneys held by the facility.

d. It shall not be possible to transfer funds between two player accounts.

e. A facility shall provide a transaction log or account statement history at no cost to players upon request. Information provided shall include sufficient information to allow players to reconcile the statement or record against their own financial records and shall identify any device where a transaction occurred.

f. A facility shall not charge any fees for the registration, operation or maintenance of wagering accounts including, but not limited to, processing any deposits or withdrawals.

12.16(3) Abandoned player accounts under this rule are subject to Iowa Code chapter 556. Player accounts are considered abandoned if no activity by the account holder has occurred for three years. Player activity includes any deposit or withdrawal, including activity initiated by the player to make a wager on a participating gaming device.

ITEM 12. Amend paragraph **13.2(7)“e”** as follows:

e. To report within 72 hours, in writing, any incident where an employee or customer is detected violating a provision of Iowa Code chapter 99F, a commission rule or order, or internal controls. In addition to the written report, the licensee or advance deposit sports wagering operator shall provide immediate notification to the commission if an incident involves employee theft, criminal activity, Iowa Code chapter 99F violations or sports wagering receipts.

ITEM 13. Rescind paragraph **13.2(9)“a.”**

ITEM 14. Reletter paragraphs **13.2(9)“b”** to **“d”** as **13.2(9)“a”** to **“c.”**

ITEM 15. Adopt the following new subrule 13.2(10):

13.2(10) *Annual audit.* If a vendor is conducting sports wagering for a casino licensee, an audit of the sports wagering operations for the vendor or parent company of the vendor shall be conducted by certified public accountants authorized to practice in the state of Iowa, and the audit shall be provided to the commission within 90 days of the vendor's fiscal year and meet the following conditions:

a. Inclusion of an internal control letter, audited balance sheet, and audited profit-and-loss statement including a breakdown of expenditures and subsidiaries of sports wagering activities.

b. Inclusion of a supplement schedule indicating financial activities on a calendar-year basis if the vendor's fiscal year does not correspond to the calendar year.

c. Inclusion of a supplement schedule for all Iowa locations in which the vendor operates.

d. Report of any material errors, irregularities that may be discovered during the audit, or notice of any audit adjustments.

e. Availability, upon request, of an engagement letter for the audit between the vendor or parent company of the vendor and the auditing firm.

ITEM 16. Adopt the following new subrule 13.2(11):

13.2(11) *Revenue reports.* Licensees and advance deposit sports wagering operators shall provide additional reports, as determined necessary by the administrator, that detail the revenue submission required by 491—paragraph 5.4(10)“d.” Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.

ITEM 17. Amend subrule 13.3(3) as follows:

13.3(3) *Sports promotional contests, tournaments, or promotional activities.* Sports promotional contests, tournaments, or promotional activities may be permitted by the licensee, vendor, or advance deposit sports wagering operator providing the following:

a. to d. No change.

e. Rules include terms and conditions. All emails or advertisements promoting contests, tournaments, and promotional activities shall include a link or other easily obtainable source that includes rules or terms and conditions.

e. f. There is compliance with all other federal, state, and local laws and rules outside of the commission's jurisdiction.

ITEM 18. Amend subrule 13.5(2) as follows:

13.5(2) *Account registration.* A person must have an established account that identifies the licensee for which sports wagering net receipts are assigned pursuant to 491—subrule 5.4(10) in order to place advance deposit sports wagers. The process for establishing an account shall be approved by the administrator. Prior to January 1, 2021, an account shall be established at the facility as required by Iowa Code section ~~99F.9(3A) with a process approved by the administrator~~ 99F.9(4). To establish an account, an application for an account shall be signed or otherwise authorized in a manner approved by the administrator and shall include the applicant's full legal name, principal residential address, date of birth, and any other information required by the administrator. The account registration process shall also include:

a. to e. No change.

f. An option for new customers on or after January 1, 2021. If an advance deposit sports wagering operator has more than one agreement with a licensee, then an option for new customers to select the licensee in which net receipts are assigned must be implemented by the operator.

ITEM 19. Adopt the following **new** paragraph **13.5(4)“h”**:

h. An advance deposit sports wagering operator or licensee shall segregate player account funds from operational funds.

ITEM 20. Adopt the following **new** paragraph **13.5(5)“e”**:

e. Inclusion of a supplemental schedule for Iowa operations. A supplemental schedule shall include a breakdown of advance deposit sports wagering activities by each Iowa casino in which there is an agreement. The supplemental schedule provided to satisfy this requirement may be unaudited; however, the top financial officer of the company shall provide a statement attesting to the accuracy of the information provided to the commission.

ITEM 21. Adopt the following **new** subrule 13.5(7):

13.5(7) *Expiration or termination of an Iowa Code section 99F.7A operating agreement.* In the event an advance deposit sports wagering operating agreement between a licensee under Iowa Code section 99F.7A and another entity expires, terminates, or is no longer valid, notice of termination must be given to the commission and all customers affiliated with the licensee. A customer shall be given an opportunity to close an account. If another individually branded website is available in the state of Iowa connected to the customer's account and the customer does not want to close the account, the customer shall be given the option to select another licensee to which net receipts are assigned.

ITEM 22. Amend paragraph **13.7(2)“c”** as follows:

c. Disclosure of operating agreements for up to two, or three if authorized by the commission, individually branded internet sites to conduct advance deposit wagering for the facility.

ITEM 23. Amend subrule 14.6(1) as follows:

14.6(1) The licensee shall pay a tax rate pursuant to Iowa Code section 99E.6 on adjusted revenue from fantasy sports contests. “Adjusted revenue” means the amount equal to the total charges and fees collected from all participants entering the fantasy sports contest less winnings paid to participants in the contest, multiplied by the location percentage defined in Iowa Code section 99E.1. Charges and fees returned to participants due to a participant withdrawing the participant's entry from a fantasy sports

contest shall not be considered when calculating the adjusted revenue. Contests resulting in negative adjusted revenue shall be considered promotional in nature and cannot be used to offset taxes owed pursuant to Iowa Code section 99E.6.

ITEM 24. Adopt the following **new** subrule 14.6(6):

14.6(6) Fantasy sports operators shall provide additional reports, as determined necessary by the administrator, that detail the taxes collected in accordance with this rule. Reports shall be provided to the commission in a format approved by the administrator. The administrator shall provide written notice to any licensee if additional reports are determined necessary. In addition, the administrator shall provide adequate time to any licensee if a report needs to be created to satisfy this requirement.