

ILLINOIS REGISTER

ILLINOIS RACING BOARD

NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Historical Horse Racing
- 2) Code Citation: 11 Ill. Adm. Code 327
- 3)

<u>Section Numbers</u> :	<u>Proposed Actions</u> :
327.10	New Section
327.20	New Section
327.30	New Section
327.40	New Section
327.50	New Section
327.60	New Section
327.70	New Section
327.80	New Section
327.90	New Section
327.100	New Section
- 4) Statutory Authority: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5].
- 5) A Complete Description of the Subjects and Issues Involved: New Part 327, Historical Racing (HHR), is intended to allow HHR terminals to be placed at Illinois racetracks and allow fans to make pari-mutuel wagers on randomly selected horse races from a video library containing thousands of previously run races at regulated and licensed Illinois race tracks. Players will not be given any identifying data (i.e. racetrack, horses name, jockey) but are given some chart data before placing bets, such as the horses' odds and some statistics on past performances. The HHR terminals will allow Illinois racetracks, which do not have slot machines, a new wagering product. The horse racing industry has embraced them as a way to keep racetracks open and improve horsemen's purses.

HHR is currently offered in Kentucky, Arkansas, Wyoming, and Oregon. It was recently approved by the Virginia General Assembly. HHR was first approved in 2000, for use at a racetrack in Arkansas. In 2010, the Kentucky Horse Racing Commission approved rules to allow HHR. Kentucky Downs installed HHR terminals in 2011. They currently have 750 terminals. In 2014, the Kentucky Supreme Court held that the Kentucky Horse Racing Commission had the authority to create rules authorizing HHR but remanded the case to the circuit court to determine whether the HHR terminals operating in Kentucky are pari-mutuel, pursuant to the KHRC's HHR rules. On October 24, 2018, the Kentucky circuit court found that the HHR terminals manufactured by Exacta are pari-mutuel under the KHRC rules. In September 2018, Churchill Downs opened Derby City Gaming offering more than 800 HHR terminals. Unlike Illinois, Kentucky does not allow any

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other types of gambling other than pari-mutuel wagering on horse racing, HHR, and lottery. Accordingly, it does not have gaming statutes for riverboats, casinos, or VGTs. If allowed in Illinois, HHR would provide revenue to State and local governments, organization licensees (racetracks), and additional purse money to the horsemen. Additional jobs related to horse racing in Illinois may be created. The amount of revenue and job creation is unknown as no projections have been provided to the IRB by the organization licensees. HHR would potentially make Illinois' horse racing industry more competitive with surrounding states.

- 6) Any published studies or reports, along with sources of underlying data, that were used when composing this rulemaking: 810 Kentucky Administrative Regulations (KAR) 1:011.
- 7) Will this rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this rulemaking contain incorporations by reference? No
- 10) Are there any other rulemakings pending on this Part? No
- 11) Statement of Statewide Policy Objective: No local governmental units will be required to increase expenditures.
- 12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

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The Board requests the submission of written comments within 45 days after the publication of this Notice. The Board will consider all written comments it receives during

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the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not-for-profit corporations affected: Terminal suppliers, organization licensees (racetracks), and occupation licensees (horsemen).
 - B) Reporting, bookkeeping or other procedures required for compliance: None
 - C) Types of professional skills necessary for compliance: None
- 14) Regulatory Agenda which this rulemaking was summarized: This rulemaking was not anticipated by the Board when the most recent regulatory agendas were published.

The full text of the Proposed Rules begins on the next page.

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TITLE 11: ALCOHOL, HORSE RACING, LOTTERY, AND VIDEO GAMING

SUBTITLE B: HORSE RACING

CHAPTER I: ILLINOIS RACING BOARD

SUBCHAPTER a: GENERAL RULES

PART 327

HISTORICAL HORSE RACING

Section

327.10	Definitions
327.20	Wagering on Historical Horse Races Authorized
327.30	Wagering Terminals
327.40	Payouts
327.50	Wagering Information
327.60	Terminal Allocation and Locations
327.70	Board Approval
327.80	Retention
327.90	Advertising
327.100	Severability

AUTHORITY: Implementing and authorized by Section 9(b) of the Illinois Horse Racing Act of 1975 [230 ILCS 5/9(b)].

SOURCE: Adopted at 43 Ill. Reg. _____, effective _____.

Section 327.10 Definitions

"Historical horse race": A horse race that was previously conducted by an Illinois Organization Licensee; concluded with official results; and concluded without scratches, disqualifications, or dead-heat finishes.

"HHR System": A system which accepts pari-mutuel wagers on historical horse races, calculates and provides payouts for winning wagers from the pari-mutuel pools created by such wagering, and includes any and all hardware or software necessary for such wagering.

"Organization Licensee": As set forth in 230 ILCS 5/3.11.

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“Pari-mutuel pool”: A pool formed through the pari-mutuel system of wagering and which may be supplemented by a Licensee in order to guarantee a minimum distribution, subject to the prior consent of the Board.

“Pari-mutuel system of wagering”: As set forth in 230 ILCS 5/3.12.

“Replay”: A replay of the race whether by a digital or animated representation, video footage recorded at the time the race was run, or a manner approved by the Board.

"Reserve account": An amount of money funded by an Organization Licensee in an amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager on a historical horse race or races.

"Seed pool": A pool of money used to ensure that all patrons are paid the minimum payout on winning wagers and may be funded by patrons wagering on historical horse races; by the Licensee; by patrons and the Licensee; or in a manner approved by the Board.

"Terminal": Any self-service totalizator machine or similar mechanical equipment used by a patron to place a pari-mutuel wager.

“Voucher”: A printed ticket that entitles the holder to an amount of money as indicated on the ticket, but which does not provide a record of individual wagers.

“Wagering facility”: As set forth in 230 ILCS 5/3.22.

Section 327.20 Wagering on Historical Horse Races Authorized

- a) The Board is authorized to approve Organization Licensees to conduct wagering on historical horse races through the use of the pari-mutuel system of wagering. Such wagering shall be conducted so as to maintain horse racing in the State of Illinois of the highest quality and free of any corrupt, incompetent, dishonest or unprincipled practices and to maintain in horse racing and wagering complete honesty and integrity.
- b) Wagering on historical horse races is authorized and may be conducted in accordance with this rule.
- c) Wagering on historical horse races may only be conducted by an Organization Licensee that:

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- 1) Was licensed in the year 2017 and conducts no less than forty (40) live race dates per calendar year; or
- 2) Has conducted at least forty (40) days of live race dates for two (2) consecutive calendar years. An Organization Licensee approved to offer wagers on historical horse races under this subsection must conduct at least forty (40) days of live race dates in any calendar year in which it offers wagers on historical horse races.
- d) Wagering on historical horse races shall only be permitted in designated areas on the licensed premises of a wagering facility.
- e) An Organization Licensee may conduct wagering on historical horse races on any breed, including but not limited to standardbred, quarter horse, and thoroughbred historical horse races, regardless of the type of breed that primarily races in live meets conducted by the Organization Licensee.
- f) An Organization Licensee may conduct wagering on historical horse races on any day of the week between the hours of 7:00 a.m. and 2:00 a.m.
- g) Any wager placed on a historical horse race or races shall be through the pari-mutuel system of wagering.
- h) Before conducting wagering on historical horse races, an Organization Licensee shall first obtain the Board's written approval of all wagers offered as set forth in Section 327.70.

Section 327.30 Wagering Terminals

- a) All wagering on historical horse races shall incorporate the following elements:
 - 1) A patron may only wager on a historical horse race or races on a terminal approved by the Board. The Board shall not require any particular make of terminal.
 - 2) Once a patron selects a wager amount on the terminal, a historical horse race or races shall be chosen at random.
 - 3) Prior to the patron making his or her wager selections, the terminal shall not display any information that would allow the patron to identify the

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historical horse race or races on which he or she is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys or drivers that participated in the race.

- 4) Prior to a patron finalizing his or her wager selections, the terminal shall make available true and accurate past performance information on each historical horse race. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form.
 - 5) After a patron finalizes his or her wager selections, the terminal shall display a replay of the race or races, or a portion thereof, and the official results of each race. The identity of each race shall be revealed to the patron after the patron has placed his or her wager.
 - 6) Each terminal for wagering for historical horse races shall display odds or pool amounts that the patron will receive for a winning wager on each pari-mutuel wagering pool.
- b) The Board may require inspection of each terminal used for wagering on historical horse races to ensure proper working order.
 - c) Terminals used for wagering on historical horse races shall not be required to print or issue tickets so long as the wagers are electronically recorded.

Section 327.40 Payouts

- a) A wager on a historical horse race or races, less deductions permitted by the Act, shall be placed in a pari-mutuels pool or pools approved by the Board.
- b) A payout to a winning patron shall be paid from money in the pari-mutuel pool and shall not constitute a wager against the Organization Licensee.
- c) An Organization Licensee conducting wagering on historical horse races shall not conduct wagering in such a manner that patrons are wagering against the Organization Licensee or in such a manner that the amount retained by the Organization Licensee is dependent upon the outcome of any particular race or the success of any particular wager.

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- d) An Organization Licensee shall only pay winning wagers on historical horse races out of the applicable pari-mutuel pool and shall not pay winning wagers out of the Organization Licensee's funds. Payment of a winning wager shall not exceed the amount available in the applicable pari-mutuel pool.
- e) An Organization Licensee conducting wagering on historical horse races may operate seed pools in a manner and method approved by the Board. For each wager made, an Organization Licensee may assign a percentage of the wager to a seed pool or pools. Seed pools shall be maintained and funded so that the amount available at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.
- f) An Organization Licensee shall provide the funding for the reserve account. The funding in a reserve account shall be non-refundable as long as the Organization Licensee conducts wagering on historical horse races. An independent testing laboratory shall assess the amount sufficient to ensure that a patron will be paid the minimum amount required on a winning wager, and shall be approved by the Board.
- g) The Board may allow promotional or free play which allows the patrons to participate in wagering without contributing the player's own funds. Free play shall be placed in the same pari-mutuel pool with all other wagers, and shall entitle the patron to the same potential winnings as if the wager was placed through a voucher or other monetary contribution.

Section 327.50 Wagering Information

- a) The following wagering information shall be available to the patrons in any form approved by the Board:
 - 1) The wagering information must clearly state the means by which a winning wager is determined and the handling of an award in any case where a tie is possible.
 - 2) Wagering information shall be available in written form.
 - 3) The rules for any exotic wagering options and the expected payouts shall be clearly explained to the player.

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- 4) The wagering information shall disclose any restrictive features of wagering, such as minimum wager amounts or maximum win values.
- b) Wagers may be placed either by voucher or through funds deposited into the terminal.
 - c) Vouchers shall contain the following information:
 - 1) The date and time the voucher was issued;
 - 2) Licensee name;
 - 3) Numeric dollar amount;
 - 4) Voucher sequence number;
 - 5) Validation number;
 - 6) Bar code or any machine-readable code representing the validation number;
 - 7) Type of transaction or other method of differentiating voucher types. If the voucher is a non-cashable item, the ticket shall explicitly express that it has “no cash value”; and
 - 8) The expiration period from date of issue, or date and time the voucher will expire in a 24-hour format according to the local time zone. This information may be contained on the ticket stock itself. Payment on valid pari-mutuel vouchers shall be made only upon presentation and surrender of a valid pari-mutuel voucher to the Licensee within 180 days after the issuance of the voucher. Failure to present any valid pari-mutuel voucher to the Licensee within 180 days after the issuance of the voucher shall constitute a waiver of the right to payment.
 - d) Winning pari-mutuel wagers shall be processed according to Internal Revenue Service reporting requirements for the taxation of pari-mutuel wagering on horse racing. If a winning amount is in excess of the thresholds established in the Internal Revenue Service reporting requirements, the terminal shall cease operation and require attendant interaction to proceed.

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Section 327.60 Terminal Allocation and Locations

- a) Terminals offering wagering on historical horse races shall be located within designated areas that have the prior written approval of the Board. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is under 18 years of age or is otherwise not permitted to place wagers.
- b) An Organization Licensee shall monitor persons entering and leaving the designated areas and shall prevent access to any patron who is under 18 years of age or is otherwise not permitted to place wagers on historical horse races.
- c) An Organization Licensee shall provide terminals that are accessible to patrons with disabilities.

Section 327.70 Board Approval

- a) An Organization Licensee shall not offer wagering on historical horse races without the prior written approval of the Board.
- b) An Organization Licensee shall submit a written request to the Board for permission to offer wagers on historical horse races, which shall include:
 - 1) The types, numbers, and denominations of pari-mutuel wagers to be offered;
 - 2) A detailed description of the rules that apply to the pari-mutuel wagers, including, if applicable, how money will be allocated to the seed pool;
 - 3) A description of the database of historical horse races that will be offered for wagering;
 - 4) The number of live race dates it will offer that calendar year, which in no event may be less than 85% of the race dates conducted by the Organization Licensee in calendar year 2017;
 - 5) The days and hours of operation during which wagering on historical horse races will be offered;

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- 6) A detailed description of the proposed designated area and the terminal or terminals on which the pari-mutuel wagers will be made, including an architect's rendering of the proposed designated area, that describes the size, construction, layout, capacity, and number of terminals and at least one photograph of the designated area when construction is completed;
 - 7) The practices and procedures that will ensure the security, safety, and comfort of patrons in the designated area;
 - 8) The manufacturer, make, and model of the terminal, including a copy of all literature supplied by the manufacturer of the terminal;
 - 9) The maintenance and repair procedures that will ensure the integrity of the terminals;
 - 10) A complete list of individuals who are authorized to examine and repair the terminals for any reason; and
 - 11) Submission of a report by an independent testing laboratory chosen by the Board to ensure the historical horse race wagers meet the requirements of this Part 327.
 - A) The expense of the testing shall be paid by the Organization Licensee offering the wagering on historical horse races or the company providing the HHR System.
 - B) Initial testing shall be conducted by the independent testing laboratory in the laboratory setting.
 - C) The Board may require periodic audits of the wagers to be conducted by the independent testing laboratory at the wagering facilities.
- c) The Board may request additional information from an Organization Licensee regarding the wagers if the additional information would assist the Board in deciding whether to approve them.
 - d) The Board may require an Organization Licensee to meet certain conditions before approving a request to offer wagers on historical horse racing. These conditions may include but are not limited to:

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- 1) The character, reputation, experience, and financial integrity of the Organization Licensee;
- 2) The character, reputation, experience and financial integrity of the proposed supplier of the HHR System;
- 3) The willingness of the Organization Licensee to provide indemnification and hold harmless protection which the Board deems appropriate relating to the enabling or regulating of wagering on historical horse races; and
- 4) Any conditions consistent with the best interests of the public and the sport of horse racing.

Section 327.80 Retention

- a) Each Organization Licensee may retain, subject to payment of all applicable taxes and purses, an amount not to exceed that set forth in 230 ILCS 5/26 (b).
- b) After payment of the privilege or pari-mutuel tax, any other applicable taxes, and the direct costs and expenses in connection with the conduct of historical horse racing, the remainder of the monies retained under Section 26 of the Act by an Organization Licensee on historical horse race wagering shall be allocated with 50% to the Organization Licensee and 50% to purses.

Section 327.90 Advertising

- a) All advertising or marketing material that is displayed or otherwise conveyed to the player must not:
- b) Contain indecent or offensive graphics and/or audio as determined by the Board;
- c) Contain content that contradicts the wagering information or terms and conditions; and
- d) Specifically target players that have been excluded from play.

Section 327.100 Severability

The provisions of these rules are severable. Should any part of these rules or their application be held unconstitutional or invalid for any reason whatsoever, by a court of competent jurisdiction,

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such holding shall not affect the validity of the remaining portions of these rules which shall remain in full force and effect except as limited by such order or judgment.