ARTICLE 13. REGISTERED HORSEMEN'S ASSOCIATIONS

Rule 1. General Provisions

71 IAC 13-1-1 Registration of horsemen's associations

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 1. (a) A horsemen's association must register with the commission annually in order to be eligible to receive monies from permit holders pursuant to the provisions of IC 4-35-7-12. Unless otherwise directed by the commission, and except as provided in subsection (c), a horsemen's association shall file its registration (accompanied by all supporting materials required by this article) with the commission not later than September 1 of the year preceding the calendar year for which the funds are to be paid. Except as provided in subsection (c), the commission shall approve or deny a registration not later than December 31 of the year preceding the calendar year for which the funds are to be paid. The registration for an upcoming calendar year must be approved by the commission before a horsemen's association is entitled to receive any funds from permit holders as provided for by IC 4-35-7-12 and before permit holders may make payment to a particular horsemen's association. The registration of a horsemen's association for a calendar year becomes effective upon the approval of the commission, not upon the filing of the registration.

(b) The deadlines set forth in subsections (a) and (c) for the commission to approve or deny a registration shall not apply when more than one (1) horsemen's association registers to be eligible to receive the same source of funds specified in IC 4-35-7-12. In that event, the commission shall approve or deny the registrations as expeditiously as possible, but not later than February 28 of the calendar year in which the funds are to be paid.

(c) If, at the time a permit holder is required to make a payment of funds to a horsemen's association pursuant to IC 4-35-7-12, either:

(1) the commission has not approved the registration of a horsemen's association otherwise eligible to receive the permit holder's payment; or

(2) for any other reason, no horsemen's association is eligible to receive the permit holder's payment;

then the permit holder shall pay the funds required to be paid under IC 4-35-7-12 into one (1) or more interest bearing escrow accounts established and maintained by the permit holder solely for the purpose of holding and distributing those funds as may be directed by the commission. When a horsemen's association becomes eligible to receive payments from a permit holder pursuant to IC 4-35-7-12 and this article, the commission shall immediately direct the release of the escrowed funds and all interest earned on those funds to the eligible horsemen's association, and the permit holder shall thereafter make payments to that horsemen's association in the manner provided by IC 4-35-7-12 and this article. *(Indiana Horse Racing Commission; 71 IAC 13-1-1; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; emergency rule filed Aug 15, 2008, 9:17 a.m.: 20080827-IR-071080675ERA; emergency rule filed Oct 3, 2013, 2:08 p.m.: 20131009-IR-071130452ERA)*

71 IAC 13-1-2 Registration criteria

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31-8-6; IC 4-35

Sec. 2. (a) The commission shall approve the registration of a horsemen's association to receive monies pursuant to IC 4-35-7-12 if, on the basis of all of the information, facts and evidence before it, the horsemen's association establishes by a preponderance of the evidence and the commission determines in the exercise of its discretion that:

(1) its ability to receive and expend funds for the purposes established by IC 4-35-7-12 is superior to the ability of every other horsemen's association (if any) that has registered to be eligible to receive the same source of funds specified in IC 4-35-7-12;

(2) the approval of its request for registration is consistent with racing in Indiana being conducted with the highest of standards and the greatest level of integrity; and

(3) the payment of funds to that horsemen's association will be in the public interest.

(b) In reviewing the registration of a horsemen's association to receive monies pursuant to IC 4-35-7-12, the commission may consider the following information, which shall be provided to the commission by the horsemen's association with its registration, and any other documents, information, data, reports, findings, factors, or indices available that the commission

considers important or relevant to its determination of whether to approve or deny the registration of the horsemen's association:

(1) The name and mailing address of the horsemen's association, the name and address of its registered agent, the names of its officers and directors at the time the registration is filed, and a copy of its current bylaws.

(2) The identity of each person who will be authorized by the horsemen's association to have access to any funds received pursuant to IC 4-35-7-12 as may be supplemented from time to time by the horsemen's association and approved by the commission. For purposes of this article, "access to any funds received pursuant to IC 4-35-7-12" means that the person will be authorized for all or any part of the calendar year for which registration is being sought by the horsemen's association to make withdrawals, disbursements, transfers, payments, or other distributions of any funds received pursuant to IC 4-35-7-12, by any means whatsoever, including, but not limited to, cash, check, or electronic transfer.

(3) The number of owners, trainers, or breeders (when applicable) represented by the horsemen's association.

(4) The number of dues paying members of the horsemen's association.

(5) Efforts of the horsemen's association to promote, develop, and improve the horse racing industry in Indiana.

(6) Specific programs that have been proposed, designed, or implemented by the horsemen's association to promote, develop, and improve the horse racing industry in Indiana.

(7) The number of years, if any, that the horsemen's association has entered into a contract with one (1) or more permit holders pursuant to IC 4-31-8-6(b) and, if so, the history of performance of the horsemen's association's contractual obligations.

(8) Financial ability of the horsemen's association, including, but not limited to, the following:

(A) To comply with the reporting requirements set forth in this article.

(B) To meet ongoing financial obligations.

(C) To propose a separate, feasible budget for each source of funds set out in section 3(1) of this rule.

(D) To propose expenditures consistent with the directives contained in IC 4-35-7-12.

(E) Any other information relating to financial ability.

(9) Management ability of the horsemen's association to receive payments and expend funds as directed by IC 4-35-7-12, including, but not limited to, the following:

(A) The organizational experience of the horsemen's association and the qualifications of directors, officers, and managing employees to manage a horsemen's association.

(B) Any other information relating to management ability.

(10) The integrity of the horsemen's association, including, but not limited to, the following:

(A) Whether it is or has been a party to litigation over business practices, bankruptcy proceedings, or failure to timely renew a registration within the preceding five (5) years.

(B) Whether it is or has been a party to proceedings in which unfair labor practices, discrimination, or governmental regulation of pari-mutuel wagering was an issue within the preceding five (5) years.

(C) Whether it has failed to timely satisfy judgments, orders, or decrees within the preceding five (5) years.

(D) Whether it is or has been delinquent in filing tax returns or remitting taxes within the preceding five (5) years.

(E) Whether it has failed to comply with applicable statutes, charters, ordinances, or regulations within the preceding five (5) years.

(F) Whether any officers, directors, or employees who will have access to any funds received pursuant to IC 4-35-7-12 have a felony or misdemeanor plea or conviction or other criminal record that could reflect negatively on the integrity of racing.

(G) Whether any officers, directors or employees who will have access to any funds received pursuant to IC 4-35-7-12 have had a denial, suspension, or revocation of a registration or a license of the legally constituted racing or gaming authority of a state, province, or country within the preceding five (5) years.

(H) Whether any officers, directors, or employees who will have access to any funds received pursuant to IC 4-35-7-12 have a current suspension for cause of a registration or license by the legally constituted racing authority of a state, province, or country.

(I) Whether any officers, directors, or employees who will have access to any funds received pursuant to IC 4-35-7-12 have perpetrated or attempted to perpetrate a fraud or misrepresentation in connection with the racing or breeding of horses or pari-mutuel wagering.

(J) Whether any officers, directors or employees who will have access to any funds received pursuant to IC 4-35-7-12 have made a material misrepresentation in the process of registering, nominating, entering, or racing a horse in an Indiana owned, Indiana bred, or Indiana sired race within the preceding five (5) years.

(K) Whether the horsemen's association's officers, directors, or representatives have been truthful and accurate in matters relating to or in dealings with the commission, the commission staff, the permit holders, or other horse racing industry constituents.

(L) Any other information relating to the integrity of a horsemen's association.

(11) Extent of any public support or opposition to the registration of the horsemen's association to receive monies allocated pursuant to IC 4-35-7-12.

(12) The horsemen's association may submit, and the commission may consider, any other information that is relevant to a proper determination by the commission to approve or deny a registration.

(Indiana Horse Racing Commission; 71 IAC 13-1-2; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)

71 IAC 13-1-3 Information to be submitted with a registration

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 2-7-1-9; IC 4-31; IC 4-35

Sec. 3. In addition to the information described in section 2(b) of this rule, the registration of a horsemen's association to receive monies allocated pursuant to IC 4-35-7-12 shall include, but not be limited to, the following information:

(1) A proposed budget for the calendar year (or, in the case of a registration under section 1(c) of this rule, the calendar years) to which the registration applies that separately identifies general categories for the expenditure of funds anticipated to be paid by the permit holders to the horsemen's association for:

(A) equine promotion or welfare pursuant to IC 4-35-7-12(d)(1);

(B) backside benevolence pursuant to IC 4-35-7-12(d)(2); and

(C) the purposes provided for in IC 4-35-7-12(f) in the amount provided for by IC 4-35-7-12(f)(1)(A)(ii) and IC 4-35-7-12(f)(1)(A)(iii), IC 4-35-7-12(f)(2)(C)(ii), or IC 4-35-7-12(f)(3)(A)(ii).

(2) A specific description of the accounting, auditing, internal control, and reporting procedures that will be maintained by the horsemen's association with respect to the three (3) separate accounts required by section 8(a)(7) of this rule during the calendar year for which payments will be made, as well as the name and contact information of the individuals responsible for each function.

(3) A certification by the board of directors of the horsemen's association that the expenditures from funds paid by the permit holders for (1)(A) and (1)(B), above *[subdivision (1)(A) and (1)(B)]*, are in the best interests of horse racing in Indiana for the breed represented by the horsemen's association.

(4) A conflict of interest policy approved by the commission that has been executed by all of the officers, directors, and employees of the horsemen's association.

(5) Certification by an officer of the horsemen's association that no monies distributed pursuant to IC 4-35-7-12 have been used in either the current year or will be used from the budget year for either:

(A) a contribution to a candidate or committee; or

(B) lobbying, as defined in IC 2-7-1-9.

(6) Any other information requested by the commission or its executive director.

(Indiana Horse Racing Commission; 71 IAC 13-1-3; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; emergency rule filed Sep 10, 2012, 2:01 p.m.: 20120912-IR-071120525ERA; emergency rule filed Apr 4, 2013, 1:05 p.m.: 20130410-IR-071130134ERA; emergency rule filed Oct 22, 2014, 3:01 p.m.: 20141029-IR-071140446ERA)

71 IAC 13-1-4 Commission consideration of registration of horsemen's association

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 4. In considering the registration of a horsemen's association, the commission shall approve or deny the request based on the standards set forth and the information specified in this article. In approving a registration, the commission may, in its sole discretion, specify in detail any conditions to which the approval of registration is subject. *(Indiana Horse Racing Commission; 71 IAC 13-1-4; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

71 IAC 13-1-5 License of horsemen's association directors, officers, and employees

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 5. All directors, officers, and employees of a registered horsemen's association that will have access to any funds received pursuant to IC 4-35-7-12 if not otherwise licensed and in good standing with the commission, must apply for and be granted a separate commission license to act as a director, officer, or employee of a horsemen's association in order to serve in that capacity. If a director, officer, or employee of a registered horsemen's association that will have access to any funds received pursuant to IC 4-35-7-12 is otherwise licensed and in good standing with the commission, then that person is also considered to be licensed as a director, officer, or employee of the horsemen's association. *(Indiana Horse Racing Commission; 71 IAC 13-1-5; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

71 IAC 13-1-6 Expenditure of funds

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 6. All monies allocated to a registered horsemen's association for equine promotion or welfare, backside benevolence, or the necessary operations of a horsemen's association required to implement and fulfill the purposes of IC 4-35-7-12 shall be expended or held in reasonable reserve by a registered horsemen's association in the amounts and for the purposes specified by IC 4-35-7-12. *(Indiana Horse Racing Commission; 71 IAC 13-1-6; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

71 IAC 13-1-7 Financial reports

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 7. (a) The commission may require periodic audits of the three separate accounts required by section 8(a)(7) of this rule in order to determine whether a registered horsemen's association has expended funds in compliance with IC 4-35-7-12.

(b) At the time it files its registration under section 1 of this rule, a registered horsemen's association shall file with the commission a copy of its state and federal tax returns from the preceding calendar year.

(c) A registered horsemen's association shall file an unaudited balance sheet and profit and loss statement if kept in the regular course of the horsemen's association's business for the three (3) separate accounts required by section 8(a)(7) of this rule as required by the commission. Those submissions must be in a format which conforms with the categories set out in section 3(1) of this rule.

(d) A registered horsemen's association shall file an annual financial statement, audited by independent certified public accountants, with the commission not later than May 15 after the close of its fiscal year, which at minimum reflects operations of the three (3) separate accounts required by section 8(a)(7) of this rule during the preceding calendar year. The audit must be in format that conforms with the categories set out in section 3(1) of this rule. The commission, upon good cause shown, may extend the time for filing or permit the horsemen's association to file a report of an independent certified public accountant that is less rigorous than a full audit but which addresses the accounting, auditing, internal control, and reporting procedures for the separate accounts required by section 8(a)(7) of this rule.

(e) A registered horsemen's association shall file with the commission a copy of any tax audit report received from the

Internal Revenue Service, Department of State Revenue, or any other federal or state agency auditing the registered horsemen's association, within thirty (30) days after the receipt thereof.

(f) A previously registered horsemen's association or a horsemen's association that has submitted a request for approval of registration with the commission shall provide any materials specified in section 6 of this rule and this section that are requested by the commissioner or its executive director.

(g) Upon receipt, a registered horsemen's association shall file with the commission annually any report received from the state board of accounts regarding any audit conducted pursuant to IC 4-35-7-12(h). *(Indiana Horse Racing Commission; 71 IAC 13-1-7; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; emergency rule filed Oct 3, 2013, 2:08 p.m.: 20131009-IR-071130452ERA)*

71 IAC 13-1-8 Accounting, auditing, internal control, and reporting requirements

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 8. (a) A registered horsemen's association, its officers, directors, officials, or employees shall be prepared to fully account, consistent with generally accepted accounting principles (GAAP) to the commission at any time for all receipts, disbursements, and balances of any monies received pursuant to IC 4-35-7-12. In connection therewith, the registered horsemen's association shall be responsible for the following:

(1) Maintaining a receipts ledger and sufficient documentation to support each receipt of funds pursuant to IC 4-35-7-12.

(2) Maintaining a monthly reconciliation between its records and depository statements.

(3) Directing its depository institution or institutions to provide account balance confirmations and documentation of deposits and expenditures to the commission upon request.

(4) Filing all required federal and state tax returns required on distributions, making required withholdings, and maintaining a copy of all tax returns on file available to commission representatives.

(5) Making all distributions to any person by check or electronic transfer. No distributions shall be made in cash unless the commission or its executive director has approved the distribution.

(6) Filing all required Internal Revenue Service reports of cash payments and maintaining a copy of the report on file or audit.

(7) Maintaining funds received pursuant to the provisions of IC 4-35-7-12 in separate accounts for each of the three (3) categories set out in section 3(1) of this rule. The funds held and maintained in those three (3) separate accounts shall be held and maintained separate from each other and separate from all other funds held or maintained by the registered horsemen's association. The commingling of funds received and distributed pursuant to the provisions of IC 4-35-7-12 with any other funds held or maintained by the registered horsemen's association is strictly prohibited.

(8) Maintaining records in a manner that clearly demonstrates that the monies have been disbursed in compliance with the provisions of IC 4-35-7-12.

(b) In each monthly payment to each registered horseman's association pursuant to IC 4-35-7-12, each permit holder shall make a separate payment of funds for each of the three (3) categories set out in section 3(1) of this rule. *(Indiana Horse Racing Commission; 71 IAC 13-1-8; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

71 IAC 13-1-9 Bond

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected: IC 4-31; IC 4-35

Sec. 9. Prior to receiving funds pursuant to IC 4-35-7-12 and as a condition of continued receipt of funds pursuant to said statute, a registered horsemen's association shall procure a fidelity bond or crime insurance policy insuring the financial duties imposed upon a horsemen's association, its officers, directors, and employees by IC 4-35-7-12. The bond shall be in favor of the association for the benefits of its constituents and shall be in the form of a fidelity bond or crime insurance policy, in an amount equal to the funds received by the association pursuant to IC 4-35-7-12, adjusted annually. The costs of obtaining the bond or crime

insurance policy may be paid by an association from funds allocated to it pursuant to IC 4-35-7-12 as a necessary expenditure for the operation of the horsemen's association required to implement and fulfill the purposes of IC 4-35-71-12. *(Indiana Horse Racing Commission; 71 IAC 13-1-9; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

71 IAC 13-1-10 Violations and sanctions

Authority: IC 4-31-3-9; IC 4-35-7-12
Affected IC 4-31; IC 4-35

Sec. 10. Any breach of the commission's approved conflict of interest policy for a registered horsemen's association or of the obligations or requirements set forth in this article, including any misuse or misappropriation of funds received by a horsemen's association under IC 4-35-7-12, may be considered a violation of this article and may subject the horsemen's association and its officers, directors, and employees to penalties, including but not limited to, any sanctions that may be imposed by the commission or a revocation or suspension of the horsemen's association's current registration under this article. *(Indiana Horse Racing Commission; 71 IAC 13-1-10; emergency rule filed Jul 11, 2008, 2:13 p.m.: 20080723-IR-071080595ERA; readopted filed Nov 21, 2014, 2:25 p.m.: 20141217-IR-071140403RFA)*

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