

ARTICLE 11. PERMIT APPLICATION REQUIREMENTS AND CRITERIA

Rule 1. Permit Application Requirements and Criteria

71 IAC 11-1-1 Authority

Authority: IC 4-31-3-9

Affected: IC 4-31-3-9; IC 4-31-5

Sec. 1. IC 4-31-3-9 authorizes the commission to adopt rules to implement this article. (*Indiana Horse Racing Commission; 71 IAC 11-1-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1208; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-2 Purpose

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 2. The purpose of this article is as follows:

- (1) To ensure that pari-mutuel wagering on horse races in Indiana will be conducted with the highest of standards and the greatest level of integrity.
- (2) To establish application and permit criteria for the issuance of permits to conduct activities relating to horse racing and pari-mutuel wagering in order to ensure the protection of the public interest.
- (3) To ensure that the process for the issuance of permits relating to horse racing and pari-mutuel wagering is fair and equitable.

(*Indiana Horse Racing Commission; 71 IAC 11-1-2; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1208; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-3 Time for filing of applications for permit

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 3. (a) The commission establishes the window period from May 1, 1992, to August 14, 1992, as the one hundred six (106) day period in which initial permit applications shall be submitted. The initial permit applications submitted during the one hundred six (106) day period, which are thereafter accepted for filing by the commission, will be considered and acted upon by the commission as a group when considering whether to grant a permit or permits. Thereafter, initial permit applications to conduct horse racing meetings will be considered and acted upon by the commission from time to time as submitted; provided, however, that initial permit applications received after the initial one hundred six (106) day period will not be considered by the commission until after the commission has considered and acted upon the initial permit applications submitted during the one hundred six (106) day period described above.

(b) Thereafter, subsequent to implementation of subsection (a), permit holders under IC 4-31-5 shall file an annual renewal permit application with the commission no later than November 1 of the year preceding the year in which the horse racing meeting is to be conducted. (*Indiana Horse Racing Commission; 71 IAC 11-1-3; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1209; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-4 Application form and affidavit

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 4. (a) An applicant for a permit under IC 4-31-5 shall submit to the commission an affidavit and application and any

exhibits thereto, in the form and manner prescribed by the commission and on forms furnished by the commission. The application and related forms shall be available at the commission's office.

(b) The applicant shall use best efforts to provide all information required to be disclosed in the application. In the event an applicant is unable, despite best efforts, to provide the information required, the applicant shall fully explain and document to the satisfaction of the commission, its inability to provide the information and shall provide such information promptly upon being able to do so.

(c) Upon request of the commission or its agents, the applicant shall provide copies of any documents used in the preparation of its application. (*Indiana Horse Racing Commission; 71 IAC 11-1-4; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1209; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-5 Application submission

Authority: IC 4-31-3-9

Affected: IC 4-31-4; IC 4-31-5

Sec. 5. An applicant for a permit under IC 4-31-5 shall submit the following to the commission's office not later than the date specified in section 3 of this rule:

(1) All documents required by IC 4-31 and this article as a single assemblage and sequentially numbered, including exhibits, with each exhibit properly identified.

(2) A letter of transmittal to the commission and, in sealed envelopes, one (1) manually signed, and fifteen (15) copies of the application.

(3) The applicant shall be responsible for the payment of any and all fees and expenses with regard to the initial permit application incurred by the commission, at its discretion, for outside professionals and consultants, excluding legal and investigative fees. As an initial retainer against such initial permit application fee, the applicant shall submit, at the time of providing a permit application to the commission, a cashier's check or certified check in the amount of twenty-five thousand dollars (\$25,000) payable to the commission. Any portion of such fees not required to complete such review as determined by the commission shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial permit application or within twenty (20) days of the granting of the permit. To the extent additional fees are necessary, as determined by the commission, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of such request. Failure to submit such additional fees will result in suspension of the processing of the permit application by the commission and may ultimately result in the denial of the issuance of a permit.

(4) The applicant shall be responsible for the payment of any and all fees and expenses incurred by the commission, at its discretion, for investigative costs incurred by the commission in investigating the applicant for its initial permit. As an initial retainer against such investigative fee, the applicant shall submit, at the time of providing a permit application to the commission, a cashier's check or certified check in the amount of twenty-five thousand dollars (\$25,000) payable to the commission. Any portion of the investigative fee not required to complete the investigation as determined by the commission shall be refunded to the applicant within twenty (20) days of the withdrawal or rejection of the initial permit application or within twenty (20) days of the granting of the permit. To the extent additional investigative fees are necessary as determined by the commission, the applicant shall submit a cashier's check or certified check payable to the commission in an amount requested by the commission within ten (10) days of receipt of such request. Failure to submit such additional investigative fees will result in suspension of the investigation and/or suspension of the processing of the permit application by the commission and may ultimately result in the denial of the issuance of a permit.

(5) A copy of the ordinance required to be adopted under IC 4-31-4.

(*Indiana Horse Racing Commission; 71 IAC 11-1-5; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1209; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-6 Permit criteria

Authority: IC 4-31-3-9

Affected: IC 4-31-4; IC 4-31-5

Sec. 6. (a) The commission may issue a permit under IC 4-31-5 if the commission determines that the applicant meets all of the requirements under IC 4-31 and this title and, that on the basis of all the facts before it, the following is shown:

- (1) The applicant is qualified and financially able to operate a race track.
- (2) Racing meetings at a race track will be operated in accordance with all applicable laws and rules.
- (3) The appropriate county fiscal body has adopted the ordinance required under IC 4-31-4.
- (4) The issuance of a permit will ensure that racing will be conducted with the highest of standards and the greatest level of integrity, and ensure the protection of the public interest.

(b) In reviewing an application, the commission may consider any information, data, reports, findings, factors, or indices available which it considers important or relevant to its determination of whether an applicant is qualified to hold a permit under IC 4-31-5, including, without limitation, the following:

- (1) The integrity of the applicant, its partners, directors, officers, policymakers, owners, directly or indirectly, of any equity, security, or other ownership interest in the applicant, including, but not limited to, the following:

- (A) Criminal record.
- (B) Whether a party to litigation over business practices, disciplinary actions over a business license or permit or refusal to renew a license or permit.
- (C) Proceedings in which unfair labor practices, discrimination, or government regulation of pari-mutuel wagering was an issue or bankruptcy proceedings.
- (D) Failure to satisfy judgments, orders, or decrees.
- (E) Delinquency in filing of tax reports or remitting taxes.
- (F) Any other indices related to the integrity of the applicant which the commission considers important or relevant to its determination.

- (2) The quality of physical improvements and equipment proposed or existing in the applicant's facility, including, but not limited to, the following:

- (A) Race track or tracks.
- (B) Stables and stable area.
- (C) Detention barn.
- (D) Paddock, jockeys' and drivers' quarters.
- (E) Grandstand.
- (F) Totalizator equipment.
- (G) Parking.
- (H) Access by road and public transportation.
- (I) Perimeter fence.
- (J) Other security improvements and equipment.
- (K) Starting, timing, photo finish, photo-patrol, or video equipment.
- (L) Commission work areas.
- (M) Concessions areas.
- (N) Pari-mutuel management areas.
- (O) Any other indices related to the quality of physical improvements and equipment which the commission considers important or relevant to its determination.

- (3) Schedule for completion of facility and feasibility of meeting schedule, including commitments of architects, engineers, contractors, suppliers, materialmen, and vendors.

- (4) The types and variety of pari-mutuel horse racing which applicant seeks to offer.

- (5) Financial ability of the applicant to develop, own, and operate a pari-mutuel facility successfully, including, but not limited to, the following:

- (A) Ownership and control structure; amounts and reliability of development costs.
- (B) Certainty of site acquisition or lease.

- (C) Current financial condition.
 - (D) Sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment.
 - (E) Provisions for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity.
 - (F) Feasibility of financial plan.
 - (G) Expert opinions relative to feasibility.
 - (H) Any other indices related to financial ability which the commission considers important or relevant to its determination.
- (6) Status of governmental actions required by the applicant's facility, including, but not limited to, the following:
- (A) Necessary road improvements.
 - (B) Necessary public utility improvements.
 - (C) Required governmental approvals for development, ownership, and operation of the facility, including appropriate zoning approvals.
 - (D) Any other indices related to the status of governmental action which the commission considers important or relevant to its determination.
- (7) Management ability of the applicant, including, but not limited to, the following:
- (A) Qualifications of managers, consultants, and other contractors to develop, own, or operate a pari-mutuel facility.
 - (B) Security plan.
 - (C) Plans for human and animal health and safety.
 - (D) Marketing, promotion, and advertising plans.
 - (E) Concession plan.
 - (F) Personnel training plan.
 - (G) Equal employment and affirmative action plans.
 - (H) Any other indices related to management ability which the commission considers important or relevant to its determination.
- (8) Compliance with applicable statutes, charters, ordinances, or regulations.
- (9) Efforts to promote, develop, and improve the horse racing industry in Indiana.
- (10) Impact of facility, including, but not limited to, the following:
- (A) Employment created, purchases of goods and services, public and private investment, and taxes generated.
 - (B) Ecological and environmental impact.
 - (C) Social impact.
 - (D) Cost of public improvements.
 - (E) Any other indices related to the impact of the proposed facility which the commission considers important or relevant to its determination.
- (11) Extent of public support or opposition to horse racing and pari-mutuel wagering at the location where the permit is sought.
- (12) Effects of location of track, including, but not limited to, the following:
- (A) Number, nature, and relative location of other permits.
 - (B) Minimum and optimum number of racing days sought by the applicant.
 - (C) Any other indices relating to location of track which the commission considers important or relevant to its determination.
- (13) The commission may consider any other information which the commission considers important or relevant to a proper determination by the commission.

(Indiana Horse Racing Commission; 71 IAC 11-1-6; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1210; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)

71 IAC 11-1-7 Assignment of racing meetings

Authority: IC 4-31-3-9

Affected: IC 4-31-5-9

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Sec. 7. In determining the assignment of racing meetings and race dates to permit holders under IC 4-31-5-9, the commission shall consider factors relating to the economic and practical feasibility of conducting racing meetings at various tracks. Factors to be considered shall include, without limitation, the following:

- (1) The types and dates of racing meetings being held elsewhere, both within and outside of Indiana.
- (2) The effects that various types of pari-mutuel racing have on one another.
- (3) The quality of horse racing provided at various tracks.
- (4) Past dates.
- (5) Past performance of the permit holder.
- (6) Whether the permit holder has complied with all applicable laws and rules relating to horse racing.
- (7) Whether the assignment will maximize revenues to the state.
- (8) Whether the assignment will adversely affect the public health, welfare, and safety.
- (9) Stability of dates.
- (10) The stability of the racing circuit.

(Indiana Horse Racing Commission; 71 IAC 11-1-7; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1211; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1507; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)

71 IAC 11-1-8 Changes in permit applications

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 8. (a) An applicant shall furnish written notification to the commission of any material change in the information originally submitted in its application. This notification shall be made within five (5) days following the event of such change and provide details to the degree of specificity required in the application.

(b) Notwithstanding an applicant's timely notification of a material change in the information submitted in its application, the commission may refuse to consider any substantive amendment to an application after the initial submission of the application. *(Indiana Horse Racing Commission; 71 IAC 11-1-8; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1211; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)*

71 IAC 11-1-9 Additional information

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 9. The commission may require, either before or after oral presentation, any additional information it considers necessary or relevant from any applicant to clarify, support, or otherwise explain information contained in the applicant's application for the purpose of ruling on a permit application. *(Indiana Horse Racing Commission; 71 IAC 11-1-9; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1211; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)*

71 IAC 11-1-10 Oral presentation by applicant

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 10. The commission shall provide the applicant for a permit under IC 4-31-5 an opportunity to make an oral presentation of its application to the commission prior to the ruling on the application. The presentation shall be made by an applicant, under oath, at a session of the commission. The presentation shall be limited to the information contained in the applicant's application, and approved supplements thereto and any supplemental information not specifically required to be disclosed in the application. The

admission as evidence of such supplemental information shall be subject to the discretion of the commission. The commission is not required to afford an applicant more than one (1) opportunity to make an oral presentation on the same application prior to a commission determination; provided, however, the commission may require an applicant to appear before the commission to clarify or otherwise respond to questions concerning the application as a condition to the issuance of a permit. No opportunity for an oral presentation need be given if, at any time, the commission deems the applicant's application not complete and does not accept the application for filing. (*Indiana Horse Racing Commission; 71 IAC 11-1-10; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1212; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-11 Permit applications as public records

Authority: IC 4-31-3-9

Affected: IC 4-31-5; IC 5-14-3-2; IC 5-14-3-4

Sec. 11. The secretary of the commission shall retain and safeguard all applications received under IC 4-31-5. Promptly after an application has been filed, the secretary shall deliver the application to the commission for review. Upon filing, the application shall become a public record as defined in IC 5-14-3-2, therefore making the application subject to public inspection or copying, except that any personal financial information required in the application or as a supplement thereto shall be kept confidential in accordance with IC 5-14-3-4(a)(5). (*Indiana Horse Racing Commission; 71 IAC 11-1-11; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1212; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-12 Contracts with a permit holder; approval by commission or executive director

Authority: IC 4-31-3-9

Affected: IC 4-31-5; IC 4-31-6-1; IC 4-35

Sec. 12. (a) The following contracts must be approved by the commission or the executive director:

- (1) contracts for management;
- (2) contracts for totalizator services;
- (3) contracts with horsemen's associations; and
- (4) a contract or a series of contracts between a permit holder and a related party that exceeds fifty thousand dollars (\$50,000), other than a contract for employment; and
- (5) a contract or transaction, or a series of contracts or transactions, between a permit holder and any party that equals or exceeds fifty million dollars (\$50,000,000) in value.

(b) "Related party" means:

- (1) An individual or business entity having a pecuniary interest in a permit holder, or an affiliate thereof if the permit holder or affiliate is not a publicly held company.
 - (2) A holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.
 - (3) A key person of a permit holder or an affiliate thereof.
 - (4) An affiliate of a permit holder.
 - (5) A relative of a holder of more than five percent (5%) of the outstanding shares of a permit holder or an affiliate thereof if the permit holder or affiliate is a publicly held company.
 - (6) A relative of a key person of a permit holder or an affiliate thereof.
 - (7) A relative of an affiliate of a permit holder.
 - (8) A trust for the benefit of or managed by a permit holder or an affiliate or a key person thereof.
 - (9) Another person who is able to control or significantly influence the management or operating policies of a permit holder or an affiliate thereof.
- (c) The commission, an agent of the commission, or the executive director may review, at any time prior to execution or

thereafter, a contract or transaction entered into by a permit holder or permit applicant upon demand.

(d) Commission authority to review contracts as provided in subsection (c) shall not be limited by the provisions listed in subsection (a). The commission shall have discretion to review any contract or transaction that may impact the horse racing industry in Indiana.

(e) Any contract required to be approved by the commission or the executive director shall be submitted to for approval within seven (7) days of the execution of the contract. The commission or the executive director may refuse to approve a contract in subsection (a) if it is determined that the contract is not in the best interest of horse racing and pari-mutuel wagering.

(f) A contract or transaction entered into by a permit holder or permit applicant that has not been submitted to the commission or executive director for approval as provided for in subsection (d) *[redesignated subsection (e) by the Publisher]* shall contain a provision indicating that the commission may subsequently disapprove of the contract.

(g) A contract or transaction entered into by a permit holder that exceeds the total dollar amount of fifty thousand dollars (\$50,000) shall be a written contract.

(h) The commission is required to maintain the integrity of the commission and the horse racing industry and act in the best interest of the state of Indiana. In consideration of the aforementioned goals, when entering contracts or transactions, permit holders and permit applicants shall:

- (1) promote this policy by entering into contracts and transactions in accordance with IC 4-31, IC 4-35, and this title; and
- (2) be held accountable for contracts and transactions entered into under this rule.

(i) The commission is not undertaking the policy of approving contracts, but will maintain oversight over contracts and transactions entered into by permit holders and permit applicants. The commission reserves the right to disapprove of and terminate a contract that does not:

- (1) comply with IC 4-31, 4-35 *[IC 4-35]*, or this title; or
- (2) maintain the integrity and protect the highest standards of the horse racing industry.

(Indiana Horse Racing Commission; 71 IAC 11-1-12; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1212; errata filed Mar 9, 1994, 2:50 p.m.: 17 IR 1622; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2086; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; emergency rule filed Apr 17, 2015, 3:15 p.m.: 20150422-IR-071150105ERA; emergency rule filed Aug 29, 2018, 11:12 a.m.: 20180905-IR-071180370ERA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)

71 IAC 11-1-12.1 Distribution agreements

Authority: IC 4-35-7-12; IC 4-35-7-16

Affected: IC 4-31; IC 4-35

Sec. 12.1. (a) The parties to the distribution agreement under IC 4-35-7-16 shall, on or before October 1 of each calendar year, report to the commission the effect of each distribution agreement on the Indiana horse racing industry.

(b) The parties submitting a proposed distribution agreement to the commission for approval under IC 4-35-7-16 shall have the burden of proving:

- (1) The distribution agreement is in the best interests of pari-mutuel horse racing in Indiana.
- (2) The distribution agreement ensures the maintenance of the highest standards and greatest level of integrity.
- (3) The distribution is fair to all parties.
- (4) The licensees are financially stable.

(Indiana Horse Racing Commission; 71 IAC 11-1-12.1; emergency rule filed Oct 3, 2013, 2:08 p.m.: 20131009-IR-071130452ERA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)

71 IAC 11-1-13 Transfers of permits

Authority: IC 4-31-3-9; IC 4-31-5-8

Affected: IC 4-31-5; IC 4-31-13-1

Sec. 13. (a) A permit issued under IC 4-31-5 is for the benefit of the permit holder only and is applicable only to the location

for which the permit is issued. The permit may not be sold or otherwise transferred and shall terminate upon a change of ownership of the permit holder, unless the commission has granted prior written approval of the change of ownership or unless this section has been otherwise complied with.

(b) The sale, pledge, encumbrance, execution of an option agreement, or other transfer of five percent (5%) or more of the equity securities or other ownership interest of a partnership, association, corporation, or other entity holding a permit shall be considered a substantial change of ownership. A "substantial change in ownership", for purposes of this subsection, includes ownership, directly or indirectly, by a person, individually or in association with others, contingent or otherwise, whether through a subsidiary or intermediary, who acquires or has a right to acquire, directly or indirectly, a five percent (5%) or more beneficial ownership of the permit holder. Any request for approval of a substantial change in ownership shall contain the same information that is required to be furnished under section 4 of this rule. Upon receipt of all information required by the commission with regard to a proposed substantial change in ownership, the commission shall, as soon as practicable, make a determination whether to authorize and approve the substantial change in ownership of a permit holder.

(c) The sale, pledge, encumbrance, execution of an option agreement, or other transfer of ownership of a permit which is less than five percent (5%) of the equity securities or other ownership interest of a partnership, association, corporation, or other entity holding a permit shall be considered a nominal change of ownership. A request for approval to make a nominal change of ownership shall be filed with the commission within fifteen (15) days of the execution of the documents upon which the proposed nominal change of ownership will be based. The commission shall determine whether the proposed nominal change of ownership may have an adverse effect upon pari-mutuel racing or the integrity of pari-mutuel racing. Upon receipt of all information required by the commission with regard to a proposed nominal change of ownership, the commission or its executive director shall, as soon as practicable, make a determination whether to authorize and approve the nominal change in ownership of a permit holder.

(d) For purposes of subsections (a) and (b), commission approval is not required for:

(1) the transfer of an ownership interest in a permit holder whether substantial or nominal, direct or indirect, if by a publicly traded corporation, and if the beneficial ownership transferred is acquired by a person who will hold the voting securities of the publicly traded corporation for investment purposes only; or

(2) a debt transaction of a publicly traded corporation unless such transaction results in the pledge or encumbrance of the assets or any portion thereof of the permit holder.

A "publicly traded corporation" is one that has voting securities registered under Section 12 of the Securities and Exchange Act of 1934 (1934 Act), or issues securities subject to Section 15(d) of the 1934 Act, or has voting securities exempted from the registration requirements due to Section 3 of the Securities Act of 1933, or is required to file under the 1934 Act.

(e) Any promise, agreement, sale, pledge, encumbrance, option agreement, or other transfer of ownership of a permit, either nominal or substantial, not memorialized by and reduced to writing will be considered void by the commission.

(f) False or misleading information, omission of required information, or substantial deviations from representations in a request for a transfer of any interest in a permit issued by the commission may be cause for termination of the permit, denial of the request for approval, and the imposition of any sanction available to the commission pursuant to IC 4-31-13-1. (*Indiana Horse Racing Commission; 71 IAC 11-1-13; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1213; emergency rule filed Feb 20, 2001, 10:08 a.m.: 24 IR 2112; errata filed Jun 21, 2001, 3:21 p.m.: 24 IR 3652; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; emergency rule filed Jun 12, 2007, 1:17 p.m.: 20070620-IR-071070341ERA, eff Jun 8, 2007 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #07-341(E) was filed with the Publisher June 12, 2007.]; emergency rule filed Dec 10, 2009, 1:25 p.m.: 20091216-IR-071090982ERA, eff Sep 1, 2009 [IC 4-22-2-37.1 establishes the effectiveness of an emergency rule upon filing with the Publisher. LSA Document #09-982(E) was filed with the Publisher December 10, 2009.]; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)*)

71 IAC 11-1-14 Validity of application information

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 14. False or misleading information, omission of required information, or substantial deviation from representations in the application for a permit under IC 4-31-5 is cause for denial, revocation, or suspension of a permit. (*Indiana Horse Racing Commission; 71 IAC 11-1-14; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1213; readopted filed Oct 30, 2001, 11:50 a.m.:*

25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA)

71 IAC 11-1-15 Enforcement of rules

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 15. Each permit holder has a duty to comply with the rules of the commission at all times and acknowledge that the rules are a condition under which the permits are granted. (*Indiana Horse Racing Commission; 71 IAC 11-1-15; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1213; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-16 Material modification; expansion or reduction of proposed or existing facility

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 16. No permit holder may materially alter an existing or proposed race track facility after a permit has been issued for that facility without prior approval of the commission or, upon delegation by the commission, the secretary of the commission. No permit holder may expand or reduce an existing or proposed race track facility after a permit has been issued for that facility, which expansion or reduction would result in an increase or decrease in the actual cost of the facility of five hundred thousand dollars (\$500,000) or more as compared to the estimated or projected development costs of the facility as proposed at the time the permit was granted or which would cost in excess of five hundred thousand dollars (\$500,000) at an existing facility, without the prior approval of the commission or, upon delegation by the commission, the secretary of the commission. In the event a permit holder shall fail to obtain required approval, the commission may revoke or suspend the permit holder's permit or assess such fines or penalties which the commission shall in its discretion deem appropriate. (*Indiana Horse Racing Commission; 71 IAC 11-1-16; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1213; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2087; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; emergency rule filed Apr 17, 2015, 3:15 p.m.: 20150422-IR-071150105ERA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-17 Delay in completion of racing facility

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 17. (a) Failure of a permit holder to begin the type of racing authorized under the permit as specified by the commission by the date specified in the permit may, at the sole discretion of the commission, subject the permit holder to a late fee not to exceed fifteen thousand dollars (\$15,000) for every day that racing is not conducted after the commencement date specified in the permit for racing to begin. However, this late fee shall not be required to be paid for any particular day if the permit holder can prove to the satisfaction of the commission that the delay arose out of causes beyond the control and without the fault or negligence of the permit holder, its contractors, and subcontractors.

(b) Such causes referred to in subsection (a) may include, but are not limited to:

- (1) acts of God or enemies of the United States;
- (2) acts of government in either its sovereign or contractual capacity;
- (3) fires;
- (4) floods;
- (5) epidemics;
- (6) quarantine restrictions;
- (7) strikes;
- (8) freight embargoes; and

(9) unusually severe weather;

but in every case the delay shall be beyond the control and without the negligence of the permit holder, its contractors, and subcontractors.

(c) If the cause of delay is the default of a contractor or subcontractor, and if the permit holder proves to the satisfaction of the commission that the default arose out of causes beyond the control of the permit holder, its contractors, and subcontractors, then the late fee shall not be due unless the supplies or services to be furnished by the contractor or subcontractor were obtainable from other sources in sufficient time to permit the permit holder to meet the completion date. (*Indiana Horse Racing Commission; 71 IAC 11-1-17; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1214; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-18 Filing of permit holder's organizational documents

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 18. Each permit holder is required to keep on file with the commission a current copy of its organizational documents, such as articles of incorporation, by-laws, articles of partnership, certificate of limited partnership, etc. Any amendment to these documents shall be filed with the commission as soon as is practicable by the applicant. (*Indiana Horse Racing Commission; 71 IAC 11-1-18; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1214; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-19 Administrative Adjudication Act (*Repealed*)

Sec. 19. (*Repealed by Indiana Horse Racing Commission; emergency rule filed Mar 2, 2021, 3:10 p.m.: 20210310-IR-071210076ERA*)

71 IAC 11-1-20 Issuance of permit

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 20. In considering the issuance of a permit, the commission shall approve, modify and approve, or deny the request for a permit. In issuing a permit, the commission may, in its sole discretion, specify in detail any conditions to which the issuance of a permit is subject. (*Indiana Horse Racing Commission; 71 IAC 11-1-20; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1214; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-21 Annual permit renewal

Authority: IC 4-31-3-9

Affected: IC 4-31-5

Sec. 21. (a) An applicant for a renewal of a permit issued under IC 4-31-5 shall submit the following to the commission's office no later than the date specified in section 3(b) of this rule:

- (1) A letter of transmittal to the commission and fifteen (15) copies of the renewal application.
- (2) A cashier's check or certified check payable to the commission in the amount of five thousand dollars (\$5,000) as a nonrefundable annual permit fee.
- (3) Any changes to the information previously submitted to the commission for applicant's existing permit which have not been previously considered and acted upon by the commission.
- (4) A request for race dates and additional information required under 71 IAC 2-9-1.

(5) Any additional information requested by the commission either before or after the renewal application is submitted.

(b) The commission may issue a renewal permit if it determines that the applicant has met the permit criteria of section 6 of this rule.

(c) The assignment of race dates and racing meetings may be the subject of a separate proceeding conducted by the commission. (*Indiana Horse Racing Commission; 71 IAC 11-1-21; emergency rule filed Nov 10, 1994, 4:40 p.m.: 18 IR 545; emergency rule filed Jan 27, 1995, 3:30 p.m.: 18 IR 1508; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

71 IAC 11-1-22 Reporting of interest in a permit holder

Authority: IC 4-31-3-9

Affected: IC 4-31-13-3.5

Sec. 22. (a) This rule applies to all permit holders.

(b) As used in this rule, "interest in a permit holder" has the meaning set forth in IC 4-31-13-3.5(f).

(c) All permit holders must file a quarterly report that sets forth those persons who hold an interest in a permit holder.

(d) The quarterly report must be filed in the format directed by the executive director, or the executive director's designee, by the fifteenth day of the month following the close of the quarter based on the calendar quarter, or at a time as directed by the executive director.

(e) The report must be filed with the following:

(1) The commission.

(2) The state election commission.

(f) A permit holder or a person with an interest in a permit holder shall not make a contribution to a candidate or committee in violation of IC 4-31-13-3.5.

(g) If the commission, or its executive director, determines that a permit holder may have violated this rule, the executive director or the commission may initiate an investigation, a disciplinary action, or both, under 71 IAC 10. (*Indiana Horse Racing Commission; 71 IAC 11-1-22; emergency rule filed December 10, 1996, 3:30 p.m.: 20 IR 982; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA; readopted filed Nov 26, 2013, 11:25 a.m.: 20131225-IR-071130345RFA; readopted filed Aug 28, 2019, 1:23 p.m.: 20190925-IR-071190319RFA*)

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