

**Public Comments – Readoption of 71 IAC 5.5-1-6 Consent to search and seizure' & '71 IAC 5-1-6 Consent to search and seizure'**

October 3, 2014  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

The unlimited authority the Indiana Horse Racing Commission (IHRC) has granted to itself with these administrative rule goes well beyond the statutory authority provided via IC 4-31 as well as beyond the 4<sup>th</sup> Amendment to the US Constitution. The authority line for this particular rule mentions IC 4-31-6-2 which only authorizes rulemaking for "procedures for license applications" and for "license fees." The expressed statutory authority granted the IHRC for right of entry and search is through IC 4-31-13-4 which does not provide for an unlimited right of entry let alone authorization for further rulemaking on the subject. The 'Consent to search and seizure' administrative rule from the flat racing rulebook is copied below:

**71 IAC 5.5-1-6 Consent to search and seizure**

Authority: IC 4-31-6-2  
Affected: IC 4-31-13-4

Sec. 6. By acceptance of a license or by engaging in activities that require a license by the commission, a licensee consents to search and inspection by the commission or its agents and to the seizure of any prohibited medication, controlled substances, paraphernalia, or devices in violation of state or federal law or these rules. Any seized drugs, medication, or other materials may be forwarded by the commission or its agents to the official chemist for analysis. The analysis of materials seized under the provisions of this section is not subject to 71 IAC 8.5-3. (Indiana Horse Racing Commission; 71 IAC 5.5-1-6; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2850, eff Jul 1, 1995; 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 May 12, 2008, 1:29 p.m.: 20080521-IR-071080353ERA)NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.

Based upon the wording of these two administrative rules, the IHRC believes that licensees have no rights to privacy or protection from an unreasonable search and seizure. In specific locations, like on the grounds of a racetrack in Indiana with a permit to conduct pari-mutuel wagering, including barns, stables, stalls, tack rooms, or feed rooms, there is not much of a right to privacy, nor should any such right be expected. The long-held view of courts is that the threat of being searched is a reasonable attempt by an administrative agency to deter any illegal activity connected to pari-mutuel horse racing. However, the IHRC believes that their powers to search and to seize are extremely broad and somehow extend beyond the grounds of a racetrack to anywhere they choose, for whatever reason, and at any time of their choosing.

In fact, the IHRC includes the following required attestation on their Multi-Purpose License Application regarding searches, "I hereby acknowledge that I will be subject to the searches, either in my presence

or absence, provided for in Indiana Code 4-31-13, as amended, and the Indiana Rules and Regulations that authorize personal inspections, inspections of any personal property, and inspections of premises and property related to my participation in a race meeting by persons authorized by the Indiana Horse Racing Commission" This statement references both Indiana statute (Indiana Code 4-31-13) and what is presumed to be the Indiana Administrative Code (Indiana Rules and Regulations). The IHRC, purposefully, uses phrases like "any personal property" which creates the illusion of an absolute authority any time, any place, especially when tied to "premises and property related to my participation in a race meeting." The use of "premises and property" can actually mean a person's home, farm, barns, etc. when the owner is not there ("either in my presence or absence").

On that same license application, the IHRC has the following required attestation regarding seizure, "I further acknowledge that the Indiana Horse Racing Commission may seize any article or substance which is found in my possession or control or in a location under my control which may be forbidden or is against the applicable Indiana Rules and Regulations." The word "any" as in "any article or substance" is another absolute statement that brings into question whether there are any limits to the IHRC's ability to search and seize property. What is interesting about the seizure attestation in the application is that only the 'Indiana Rules and Regulations' are mentioned and not Indiana Statute. That's because the words 'seize' or 'seizure' don't appear anywhere in IHRC's authorizing statute, just the word search. The phrase "a location under my control" is also a very broad and nebulous description.

The Association of Racing Commissioners International (ARCI) Multi-Jurisdictional Owner's Application, which is used by the IHRC, takes a different approach to search and seizure in its Affidavit of Licensure, "I consent to a search within the grounds of any racetrack or racing association of my person and property, including premises and vehicles that I have the right to (or do) occupy or control, and to the seizure of articles related to unlawful conduct." For owners, the consent to search is only "within the grounds" of a racetrack because the ARCI is taking a more legal and constitutional approach with the model rule than the IHRC does with Indiana's administrative rules. However, the affidavit also has an owner attest to compliance with all rules and regulations of the locations in which would include the consent to search and seizure administrative rules.

The ability to search anywhere at any time and to 'seize' any property is a power that the IHRC has essentially granted itself, not by statute. This stance is an infringement of constitutional and civil rights. The IHRC has stepped well beyond their authorizing statute with their 'search and seizure' administrative rules. While reading 71 IAC 5.5-1-6 or 71 IAC 5-1-6, ask yourself what are limits to the search and seizure authority that the IHRC has placed upon itself?

In addition, an individual doesn't even have to be a licensee to fall under the scope of this administrative rule. You only have to be "engaging in activities that require a license" which is a definition that only the IHRC will control irrespective of any individual opinion. Based upon the wording of these two administrative rules, there is nothing but a forced consent to search that doesn't describe specifics of any location, for any particular purposes, or with any limitations on the timing or scope of a search. While the rules use the terms "prohibited medication" and "controlled substances", the administrative rule also uses the term "paraphernalia." One of the definitions of paraphernalia is 'personal belongings'

which opens up for the IHRC to interpret that term as they see fit. Effectively, there is no limit as to what the IHRC believes can be seized, anytime, anywhere.

The Association of Racing Commissioner's International (ARCI) uses very similar language in their 'Consent to Search and Seizure' model rule: "By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state/provincial and federal law." However, any language in ARCI Model Rules would have never been vetted for compliance versus Indiana statute to determine if a model rule would even be legal in Indiana. This is a good example as the IHRC seems to have followed the model rule to a degree, but at least the ARCI model rule requires searches and seizures to be done "in accordance with state/provisional and federal law" which is not even a consideration in Indiana's version of these administrative rules. That language from the Model Rule is conveniently absent.

The IHRC has not been granted explicit rulemaking authority via Indiana statute to even create such 'search and seizure' rules. According to the Indiana's Administrative Rule Drafting Manual, the 'Authority Line' for any administrative rule "must give the citation of each Indiana statute (enabling statute) that expressly delegates rulemaking power to the agency to issue a rule on the subject matter of the accompanying rule." This means that the IHRC is required to demonstrate where they gain the authority to create a specific administrative rule. In addition, the drafting manual states, "If the General Assembly has not expressly delegated authority to issue a rule, the authority line must give the citation of each statute that grants rulemaking power to the agency by implication."

In the case of '71 IAC 5.5-1-6' and '71 IAC 5-1-6,' the IHRC cites IC 4-31-6-2 as providing their authority to create this 'search and seizure' rule. This very short aspect of the IHRC's authorizing statute is copied below:

#### **IC 4-31-6-2**

##### **Procedures for license applications; license fees; adoption of rules**

Sec. 2. The commission shall adopt rules under IC 4-22-2 establishing:

- (1) procedures for license applications; and
- (2) license fees.

As added by P.L.341-1989(ss), SEC.2.

While there is an explicit authorization for adopting administrative rules in IC 4-31-6-2, this authorization applies only for "procedures for a license application" and for "license fees." There is no explicit authority granted to the IHRC to create any 'search and seizure' rule. So, is there an implicit authorization to promulgate a search and seizure administrative rule in IC 4-31-6-2? To say 'yes' to that question, the IHRC would somehow have to believe that consent to a search or to a seizure is a part of a necessary step-by-step process (procedure) for applying for a license. The IHRC's rulemaking on this subject is a stretch, especially when considering that Indiana statute outlines the conditions under which the IHRC can refuse or deny a license application. None of those conditions allow for a refusal or a denial of a license application based a person's refusal to acknowledge the IHRC created 'search and seizure'

administrative rule. Searches and seizures can fit the definition of a procedure; however, they would be procedures performed post-issuance of a license, not before.

The biggest concern with these particular administrative rules is with the unlimited authority the IHRC has granted to itself to conduct warrantless searches without probable cause. This self-appointed authority goes well beyond their statutory authority provided via IC 4-31 which is the pari-mutuel horse racing statute. These rule go beyond the US Constitution as well. The Fourth Amendment states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The key phrase in the Fourth Amendment is "unreasonable searches and seizures," and more specifically, "unreasonable." Many of the options the IHRC has provided itself within 71 IAC 5.5-1-6 and 71 IAC 5-1-6 are very unreasonable. REASONABLE searches and seizures can, however, be done by an administrative agency without a warrant or probable cause.

Generally speaking, administrative searches of private property without a warrant have been held to be unconstitutional, including a person's home. However, the US Supreme Court has upheld warrantless administrative searches for commercial property and has even done so when considering a warrantless administrative search of an unlicensed commercial stable outside of a racetrack. This exception to the administrative search warrant requirement "involves activities within a particular industry that has been subject to pervasive or long-standing governmental regulation" or what can be further described as "closely regulated industries." In effect, the court's view is that a person's involvement in a highly regulated industry should lower their expectation of privacy because of the government's interest in regulating that industry is increased. The pari-mutuel horse racing industry is definitely a "closely regulated" industry that could fit into the exception as long as warrantless administrative searches were considered to be reasonable. On the grounds of a racetrack, in most cases, would be considered reasonable. To be considered reasonable courts have recognized that a warrantless administrative search is reasonable if three conditions are met.

First, the government agency must have a "substantial" interest in pursuing any search. Simply, a horse racing commission's substantial interest would be their efforts to maintain the integrity of pari-mutuel horse racing. The substantial interest criterion for the IHRC is fairly easy to meet. The second criterion is that any warrantless administrative search is being conducted as a necessity to further the agency's "regulatory scheme" which, in this case, can be defined as "a combination of elements (as statutes or regulations) that are connected, adjusted, and integrated by design: a systematic plan or program. This aspect of the three-pronged test is a little bit more difficult satisfy, and is designed to eliminate the arbitrary and "unbridled discretion [of] executive and administrative officers." Any searches conducted outside of a racetrack under 71 IAC 5.5-1-6 or 71 IAC 5-1-6 would fail to meet this particular requirement. There is no design, or rhyme or reason, or administrative program associated with 71 IAC 5.5.-1-6 or 71 IAC 5-1-6. Yet, it's the third court-established criterion where the IHRC's administrative 'search and seizure' rule fails miserably.

Any of the IHRC's attempted searches off premises of a racetrack, "in terms of the certainty and regularity of its application, [must] provid[e] a constitutionally adequate substitute for a warrant." In essence, administrative rules (or statutes) have to provide that any warrantless administrative search is being done pursuant to the law, has a defined and specific scope, and places limits on those conducting the search. In other words, the administrative rule or statute has to announce to the world that your property "will be subject to periodic inspections undertaken for a specific purpose." The administrative rule or statute that allows for warrantless administrative searches must also provide description of the "time, place, and scope" of any search. 71 IAC 5.5-1-6 and 71 IAC 5-1-6 allow for arbitrary and limitless actions by the IHRC, and therefore, needs to be removed from the Indiana Administrative Code as unconstitutional or modified significantly to comply with the long-established administrative search exceptions to the Fourth Amendment.

Below is how the Indiana statute (IC 4-31-13-4) reads that provides for the IHRC's statutory right of entry and authorization to search people or places. As mentioned earlier, the words 'seize' or 'seizure' appear nowhere in any portion of the IHRC's authorizing statute. You will also see that there is no authorization or expressed statutory authority granted to the IHRC to create any administrative rules on the subject. While IC 4-31-13-4 may not even meet the three criteria established by courts for affective warrantless administrative searches at a racetrack, IC 4-31-13-4(5) provides a much more limited capability to search places outside of a racetrack than the IHRC has granted itself through 71 IAC 5.5-1-6 and 71 IAC 5-1-6.

#### IC 4-31-13-4

##### **Right of entry by commission and representatives; searches of persons and property; violation; suspension**

Sec. 4. (a) The commission and its representatives have the right of full and complete entry to any and all parts of the grounds and mutuel plants of permit holders.

(b) The commission, the commission's representatives, and the state judge investigating for violations of law or of the rules of the commission may permit persons authorized by them to search the following persons and areas:

(1) All persons who are within the racetrack premises and:

(A) licensed by the commission; or

(B) engaged in activities that require a license by the commission.

(2) Persons who have gained access to the racetrack premises by special permission.

(3) Vendors licensed by the commission when they are within the racetrack premises.

(4) Stables, rooms, vehicles, and other places within the racetrack premises that are used by those persons who may be searched under this section.

**(5) Stables, rooms, and vehicles that are used or maintained by persons licensed by the commission and are located in areas outside of the racetrack premises where horses eligible to race at the racing meeting are stabled.**

(c) If a licensee refuses to consent to a search under this section, the person shall be automatically suspended.

As added by P.L.341-1989(ss), SEC.2. Amended by P.L.50-1995, SEC.12.

IC 4-31-13-4(5) does have some specifics as to what locations can be searched as in "where horses eligible to race at the meeting are stabled." However, this subsection also seems to fail the final two tests for a warrantless administrative search to meet the any established exception to the Fourth Amendment. First, there is no mention of a specific program or design involved with a search conducted under this subsection. Therefore, any off-track search would be considered to be arbitrary, especially as measured by 71 IAC 5.5-1-6 and 71 IAC 5-1-6. Secondly, IC 4-31-13-4(5) establishes no limits to those conducting any search. If IC 4-31-13-4(5) does meet any exception to the Fourth Amendment, then surely the more intrusive administrative rules (71 IAC 5.5-1-6 and 71 IAC 5-1-6) do not either. Accordingly, neither should be readopted without conforming to the exceptions to the Fourth Amendment.

Thank You,



Jim Hartman

9744 Castle Woods Cove

Indianapolis, IN 46280

**OFFICE USE ONLY:** New or Renewal Date \_\_\_\_/\_\_\_\_/\_\_\_\_ License # \_\_\_\_\_ F.P. \_\_\_\_\_  
 Total Fees \_\_\_\_\_ Receipt/Tran ID # \_\_\_\_\_ Approved by: \_\_\_\_\_  
 Cash \_\_\_\_\_ Check # \_\_\_\_\_ M.O. # \_\_\_\_\_ Clerk \_\_\_\_\_

# Owners



## Welcome to the RCI Multi-Jursidiction Licensing Program

As a racehorse or greyhound owner who may wish to participate in several different racing jurisdictions, you can simplify the process by completing this application for an **OWNER'S** license. Copy it and send it to any of the racing jurisdictions listed (see the last page of this form) you'll be racing in. Some racing commissions may require additional information from you. This form is only for those owners who will not be applying for any other type of license (i.e., trainer, driver, etc.) **If you will be applying for another type of license, please contact that jurisdiction for their individual application.**

Please refer to the last page of this form for a list of participating jurisdictions and fee schedule.

Check Breed(s)  Thoroughbred  Standardbred  Quarter Horse  Greyhound

- Applicant Name \_\_\_\_\_  
 Last First Middle Maiden
- Have you ever used an assumed name or been known by another name or been licensed under an assumed or different name? If yes, give name(s)  Yes  No
- Marital status? Married \_\_\_\_\_ Single \_\_\_\_\_ Divorced \_\_\_\_\_ Widowed \_\_\_\_\_  
 If married, full name of spouse, including maiden name: \_\_\_\_\_
- Last licensed in: \_\_\_\_\_  
 Year Type of License Name of State
- List latest dates fingerprinted and what states printed you: \_\_\_\_\_  
 Month & Year(s) Printed In what State(s)
- Telephone numbers: ( ) \_\_\_\_\_ ( ) \_\_\_\_\_ ( ) \_\_\_\_\_  
 Home # Business or Cell # Fax #
- Person to be notified in case of emergency: \_\_\_\_\_ Telephone: ( ) \_\_\_\_\_

8. Social Security No.* <small>Social Insurance No. (Canadians)</small>	Sex	Height	Weight	Color Hair	Color Eyes	Date of Birth	Age
- -						/ /	

\* Providing Social Security Number may be voluntary and will be used as a secondary identifier, however, some jurisdictions do mandate you provide it. Mo Day Year

- Are you a U.S. Citizen?  Yes  No If no, what country are you a citizen of? \_\_\_\_\_  
 Place of Birth \_\_\_\_\_ City/State Immigration I.D. number (if applicable) A- \_\_\_\_\_
- USTA/SC Membership Number \_\_\_\_\_ (If applicable) USTA/SC Membership Exp. Date: \_\_\_\_\_
- Permanent mailing address: \_\_\_\_\_  
 (at which service all papers may be made upon you) Street  
 \_\_\_\_\_ City State/Province Postal Zip/Country
- Local address: \_\_\_\_\_  
 \_\_\_\_\_ Street  
 \_\_\_\_\_ City State/Province Postal Zip/Country

13. Give the following information relative to your current employer. If self-employed, so indicate:

Employment Dates \_\_\_\_\_ Name of Employer \_\_\_\_\_ Address (Street, City, State, Zip) \_\_\_\_\_

14. List your occupation here: \_\_\_\_\_ If self-employed, list type of business: \_\_\_\_\_

15. Are you under an obligation to pay child support?  Yes  No If yes, are you 4 months or more in arrears?  Yes  No

Questions 16(a-h) MUST be answered "yes" or "no". Give details in space provided.

	Yes	No
16.a. Has your or your spouse's racing license ever been <b>denied, suspended</b> for more than 7 days or <b>revoked</b> ?		
b. Has any other type of license or permit of you or your spouse ever been <b>suspended, denied</b> or <b>revoked</b> ?		
c. Have you ever been <b>expelled, discharged, or ejected</b> from any race track or <b>fined</b> more than \$100?		
d. Have you or your spouse ever been <b>convicted</b> (including by nolo contendere) of, or forfeited bail on, any <b>felony or misdemeanor</b> criminal offense (including DWI or DUI)?		
e. Are there any indictments, complaints or criminal charges currently pending anywhere against you or your spouse?		
f. Are you or your spouse currently on parole or probation?		
g. Are there any outstanding civil judgments against you or your spouse?		
h. Do you have a position with a race commission, racetrack, political party or in government?		

For each "yes" above, you must provide full details below (when, where, what). Use a separate sheet if needed.

Date	State/Track	Specific Violation, Crime, or Debt	Penalty (Sentence w/parole end-date)

17. Statement of Ownership (including questions 18 & 19)

OWNERSHIP: Number of horses or greyhounds in training ( \_\_\_\_\_ ), listing below those you plan to race this year (and if owned by partners or entity, or leased, so designate.)

Horse/Greyhound Name	Age	Trainer's Full Name	Ownership Name on Registration Papers	% Owned	Breed (T/S/Q/G)

18. If you listed a **Stable Name** or **Ownership Entity** (a partnership, corporation, etc.) as owner of a horse or greyhound under Question 17 above, please tell us about the **individual persons** under that name holding any interest in those horses or greyhounds. Please check with each state in which you plan to race, to determine if they require a separate **Stable or Entity** registration form be filed, in addition to this application.

Name	Address (street, city, state & zip)	Name of Horse or Greyhound	% Owned

19. Is your horse leased? \*  Yes  No

\* A copy of the lease agreement(s) must be attached and submitted with this application. Note: Virginia & Michigan require all leases be notarized.

\_\_\_\_\_  
Name of Lessor (owner)

\_\_\_\_\_  
Name of Lessee

If additional space is needed for any answers, please use a separate sheet of paper and submit it with this form.





## Jurisdictions and Fee Schedule

(Code for Fees: O=Owner; H=Harness; TB=Thoroughbred; Q=Quarter Horse; GH=Greyhound)

<p><b>Arkansas State Racing Commission Greyhound Division</b> P.O.Box 2088 West Memphis, AR 72303-2088 Ph: 501-682-1467; Fax: 730-732-5926 O @ \$30 payable to ASRC No Prints Required</p>	<p><b>Indiana Horse Racing Commission at Indiana Downs</b> 4425 N 200 West Shelbyville, IN 46176 Ph: 317-713-3350; Fax: 317-713-3355 O @ \$35 payable to IHRC Prints \$36 payable to IHRC</p>	<p><b>Michigan Gaming Control Board</b> 3062 W Grand Blvd, L-700 Detroit, MI 48202 Ph: 313-456-4100; Fax: 313-456-2864 O @ \$25 payable to State of Michigan Prints \$36 payable to State of Michigan</p>	<p><b>Ontario Racing Commission</b> 10 Carlson Court, Suite 400 Toronto, Ontario M9W 6L2 Canada Ph: 416-213-0520; Fax: 416-213-7827 New: O @ \$126 (\$CND) RENEW: O @ \$105 (\$CND) No prints required</p>
<p><b>Arkansas State Racing Commission Thoroughbred Division</b> P.O.Box 699 Little Rock, AR 71902 Ph: 501-682-1467; Fax: 501-623-9443 O @ \$30 payable to ASRC No Prints Required</p>	<p><b>Iowa Racing and Gaming Commission</b> One Prairie Meadows Dr. Altoona, IA 50009-0901 Ph: 515-967-1260; Fax: 515-967-1290 O @ \$10 payable to IRGC (2 YR LIC) Prints \$36 payable to RCI or \$46.25 payable to IRGC</p>	<p><b>Mobile County Racing Commission</b> P.O. Box 1886 Mobile, AL 36633 Ph: 251-653-4820; Fax: 251-653-4850 O @ \$25 payable to MCRC No Prints Required</p>	<p><b>Pennsylvania HARNESS Racing Comm.</b> P.O. Box 427 Meadow Lands, PA 15347 Ph: 724-223-4585; Fax: 724-223-4305 O @ \$60 (Only offer 3 YR LICENSE) Prints \$40 on PA fingerprint card every 3 yrs</p>
<p><b>California Horse Racing Board</b> 1010 Hurley Way, Suite 300 Sacramento, CA 95825 Ph: 916-263-6000; Fax: 916-263-6042 O @ \$150 payable to CHR (Only offer 3 YR LICENSE) Only State Prints Required</p>	<p><b>Jamaica Racing Commission</b> P.O. Box 309 Kingston 10, Jamaica Ph: 876-926-2727; Fax: 876-926-2207 O @ \$3,000 Jamaican dollars payable to JRC. Require 2 passport size photos No Prints Required</p>	<p><b>Nebraska State Racing Commission</b> P.O. Box 95014 Lincoln, NE 68509 Ph: 402-471-4155; Fax: 402-471-2339 O @ \$30 payable to NSRC Prints \$38 payable to NSRC</p>	<p><b>Puerto Rico Racing Sport Administration</b> Administracion del Deporte Hipico Apartado P.O. Box 29156 65th Infanteria Station Rio Piedras, PR 00929-0156 Ph: 787-768-2005; Fax: 787-762-1105 NEW: O @ \$150; RENEW: O @ \$100; \$400 4-YR payable to PRRSA. No Prints Required</p>
<p><b>Colorado Division of Racing Events</b> 1881 Pierce Street, Suite 108 Lakewood, CO 80214-1494 Ph: 303-205-2990; Fax: 303-205-2950 NEW: O @ \$75 (incl. state and FBI prints) (\$85 if State &amp; RCI prints-RCI prints payable to RCI) RENEW: O @ \$25. Pay all to CDRE, exp. RCI prints</p>	<p><b>Kentucky Horse Racing Authority</b> 4063 Iron Works Parkway Lexington, KY 40511-8434 Ph: 859-246-2040; Faxed apps. not allowed. TB O @ \$150; H O @ \$125 payable to KHRC. No Prints Required</p>	<p><b>New Hampshire Racing &amp; Charit. Gaming</b> 57 Regional Dr., Unit #3 Concord, NH 03301-8518 Ph: 603-271-2158; Fax: 603-271-3381 H-O @ \$40; GH-O @ \$40; w/colors @ \$25; Criminal records check required - \$25 All payable to NHPMC.</p>	<p><b>Texas Racing Commission</b> 8505 Cross Park Drive, Suite 110 Austin, TX 78754-4594 Ph: 512-833-6699; Fax: 512-833-6907 O @ \$100 (1 YR LIC); \$200 (2 YR LIC); \$300 (3 YR LIC) payable to TXRC. Finger Prints-contact Commission</p>
<p><b>Delaware HARNESS Racing Commission</b> 2320 South Dupont Highway Dover, DE 19901 Ph: 302-342-3008; Fax: 302-697-4748 O @ \$50 (1 YR LIC); O @ \$150 (3 YR LIC) Prints \$79 processed through DHRC payable to DHRC</p>	<p><b>Louisiana State Racing Commission</b> 320 North Carrollton Ave, Suite 2-B New Orleans, LA 70119 Ph: 504-483-4000; Fax: 504-483-4898 O @ \$25 (1 YR LIC); O @ \$75 (3 YR LIC); Colors fee: 1 YR @ \$25; 3 YR @ \$75. All payable to LSRC. No Prints Required</p>	<p><b>New Jersey Racing Commission</b> P.O. Box 088 Trenton, NJ 08625 Ph: 609-292-0613; Fax: 609-599-1785 O @ \$50 (1 YR LIC); \$150 (3 YR LIC) &amp; One time NJ State prints \$40 payable to NJRC. RCI prints \$36 payable to RCI</p>	<p><b>Virginia Racing Commission</b> 10700 Horsemen's Road New Kent, VA 23124 Ph: 804-966-7412; Fax: 804-966-7422 O @ \$50 payable to VRC Prints \$37 on VA print card payable to VRC</p>
<p><b>Delaware Thoroughbred Racing Comm.</b> 777 Delaware Park Blvd Wilmington, DE 19804 Ph: 302-994-2521, x7148; Fax: 302-993-8949 O @ \$50 (1 YR LIC); O @ \$150 (3 YR LIC) Prints \$79 processed through DTRC payable to DTRC</p>	<p><b>Maine Harness Racing Commission</b> 28 State House Station, Derring Building Augusta, ME 04333-0028 Ph: 207-287-3221; Fax: 207-287-7548 O @ \$35 payable to MHRC No Prints Required</p>	<p><b>New Mexico Racing Commission</b> 4900 Alameda Boulevard NE Albuquerque, NM 87113-1736 Ph: 505-841-6400; Fax: 505-841-6413 O @ \$100 (1 YR LIC) O @ \$120 (3 YR LIC) payable to NMRC. Prints \$36 payable to RCI</p>	<p><b>Washington Horse Racing Commission</b> 6326 Martin Way, Suite 209 Olympia, WA 98516 Ph: 360-459-6462; Fax: 360-459-6461 O @ \$226 payable to WHRC (includes \$150 payment for Worker's Com, \$66 lic fee, \$10 State of WA fingerprint fee - (required every 3 yrs))</p>
<p><b>Florida Division of Pari-Mutuel Wagering</b> 1940 North Monroe Street Tallahassee, FL 32399-1037 Ph: 850-488-9130; Fax: 850-488-0550 O @ \$80 (3 YR LIC) pay to DBPR/PMW. If Florida prints used, print fee is \$47 payable to DBPR/PMW. If RCI prints used, print fee \$36 payable to RCI</p>	<p><b>Maryland Racing Commission</b> 300 E Towson Towne Boulevard Towson, MD 21286 Ph: 410-853-1674; Fax: 410-853-1668 NEW: O @ \$50; RENEW: O @ \$25 Call for other Charges; State Prints Only - payable to CJIS</p>	<p><b>New York State Racing and Wagering Brd</b> 1 Broadway Center, Suite 600 Schenectady, NY 12305-2553 Ph: 518-395-5400; Fax: 518-347-1439 NEW: O @ \$210.50 - includes print fees. RENEW: O @ \$50/year up to 3 consec. yrs. 2 self photos. All payable to NYSRWB</p>	<p><b>West Virginia Racing Commission</b> 900 Pennsylvania Avenue, Suite 533 Charleston, WV 25302 Ph: 304-558-2150; Fax: 304-558-6319 O @ \$30.00 payable to WVRC; Prints \$36 payable to WVRC. Send Apps to Track.</p>
<p><b>Illinois Racing Board</b> 100 West Randolph Street, Suite 7-701 Chicago, IL 60601 Ph: 312-814-2600; Fax: 312-814-5062 O @ \$25 payable to IRB; Prints \$45 Illinois State/FBI fingerprint card required.</p>	<p><b>Massachusetts State Racing Commission</b> 1 Ashburton Place, Room 1313 Boston, MA 02108 Ph: 617-727-2581; Fax: 617-227-6062 TB &amp; H: O @ \$30 payable to MSRC No Prints Required</p>	<p><b>Ohio State Racing Commission</b> 77 South High Street, 18th Floor Columbus, OH 43215-6108 Ph: 614-466-2757; Fax: 614-466-1900 O @ \$50 payable to OSRC Prints \$36 payable to OSRC</p>	<p style="text-align: center; font-size: 2em; font-weight: bold;">RCI Multi App rev. 1/1/2013</p>

Use as a Florida Application Requires the Applicant's signature to be Notarized.

### DIRECTIONS FOR USING THIS FORM

**GENERAL INFORMATION:** All participating jurisdictions listed on this page have agreed to accept this form in lieu of a state or provincial license form. The list of participating jurisdictions and fees below are current as of August 8, 2012. You may call the Association of Racing Commissioners International (RCI) or participating jurisdictions to inquire about any updates.

**APPLICATIONS:** Before signing, make the number of copies of the completed application you will need based on the number of states/jurisdictions you'll race in and then sign them, therefore assuring that each racing jurisdiction will have an original signature. Either hand deliver or mail it along with the applicable fee (see fee structure for each jurisdiction below) to each participating jurisdiction where you are seeking a license. You are responsible for delivering this application and applicable fees to each jurisdiction. Participating jurisdictions will not forward copies of this application and fees to other jurisdictions; however, the RCI will forward copies to other jurisdictions at the cost of \$10 per jurisdiction.

**FINGERPRINTS:** Some states require that first-time licensees submit an RCI fingerprint card and the payment of a \$34 fee. You will submit a fingerprint card to only one of the participating jurisdictions listed above. To have fingerprint reports sent to other jurisdictions where you plan to race, mark those jurisdictions on the back of the RCI fingerprint card. You may select up to nine jurisdictions. You may choose to get fingerprinted at a race track or by your local police or sheriff's office. Regardless of the location, be sure to use the RCI fingerprint card so you can ask that more than one racing commission receive the results from the FBI. Additionally, a renewing licensee may be required to submit fingerprints on a periodic basis. Applicants will be advised of requirements by each jurisdiction. Refer to the fee schedule above for directions regarding to whom checks should be made payable to and whether separate checks are required (one for your license and one for your fingerprints, if using the RCI fingerprint card).

**WHERE TO MAIL FORMS:** Completed fingerprints along with a check or money order for \$34 (no cash) may be mailed to the racing commission where you plan to race next or to the commission requiring your prints. This completed license form and applicable license fee must accompany the completed fingerprint card and \$34 fingerprint fee. The payment for fingerprints varies from jurisdiction to jurisdiction. Refer to the boxes above

**Public Comments –Adoption of 71 IAC 5.5-1-10.1 Workers' compensation**

October 3, 2104  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

The authority line for this particular rule establishes 'IC 4-31-6-2' as the authorizing statute for rulemaking; however, 'IC 4-31-6-2' only authorizes rulemaking for "procedures for license applications" and for "license fees." This particular administrative rule is neither a procedure nor a fee. The Indiana Horse Racing Commission (IHRC) has no explicit or implicit statutory authorization for adopting this administrative rule. Below is how IC 4-31-6-2 reads:

**IC 4-31-6-2**

**Procedures for license applications; license fees; adoption of rules**

Sec. 2. The commission shall adopt rules under IC 4-22-2 establishing:

- (1) procedures for license applications; and
- (2) license fees.


As added by P.L.341-1989(ss), SEC.2.

In addition, this particular administrative rule does not avoid an unnecessary duplication as required by IC 4-22-2-19.5(a)(3) of what is required of an employer by 'IC 22-3 WORKER'S COMPENSATION SYSTEM.'

This particular administrative rule attempts to incorporate by reference materials, specifically "as required by Indiana statute," without being "fully and exactly described" as required by IC 4-22-2-21(b) which would require a specific cite of what Indiana statute a horsemen is being directed to follow.

From the perspective of the IHRC, this particular administrative rule does not have "practical enforcement" as required by IC 4-22-2-19.5(a)(5) as enforcement of worker's compensation laws is the responsibility of the Worker's Compensation Board. The IHRC has no statutory authority in enforce worker's compensation laws.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments –Readoption of 71 IAC 5-1-10 Workers' compensation**

October 3, 2104  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

The authority line for this particular rule establishes 'IC 4-31-6-2' as the authorizing statute for rulemaking; however, 'IC 4-31-6-2' only authorizes rulemaking for "procedures for license applications" and for "license fees." This particular administrative rule is neither a procedure nor a fee. The Indiana Horse Racing Commission (IHRC) has no explicit or implicit statutory authorization for adopting this administrative rule. Below is how IC 4-31-6-2 reads:

**IC 4-31-6-2**

**Procedures for license applications; license fees; adoption of rules**

Sec. 2. The commission shall adopt rules under IC 4-22-2 establishing:

- (1) procedures for license applications; and
- (2) license fees.

As added by P.L.341-1989(ss), SEC.2.

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This particular administrative rule attempts to incorporate by reference materials, specifically "as required by Indiana statute," without being "fully and exactly described" as required by IC 4-22-2-21(b) which would require a specific cite of what Indiana statute a horsemen is being directed to follow.

From the perspective of the IHRC, this particular administrative rule does not have "practical enforcement" as required by IC 4-22-2-19.5(a)(5) as enforcement of worker's compensation laws is the responsibility of the Worker's Compensation Board. The IHRC has no statutory authority in enforce worker's compensation laws.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Commentary – Readoption of 71 IAC 8.5-2-3 Selection of horses to be tested & 71 IAC 8-3-3 Selection of horses to be tested**

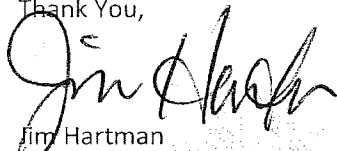
October 3, 2104  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These administrative rules does not avoid an unnecessary duplication of 'IC 4-31-12-5 Blood and urine tests' as required for administrative rules by IC 4-22-2-19.5(a)(4). In addition, '71 IAC 8.5-2-3(c)' authorizes a "designee" of the official veterinarian to authorize the taking of a sample where no such authorization exists in 'IC 4-31-12-5.'

IC 4-31-12-5(b)(2) reads as follows, "Any other horses designated by the judges, the stewards, a commission veterinarian, a member of the commission, or the secretary of the commission. The judges and veterinarian shall designate for the taking of such a specimen a horse that races markedly contrary to form."

71 IAC 8.5-2-3(c) reads as follows, "The stewards and the official veterinarian or his/her designee shall designate for the taking of such a specimen a horse that races markedly contrary to form." The only difference in 71 IAC 8-3-3(c) is that "The judges" is used instead of "The steward." Clearly, Indiana statute does not allow for the stewards or the official veterinarian to delegate their authority to any other party. Therefore, these administrative rules should not be readopted without a modification to conform them to Indiana statute.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 5.5-1-13 License denial**

October 3, 2014  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

This particular administrative rule directly conflicts with the language in IC 4-31-6-9 which states “the issuance, **denial**, suspension, or revocation of a license under this chapter is subject to IC 4-21.5” which is the ‘Administrative Orders and Procedures Act.’ This ‘license denial’ administrative rule forces an applicant into a hearing “pursuant to the procedures provided for in 71 IAC 10.” The procedures outlined in 71 IAC 10 are far from a direct replication of IC 4-21.5; therefore, “IC 4-21.5” should replace “71 IAC 10” in the administrative rule in any readoption as required by Indiana statute.

**71 IAC 5.5-1-13 License denial**

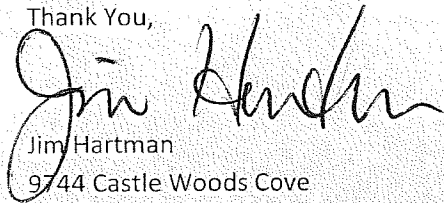
Authority: IC 4-31-6-2  
Affected: IC 4-31

Sec. 13. If an applicant contests the basis of the denial of a license application not later than fifteen (15) days after notice is served, an administrative law judge shall conduct a hearing **pursuant to the procedures provided for in 71 IAC 10**. Nonetheless, a hearing challenging the denial of a license application is not considered to be a disciplinary action. The commission may formally deny an application in accordance with these rules. An application that is denied shall be reported:

- (1) in writing to the applicant stating the reasons for denial and the date when a reapplication may be submitted; and
- (2) to the USTA and the ARCI, which shall then advise other racing jurisdictions.

*(Indiana Horse Racing Commission; 71 IAC 5.5-1-13; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2851, eff Jul 1, 1995; emergency rule filed Aug 23, 2001, 9:58 a.m.: 25 IR 118; 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 Oct 3, 2013, 2:08 p.m.: 20131009-IR-071130452ERA) NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.*

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 5.5-1-12 License refusal & 71 IAC 5-1-12 License refusal**

October 3, 2014  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These administrative rules are in direct conflict with the language in IC 4-31-6-9 which states “the *issuance*, denial, suspension, or revocation of a license under this chapter is subject to IC 4-21.5” which is the Administrative Orders and Procedures Act. These ‘license refusal’ administrative rules force an applicant into a hearing “pursuant to the procedures provided for in 71 IAC 10.” The procedures outlined in 71 IAC 10 are far from a direct replication of IC 4-21.5; therefore, “IC 4-21.5” should replace “71 IAC 10” in the administrative rule in any readoption as required by Indiana statute.

**71 IAC 5.5-1-12 License refusal**

Authority: IC 4-31-6-2

Affected: IC 4-31

Sec. 12. The commission, the stewards, or the executive director as the commission's designee may refuse to issue a license. The decision to refuse a license is treated as a withdrawal of the license application without prejudice and is not reported to the ARCI. If an applicant is refused, the applicant may reapply for a license. If an applicant contests a license refusal, the stewards (or an administrative law judge if the stewards are unavailable) shall conduct a hearing pursuant to the procedures provided **for in 71 IAC 10**. Nonetheless, the hearing on a license refusal is not considered to be a disciplinary action. If the stewards affirm the decision to refuse a license application, the refusal shall be treated as the denial of the application, consistent with these rules.

*(Indiana Horse Racing Commission; 71 IAC 5.5-1-12; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2851, eff Jul 1, 1995; emergency rule filed Aug 23, 2001, 9:58 a.m.: 25 IR 118; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)*  
*NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.*

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 2-8-1 Records**

October 3, 2014  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

This particular administrative rule does not avoid an unnecessary duplication of 'IC 5-14-3 Access to Public Records' as required for administrative rules by IC 4-22-2-19.5(a)(4) and actually adds requirements upon the public not established by IC 5-14-3. The current rule reads as follows:

71 IAC 2-8-1 Records  
Authority: IC 4-31-3-9  
Affected: IC 4-31; IC 5-14-3

Sec. 1. (a) Except as otherwise provided by the Act, commission records are subject to the Access to Public Records Act, IC 5-14-3.

(b) Except as otherwise authorized by statute, all original records of the commission shall be maintained in the main offices of the commission. No person may remove an original record from the offices of the commission without the approval of the executive director.

(c) To inspect commission records, a person must make a written request to the executive director on a form prescribed by the commission and must pay all costs, including preparing or copying the record and postage, if applicable. (Indiana Horse Racing Commission; 71 IAC 2-8-1; emergency rule filed Feb 10, 1994, 9:20 a.m.: 17 IR 1125; emergency rule filed Mar 25, 1996, 10:15 a.m.: 19 IR 2070; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA) NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.

There is no statutory requirement in IC 5-14-3 for a member of the public to submit records requests "to the executive director on a form prescribed by the commission." There is no statutory requirement that a person who has made a request "must pay all costs" or pay for "postage." With this particular administrative rule, the IHRC has established new procedures and requirements not authorized under Indiana law and IC 4-31-3-9 provides no authority to do so whatsoever.

In addition, IC 4-31-3-9 provides the IHRC with no rulemaking authority on this subject. This administrative rule should not be readopted and allowed to expire or be repealed.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280



**Public Comments – Readoption of 71 IAC 2-7-1 Subpoenas**

October 3, 2104  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

With this particular administrative rule, the IHRC has granted itself what appears to be an unfettered subpoena power rather than within the limitations of IC 4-21.5 'Administrative Orders and Procedures Act.'

Thank You,

A handwritten signature in black ink, appearing to read "Jim Hartman". The signature is written in a cursive, flowing style.

Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 1.5-1-100 “Substantial evidence” defined’ & ‘71 IAC 1-1-105  
“Substantial evidence” defined’**

October 3, 2014

Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These administrative rules attempt to define a legal standard which has already been defined by the US Supreme Court and should not be attempted to be defined by the Indiana Horse Racing Commission (IHRC). Promulgating such a definition is also beyond the scope of the IHRC statutory authority under IC 4-31 or IC 4-31-3-9 to establish such a definition. The flat racing rulebook definition is copied below:

71 IAC 1.5-1-100 "Substantial evidence" defined

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 100. "Substantial evidence" means evidence which a **reasoning mind** would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. (Indiana Horse Racing Commission; 71 IAC 1.5-1-100; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2824, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA) NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.

In 1938, in its decision in Consolidated Edison Co. v. NLRB, the U.S. Supreme Court said, "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a REASONABLE mind might accept as adequate to support a conclusion." The IHRC's incorrect use of "reasoning mind" is vastly different than the "reasonable mind" standard established by the US Supreme Court. The word 'reasoning' is a noun and the word 'reasonable' is an adjective which is necessary in this definition.

In addition, these administrative rules are irrelevant as IC 4-31-12-15(c) and IC 4-31-13-2(c) requires a standard of a "preponderance of evidence" as the IHRC's burden of proof regarding potential violations. These administrative rules should not be readopted in any form.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 1.5-1-52 “Maiden” defined & 71 IAC 1.5-1-53 “Maiden race” defined**

October 3, 2014  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These particular administrative rules attempt to incorporate by reference definitions by “as defined in breed registry rules” without stating what breed registry and which breed registry rules without them being “fully and exactly described” as required by IC 4-22-2-21(b). Since these flat racing administrative rules are designed to cover two breeds, there is no singular “breed registry rules.”

**71 IAC 1.5-1-53 "Maiden race" defined**

Authority: IC 4-31-3-9  
Affected: IC 4-31

Sec. 53. "Maiden race" means a contest restricted to maidens. (Indiana Horse Racing Commission; 71 IAC 1.5-1-53; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2819, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)

While the IHRC's definition of 'maiden race' is simply "a contest restricted to maidens" in the flat racing rulebook, the Association of Racing Commissioners International (ARCI) takes a more accurate view. In their Model Rules by defining a maiden race as "a contest restricted to nonwinners." Since the IHRC's definition of a maiden race references a term (maiden) to describe what is being defined (maiden race), the definition of maiden becomes extremely important in the definition of maiden race. The standardbred rulebook defines a 'maiden' with terms that include "never won a heat or race" (as in non-winners) and "entered to start" with "a purse" being offered (as like in a race). The approach with the standardbred rulebook is understandable and makes no reference to "breed registry rules."

The definition of 'maiden' in the flat racing rulebook is altogether different:

**71 IAC 1.5-1-52 "Maiden" defined**

Authority: IC 4-31-3-9  
Affected: IC 4-31

Sec. 52. "Maiden" means a horse that has never won an official or recognized race as defined in breed registry rules. (Indiana Horse Racing Commission; 71 IAC 1.5-1-52; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2819, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA)

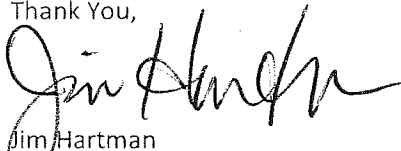
In breaking down this definition, there are terms like "never won" and "race" which are easily understood. "Race" is actually a definition in the flat racing rulebook as well. However, the IHRC's definition of maiden incorporates by reference definitions of "official or recognized race" in the "breed

registry rules." Therefore, the definition of "race" in the flat racing rulebook means nothing in defining a "maiden" in Indiana. Not simply stopping the definition after the word "race" defies logic, but the phrase "as defined in breed registry rules" has the rule of law. To truly, then, understand the definition of maiden and maiden race in Indiana's flat racing rulebook, the definitions in the breed registry rules, must be reviewed to complete the definition.

Using The Jockey Club as an example, <http://www.thejockeyclub.com/default.asp>, they define themselves as "the breed registry for Thoroughbred horses in the United States, Canada, and Puerto Rico." The Jockey Club's breed registry rules are compiled in The American Stud Book: Principal Rules and Requirements, which can be found at [http://www.thejockeyclub.com/pdfs/rule\\_book.pdf](http://www.thejockeyclub.com/pdfs/rule_book.pdf). In reviewing these breed registry rules; there is no definition of "official race," "recognized race," or "race" for that matter. The entirety of this breed registry uses the word 'race' maybe a half dozen times, mostly in paragraphs about changing a thoroughbred's name prior to a first race and about getting a 30-day foreign race permit.

The definitions that the IHRC is attempting to incorporate from the "breed registry rules" into Indiana's flat racing rulebook DO NOT exist! The Jockey Club's breed registry rules do, however, have the following definition: "Maiden: A filly or mare that has never been bred (mated)." Since "maiden" is the only term from the IHRC's definition actually defined in the breed registry rules, the IHRC has inadvertently defined a "maiden" in Indiana flat racing in the terms of not being bred rather than not having won a race.

Thank You,



Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comment – Readoption of 71 IAC 1.5-1-45 "Horse" defined & 71 IAC 1-1-47 "Horse" defined**

October 3, 2104  
Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These administrative rules require an equine be "registered for racing" without defining the organization that would provide such a registration for an equine to be considered a 'horse.' There is no registration requirement within Indiana Horse Racing Commission administrative rules or authorizing statute that specifically would require registration of an equine to race at an Indiana race track. Without any specificity with this registration requirement, especially since 71 IAC 1.5-1-45 covers multiple racing breeds, these administrative rules need to be adjusted accordingly to define just what "registered for racing" means.

71 IAC 1.5-1-45 "Horse" defined  
Authority: IC 4-31-3-9  
Affected: IC 4-31

Sec. 45. "Horse" means any equine (including and designated as a mare, filly, stallion, colt, ridgeling, or gelding) registered for racing; specifically, an entire male five (5) years of age and older. (Indiana Horse Racing Commission; 71 IAC 1.5-1-45; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2819, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-071070030RFA) NOTE: Expiration postponed by Executive Order #13-27, posted at 20140108-IR-GOV130576EOA.

Thank You,

  
Jim Hartman  
9744 Castle Woods Cove  
Indianapolis, IN 46280

**Public Comments – Readoption of 71 IAC 1.5-1-50 “Jurisdiction” defined & 71 IAC 1-1-52  
“Jurisdiction” defined**

October 3, 2014

Indiana Horse Racing Commission  
1302 N. Meridian Street, Suite 175  
Indianapolis, IN 46202

These two administrative definitions extend the authority of the Indiana Horse Racing Commission (IHRC) beyond their statutory jurisdiction granted by ‘IC 4-31-1 Pari-mutuel Wagering on Horse Racing.’ Therefore, these two administrative definitions should not be readopted as is, but modified significantly to reflect the IHRC’s statutory authorizations and, more importantly, limitations.

Both the standardbred and flat racing rulebooks have ‘jurisdiction’ definitions as follows which is from the flat racing rulebook:

71 IAC 1.5-1-50 “Jurisdiction” defined

Authority: IC 4-31-3-9

Affected: IC 4-31

Sec. 50. “Jurisdiction” of the commission means the state of Indiana. (Indiana Horse Racing Commission; 71 IAC 1.5-1-50; emergency rule filed Jun 15, 1995, 5:00 p.m.: 18 IR 2819, eff Jul 1, 1995; readopted filed Oct 30, 2001, 11:50 a.m.: 25 IR 899; readopted filed Mar 23, 2007, 11:31 a.m.: 20070404-IR-71070030RFA)

Merriam-Webster defines jurisdiction in a number of ways: 1) the power, right, or authority to interpret and apply the law, 2a) the authority of a sovereign power to govern or legislate, 2b) the power or right to exercise authority: control, 3) the limits or territory within which authority may be exercised. With these definitions as a backdrop to these administrative rules, the IHRC must believe that their “power,” “authority,” “control,” and “territory” is the entire state. Effectively, the IHRC is claiming that its regulatory jurisdiction is the entire state of Indiana. Indiana statutes disagree in a number of ways with the IHRC’s position.

First, the idea that the IHRC has to create such definitions of their jurisdiction in the Indiana Administrative Code is actually laughable because the whole idea of an authorizing statute is to define the limits of an administrative agency’s authority. The ‘Definitions’ chapter in Indiana law (IC 4-31-2) does not include a ‘jurisdiction’ definition because the entirety of the law is simply a definition of jurisdiction in and of itself. Yet, somehow the IHRC’s current interpretation of this authorizing statute leads to such a definition as “the state of Indiana.” Had the Indiana legislature felt it was necessary to specifically define the IHRC’s geographical jurisdiction, they would have.

Second, ‘IC 4-31 Pari-Mutuel Wagering On Horse Racing’ is not the only aspect of Indiana law that addresses horse racing in Indiana. However, IC 4-31 is the only ‘Article’ that gives the IHRC any authority over horse racing and more specifically “pari-mutuel” horse racing. The Indiana legislature was very

specific in IC 4-31-1-1 which provides that the applicability of the law "does not apply to horse racing meetings at which pari-mutuel wagering is not permitted." By that statutory pronouncement alone, the application of the IHRC's jurisdiction cannot be the entire State of Indiana and the limits the IHRC's authority. By the wording of IC 4-31-1-1, the Indiana legislature defined the jurisdiction of the IHRC to only horse racing meetings at which pari-mutuel wagering is permitted which doesn't take place broadly across the entire state of Indiana, only at race tracks during recognized meetings.

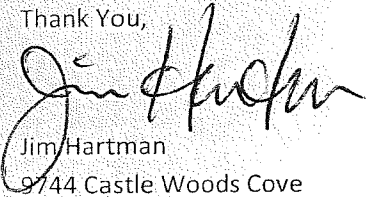
The Indiana legislature in 'IC 15-19-3 Regulation of Horse Racing' grants no authority to the IHRC over other types of horse racing or locations within Indiana. The only exception would be the legislative intent expressed in 'IC 4-31-5.5 Satellite Facilities,' which provides that the IHRC's jurisdiction is actually only over locations WITHIN the state that provide pari-mutuel wagering on live horse racing and those off-track simulcasting locations that can also provide pari-mutuel wagering on horse racing on races in Indiana and around the country. Therefore, by statute, the IHRC's jurisdiction is defined as being only at Indiana race tracks for recognized meets and at all licensed OTB's, and not beyond.

Third, the authority line in the current versions of 71 IAC 1.5-1-50 and 71 IAC 1-1-52 claim that IC 4-31-3-9 gives the IHRC the authority to create a jurisdiction definition that encompasses the entire state. According to Indiana statute, an administrative agency is required to cite from where they get their rulemaking authority for each administrative rule. In reviewing IC 4-31-3-9, the only possible portion of this statute that provides the IHRC discretionary rulemaking authority is IC 4-31-3-9(a)(1)(H) which states, "any other regulation that the commission determines is in the public interest in the **conduct of recognized meetings** and wagering on horse racing in Indiana." What the law actually allows for is rulemaking for recognized race meetings and places where people can wager on horse racing which is a very limited definition when compared to the IHRC's 'entire state of Indiana' claim. Indiana statutes only provide for the IHRC's discretionary rulemaking, and therefore, exercise of authority at the two tracks and at all licensed OTB's.

Fourth, statutory construction is a set of interpretation guidelines established by courts that apply to laws and to administrative rules. Statutory construction does not allow for any interpretation of a law or administrative rule that would lead to an absurd result. Yet, the IHRC's expanded definition of jurisdiction as the entire state can lead to an absurd result.

Indiana statute, through IC 4-31-13-1(a)(3), allows the IHRC to "rule off" a person from a race track "if necessary in the public interest to maintain proper control over recognized meetings." The IHRC expands upon this authority in "71 IAC 2-10-1 Exclusion of patrons and licensed and unlicensed persons." In this administrative rule, the IHRC concludes that their authority allows for "exclusions under this section shall be for all of the premises under the regulatory jurisdiction of the commission, including satellite facilities." Given the current definitions of jurisdiction, the IHRC's own administrative rule gives them the ability to exclude someone from their "regulatory jurisdiction" which is defined as the entire state of Indiana. This, of course, is absolutely absurd that the IHRC can rule someone off and exclude them from the entire state of Indiana.

Thank You,

A handwritten signature in black ink, appearing to read "Jim Hartman". The signature is written in a cursive style with a large initial "J".

Jim Hartman

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**Public Comments – Readoption of 71 IAC 10-1-1, 71 IAC 10-1-2, 71 IAC 10-2-1, 71 IAC 10-2-2, 71 IAC 10-2-4, 71 IAC 10-2-5, 71 IAC 10-2-6, 71 IAC 10-2-7, 71 IAC 10-2-8, 71 IAC 10-2-8.1, 71 IAC 10-2-9, 71 IAC 10-2-10, 71 IAC 10-3-1, 71 IAC 10-3-2, 71 IAC 10-3-3, 71 IAC 10-3-4, 71 IAC 10-3-5, 71 IAC 10-3-6, 71 IAC 10-3-7, 71 IAC 10-3-8, 71 IAC 10-3-9, 71 IAC 10-3-10, 71 IAC 10-3-11, 71 IAC 10-3-12, 71 IAC 10-3-13, 71 IAC 10-3-14, 71 IAC 10-3-15, 71 IAC 10-3-16, 71 IAC 10-3-17, 71 IAC 10-3-18, 71 IAC 10-3-19, 71 IAC 10-3-20, 71 IAC 10-3-21**

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Given the Indiana Horse Racing Commission's (IHRC) past history of exclusively using the emergency rulemaking process to promulgate administrative rules, the public interest would be served by a more extensive review of the administrative rules in 71 IAC 10, including a review for statutory authority and for statutory compliance. Effectively, 71 IAC 10 creates a complicated and parallel system of due process which in many instances is beyond what is authorized by 'IC 4-31 Pari-Mutuel Wagering on Horse Racing.' There are numerous administrative rules in this article that do not avoid an unnecessary duplication of aspects of 'IC 4-21.5 Administrative Orders and Procedures' (AOPA) and 'IC 4-31 Pari-Mutuel Wagering on Horse Racing' as required by IC 4-22-2-19.5(a)(4).

Most importantly, the IHRC has a statutory requirement to follow 'IC 4-21.5 Administrative Orders and Procedures,' yet has created '71 IAC 10 Due Process and Disciplinary Action' which in many cases circumvents IC 4-21.5 because it is not a word-for-word duplication. The applicability of AOPA in IC 4-21.5 is as follows:

**IC 4-21.5-2-3**

**Application of law**

Sec. 3. This article applies to an agency, except to the extent that a statute clearly and specifically provides otherwise. This article applies (to the extent that a statute other than this article specifically applies this article) to a class of otherwise exempt orders or one (1) or more stages of an otherwise exempt proceeding.

*As added by P.L.18-1986, SEC.1.*

The IHRC, being an agency without exemption under Indiana law, is required to follow AOPA, not create its own system of adjudication as in 71 IAC 10. The IHRC only has expressed authority for rulemaking regarding administrative orders and procedures in limited circumstances within IC 4-21.5. Rulemaking authority is explicitly stated in IC 4-21.5-3-8.5 regarding sharing an administrative law judge with another agency; IC 4-21.5-3-34(b) regarding informal settlement procedures; IC 4-21.5-3-35 which allows for adding procedural rights; and IC 4-21.5-3.5 regarding mediation. The IHRC has not established any administrative rules within these authorized areas. This brings into question, the IHRC's rulemaking authority which is expressed as IC 4-31-3-9 for each administrative rule in 71 IAC 10.