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**NEW JERSEY RACING COMMISSION
Off-Track Wagering and Account Wagering
Proposed Readoption: N.J.A.C. 13:74**

Authorized By: New Jersey Racing Commission, Frank Zanzuccki,
Executive Director.

Authority: N.J.S.A. 5:5-30 and 5:5-127 et seq.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2014-181.

Submit written comments by December 19, 2014, to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1.c, N.J.A.C. 13:74 is scheduled to expire on March 19, 2015. These rules have been reviewed pursuant to Executive Order No. 66 (1978) and the New Jersey Racing Commission (Racing Commission or Commission) finds them to continue to be reasonable, necessary, and effective for the purposes for which they were originally promulgated, namely, to effectuate the purposes of the Off-Track and Account Wagering Act (Act), N.J.S.A. 5:5-127 et seq., which became effective in 2002. These purposes include the licensure and establishment of no more than 15 off-track wagering facilities at which pari-mutuel wagering could be conducted on live and simulcast horse races by residents of this State, as well as the licensure establishment of an account wagering system whereby State resident account holders could establish multi-day wagering accounts through which pari-mutuel wagering by telephone, computer or other electronic means, as approved by the Commission, could occur on horse race events.

N.J.A.C. 13:74 generally establishes the rules governing off-track wagering and account wagering. As of the time of this proposed readoption, the account wagering license and five off-track wagering facility licenses, of the permissible maximum of 15 off-track wagering licenses, have been issued by the Racing Commission. The license for the account wagering system is held by the New Jersey Sports & Exposition Authority (Authority). On its behalf, as authorized by the Racing

Commission pursuant to N.J.A.C. 13:74-4.2, the account wagering system is operated by a management company known as Darby Development, LLC. As further authorized by the Racing Commission, pursuant to and in accordance with N.J.A.C. 13:74-4.1, the Authority has assigned or transferred each of the five issued off-track wagering licenses amongst the racetrack permit holder parties to the off-track wagering participation agreement, which participation agreement is defined at N.J.A.C. 13:74-1.1. These licenses were transferred by the Authority in compliance with the terms of the off-track wagering participation agreement, or in connection with the Authority's leasing of its two racetrack premises (Monmouth Park and the Meadowlands Racetrack, now known as the New Meadowlands Racetrack) to entities which joined the participation agreement as racetrack permit holder parties, which license transfers were also consistent with the terms of the participation agreement. Accordingly, the five licenses for the presently operational off-track wagering facilities are held indirectly, through intermediary companies, by the following racetrack permit holders: Greenwood ACRA, Inc., which holds the racetrack permit (thoroughbred) for the Atlantic City Race Course, and indirectly holds the license for the Vineland City off-track wagering facility; FR Park Racing, L.P., which holds two racetrack permits (standardbred) for the Freehold Raceway, and indirectly holds the licenses for both the Toms River Township and Gloucester Township off-track wagering facilities; the New Jersey Thoroughbred Horsemen's Association Inc., which holds the racetrack permit (thoroughbred) for Monmouth Park and leases the related premises from the Authority, and which also holds the racetrack permit to conduct thoroughbred racing at the New Meadowlands Racetrack facility, and indirectly holds the license for the Woodbridge Township off-track wagering facility; and New Meadowlands Racetrack, LLC, which holds the racetrack permit (standardbred) for the New Meadowlands Racetrack and leases the related premises from the Authority, and indirectly holds the license for the Bayonne City off-track wagering facility.

N.J.A.C. 13:74, as and where appropriate, references other existing rules of the Racing Commission. Those rules consist of N.J.A.C. 13:70, 13:71, 13:72, and 13:74A. N.J.A.C. 13:70, Horse Racing, consists of the Commission's rules governing the conduct of thoroughbred racing in this State. N.J.A.C. 13:71, Harness Racing, consists of the Commission's rules governing harness or standardbred racing in this State. N.J.A.C. 13:72, Casino Simulcasting, consists of the Commission's rules governing the conduct of casino simulcasting in this State. The Racing Commission regulates casino simulcasting jointly with the New Jersey Division of Gaming Enforcement, whose counterpart rules concerning casino simulcasting appear at N.J.A.C. 13:69M. N.J.A.C. 13:74A, Self-Exclusion List, consists of the Commission's rules governing the self-exclusion list maintained by the Commission consisting of individuals who have complied with the application procedure set forth therein to have their names voluntarily placed on this list, which will then result in their exclusion from entry into permitted racetracks and licensed off-track wagering facilities and from opening or maintaining a wagering account with the account wagering system. The Commission also has rules, not referenced within these rules proposed for readoption, which appear at N.J.A.C. 13:73 and 13:74B. These rules relate to workers' compensation insurance coverage for horse racing industry employees and a "Pilot Program" (authorizing wagering on horse races through electronic wagering terminals located in a limited number of eligible taverns, restaurants, and similar venues), respectively.

N.J.A.C. 13:74 contains 12 subchapters. Subchapter 1 sets forth general provisions, which include definitions and generally provides that, except as provided therein and otherwise provided in the Act, the conduct of pari-mutuel wagering in off-track wagering facilities, or in connection with account wagering, shall be subject to the rules of the Racing Commission. Additionally, Subchapter 1 sets forth provisions cross-referencing other rules in this chapter applicable to horsemen's organizations that also hold a permit to conduct a race meeting at a racetrack in New Jersey.

Subchapter 2 addresses the application procedure for an initial one-year off-track wagering license, and any renewals of that license. Included with this subchapter are rules setting forth prerequisites and procedures for the grant of an initial off-track wagering license to the Authority, a horsemen's organization, or a well-suited entity. Also

included are benchmarks for determining whether a permit holder has made progress toward establishing its share of off-track wagering facilities and requirements applicable to deposits, bonds, or letters of credit. Finally, Subchapter 2 sets forth benchmarks for the determination of substantial progress in establishing an off-track wagering facility and for the establishment of an off-track wagering facility by a well-suited entity.

Subchapter 3 addresses the application procedure for an initial one-year account wagering license, and the renewal of that license.

Subchapter 4 addresses the prerequisites and procedures for the assignment or transfer of an off-track wagering license or an account wagering license, as well as the operational aspects of both the off-track wagering and account wagering systems.

Subchapter 5 addresses the licensing of those persons and entities involved in off-track and account wagering required to be licensed, penalties for violations of the Commission's rules, and the hearing process for determining whether violations have occurred.

Subchapter 6 addresses standards for off-track wagering facilities which include requirements such as square footage, safety requirements, and the display of odds. This subchapter also addresses ticket sales, refunds, expiration of tickets, testing of equipment, complaints, and persons prohibited at off-track wagering facilities.

Subchapter 7 addresses standards for the account wagering system, which include restrictions on placing and accepting account wagers, credits, debits, cancellations, and closure of the account wagering system. This subchapter also addresses the requirements, functions, and minimum standards of operation for the phone bank facility which must be located in this State, the testing of equipment and software, the facilities at or through which an account holder may place wagers, the race information that must be available, and notice requirements. Finally, this subchapter addresses fees, the disbursement of proceeds, dormant accounts, records maintenance, disputes, complaints, and persons prohibited from having or maintaining a wagering account.

Subchapter 8 addresses certain requirements concerning the conduct of both off-track wagering and account wagering such as requirements for the hub facility, receipt of races from in-State sending tracks and out-of-State tracks, the formation of various pari-mutuel pools for in-State tracks and out-of-State tracks, the formation of inter-state common pools, and agreements with sending tracks.

Subchapter 9 addresses minimum standards for the in-State hub facility including the presence of a Supervisor of Mutuels, internal control procedures, testing of equipment and software, mechanical breakdowns, overpays, and transmission failure.

Subchapter 10 addresses assessment formulas for racing costs and for costs related to the prevention, education, and treatment programs for the benefit of compulsive gaming.

Subchapter 11 addresses Commission access to and presence at off-track wagering facilities and premises where account wagering is directly or indirectly conducted. This subchapter requires unrestricted access for the Commission and its representatives as well as the provision of parking space and office space. This subchapter also addresses prohibited affiliations by Commission employees or appointees.

Subchapter 12 references the Commission's rules applicable to the Self-Exclusion List at N.J.A.C. 13:74A, which allow individuals to voluntarily place themselves on a list of persons to be excluded from racetracks, explains that these rules are applicable to off-track wagering facilities and the opening or maintenance of a wagering account, and incorporates the rules in N.J.A.C. 13:74A by reference.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The establishment of off-track wagering and account wagering in this State has resulted in an increase in the number of persons who choose to participate in legalized horse race wagering in New Jersey. It has also resulted in a net increase in the amount of wagering on horse racing in this State. Although a maximum of 15 such facilities is authorized by the Act, the total number of authorized off-track wagering facilities that will be applied for and established is unknown. As of August 15, 2014, there

are five operating facilities in the State, and the account wagering system continues to be operational. Although social impacts have resulted from such initiatives, it must be noted that the resulting social impacts are the result of decisions made by the Legislature to authorize these activities and not the promulgation or proposed re-adoption of these rules.

Certain rules in this chapter require that a portion of the funds collected as a result of wagering at off-track wagering facilities, or through the account wagering system, accrue to the benefit of horse breeding and development in New Jersey. In a similar vein, certain of the funds derived from such wagering accrues to the benefit of backstretch benevolence, a program administered by the Commission that benefits backstretch workers at racetracks and other facilities under the Commission's jurisdiction. Also important for the promotion of the sport of horse racing is that certain funds from off-track and account wagering are allotted to increase purse monies and programs designed to aid horsemen in New Jersey. For these reasons, as well as the fact that these forms of wagering provide a recreational opportunity for those who wish to participate, there will be a beneficial social impact.

The re-adoption of these rules will promote the economic future of the horse racing industry in this State and, consequently, the vendor or ancillary services that support the existence of horse racing in this State. The implementation of off-track wagering and the facilities that have been constructed thus far has resulted in jobs for State residents, created additional recreational opportunities for New Jersey residents, and increased commerce and contracts for services associated with the operation of an off-track wagering facility. Additional off-track wagering facilities, considering that only five of the 15 permitted by law are licensed and operational, will likely result in an increase of these benefits. The implementation of the account wagering system has had similar positive impacts. Additionally, the re-adoption of these rules will continue to advance the public interest in helping to preserve the State's open spaces because funds generated by off-track wagering and account wagering, which benefit live racing purses in this State, and encourage the existence and maintenance of farmlands and facilities where race horses are bred and raised.

As with any expansion of legalized gaming, a potential is presented for negative social implications. Through the application process for the five existing off-track wagering facilities, the Racing Commission has learned that, while some New Jersey residents support the existence of such facilities in their communities, others residents oppose the existence of off-track wagering facilities on concerns that include an increase in gambling, increased traffic, and a potential for increased crime. The Act, through its stringent requirements, which include that the Racing Commission regulates these areas, seeks to limit the potential for such negative social implications. Moreover, the Act requires that certain funds be allocated to the Department of Health for the prevention, education, and treatment of compulsive gamblers, thereby further reducing the impact of the potentially negative implications. The Racing Commission believes that the requirements of the Act, and the requirements of these rules of the Commission proposed for re-adoption, sufficiently reduce the potential for such negative adverse social implications.

Economic Impact

The total economic impact of these rules proposed for re-adoption cannot accurately be estimated. However, several identifiable economic ramifications result from account wagering and off-track wagering.

Each newly proposed off-track wagering facility results in an economic impact for those entities applying for licenses to operate it as they must submit non-refundable filing fees with each application for an initial off-track wagering license. Additionally, the application process for an initial off-track wagering license necessitates that a Racing Commission investigation be conducted, that a public hearing be held, and the costs of each are ultimately borne by the applicant. Moreover, since an off-track wagering license is only valid for one calendar year, renewal license applications and their accompanying non-refundable renewal license fees must be paid by existing licensees.

In establishing any off-track wagering facility, as well as maintaining the account wagering system, there are substantial costs incurred. While the applicant who receives an off-track wagering license may choose a

premises for the facility that already exists, as was done in the case of four of the five currently operating facilities, such an existing facility still needs to be renovated and outfitted to meet the requirements set forth in these rules. In order to complete such renovations, the licensee must hire construction companies and other vendors, thereby creating employment opportunities for New Jersey residents. In a similar vein, as in the case of the operational Bayonne City off-track wagering facility, building an off-track wagering facility from the ground up also requires that construction companies and similar vendors involved in the development of the premises be contracted with, which requires the employment of construction workers, electricians, plumbers, masons, technological firms, etc.

The rules also require the licensees to have written internal control procedures concerning the establishment and operation of the off-track wagering facility and account wagering system. There may be ongoing costs incurred in training staff on the implementation of these internal control procedures, as well as costs associated with the updating of such procedures. Further, individuals and vendors who wish to work at an off-track wagering facility, or perform work for or service the account wagering system, will be required to obtain a Commission-issued license. Such licenses must be renewed annually and the costs range from \$10.00 to \$50.00 each.

Once the off-track wagering facilities are completed and ready for operation, personnel need to be employed to operate the facility. Further, vendors will need to be contracted with for services such as food and beverage services, custodial services and equipment services. These additional employment opportunities should result in a positive economic impact on the residents of the municipality in which the facility is located. Additionally, the residents of the municipality in which the facility is located may benefit from revenues or fees collected from the facility, which would include any permit fees associated with the construction phase. Moreover, the Act requires that applicants for an initial off-track wagering license who are also the owners of the land, building, and premises of the proposed off-track wagering facility, reach an agreement with the governing body of the local municipality where the proposed facility will be located that establishes the amount of monies the applicants must pay to the municipality in-lieu-of taxes in each of the first five years during the operation of the off-track wagering facility. It bears noting that, in such case, the payment-in-lieu-of-taxes may not provide the maximum property tax payment to the municipality, and depending on the prior occupancy status and alternate uses of the premises, may result in a loss of revenue to the municipality.

Permit holders, as the license holders of the off-track wagering facilities, their successors in interest, and horsemen's organizations should also receive positive economic benefits from the re-adoption of these rules. The off-track wagering licensees, as well as the account wagering licensee and the State's horsemen's organizations, derive revenue related benefits from the operation of such businesses. Additionally, the permit holders indirectly benefit as monies, derived from wagering through these two systems, are devoted to live race purses. Larger purses benefit both the racetracks and the horsemen's groups by attracting more horses, and potentially better horses, which can in turn result in greater racetrack live race offerings, attendance, and increased horse race wagering. Since larger purses can enhance a permit holder's live race offering in this manner, ancillary industries to racing which benefit from a larger horse population, such as feed companies, large animal veterinarians, hay producers, and blacksmiths, may in such case experience additional business. Moreover, monies wagered through off-track wagering facilities and the account wagering system achieves a positive economic impact to certain persons employed in the racing industry because a portion of the revenue is allocated for backstretch benevolence, providing programs and assistance for the individuals who are part of the industry's backstretch community. Of course, persons who wager through the account wagering system, or at off-track wagering facilities, may experience a positive or negative economic impact dependent on the outcome of the collective wagers they choose to make.

The rules proposed for re-adoption also require that the account wagering licensee and off-track wagering licensees utilize an in-State hub facility. Although this requirement benefits the hub facility directly, because this requirement results in business for it, the hub facility incurs

costs that include costs related to maintaining its facility, hardware and software costs, and the regulatory costs of the Racing Commission Supervisor of Mutuels. To the extent such costs are off-set by billings to the account wagering licensee and off-track wagering licensees as part of the services provided to each by the hub facility, a negative economic impact results to such licensees. Additionally, the operator of the hub facility is required to establish internal control procedures associated with operating both systems, which may result in additional operating and administrative costs.

The permit holders and successors in interest will incur costs, as mandated by these rules proposed for re-adoption, as a result of the requirement that they pay costs associated with the regulation of racing. Additionally, it is possible that these costs may increase as the continued build-out of the off-track wagering facilities may result in an increase in costs associated with the Commission's regulatory costs. However, it must be noted that these costs are lessened somewhat by provisions of N.J.A.C. 13:74-10.1(b), which allocates certain other racing related revenues to regulatory costs, which revenues will likely increase along with any such build-out of off-track wagering facilities.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for re-adoption are authorized by the provisions of the Off-Track and Account Wagering Act, P.L. 2001, c. 199, and are not subject to any Federal requirements or standards.

Jobs Impact

As noted earlier, the rules proposed for re-adoption may result in employment opportunities for New Jersey residents. The opening of additional off-track wagering facilities will allow for the creation of new job opportunities, and the continued operation of current off-track wagering facilities and the account wagering system will allow for a continuation of jobs already in existence. Although the locations for the remaining available off-track wagering licenses (10) has yet to be determined, and the specific geographic locations of these additional employment opportunities is consequently unknown, the impact of the current facilities evidences that employment opportunities will be created for residents of this State. Additionally, the continued operation of the account wagering system has the potential to create employment opportunities through repair and replacement of system parts and services necessary for its orderly operation.

Agriculture Industry Impact

The rules proposed for re-adoption are likely to have a positive impact on the agriculture industry. The horse racing industry requires farms to breed, raise, board, exercise, and train racehorses, directly impacting the agriculture industry and promoting open space considerations. Since the rules proposed for re-adoption require that certain funds collected through off-track wagering and account wagering are to be allocated for horse breeding and development, those funds directly benefit the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for re-adoption may impose reporting or recordkeeping requirements on limited small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq. However, it is important to note that any impact on small businesses, which may result from these rules, is due to the Legislature's decision to authorize the activities incident thereto, and not the re-adoption of these rules. With respect to the permit holders who currently have the rights to establish, license, and operate off-track wagering facilities, none qualify as a small business under the Regulatory Flexibility Act as each has over 100 full-time employees and therefore, no regulatory flexibility analysis is required as to the permit holders.

Additionally, the rules proposed for re-adoption will likely expand the opportunities for vendors, who may operate as small businesses, who furnish goods and services to an off-track wagering facility. For example, the rules requires that, unless a vendor is able to obtain an exemption from the Commission pursuant to the procedure as set forth in the rules, the vendor must obtain a license issued by the Racing Commission if that vendor maintains a presence at the premises of an off-track wagering facility or account wagering licensee, or where they supply racing-related

or pari-mutuel related equipment, supplies, information, or data to either licensee. Moreover, in a significantly lesser number, other vendors who transact more than \$10,000 annually with an off-track wagering licensee might be required to file an application for a vendor's license. However, these costs may be mitigated in the event the vendor is already licensed by the Commission for performing services substantially similar to those which it is contracting for in connection with off-track wagering or account wagering, because in such case an endorsement to the existing license at no cost is the only requirement. These requirements, in addition to being amply warranted, are necessary to ensure the integrity of off-track wagering.

The rules also impose recordkeeping and reporting requirements on the hub facility utilized by both the account wagering system licensee and the off-track wagering licensees. Presently, there is one licensed and operational hub facility in New Jersey servicing all New Jersey racing outlets, including the account wagering system and off-track wagering facilities. Should a hub facility be used that has not yet been licensed, it would be required to be licensed and pay the licensing fee. Additionally, in the event off-track wagering or the account wagering system was serviced in-whole or in-part by any new hub facility, as is the case with the existing hub facility, that hub facility would be responsible for the regulatory costs of the Commission's Supervisor of Mutuels assigned to the facility.

A hub facility houses the totalisator and generates the reports that are to be utilized to reconcile simulcast wagers with sending or host tracks and calculates payments due to the Commission. The hub facility also performs integral functions, as overseeing the operations of the totalisator and conducting manual merges of pari-mutuel pool information in the event of a transmission failure. For these reasons, the licensing requirements and other controls imposed upon a hub facility are essential to maintaining the integrity, fiscal soundness, and technical reliability of off-track wagering.

It is not anticipated that any small businesses will have to employ professional services in order to comply with these rules proposed for re-adoption.

Housing Affordability Impact Analysis

The rules proposed for re-adoption are unlikely to impact affordable housing in New Jersey and would not evoke a change in average costs associated with housing because the rules proposed for re-adoption have to do with the establishment, operation, and regulation of off-track wagering facilities and the account wagering system. The rules proposed for re-adoption regulate wagering as concerns the sport of horse racing and have no impact on the affordability of housing in New Jersey.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption are not likely to have any impact on housing production in Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan. The rules proposed for re-adoption regulate wagering as concerns the sport of horse racing.

Full text of the rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:74.