

Federal standards apply to cosmetic contact lenses, not medicated contact lenses.

Full text of the adoption follows:

13:38-2.4 Requirements for issuing prescriptions and dispensing of medications

(a)-(c) (No change.)

(d) In addition to the provisions of (a) and (b) above, optometrists certified to prescribe pharmaceutical agents pursuant to the provisions of N.J.A.C. 13:38-4 and N.J.S.A. 45:12-9.8 through 9.13 shall comply with the following:

1. (No change.)

2. The optometrist shall not dispense a prescription as provided for in N.J.S.A. 45:12-1 et seq., in an amount exceeding a 72-hour supply unless the prescription is dispensed at no charge to the patient.

i. Notwithstanding (d)2 above, an optometrist may dispense a pharmaceutical agent, as provided for in N.J.S.A. 45:12-1 et seq., that is delivered to the eye through a contact lens and may dispense such pharmaceutical agent at a charge to the patient.

3. (No change.)

(e)-(k) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Off-Track Wagering and Account Wagering

Adopted Amendments: N.J.A.C. 13:74-1.1 and 2.4

Adopted New Rules: N.J.A.C. 13:74-1.3, 2.7, and 2.8

Proposed: November 5, 2012 at 44 N.J.R. 2455(a).

Adopted: January 16, 2013 by the New Jersey Racing Commission, Frank Zanzuccki, Executive Director.

Filed: January 28, 2013 as R.2013 d.042, **without change**.

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

Effective Date: March 4, 2013.

Expiration Date: September 20, 2014.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments and new rules are authorized by the provisions of the Off-Track and Account Wagering Act, P.L. 2001, c. 199, as amended by P.L. 2011, c. 205, and are not subject to any Federal requirements or standards.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

13:74-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...
 "Share" means the number of off-track wagering facilities allocated to the Authority or a permit holder in the participation agreement for off-track wagering required by N.J.S.A. 5:5-130(a), which has been reviewed and approved by the Commission and Attorney General pursuant to N.J.S.A. 5:5-130(b), minus any off-track wagering facility or facilities that are no longer within the number allocated to the Authority or permit holder pursuant to the operation of P.L. 2011, c. 205 (N.J.S.A. 5:5-130(b)(1)).
 ...

13:74-1.3 Horsemen's organizations

(a) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall make application for an initial off-track wagering license in its capacity as permit holder pursuant to N.J.A.C. 13:74-2.1. A horsemen's organization which obtained the right

pursuant to N.J.S.A. 5:5-130(b)(1) to seek licensure of an off-track wagering facility no longer part of a permit holder's share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall make application for an initial off-track wagering license in accordance with N.J.A.C. 13:74-2.2.

(b) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall make application for the renewal of an off-track wagering license in its capacity as permit holder in accordance with N.J.A.C. 13:74-2.3(h)1 and 2. A horsemen's organization which obtained the right pursuant to N.J.S.A. 5:5-130(b)(1) to seek licensure of an off-track wagering facility no longer part of a permit holder's share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall make application for the renewal of an off-track wagering license in accordance with N.J.A.C. 13:74-2.3(h)3 and 4.

(c) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.4(b) and 2.7(a) applicable to permit holders. A horsemen's organization which obtained the right pursuant to N.J.S.A. 5:5-130(b)(1) to seek licensure of an off-track wagering facility no longer part of a permit holder's share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.4(a) and 2.7(b).

(d) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall, if applicable, comply with the deposit requirements in N.J.A.C. 13:74-2.6(b)2 and the retention of eligibility requirements in N.J.A.C. 13:74-2.6(c) applicable to permit holders. A horsemen's organization which obtained the right pursuant to N.J.S.A. 5:5-130(b)(1) to seek licensure of an off-track wagering facility no longer part of a permit holder's share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall, if applicable, comply with the return of allocation requirements in N.J.A.C. 13:74-2.6(e)1 and the retention of eligibility requirements in N.J.A.C. 13:74-2.6(c)2.

(e) If a horsemen's organization which holds a permit to conduct a race meet at a New Jersey racetrack fails to retain its rights to an off-track wagering facility in accordance with the requirements of P.L. 2011, c. 205, the off-track wagering facility shall not be made available to that horsemen's organization to be established. Under these circumstances, any such off-track wagering facility shall be made available to be established by one or both of the other two horsemen's organizations within this State. If the other horsemen's organizations do not file an application to obtain a license for the off-track wagering facility in accordance with N.J.S.A. 5:5-130(b)(2) and the Commission's rules, the off-track wagering facility shall be made available to be established by a well-suited entity pursuant to N.J.S.A. 5:5-130(c).

13:74-2.4 Benchmarks for the determination of progress applicable to the establishment of an off-track wagering facility prior to its operation

(a) An application for the grant of an initial off-track wagering license filed by a horsemen's organization pursuant to N.J.S.A. 5:5-130(b)(2) which has not received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1) shall not be considered by the Commission unless the application is filed within a reasonable time frame from the date the horsemen's organization became eligible to apply for an initial license. For purposes of this section, the phrase "reasonable time frame" shall mean that any such application must be filed with the Commission within one year of the date that the horsemen's organization became eligible to apply for the particular initial license. Additionally, the filed application shall, within one year of the date that the horsemen's organization became eligible to apply for the particular initial license, be determined to be complete by the Racing Commission's Executive Director. Where an application is not filed within one year of the date that the horsemen's organization became eligible to apply for an initial license, or where such application is filed within such time frame but is determined not to be complete by the Racing Commission's Executive Director within that same time period, the application shall be denied by the Commission consistent with (d) below.

1. In order for its application to be found to be complete, and in addition to the other requirements of this chapter, the horsemen's organization shall demonstrate through its application that it has met the following benchmarks:

i. It has identified a suitable location for the proposed off-track wagering facility;

ii. It has entered into an agreement with the governing body of the local municipality within which the proposed off-track wagering facility is to be located establishing the payment in-lieu-of taxes the Authority or the permit holder must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1; and

iii. The horsemen's organization can demonstrate that it has met one of the following benchmarks, it has:

- (1) Obtained fee title ownership of the proposed property;
- (2) Obtained a leasehold interest in the proposed property for a period of not less than five years;
- (3) Entered into an option agreement with a property owner to acquire either (a)1iii(1) or (2) above; or
- (4) Executed a letter of intent with the current property holder in sufficient detail to demonstrate the material factors of a purchase or lease or agreement.

2. A horsemen's organization that has become eligible to apply for a license for one or more off-track wagering facilities pursuant to N.J.S.A. 5:5-130(b)(2), which horsemen's organization has not received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1), that has complied with (a) and (a)1 above shall make progress on an annual basis in establishing each of the off-track wagering facilities from the date the organization became eligible to apply. For purposes of this paragraph, make progress on an annual basis shall mean that the horsemen's organization has demonstrated to the satisfaction of the Commission that it has complied with each of the following requirements:

i. Within one year from the date that the application is filed with the Commission, the horsemen's organization shall have:

- (1) Submitted to the Commission all information and documentation required by N.J.A.C. 13:74-2.2;
- (2) Established that the proposed off-track wagering facility is in a suitable location and that the horsemen's organization has:

(A) Obtained fee title ownership of the proposed property or properties; or

(B) Obtained a leasehold interest in the proposed property or properties for a period of not less than five years;

(3) Documented that it has obtained sufficient financial resources to pay for the design, construction, development, and other costs necessary to establish the proposed off-track wagering facility or facilities. The horsemen's organization shall provide to the Commission:

(A) A detailed project development budget informed by a qualified professional design and construction team for each off-track wagering facility. The budget shall include all hard and soft costs associated with the project to bring the off-track wagering facility or facilities into operation and the horsemen's organization shall bear the burden of establishing that the budget is a reasonable, informed, and realistic projection of all applicable costs; and

(B) Documentation that the horsemen's organization has either placed monies into escrow or secured an irrevocable letter of credit in an amount equal to the project development budget which is sufficient to finance the licensure, construction, and commencement of operation of each off-track wagering facility or facilities that is the subject of the application or applications filed pursuant to this section. All committed capital shall be supported by financial statements prepared by a CPA and shall demonstrate the horsemen's organization's commitment of such funds to the establishment of the off-track wagering facility or facilities. Any third-party capital shall be supported by documentation of a fully-executed and binding irrevocable letter of credit; and

(4) Established that the operational capacity and market feasibility of each proposed off-track wagering facility will benefit the horse racing industry in this State. The horsemen's organization shall provide to the Commission:

(A) A third-party market study completed by a qualified firm, which demonstrates the market feasibility of each proposed off-track wagering facility;

(B) A 10-year financial pro forma detailing the projected revenues and expenses of each proposed off-track wagering facility in sufficient detail to support an acceptable market rate of return on the project;

(C) Detailed information on key individuals necessary to operate each proposed off-track wagering facility, which shall demonstrate that the horsemen's organization has the requisite staff to operate the facility or facilities; and

(D) Entered into an agreement, if applicable, with the governing body of the local municipality within which the proposed off-track wagering facility is to be located establishing the payment in-lieu-of taxes the horsemen's organization must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1; and

ii. Within 180 days from the date the application was filed, the horsemen's organization shall have obtained a license for the off-track wagering facility or facilities that were the subject of the application or applications filed pursuant to (a) above; and each off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

3. Notwithstanding (a)1 and 2 above, a horsemen's organization that has received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1) shall comply with the requirements in this paragraph and (a)4 below, obtain the initial license, and make substantial progress in establishing the off-track wagering facility in accordance with N.J.A.C. 13:74-2.7 within one year from the date the funds were allocated to it by the Commission.

4. A horsemen's organization that has become eligible to apply for a license pursuant to N.J.S.A. 5:5-130(b)(2) may seek one extension of no more than six months in length to demonstrate compliance with the requirements of (a)2ii above for not more than one off-track wagering facility to be licensed and fully-operational. The Commission may, in its discretion, grant a horsemen's organization one extension if it determines that the horsemen's organization has made all reasonable efforts to comply with (a)2ii above but it has been precluded from doing so by exigent circumstances beyond its control.

i. The duration of an extension shall be determined by the Commission in its discretion on a case-by-case basis but in no case shall the extension exceed six months.

(b) Commencing on June 28, 2012, the 181st day after the effective date of P.L. 2011, c. 205, a permit holder that has demonstrated progress to the satisfaction of the Commission pursuant to the benchmarks in N.J.A.C. 13:74-2.5 shall be allowed to retain its share of off-track wagering facilities to be established without making a deposit or posting a bond or irrevocable letter of credit as required by N.J.S.A. 5:5-130(b)(1) only if the permit holder demonstrates to the satisfaction of the Commission that it continues to make progress on an annual basis by documenting compliance with each of the following requirements. The following requirements shall commence on June 28, 2012 and continue throughout each consecutive one-year period thereafter until all of the off-track wagering facilities within the permit holder's share are licensed and fully operational as provided below:

1. Within one year from June 28, 2012, the permit holder has filed an application for an initial license for at least one off-track wagering facility within the permit holder's share which application the Commission has determined to be complete and the permit holder, as applicant, shall have complied with each of the following requirements:

- i. The applicant has submitted to the Commission all information and documentation required by N.J.A.C. 13:74-2.1 or 2.2, as applicable;
- ii. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable location and the applicant has:

- (1) Obtained fee title ownership of the proposed property; or
- (2) Obtained a leasehold interest in the proposed property for a period of not less than five years;

iii. The applicant has obtained sufficient financial resources to pay for the design, construction, development and other costs necessary to establish the proposed off-track wagering facility. The applicant shall provide to the Commission:

(1) A detailed project development budget informed by a qualified professional design and construction team. The budget shall include all hard and soft costs associated with the project to bring the off-track wagering facility into operation and the applicant shall bear the burden of establishing that the budget is a reasonable, informed and realistic projection of all applicable costs; and

(2) Documentation that the applicant has either placed monies into escrow or secured an irrevocable letter of credit in an amount equal to the project development budget which is sufficient to finance the licensure, construction and commencement of operation of the off-track wagering facility that is the subject of the application. All committed capital shall be supported by financial statements prepared by a CPA and shall demonstrate the applicant's commitment of such funds to the establishment of the off-track wagering facility. Any third-party capital shall be supported by documentation of a fully-executed and binding irrevocable letter of credit; and

iv. The applicant has demonstrated to the Commission that the operational capacity and market feasibility of the proposed off-track wagering facility will benefit the horse racing industry in this State. The applicant shall provide to the Commission:

(1) A third-party market study completed by a qualified firm, which demonstrates the market feasibility of the proposed off-track wagering facility;

(2) A 10-year financial pro forma detailing the projected revenues and expenses of the proposed off-track wagering facility in sufficient detail to support an acceptable market rate of return on the project;

(3) Detailed information on key individuals necessary to operate the proposed off-track wagering facility, which shall demonstrate that the applicant has the requisite staff to operate the facility; and

(4) It has entered into an agreement with the governing body of the local municipality within which the proposed off-track wagering facility is to be located establishing the payment in-lieu-of taxes the Authority or the permit holder must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1; and

v. On or before December 31, 2013, within two years from the effective date of P.L. 2011, c. 205, the applicant shall have obtained a license for the off-track wagering facility or facilities that were the subject of the application or applications filed pursuant to (b)1 above; and the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

2. If, on or after June 28, 2013, an applicant has not obtained a license or complied with (b)1 above for all of the off-track wagering facilities within its share, the applicant shall file an application pursuant to the requirements of (b)1 above for at least one off-track wagering facility within the permit holder's share, which application the Commission has determined to be complete, and the applicant shall fully comply with each of the requirements set forth above in (b)1i through and including iv above on or before June 28, 2014; and

i. On or before December 31, 2014, within three years from the effective date of P.L. 2011, c. 205, the applicant shall have obtained a license for the off-track wagering facility or facilities that were the subject of the application or applications filed pursuant to (b)2 above; and the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

3. If, on or after June 28, 2014, an applicant has not obtained a license or complied with (b)1 and 2 above for all of the off-track wagering facilities within its share, the applicant shall file an application pursuant to the requirements of (b)1 above for all remaining off-track wagering facilities within the permit holder's share, which application the Commission has determined to be complete, and the applicant shall fully comply with each of the requirements set forth above in (b)1i through and including iv on or before June 28, 2015; and

i. On or before December 31, 2015, within four years from the effective date of P.L. 2011, c. 205, the applicant shall have obtained a license for the off-track wagering facility or facilities that were the subject of the application or applications filed pursuant to (b)3 above; and the off-track wagering facility or facilities shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

(c) An applicant may seek one extension of no more than six months in length to demonstrate compliance with the requirements of either (b)1v, 2i, or 3i above for a maximum of one off-track wagering facility to be licensed and fully-operational. The Commission may, in its discretion, grant an applicant one extension if it determines that the applicant or licensee has made all reasonable efforts to comply with (b)1v, 2i, or 3i above but has been precluded from doing so by exigent circumstances beyond its control.

1. The duration of an extension shall be determined by the Commission in its discretion on a case-by-case basis but in no case shall the extension exceed six months.

(d) The failure of an applicant or licensee to meet the benchmarks in this section shall constitute a basis for the denial of an initial off-track wagering license, the renewal of an off-track wagering license, or the determination that the permit holder shall no longer be allowed to retain its share of off-track wagering facilities to be established because it has failed to continue to make progress on an annual basis as required by N.J.S.A. 5:5-130(b)(1).

13:74-2.7 Benchmarks for the determination of substantial progress applicable to the establishment of an off-track wagering facility prior to its operation

(a) A permit holder that has made a deposit or posted a bond, or irrevocable letter of credit pursuant to N.J.S.A. 5:5-130(b)(1) in connection with an off-track wagering facility in the permit holder's share that remains to be established shall, within one year from the date of making the deposit, or posting the bond, or irrevocable letter of credit, file an application for an initial license pursuant to N.J.A.C. 13:74-2.1, comply with all requirements of the Act and the Commission's rules, obtain the initial license for the off-track wagering facility, and make substantial progress in establishing the off-track wagering facility. A permit holder shall demonstrate to the satisfaction of the Commission that it has made substantial progress through compliance with the following requirements:

1. Within one year from the date of making the deposit, or posting the bond, or irrevocable letter of credit, the permit holder shall obtain all permits required by the municipality where the off-track wagering facility will be located necessary to allow the permit holder to commence construction at the site; and

2. Within two years from the date the permit holder made the deposit, or posted the bond, or irrevocable letter of credit, the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

(b) A horsemen's organization that has received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1) shall, within one year from the date the funds are allocated to it by the Commission, file an application for an initial license pursuant to N.J.A.C. 13:74-2.2, comply with all requirements of the Act and the Commission's rules, obtain the initial license for the off-track wagering facility, and make substantial progress in establishing the off-track wagering facility. A horsemen's organization shall demonstrate to the satisfaction of the Commission that it has made substantial progress through compliance with the following requirements:

1. Within one year from the date the funds are allocated to it by the Commission, the horsemen's organization shall obtain all permits required by the municipality where the off-track wagering facility will be located necessary to allow the horsemen's organization to commence construction at the site; and

2. Within two years from the date the funds are allocated to the horsemen's organization by the Commission, the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

13:74-2.8 Benchmarks for the determination of progress applicable to the establishment of an off-track wagering facility by a well-suited entity prior to its operation

(a) A well-suited entity shall file an application for the grant of an initial off-track wagering license within one year from the date of the Commission's selection of the successful bidder and the Attorney General's approval of that bidder in accordance with N.J.A.C. 13:74-2.2(a)2vi. The filed application shall, within one year of the date that the well-suited entity became eligible to apply for the particular initial license, be determined to be complete by the Racing Commission's Executive Director in accordance with N.J.A.C. 13:74-2.2.

(b) Upon compliance with N.J.A.C. 13:74-2.2, a well-suited entity shall make progress on an annual basis in establishing the off-track wagering facilities from the date the organization became eligible to apply for an off-track wagering license. For purposes of this subsection, make progress on an annual basis shall mean that the well-suited entity has demonstrated to the satisfaction of the Commission that it has complied with each of the following requirements:

1. Within one year from the date that the application is filed with the Commission, the well-suited entity shall have:

i. Submitted to the Commission all information and documentation required by N.J.A.C. 13:74-2.2;

ii. Established that the proposed off-track wagering facility is in a suitable location and that the well-suited entity has:

(1) Obtained fee title ownership of the proposed property; or

(2) Obtained a leasehold interest in the proposed property for a period of not less than five years;

iii. Documented that it has obtained sufficient financial resources to pay for the design, construction, development, and other costs necessary to establish the proposed off-track wagering facility. The well-suited entity shall provide to the Commission:

(1) A detailed project development budget informed by a qualified professional design and construction team for the off-track wagering facility. The budget shall include all hard and soft costs associated with the project to bring the off-track wagering facility into operation and the well-suited entity shall bear the burden of establishing that the budget is a reasonable, informed, and realistic projection of all applicable costs; and

(2) Documentation that the well-suited entity has either placed monies into escrow or secured an irrevocable letter of credit in an amount equal to the project development budget which is sufficient to finance the licensure, construction, and commencement of operation of the off-track wagering facility that is the subject of the application. All committed capital shall be supported by financial statements prepared by a CPA and shall demonstrate the well-suited entity's commitment of such funds to the establishment of the off-track wagering facility. Any third-party capital shall be supported by documentation of a fully-executed and binding irrevocable letter of credit; and

iv. Established that the operational capacity and market feasibility of the proposed off-track wagering facility will benefit the horse racing industry in this State. The well-suited entity shall provide to the Commission:

(1) A third-party market study completed by a qualified firm, which demonstrates the market feasibility of the proposed off-track wagering facility;

(2) A 10-year financial pro forma detailing the projected revenues and expenses of the proposed off-track wagering facility in sufficient detail to support an acceptable market rate of return on the project;

(3) Detailed information on key individuals necessary to operate the proposed off-track wagering facility, which shall demonstrate that the well-suited entity has the requisite staff to operate the facility; and

(4) An agreement, if applicable, with the governing body of the local municipality within which the proposed off-track wagering facility is to be located establishing the payment in-lieu-of taxes the well-suited entity must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1; and

2. Within 180 days from the date the application was filed, the well-suited entity shall have obtained a license for the off-track wagering facility that was the subject of the application and the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

(c) A well-suited entity that has become eligible to apply for a license pursuant to N.J.S.A. 5:5-130(c) may seek one extension of no more than six months in length to demonstrate compliance with the requirements of (b) above. The Commission may, in its discretion, grant a well-suited entity one extension if it determines that the well-suited entity has made all reasonable efforts to comply with (b) above but it has been precluded from doing so by exigent circumstances beyond its control.

1. The duration of an extension shall be determined by the Commission in its discretion on a case-by-case basis but in no case shall the extension exceed six months.