

DEPARTMENT OF LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

1 OFF-TRACK WAGERING AND ACCOUNT WAGERING

Special Adopted Amendments: N.J.A.C. 13:74-1.1, 2.3

Special Adopted New Rules: N.J.A.C. 13:74-2.2, 2.4

Adopted: May 20, 2011 by New Jersey Racing Commission, Frank Zanzuccki, Executive Director

Effective Date: May 23, 2011

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

The amendments and new rules to N.J.A.C. 13:74 in the Off-track and Account Wagering rules are necessary due to recent amendments to the Off-Track and Account Wagering Act, N.J.s.A. 5:5-127 et seq. which were enacted in P.L. 2011, c.26, on February 23, 2011.

The legislation requires that the Racing Commission adopt rules addressing the changes to the Act within three months from the effective date of P.L. 2011, c. 26. The amendments and new rules became effective immediately upon acceptance for filing with the Office of Administrative Law for a period not to exceed 180 days, and will thereafter be proposed to be amended or adopted in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Federal Standards Statement

A Federal standards analysis is not required because the rules of racing are dictated by stature, N.J.S.A. 5:5-22, et seq., and

the adopted rules are not subject to any Federal requirements or standards.

Full text of the special adopted amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:74-1.1 Definitions

...

"Act" means the Off-Track and Account Wagering Act, P.L. 2001, c.199 **as amended**.

...

"Applicant" means the New Jersey Sports and Exposition Authority or another entity that submits an application to the Commission for a license to establish and conduct an off-track wagering facility pursuant to this Act.

...

"Horsemen's organization" means the New Jersey Thoroughbred Horsemen's Association, the Standardbred Breeders' and Owners' Association of New Jersey, the Thoroughbred Breeders' Association of New Jersey or another organization or group representing a majority of horsemen who participate in horse race meetings conducted within this State.

...

"Off-track wagering licensee" means the Authority or its assignee [provided that] **or assignees or another entity to which** the Commission has granted its approval [for the authority] to conduct an off-track wagering facility as provided for in this Act.

...

"Participation agreement" means the written contract **entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26,** that provides for the establishment or implementation of either an off-track wagering facility or facilities or an account wagering system. Each such contract shall set forth the manner in which the off-track wagering facility or facilities or the account wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the Authority and the other eligible participants **subject to the agreement**.

...

"Well-suited entity" means a person, persons, association, corporation, partnership, organization or other entity authorized

to apply for an off-track wagering license pursuant to N.J.S.A. 5:5-130(c) which meets the standards, criteria and qualifications set forth in N.J.A.C. 13:74-2.2 by clear and convincing evidence as determined by the Commission.

13:74-1.2 Rules of the Racing Commission

Except as otherwise provided in the Act or this chapter, [the rules of] racing and 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. These rules shall be applicable to all persons licensed by the Commission and every patron of an off-track wagering facility or of the account wagering system.

SUBCHAPTER 2. APPLICATION FOR INITIAL OFF-TRACK WAGERING LICENSE; APPLICATION FOR RENEWAL OF OFF-TRACK WAGERING LICENSE

13:74-2.1 Prerequisites to and procedures for grant of initial off-track wagering license **to the Authority**

(a) The Authority shall make an application for an initial off-track wagering license on a form prescribed by the Commission, accompanied by a non-refundable filing fee of \$2,500. An initial application, accompanied by the non-refundable filing fee, shall be filed for each off-track wagering facility proposed by the Authority **on behalf of itself or a permit holder or permit holders subject to the participation agreement entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26.**

(b) An application for an initial off-track wagering license shall not be considered complete unless:

1. [The Authority is in compliance with the minimum live race date requirements of the Act;] **The permit holder or permit holders at Monmouth Park and the thoroughbred and standardbred permit holder or permit holders at the Meadowlands Racetrack have scheduled at least the minimum number of live race dates required P.L. 2001, c. 199, as amended, (N.J.S.A. 5:5-156).**

2. The Authority includes within the application a copy of a fully executed participation agreement **that is consistent with current law**, the terms of which encompass the license period, which it has entered into with all parties or successors in interest that held a valid race permit in 2000 (who are each in compliance with said permit, who are each in compliance with any minimum live race dates requirements of

the Act, and who each are in good standing with the Racing Commission and State);

3. (No change.)

4. If the Authority or a permit holder subject to the participation agreement is the owner of the land, building, and premises of the proposed off-track wagering facility, it shall include a statement evidencing that it has reached 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.

5. The Authority demonstrates through the application that the requirements of the Act have been satisfied [, including a statement evidencing that the governing body of the local municipality within which the proposed off-track wagering facility is to be sited has not issued a resolution disapproving the proposed off-track wagering facility]; and

[5]6. The Authority has completely answered each question within the application and complied with the requirements of this section.

(c) The initial application form, as prescribed by the Commission, shall include disclosure requirements concerning, but not limited to, the physical plan, [and] location **and the proposed hours of operation** of the proposed off-track wagering facility subject of the specific application including the space relationship between wagering and non-wagering related amenities, the number of jobs expected to be created at the proposed facility, the gross revenues expected to be generated by the facility, the fire evacuation plan for the proposed facility, the type of food and beverages to be available **which shall include provisions for first-class dining** and, if alcoholic beverages are to be offered at the proposed facility, **documentation that** [whether] the requirements of the Act, **as amended by P.L. 2011, c. 26**, have been satisfied. [, and the proposed hours of operation of the off-track wagering facility]

(d) The initial application form shall have attached a written internal controls procedure which shall set forth the procedures to be implemented to effectively operate and manage the proposed off-track wager facility, and the procedures to be implemented to effectively maintain the integrity of wagering and the proceeds from wagering within the proposed off-track wagering facility. The internal control procedures shall include a procedure to foster and insure that the off-track wagering licensee complies with the requirement of the Act, which creates a right of first refusal as

to certain individuals for certain employment opportunities within off-track wagering facilities.

(e) The initial application form shall be accompanied by a certification, signed and dated by a high managerial agent of the Authority, attesting that the disclosures within the application and within its attachments are true, accurate and complete.

(f) The initial application for an off-track wagering facility may be filed with the Commission at any time following the effective date of the Act, and any initial license granted pursuant to such application shall be for a period of one year.

(g) In evaluating an application for an off-track wagering license, the Commission shall consider the proximity of the applicant's proposed site to other planned or existing off-track wagering facilities and to racetracks in this State. If, in the opinion of the Commission, the establishment of the facility at its proposed location would be inimical to the interests of another planned or established off-track wagering facility, or to a State racetrack, the Commission shall reject the application and require the applicant to consider alternative sites for the proposed facility.

(h) In evaluating an application for an off-track wagering license filed by the Authority on behalf of itself or on behalf of a permit holder subject to the participation agreement entered into prior to the effective date of P.L. 2011, c. 26., the Commission shall determine whether the Authority or the permit holder, respectively, has made progress toward establishing its share of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 since the signing of the participation agreement.

1. Any of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 that has not received a license pursuant to N.J.S.A. 5:5-133 on or before January 1, 2012 shall no longer be considered as part of the Authority's or respective permit holder's share and shall be available to be established by a horsemen's organization in this State as provided by N.J.S.A. 5:5-130(b)(2).

2. Notwithstanding paragraph (h)(1) above, the Commission may allow the Authority or permit holder, respectively, to retain the rights to establish an off-track wagering facility within its share after January 1, 2012 if the Commission finds that the Authority or permit holder is making progress as of that date toward obtaining an off-track wagering license and establishing the facility in accordance with the benchmarks set forth in this paragraph and the Authority or permit holder

demonstrates on an annual basis that it continues to make progress in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.4.

a. In determining whether the Authority or a permit holder subject to the participation agreement has made progress toward obtaining an initial off-track wagering license for, and the establishment of, an off-track wagering facility within its share, the Commission will consider the following benchmarks.

i. The Authority or a permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under its control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or has demonstrated to the satisfaction of the Commission that the execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord.

ii. If the Authority or permit holder does not meet the requirements set forth in (i) above, it can demonstrate to the Commission that

(a) it has identified a suitable location for the proposed off-track wagering facility;

(b) 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

(c) the Authority or permit holder can demonstrate that it has met one of the following benchmarks:

i. it has obtained fee title ownership of the proposed property;

ii. obtained a leasehold interest in the proposed property for a period of not less than 5 years;

iii. entered into an option agreement with a property owner to acquire a or b above; or

iv. 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.

(i) In filing an application for an off-track wagering license pursuant to this rule, the Authority or permit holder shall bear the burden of demonstrating to the Commission by clear and convincing evidence that the person or persons applying for licensure on behalf of the Authority or permit holder possess the necessary qualifications to obtain licensure for an off-track wagering facility in accordance with standards and criteria that shall include, but not be limited to:

1. proof of financial resources sufficient to enable the Authority or permit holder to establish and conduct a quality off-track wagering facility or facilities with appropriately staffed and managed operations;

2. evidence of good character, honesty, competency and integrity;

3. the absence of a conviction for a crime involving fraud, dishonesty or moral turpitude; and

4. all requirements and considerations set forth in N.J.A.C. 13:74-5.8.

The Commission may refuse to issue a license if it shall find that the applicant has failed to demonstrate its suitability for licensure by clear and convincing evidence.

([g]j) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall within 14 days review the application in accordance

with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon the Executive Director being satisfied that these requirements are met, and consistent with the public notice requirements of the Act, the Commission within 45 days of the receipt of the completed application, certification and non-refundable \$ 2,500 filing fee shall at the cost of the Authority hold a public hearing in the municipality in which the proposed off-track facility is to be located.

(**[h]k**) Between 30 days and 60 days following closing of the record on the public hearing described in (**[g]j**) above, the Commission shall make a final determination on the application. The Commission shall approve the application if it determines that the Authority by clear and convincing evidence has demonstrated, through its application and internal control procedures, that:

1. The plan for the proposed facility, including its size, seating capacity, parking and services to be provided reflects appropriate standards of quality;

2. The grant of a license to establish the proposed off-track wagering facility will not be inimical to the interest of the public and the horse racing industry in this State;

3. The **participation agreement** meets the requirements of the Act **and is consistent with current law** to the satisfaction of the Commission and Attorney General;

4. The proposed off-track wagering facility site is [located in a district zoned commercial or industrial and not in an area zoned residential] **in an appropriate location**;

[5. The Authority has submitted its plans to the municipal planning board, and complied with the provisions of section 22 of P.L. 1975, c.291 (N.J.S.A. 40:55D-31); and

6. The Authority has made reasonable efforts to address the reasonable concerns, if any, as expressed by the appropriate municipal planning board.]

(1) An off-track wagering license shall be issued only if the permit holders in this State schedule at least the minimum number of race dates required by N.J.S.A. C.5:5-156.

(**[i]m**) The Commission's determination on the application shall be submitted to the Attorney General, for review and approval, within three business days following the Commission's determination. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a

final decision. The Commission shall issue the license upon approval of the Attorney General.

([j]n) Any off-track wagering license issued to the Authority shall specify the effective dates of the license, the location of the off-track wagering facility subject of the license, the periods of time during the calendar year and the maximum hours of operation during which off-track wagering is permitted at the facility, and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit of the off-track wagering licensee's books and records pertaining to off-track wagering, as well as the imposition of a condition consistent with N.J.A.C. 13:74-11.2.

([k]o) The Commission shall issue no more than 15 off-track wagering facility licenses, and no more than eight such licenses may be granted in the two year period commencing on the effective date of the Act.

13:74-2.2 Prerequisites to and procedures for grant of initial off-track wagering license to a horsemen's organization or a well-suited entity

(a) A horsemen's organization or a well-suited entity, as provided for in N.J.S.A. 5:5-130(c), P.L. 2011, chapter 26, section 3, shall make an application for an initial off-track wagering license on a form prescribed by the Commission.

1. An application filed by a horsemen's organization shall be accompanied by a non-refundable filing fee of \$2,500.

2. An application filed by a well-suited entity shall be accompanied by a license fee in the amount of the successful bid pursuant to N.J.S.A. 5:5-130(d)(2), which shall be distributed 50% to the New Jersey Thoroughbred Horsemen's Association and 50% to the Standardbred Breeders and Owners Association of New Jersey for programs designed to benefit the New Jersey horsemen.

3. An initial application, accompanied by the non-refundable filing fee, shall be filed for each off-track wagering facility proposed by the applicant pursuant to this rule.

(b) An application for an initial off-track wagering license filed pursuant to this rule shall not be considered complete unless:

1. The applicant demonstrates through the application that the requirements of the Act have been satisfied;

2. If the applicant for an initial off-track wagering license pursuant to this rule is the owner of the land, building, and premises of the proposed off-track wagering facility, it shall include a statement evidencing that it has reached 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 applicant must pay to the municipality for the first five years of operation of the off-track wagering facility as required by N.J.S.A. 5:5-151.1, pursuant to P.L. 2011, c. 26, section 7.

3. The applicant demonstrates through the application that the requirements of the Act have been satisfied; and

4. The applicant has completely answered each question within the application and complied with the requirements of this section.

(c) The initial application form, as prescribed by the Commission, shall include disclosure requirements concerning, but not limited to, the physical plan, location and the proposed hours of operation of the proposed off-track wagering facility subject of the specific application including the space relationship between wagering and non-wagering related amenities, the number of jobs expected to be created at the proposed facility, the gross revenues expected to be generated by the facility, the fire evacuation plan for the proposed facility, the type of food and beverages to be available which shall include the provision of first-class dining facilities and, if alcoholic beverages are to be offered at the proposed facility, whether the requirements of the Act, as amended by P.L. 2011, c. 26, have been satisfied.

(d) The initial application form shall have attached a written internal controls procedure which shall set forth the procedures to be implemented to effectively operate and manage the proposed off-track wager facility, and the procedures to be implemented to effectively maintain the integrity of wagering and the proceeds from wagering within the proposed off-track wagering facility. The internal control procedures shall include a procedure to foster and insure that the off-track wagering licensee complies with the requirement of the Act, which creates a right of first refusal as to certain individuals for certain employment opportunities within off-track wagering facilities.

(e) The initial application form shall be accompanied by a

certification, signed and dated by a high managerial agent of the applicant, attesting that the disclosures within the application and within its attachments are true, accurate and complete.

(f) The initial application for an off-track wagering facility may be filed with the Commission at any time following the effective date of the Act, as amended by P.L. 2011, c. 26, and any initial license granted pursuant to such application shall be for a period of one year.

(g) In evaluating an application for an off-track wagering license, the Commission shall consider the proximity of the applicant's proposed site to other planned or existing off-track wagering facilities and to racetracks in this State. If, in the opinion of the Commission, the establishment of the facility at its proposed location would be inimical to the interests of another planned or established off-track wagering facility, or to a State racetrack, the Commission shall reject the application and require the applicant to consider alternative sites for the proposed facility.

(h) In evaluating an application for an off-track wagering license filed by a horsemen's organization, the Commission shall determine whether the horsemen's organization has applied for a license pursuant to N.J.S.A. 5:5-133 within a reasonable time frame from the date the horsemen's organization became eligible to apply utilizing the benchmarks set forth in N.J.A.C. 13:74-2.4(a). If the Commission determines that the organization did not apply for a license within a reasonable time frame, the horsemen's organization shall no longer be considered eligible to license, establish and operate the off-track wagering facility.

(i) In evaluating an application for an off-track wagering license filed by a horsemen's organization or a well-suited entity pursuant to N.J.S.A. 5:5-130(b) and -130(c), the Commission shall assess the qualifications of the organization or entity and, in doing so, apply substantially similar standards and criteria to those the Commission applies to the Authority, its assignees, if any, and other permit holders and licensees in the State. These standards and criteria shall enable the Commission to determine by clear and convincing evidence in the opinion and discretion of the Commission that the person or persons applying for licensure on behalf of the organization or entity are well-suited to receive licensure. These standards and criteria shall include, but not be limited to:

1. proof of financial resources sufficient to enable the organization or entity to establish and conduct a quality off-track wagering facility or facilities with appropriately staffed and managed operations;

2. evidence of good character, honesty, competency and integrity;

3. the absence of a conviction for a crime involving fraud, dishonesty or moral turpitude; and

4. all requirements and considerations set forth in N.J.A.C. 13:74-5.8.

The Commission may refuse to issue a license if it shall find that the applicant has failed to demonstrate its suitability for licensure by clear and convincing evidence.

(j) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall within 14 days review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon the Executive Director being satisfied that these requirements are met, and consistent with the public notice requirements of the Act, the Commission within 45 days of the receipt of the completed application, certification and non-refundable filing fee shall at the cost of the applicant hold a public hearing in the municipality in which the proposed off-track facility is to be located.

(k) Between 30 days and 60 days following closing of the record on the public hearing described in (j) above, the Commission shall make a final determination on the application. The Commission shall approve the application if it determines that the applicant by clear and convincing evidence has demonstrated, through its application and internal control procedures, that:

1. The plan for the proposed facility, including its size, seating capacity, parking and services to be provided reflects appropriate standards of quality including, but not limited to, first-class dining;

2. The grant of a license to establish the proposed off-track wagering facility will not be inimical to the interest of the public and the horse racing industry in this State; and

3. The proposed off-track wagering facility site is [located in a district zoned commercial or industrial and not in an area zoned residential] in an appropriate location;

(l) If the entity receiving the off-track wagering license is not a permit holder in this State, the grant of the license shall be contingent upon the licensee showing simulcast New Jersey races and allowing wagering thereon at the off-track wagering facility, subject to the rules and regulations of the Commission including, but not limited to, N.J.A.C. 13:74-8.2.

(m) An off-track wagering license shall be issued only if the permit holders in this State schedule at least the minimum number of race dates required by N.J.S.A. C.5:5-156.

(n) The Commission's determination on the application shall be submitted to the Attorney General, for review and approval, within three business days following the Commission's determination. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. The Commission shall issue the license upon approval of the Attorney General.

(o) Any off-track wagering license issued to the applicant shall specify the effective dates of the license, the location of the off-track wagering facility subject of the license, the periods of time during the calendar year and the maximum hours of operation during which off-track wagering is permitted at the facility, and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit of the off-track wagering licensee's books and records pertaining to off-track wagering, as well as the imposition of a condition consistent with N.J.A.C. 13:74-11.2.

(p) The Commission shall issue no more than 15 off-track wagering facility licenses, and no more than eight such licenses may be granted in the two year period commencing on the effective date of the Act.

13:74-2.[2]3 Prerequisites to and procedures for grant of renewal of an off-track wagering license

(a) These procedures shall apply where the [Authority] **applicant** has been granted an initial license for an off-track wagering facility within a particular municipality, which initial license has not lapsed, where the grant of that initial license occurred pursuant to the provisions of the Act and N.J.A.C. 13:74-2.1 **and -2.2**, and where the [Authority] **applicant** or its successor in interest makes proper application for the renewal of an initial or previously renewed license for an off-track wagering facility itself subject of an initial license grant.

(b) A renewal license for an off-track wagering facility, as issued by the Commission, shall run for a one year period commencing January 1 and ending on December 31 of the same year. Where, however, an initial one year off-track wagering license granted pursuant to the procedure set forth in N.J.A.C. 13:74-2.1 **or -2.2** shall by operation of the calendar expire on a date which would result in a lapse of such license if these dates were to be complied with, the Commission on a one-time basis and at no additional cost to the off-track wagering licensee may renew the initial license period to the last day of December of the year in question.

(c) A renewal application for an existing off-track wagering facility license shall be made by the off-track wagering licensee on a form prescribed by the Commission, accompanied by a non-refundable filing fee as **required by N.J.S.A. 5:5-131(c)** [of \$1,250], and shall be filed no later than October 15 of the year prior to that for which the license renewal is sought.

(d) A renewal application **filed by the Authority on behalf of itself or on behalf of a permit holder that is a party to the participation agreement** shall not be considered complete unless:

1. The [Authority is in compliance with] **permit holder or permit holders at Monmouth Park and the thoroughbred and standardbred permit holder or permit holders at the Meadowlands Racetrack have scheduled at least the minimum number of live race dates** [requirements of the Act] required P.L. 2001, c. 199 (N.J.S.A. 5:5-156) **as amended**;

[2. The off-track wagering licensee includes with the application a copy of a fully executed participation agreement which the off-track wagering licensee has entered into with all parties or successors in interest that held a valid race permit in 2000 (who are each in compliance with the permit, who each are in compliance with any minimum live race dates of

the Act, and who each are in good standing with the Commission and State);

3. All parties to the participation agreement are licensed by the Commission, or otherwise qualified to participate in off-track wagering; and]

2. The application includes a copy of a fully executed participation agreement as required by the Act and the Authority or permit holder demonstrates that:

a. The participation agreement meets the requirements of the Act **and is consistent with current law** to the satisfaction of the Commission and Attorney General **and that each party to the participation agreement is:**

i. **in compliance with the participation agreement;**

ii. **in compliance with all permits;**

iii. **in compliance with all applicable minimum live race date requirements in the Act;**

iv. **licensed by the Commission or otherwise qualified to participate in off-track wagering; and**

v. **in good standing with the Commission and State.**

([4]e) The off-track wagering licensee has completely answered each question within the renewal application and complied with the requirements of this [section] **rule.**

([e]f) The renewal application shall include as attachments a written internal controls procedure as required by N.J.A.C. 13:74-2.1(d) **and -2.2(d).**

([f]g) The renewal application shall be accompanied by a certification, signed and dated by a high managerial agent of the off-track wagering licensee, attesting that the disclosures within the application and its attachments are true, accurate and complete.

(h) In evaluating an application for the renewal of an off-track wagering license to be issued after January 1, 2012 for a facility that has not commenced operation in compliance with the Act, the Commission shall determine whether the off-track wagering licensee has made progress on an annual basis in establishing the off-track

wagering facility pursuant to the benchmarks set forth in N.J.A.C. 13:74-2.4.

([g]i) Following the Executive Director's determination that the renewal application is complete, the Executive Director shall at the cost of the off-track wagering licensee cause a hearing to be held before the Commission. Any such hearing may be held at a properly and regularly convened public meeting of the Commission, and at a location in this State at the Commission's discretion.

([h]j) Following the Commission's consideration of the renewal application, and prior to the expiration date of the initial license or previously renewed license under which the off-track wagering facility is then operating, the Commission subject to the review and approval of the Attorney General shall issue to the off-track wagering licensee an off-track renewal license if appropriate. An off-track renewal license shall be issued to the off-track wagering licensee where it demonstrates by clear and convincing evidence that:

1. The plan for the continued operation of the facility, including its size, seating capacity, parking and services to be provided, reflects appropriate standards of quality;
2. The grant of an off-track wagering license renewal to continue the operations of the off-track wagering facility will not be inimical to the interests of the public and the horse racing industry in this State;
3. The participation agreement meets the requirements of the Act **and is consistent with current law** to the satisfaction of the Commission and Attorney General; and
4. The off-track wagering licensee is in compliance with the Act, this chapter and any conditions imposed upon it by the Commission.

([i]k) A renewed off-track wagering license issued to the off-track wagering licensee shall specify the effective dates of the renewal license, the location of the off-track wagering facility subject of the license renewal, the periods of time during the calendar year and the hours of operation during which off-track wagering is permitted at the facility, and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit of the off-track wagering licensee's books and records pertaining to the off-track wagering, as well as the imposition of any condition consistent with N.J.A.C. 13:74-11.2.

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) 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 N.J.A.C. 13:74-2.4(d).

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:

(a) it has identified a suitable location for the proposed off-track wagering facility;

(b) 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

(c) the horsemen's organization can demonstrate that it has met one of the following benchmarks:

i. it has obtained fee title ownership of the proposed property;

ii. obtained a leasehold interest in the proposed property for a period of not less than 5 years;

iii. entered into an option agreement with a property owner to acquire a or b above; or

iv. 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.

(b) Commencing on January 1, 2012, any applicant filing an application for an initial off-track wagering license or for the renewal of a license for an off-track wagering facility that is not operational must demonstrate compliance with each of the following requirements:

1. Within one year from the date the application is filed, the applicant shall comply with each of the following requirements.

a. The applicant has submitted to the Commission all information and documentation required by N.J.A.C. 13:74-2.1, -2.2, or -2.3, as applicable.

b. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable locations and the applicant has

i. obtained fee title ownership of the proposed property;

ii. obtained a leasehold interest in the proposed property for a period of not less than 5 years;

iii. entered into an option agreement with a property owner to acquire a or b above; or

iv. 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.

c. 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 and begin operation. The applicant shall provide to the Commission:

i. 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

ii. a detailed source of capital equal to the project development budget. All committed capital shall be supported by financial statements prepared by a CPA and shall demonstrate the applicant's ability to commit such funds to the establishment of the off-track wagering facility. Any third party capital shall be supported by commitment letters or other documentation demonstrating that such entities are prepared to invest such capital.

d. 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:

i. a third party market study completed by a qualified firm which demonstrates the market feasibility of the proposed off-track wagering facility;

ii. 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; and

iii. 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.

2. Within one year from the date the Commission issues an off-track wagering license, the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of parimutuel wagers.

(c) Upon receiving a request by an applicant or licensee for an extension of time in which to comply with the requirements of N.J.A.C. 13:74-2.4(b)2, the Commission may, in its discretion, grant an extension if it determines that the applicant or licensee has made all reasonable efforts to comply therewith 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 within its discretion.

2. Notwithstanding the foregoing, all off-track wagering facilities shall be fully operational for the simulcasting of horse races and the acceptance of parimutuel wagers within two years from the date the off-track wagering license was issued and the Commission shall not grant any extension that would be inconsistent with this requirement.

(d) The failure of an applicant or licensee to meet the benchmarks in this rule shall constitute a basis for the denial of an initial off-track wagering license or the renewal of an off-track wagering license, respectively. The only extensions that may be applied for and considered by the Commission, pursuant to this rule, shall be time extension requests sought pursuant to N.J.A.C. 13:74-2.4(b)2, as authorized by N.J.A.C. 13:74-2.4(c).