

(c) A licensee shall not be required to obtain CPC credits during the biennial renewal period in which the licensee obtained initial licensure.

(d) A new licensee by way of comity shall be responsible at the first biennial renewal for one CPC credit for each full calendar month since the New Jersey license was issued.

(e) A licensee serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year shall have all CPC requirements waived for that year.

13:40-13.9 Responsibilities of program providers

(a) Program providers shall:

1. Select and assign qualified instructors for the program;
2. Assure that the number of participants and the physical facilities are consistent with the teaching methods to be utilized;
3. Disclose in advance to prospective participants, the course objectives, prerequisites, experience level, content, required advanced preparation, teaching method, and the number of CPC credits that may be approved in the program;
4. Solicit evaluations from both the participants and the instructor at the conclusion of each program;
5. Evaluate the performance of the instructors at the conclusion of each program to determine their suitability for continuing to serve as instructors and advise instructors of their performance;
6. Systematically review the evaluation process to ensure its effectiveness;
7. Furnish to each enrollee who has successfully completed the program a verification of completion, which shall include at least the following information:
 - i. The title, date, and location of the course offering;
 - ii. The name and license number of the attendee;
 - iii. The number of credits that may be awarded; and
 - iv. The name and signature of an authorized representative of the provider;
8. Maintain and retain accurate records of program attendance and completion for a six-year period;
9. Retain a written outline of course materials for a six-year period; and
10. Provide the Board with such documentation as requested by the Board.

(a)

NEW JERSEY RACING COMMISSION OFF-TRACK WAGERING AND ACCOUNT WAGERING

**Proposed Readoption of Special Adopted
Amendments: N.J.A.C. 13:74-1.1, 1.2, 2.1, and 2.2**

**Proposed Readoption of Special Adopted New
Rules: N.J.A.C. 13:74-2.2 and 2.4**

Proposed Amendment: N.J.A.C. 13:74-2.2 and 2.3

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

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

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

Proposal Number: PRN 2012-016.

Submit written comments by March 3, 2012 to:

Michael Vukceovich, Deputy Director
New Jersey Racing Commission
Department of Law and Public Safety
PO Box 088
Trenton, New Jersey, 0865-0088

The agency proposal follows:

Summary

The New Jersey Racing Commission (Commission) is proposing to readopt the specially-adopted amendments to N.J.A.C. 13:74-1.1, 1.2, 2.1, and 2.2 (recodified as 2.3) and the specially-adopted new rules N.J.A.C. 13:74-2.2 and 2.4 that implement P.L. 2011, c. 26. The specially-adopted amendments and new rules (collectively "special adoption") were published in the New Jersey Register on June 20, 2011 at 43 N.J.R. 1445(a). Pursuant to P.L. 2011, c. 26, sec. 8, the special adoption became effective on May 20, 2011, upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-6.4), for a period not to exceed 180 days. The special adoption is scheduled to expire on November 16, 2011. This expiration date is extended by 180 days pursuant to N.J.S.A. 52:14B-5.1c(2), by the timely filing of this notice of readoption, to May 14, 2012.

The Commission is proposing to readopt the specially-adopted amendments and rules with the three following amendments. First, the Commission is proposing the deletion of the specially-adopted amendment made to N.J.A.C. 13:74-2.2(c) (recodified as N.J.A.C. 13:74-2.3(c)). The specially-adopted amendment deleted the requirement in the rule mandating that a renewal application for an existing off-track wagering facility shall be accompanied by a non-refundable filing fee of \$1,250 and required instead that a renewal application for an existing off-track wagering facility shall be accompanied by a non-refundable filing fee "as required by N.J.S.A. 5:5-131(c)." The Commission is proposing the deletion of the statutory cross-reference and will continue to require a filing fee of \$1,250.

Second, the Commission is proposing to readopt new rule N.J.A.C. 13:74-2.2 with amendments. The proposed amendments, set forth as subparagraphs (a)2i through vi, establish a procedure for the acceptance of bids when an initial off-track wagering license becomes available to "well-suited entities." Pursuant to the proposed procedure, a successful bidder shall receive the right to file an application for the issuance of an initial off-track wagering license.

Third, the Commission is proposing to readopt the specially adopted amendments to N.J.A.C. 13:74-2.1(h) with the additional amendments set forth at sub-subparagraph (h)2i(1). The additional proposed amendment allows the Authority or permit holder to retain the rights to establish an off-track wagering facility within its share after January 1, 2012, if the Authority or permit holder can demonstrate to the satisfaction of the Commission that is "engaged in substantial, good faith negotiations in an attempt to reach an agreement, in connection with the sale or lease of a racetrack under its control, to obtain, establish, or transfer one or more off-track wagering licenses or facilities, but not agreement was reached as a result of these negotiations. . ." To retain the rights to its off-track wagering facilities, sub-sub-subparagraph (h)2i(1)(B) requires that the Authority or permit holder must also demonstrate to the satisfaction of the Commission that it "is in the process of making alternative arrangements intended to solicit new persons or entities that possess a good faith interest in the negotiation and execution of any such agreement." In order for the Commission to deem that sufficient progress has been made to meet the requirements of the benchmark in sub-sub-subparagraph (h)2i(1)(B), the Authority or permit holder shall bear the burden of establishing to the satisfaction of the Commission that the planned, alternative arrangements have a reasonable likelihood of soliciting new sources of interest and resulting in negotiations and the eventual execution of an agreement to obtain, establish, or transfer one or more off-track wagering licenses or facilities.

Through this notice of proposal to readopt the specially-adopted amendments and new rules, with these three changes, the Commission is implementing the sweeping changes that the Legislature made in P.L. 2011, c. 26 to the Off-Track and Account Wagering Act (the Act), N.J.S.A. 5:5-127 et seq. The Act, which became effective on February 1, 2002, authorized the establishment of an off-track wagering system in this State consisting of no more than 15 off-track wagering facilities at which parimutuel wagering could be conducted on live and simulcast horse races. The Act limited the licensure and operation of off-track wagering facilities to those entities that held a valid permit to conduct horse racing and conducted a race horse meeting within this State in the calendar year 2000. Pursuant to this provision, only the New Jersey Sports and Exposition Authority (Authority), the permit holder that

operated horse racing meets at the Meadowlands Racetrack and Monmouth Park, the permit holder that operated race meetings at Freehold Raceway and the permit holder that operated race meetings at the Atlantic City Race Course were authorized to establish, license, and operate an off-track wagering facility. Pursuant to a participation agreement required by the Act, the three eligible permit holders divided the rights to establish, license, and operate the 15 off-track wagering facilities so that the Authority received the rights to nine off-track wagering facilities, the permit holder at Freehold Raceway received the rights to four and the permit holder at the Atlantic City Race Course received the rights to two.

By January 2010, there were only three off-track wagering facilities licensed and operating in this State. Each of the three eligible permit holders had established, licensed, and opened one such facility. The Legislature enacted P.L. 2011, c. 26 and revised several provisions of the Act to facilitate the establishment of off-track wagering facilities. Pursuant to P.L. 2011, c. 26, sec. 3, the three permit holders who have held the exclusive rights to establish and license up to 15 off-track wagering facilities may forfeit their rights to any off-track wagering facility within its share that has not received a license under N.J.S.A. 5:5-136 by January 1, 2012. However, if the commission finds that a permit holder is "making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to specified benchmarks developed by the commission," the Commission may allow a permit holder to retain its share of the off-track wagering facilities to be established provided that the permit holder can demonstrate to the Commission's satisfaction that it "continues to make progress on an annual basis." *Ibid.*

If any of these three eligible permit holders forfeit their rights to establish an off-track wagering facility, P.L. 2011, c. 26, sec. 3, authorizes the Commission to issue an initial off-track wagering license for a forfeited facility to a horsemen's organization in this State that files an application in accordance with all applicable provisions of the Act, as amended, and is approved by the Commission and the Attorney General for the grant on an initial off-track wagering license. This legislation requires that a horsemen's organization that receives a license "shall make progress on an annual basis in establishing an off-track wagering facility from the date the organization is eligible to apply for an initial license." *Ibid.* Any facility that has not received a license "within a reasonable time frame from the date the horsemen's organization became eligible to apply for its initial license shall no longer be considered eligible to be established by a horsemen's organization . . ." *Ibid.* Under these circumstances, the right to file an application for an initial license to establish and operate the off-track wagering facility shall be made available to a "well-suited entity" through a bidding process established by the Commission in consultation with the State Treasurer. *Ibid.* The proposed amendments, set forth as N.J.A.C. 13:74-2.2(a)2i through vii establish this bidding procedure for eligible "well-suited entities."

The Commission is now proposing the re adoption of the specially-adopted amendments to N.J.A.C. 13:74-1.1, 1.2, 2.1, and 2.2 and the specially-adopted new rules N.J.A.C. 13:74-2.2 and 2.4, which implement the legislative changes made at P.L. 2011, c. 26. Included in the re adopted rules are provisions that identify criteria and benchmarks, which form the basis for the administrative determinations the Commission must make regarding the new legislative mandates that requires evidence of progress.

Specifically, the specially-adopted amendments to N.J.A.C. 13:74-1.1, 1.2, 2.1, and 2.2 and the specially-adopted new rules N.J.A.C. 13:74-2.2 and 2.4, including the amendments proposed in this notice of re adoption to N.J.A.C. 13:74-2.2(a)2 and 2.3(c) are summarized below.

In the specially-adopted amendments to N.J.A.C. 13:74-1.1, Definitions, the Commission amended the definitions for the terms "Act," "off-track wagering licensee" and "participation agreement." The term "Act" was amended to mean the Off-Track and Account Wagering Act, P.L. 2001, c. 199, as amended, "Off-track wagering licensee," which was originally defined to mean the Authority was amended to include the Authority or its assignee or assignees or another entity to which the Commission has granted its approval to conduct an off-track wagering facility as provided for in the Act. The term "participation agreement," which was originally defined to mean the "written contract that provides

for the establishment or implementation of either an off-track wagering facility or facilities or an account wagering system . . ." was amended to specify that the written contract being referenced was "entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26." In addition, the reference in the definition of "participation agreement" to "the Authority and the other eligible participants" was amended to specify that "the other eligible participants" means "the other eligible participants subject to the agreement."

In the specially-adopted amendments to N.J.A.C. 13:74-1.1, the Commission also established definitions for three new terms: "applicant," "horsemen's organization," and "well-suited entity." "Applicant" was defined to mean "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 the Act." "Horsemen's organization" was defined to mean "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." "Well-suited entity" was defined to mean "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." The Commission now proposes to re adopt these specially-adopted amendments to N.J.A.C. 13:74-1.1.

The Commission also proposes to re adopt the specially-adopted amendment to N.J.A.C. 13:74-1.2, Rules of the Racing Commission. In the specially-adopted amendments, the Commission made an editorial change to clarify the text of the rule. Originally, this rule stated, in part, that "[e]xcept 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 . . . shall be subject to the rules of the Racing Commission." In amending this rule, the Commission deleted the phrase "rules of racing" the first time it appears to clarify that it is the conduct of parimutuel wagering in off-track wagering facilities that shall be subject to the Commission's rules.

The Commission is proposing to re adopt the specially-adopted amendments to N.J.A.C. 13:74-2.1, Prerequisites and procedures for grant of initial off-track wagering license to the Authority with the amendments described above to sub-paragraph (h)2i(1). Prior to revision by P.L. 2011, c. 26, the Act stated that "the commission is authorized to permit off-track wagering at a specified facility, upon application of the authority . . ." N.J.S.A. 5:5-130. Pursuant to the terms of the participation agreement between the Authority and the other two permit holders eligible to participate in off-track wagering, which was required by the Act, the Authority was authorized to apply for the issuance of an initial off-track wagering license on behalf of itself or on behalf of the other two permit holders. Only the Authority was authorized to make application to the Commission for an initial off-track wagering license. N.J.A.C. 13:74-2.1, as originally promulgated, only addressed the prerequisites and procedures for the grant of an initial off-track wagering license upon application by the Authority. In the specially-adopted amendments to subsection (a), the Commission amended the language in this section to provide that the application for an initial off-track wagering license may be filed 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."

In the specially-adopted amendments to paragraph (b)1, the Commission set forth the statutory requirement in N.J.S.A. 5:5-130(a) that the Commission shall issue an off-track wagering license only if "the Authority schedules at least the minimum number of race dates required in section 30 of this act (N.J.S.A. 5:5-156)." N.J.S.A. 5:5-130(a) was subsequently amended to delete "Authority" and require instead that "the permit holder at Monmouth Park and the thoroughbred and standardbred permit holders at the Meadowlands Racetrack" schedule at least the minimum number of race dates required by N.J.S.A. 5:5-156. See P.L. 2004, c. 116, sec. 3; P.L. 2011, c. 26, sec. 3. As a result, in the specially-adopted amendment to paragraph (b)1, the Commission changed the rule

to require "[t]he 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 by P.L. 2001, c. 199, as amended (N.J.S.A. 5:5-156)."

In the specially-adopted amendments to paragraph (b)2 and (k)3, the Commission added language to clarify the requirement that in filing an application, the Authority must include a copy of a fully-executed participation agreement, which is "consistent with current law."

Legislative changes in P.L. 2011, c. 26 affecting the rights of municipalities resulted in the specially-adopted amendments to N.J.A.C. 13:74-2.1(b)4. As originally adopted, paragraph (b)4 required, pursuant to N.J.S.A. 5:5-131(h), that the Authority demonstrate in the application that the requirements of the Act have been satisfied and that the Authority include 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. In enacting P.L. 2011, c. 26, sec. 4, the Legislature removed from existing law the provision in N.J.S.A. 5:5-131(h) that allowed a municipality to reject the establishment of an off-track wagering facility within its boundaries by issuing a resolution disapproving the proposed off-track wagering facility.

While P.L. 2011, c. 26 voided a municipality's right to oppose the siting of an off-track wagering facility within its borders, the Legislature amended the Act to mandate that if the off-track wagering licensee is the owner of the land, building, and premises of the proposed off-track wagering facility, the licensee must reach an agreement with the governing body of the local municipality where the proposed off-track wagering facility will be located requiring the licensee to make a payment in-lieu-of taxes to the municipality in each of the first five years during the operation of the off-track wagering facility.

In the specially-adopted amendments to paragraph (b)4 (recodified as paragraph (b)5), the Commission deleted the reference to the resolution (for the reasons previously discussed) and all of the language that followed "[t]he Authority demonstrates through the application that the requirements of the Act have been satisfied." Therefore, the paragraph now only requires that the application demonstrate satisfaction of the requirements in the Act. In the specially-adopted amendment to N.J.A.C. 13:74-2.1(c), the Commission added the requirements that the initial application form shall disclose the proposed hours of operation of the off-track wagering facility, the provisions made for first-class dining and if alcoholic beverages are to be offered, documentation that the requirements of the Act, as amended by P.L. 2011, c. 26, have been satisfied.

In new subsection (g), the Commission specially-adopted amendments that implemented the statutory requirement in P.L. 2011, c. 26, sec. 4, mandating that the Commission consider the proximity of the applicant's proposed site to other planned or existing off-track wagering facilities and to racetracks in this State when evaluating an application for an off-track wagering license. This subsection further provides that 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 must reject the application and require the applicant to consider alternative sites for the proposed facility.

As discussed above, the specially-adopted amendments as new subsection (h) implement one of the major changes made to the Act by the Legislature in P.L. 2011, c. 26. Pursuant to section 3 of P.L. 2011, c. 26, the Authority or a permit holder subject to the participation agreement entered into prior to the effective date of P.L. 2011, c. 26, may forfeit the right to obtain a license for off-track wagering facilities within their allotted share. New paragraph (h)1 states that "[a]ny of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 that have 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)."

New paragraph (h)2 sets forth the statutory exception to forfeiture of these rights found in P.L. 2011, c. 26, sec. 3. Paragraph (h)2 provides that the Authority or a permit holder may be able to retain their rights to off-

track wagering facilities within its share that is not licensed on or before January 1, 2012, if it can establish compliance with two mandatory conditions. First, the Authority or permit holder establishes to the Commission's satisfaction that it has made progress toward establishing its share of off-track wagering facilities in accordance with the benchmarks set forth in subparagraph (h)2i and that it demonstrates to the Commission on an annual basis that it continues to make progress in accordance with the benchmarks set forth in the specially-adopted new rule N.J.A.C. 13:74-2.4, which the Commission is also proposing to readopt.

The specially-adopted amendment, as new subparagraph (h)2i, states that "[i]n 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 . . ." The benchmarks set forth in the specially-adopted amendments to sub-subparagraph (h)2i(1) and (2) make three separate avenues available to the Authority or permit holder to establish that it has "made progress."

First, pursuant to sub-subparagraph (h)2i(1), the Commission shall deem that the Authority or permit holder has made the requisite 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.

Second, pursuant to sub-sub-subparagraph (h)2i(1)(A), the Commission shall deem that the Authority or permit holder has made the requisite progress if the Authority or permit holder has engaged in negotiations, no such agreement has yet been reached, and "the Authority or permit holder 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."

Finally, pursuant to sub-sub-subparagraph (h)2i(1)(B), the Commission shall deem that the Authority or permit holder has demonstrated to the satisfaction of the Commission that "it engaged in substantial, good faith negotiations in an attempt to reach an agreement, in connection with the sale or lease of a racetrack under its control, to obtain, establish, or transfer one or more off-track wagering licenses or facilities, no agreement was reached as a result of these negotiations and the Authority or permit holder is in the process of making alternative arrangements intended to solicit new persons or entities that possess a good faith interest in the negotiations and execution of any such agreement."

Pursuant to sub-sub-subparagraph (h)2i(1)(B)I, in order for the Commission to deem that sufficient progress has been made to meet the requirements of the benchmark in sub-sub-subparagraph (h)2i(1)(B), "the Authority or permit holder shall bear the burden of establishing to the satisfaction of the Commission that the planned, alternative arrangements have a reasonable likelihood of soliciting new sources of interest and resulting in negotiations and the eventual execution of an agreement to obtain, establish, or transfer one or more off-track wagering licenses or facilities." In addition, sub-sub-subparagraph (h)2i(1)(B)II provides that "[t]o ensure that the Authority or permit holder remains in compliance with the benchmark in sub-sub-subparagraph (h)2i(1)(B), the Commission may require the filing of periodic or regular reports."

If the Authority or permit holder cannot meet any of these three requirements, it may, nevertheless, establish that it has made the requisite progress as provided for in sub-subparagraph (h)2i(2).

Pursuant to sub-subparagraph (h)2i(2), the Commission shall deem that the Authority or a permit holder has made progress toward establishing its share of off-track wagering facilities if it can demonstrate to the Commission all of the following requirements: it has identified a suitable location for the proposed off-track wagering facility (sub-sub-subparagraph (h)2i(2)(A)); it has entered into an agreement with the governing body of the local municipality where the proposed off-track wagering facility is to be located which establishes 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 (sub-

sub-subparagraph (h)2i(2)(B)); and it can demonstrate that it has met one of the four listed benchmarks (sub-sub-subparagraph (h)2i(2)(C)). The four benchmarks, set forth in sub-sub-subparagraph (h)2i(2)(C)(1) through (IV), require, respectively, that the Authority or permit holder must demonstrate that it has obtained fee title ownership of the proposed property where the off-track wagering facility will be located; it has obtained a leasehold interest in the proposed property for a period of not less than five years; it has entered into an option agreement with a property owner either to acquire fee title ownership of the proposed property or a leasehold interest in the proposed property for a period of not less than five years; or it has 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.

P.L. 2011, c. 26, sec. 3(c) requires that the Commission establish uniform standards and criteria to be used in assessing whether an applicant for an initial off-track wagering license is qualified to establish and operate an initial off-track wagering facility and that these standards and criteria apply to applications filed by the Authority or its assignee, other permit holders and licensees, horsemen's organizations, and well-suited entities. P.L. 2011, c. 26, sec. 3(c) also mandates that these standards and criteria shall include: "(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) any additional standards and criteria the commission may establish by rule or regulation in accordance with this act."

The specially-adopted amendments adopted as new subsection (i) implement these standards and criteria. The mandates set forth in P.L. 2011, c. 26, sec. 3(c)(1) through (3) are set forth as paragraphs (i)1 through 3, respectively. In addition, paragraph (i)4 requires that the applicant comply with "[a]ll requirements and considerations set forth in N.J.A.C. 13:74-5.8." Finally, subsection (i) states that the Commission may refuse to issue an initial off-track wagering license to the Authority or permit holder if it has failed to demonstrate its suitability for licensure pursuant to these standards and criteria by clear and convincing evidence when applying for an initial off-track wagering license.

In the special adoption of new rule N.J.A.C. 13:74-2.2(i), the Commission ensured the uniformity required by the Legislature by making these same standards and criteria applicable to horsemen's organizations and well-suited entities that apply for an initial off-track wagering license. Similarly, subsection (i) also includes the provision indicating that the Commission may refuse to issue an initial off-track wagering license to a horsemen's organization or well-suited entity if it has failed to demonstrate its suitability for licensure pursuant to these standards and criteria by clear and convincing evidence when applying for an initial off-track wagering license. The Commission is proposing to readopt subsection (i).

The special adoption of amendments to N.J.A.C. 13:74-2.1(k), set forth the requirement that the Commission shall make a final determination on an application for an initial off-track wagering license between 30 and 60 days following the closing of the record on the public hearing described in N.J.A.C. 13:74-2.1(j). Subsection (k) indicates that the Commission shall approve the application if it determines that the Authority has demonstrated through its application and internal control procedures, by clear and convincing evidence, its compliance with four requirements. In the special adoption, no changes were made to the requirements in paragraphs (k)1 and 2, but the Commission amended paragraphs (k)3 and 4 as follows. In paragraph (k)3, the Commission kept the requirement that the participation agreement shall meet the requirements of the Act and added that it shall also be "consistent with current law." In paragraph (k)4, the Commission deleted the prior requirement that the proposed off-track wagering facility is not in an area zoned residential and replaced it with the requirement that the proposed off-track wagering facility is "in an appropriate location."

Because of the statutory changes made to the Act by P.L. 2011, c. 26, sec. 1, an applicant for an initial off-track wagering license is no longer required to submit the plans for the proposed off-track wagering facility to the municipal planning board where the proposed facility will be

located and comply with the provisions of section 22 of P.L. 1975, c. 291 (N.J.S.A. 40:55D-31). As a result, the specially-adopted amendment deletes paragraph (k)5 from the rule. Similarly, pursuant to the amendments made by P.L. 2011, c. 26, sec. 1 to the Act, a municipality no longer has the right to oppose the placement of an off-track wagering facility within its borders. For this reason, the specially-adopted amendment deletes paragraph (k)6, which contained the requirement that the Authority has made reasonable efforts to address the reasonable concerns, if any, as expressed by the appropriate municipal planning board.

The specially-adopted amendment proposed as new subsection (l) indicates that the Commission shall issue a license for an off-track wagering facility only if the permit holders in this State schedule at least the minimum number of race dates required by N.J.S.A. 5:5-156.

Finally, as a result of the proposed readoption of the specially-adopted amendments to N.J.A.C. 13:74-2.1, subsections (m), (n), and (o) of the original text of this rule have been recodified as subsections (i), (j), and (k), respectively, without any change in text.

As set forth above, the Commission is proposing to readopt all of the specially-adopted amendments to N.J.A.C. 13:74-2.1.

The Commission is proposing to readopt specially-adopted new rule N.J.A.C. 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, with the one change, as discussed above. The proposed amendment, which is set forth as subparagraphs (a)2i through vi and is discussed below, establishes, pursuant to the statutory mandate in P.L. 2011, c. 26, sec. 3(d), a procedure for the acceptance of bids when an initial off-track wagering license becomes available to a well-suited entity. Other than proposing this amendment, the Commission is proposing to readopt specially-adopted new rule N.J.A.C. 13:74-2.2 without change.

In the special adoption of new rule N.J.A.C. 13:74-2.2(a), the Commission requires that a horsemen's organization or a well-suited entity, as provided for in P.L. 2011, c. 26, sec. 3(c) (N.J.S.A. 5:5-130(e)), shall file an application for an initial off-track wagering license on the form prescribed by the Commission. Paragraph (a)1 requires that an application filed by a horsemen's organization must be accompanied by a non-refundable filing fee of \$2,500. Paragraph (a)2 requires, pursuant to P.L. 2011, c. 26, sec. 3(c), that an application filed by a well-suited entity must be accompanied by a license fee in the amount of that entity's successful bid pursuant to N.J.S.A. 5:5-130(d)(2) and that this filing fee shall be distributed 50 percent to the New Jersey Thoroughbred Horsemen's Association and 50 percent to the Standardbred Breeders and Owners Association of New Jersey for programs designed to benefit the New Jersey horsemen.

Proposed new subparagraph (a)2i provides that to be qualified to submit an application for an initial off-track wagering license as a well-suited entity, a person, persons, association, corporation, partnership, organization, or other entity must be selected as a successful bidder in the bidding process set forth in this subsection.

At proposed new sub-subparagraph (a)2ii(1) and (2), the Commission sets forth the two determinations that the Commission must reach in order for an initial off-track wagering license to become available for public bid. First, pursuant to N.J.A.C. 13:74-2.1(h), the Commission must have determined that one or more of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 shall no longer be considered part of the Authority's or permit holder's share. Second, pursuant to N.J.A.C. 13:74-2.2(h), the Commission must have determined that no horsemen's organization has applied for the available off-track wagering license pursuant to N.J.S.A. 5:5-133 within a reasonable time frame from the date that horsemen's organizations became eligible to apply.

Proposed new subparagraph (a)2iii provided that in placing an available off-track wagering license up for bid, the Commission may utilize the services of the Division of Purchase and Property (Division), which is in the Department of the Treasury, to advertise, solicit, accept, and evaluate formal sealed bids pursuant to the Division's rules set forth in N.J.A.C. 17:12. The proposed new subparagraph also provides that the Commission may consult with the Division during the bidding process and ensure that the bidding process meets four requirements. Pursuant to sub-subparagraph (a)2iii(1) through (4), the bidding process must include

procedures for the establishment of a minimum bid threshold for the selection of a successful bidder; notify bidders that the awarding of a bid to a successful bidder shall be contingent upon that bidder's ability to establish its eligibility to be licensed as an off-track wagering licensee in compliance with N.J.S.A. 5:5-130 and N.J.A.C. 13:74-2.2(i); require that in addition to submitting a monetary bid, a bidder shall submit a conceptual plan describing the off-track wagering facility the bidder intends to establish, the amenities it will offer, and its proposed or intended location; and inform bidders that a successful bid shall be conditional upon the successful bidder's compliance with all the provisions of the Act and the applicable rules promulgated by the Commission.

Proposed new subparagraph (a)2iv addresses the selection of successful bidders. This regulation requires that upon receipt of any evaluation or recommendations provided by the Division of Purchase and Property, the Commission shall select the successful bidder and in doing so, the Commission shall consider and balance the four factors in proposed new subparagraph (a)2iv(1) through (4): the monetary value of the bid in comparison to other bids submitted; the level of quality of the proposed facility and the amenities it will offer in striving to be a first-rate experience for the customer that includes the provision of first-class dining facilities; the potential of the proposed facility and amenities to generate greater interest in the horse racing industry and the sport of horse racing in the State; and the proximity of the bidder's proposed or intended location for the off-track wagering facility and its impact on other planned or existing off-track wagering facilities and racetracks in the State.

Proposed new subparagraph (a)2v requires that the Commission's selection of the successful bidder and the basis for its decision shall be submitted to the Attorney General, for review and approval, within 14 days following its determination. This determination 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.

Finally, proposed new subparagraph (a)2vi specifies that the Commission's selection of a successful bidder and the Attorney General's approval grant that bidder the right to file an application for the issuance of an initial off-track wagering license. However, any grant of an initial off-track wagering license is contingent upon the bidder's full compliance with the application process and the bidder's ability to meet the eligibility standards set forth in this section and the Commission's selection of a successful bidder and the Attorney General's approval shall not be construed as granting that bidder the right to receive an initial off-track wagering license.

In the special adoption of N.J.A.C. 13:74-2.2(a)3, the Commission set forth the requirement that 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 section.

At N.J.A.C. 13:74-2.2(b), the Commission indicates that an application for an initial off-track wagering license filed pursuant to this section shall not be considered complete unless the following three requirements are met. First, pursuant to paragraph (b)1, the applicant must demonstrate through the application that the requirements of the Act have been satisfied. Second, pursuant to paragraph (b)2, if the applicant for an initial off-track wagering license pursuant to this section is the owner of the land, building, and premises of the proposed off-track wagering facility, the applicant 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, sec. 7. Third, pursuant to paragraph (b)3, the applicant shall have completely answered each question within the application and complied with the requirements of this section.

At N.J.A.C. 13:74-2.2(c), the Commission sets forth the disclosure requirements an applicant must meet when filing an application for an initial off-track wagering license pursuant to this section. These disclosure requirements mandate that 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, and 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.

At N.J.A.C. 13:74-2.2(d), the Commission sets forth the additional requirements an applicant must meet when filing an application for an initial off-track wagering license pursuant to this section related to the filing of internal control procedures. Pursuant to subsection (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. These 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.

At N.J.A.C. 13:74-2.2(e), the Commission indicates that the initial application form must 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 the attachments to the application are true, accurate, and complete.

At N.J.A.C. 13:74-2.2(f), the Commission sets forth the requirement that the initial application for an off-track wagering facility may be filed with the Commission pursuant to this section at any time following the effective date of the Act, as amended by P.L. 2011, c. 26, which is February 23, 2011, and that any initial license granted pursuant to such application shall be valid for a period of one year.

At N.J.A.C. 13:74-2.2(g), the Commission identifies factors it will consider in evaluating an application for an off-track wagering license filed pursuant to this section. Subsection (g) states that 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 and that 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.

At N.J.A.C. 13:74-2.2(h), the Commission establishes requirements related to the timeliness of an application that a horsemen's organization must meet when applying for an initial off-track wagering license. Subsection (h) states that 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 the specially-adopted new rule N.J.A.C. 13:74-2.4(a). Subsection (h) provides that if the Commission determines that the horsemen's 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.

N.J.A.C. 13:74-2.2(i) addresses the standards and criteria the Commission will apply in determining if a horsemen's organization or a well-suited entity making application for an initial off-track wagering license is qualified to receive a license. As discussed above in detail, the proposed requirements in subsection (i) are the same as those proposed in N.J.A.C. 13:74-2.1(i).

N.J.A.C. 13:74-2.2(j) establishes the time frame in which the Commission must act after an application for an initial off-track wagering license has been determined to be complete. This section requires that the

Executive Director of the Commission 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's determination that he or she is satisfied that these requirements are met, and consistent with the public notice requirements of the Act, the Commission shall, within 45 days of the receipt of the completed application, certification and non-refundable filing fee, at the cost of the applicant, hold a public hearing in the municipality in which the proposed off-track facility is to be located.

N.J.A.C. 13:74-2.2(k) establishes the time frame in which the Commission must reach a final determination on the application and sets forth the factors that the applicant must establish by clear and convincing evidence in order for the Commission to grant the initial off-track wagering license being applied for. This subsection requires that Commission shall make a final determination on the application between 30 days and 60 days following closing of the record on the public hearing described above in subsection (j). Pursuant to subsection (k), the Commission shall approve the application if it determines that the applicant has demonstrated three factors by clear and convincing evidence through its application and internal control procedures. Pursuant to paragraphs (k)1, 2, and 3, respectively, the applicant must demonstrate that 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; 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 the proposed off-track wagering facility site is in an appropriate location.

N.J.A.C. 13:74-2.2(i) sets forth the statutory requirement in P.L. 2011, c. 26, sec. 3(c) that if the entity receiving an off-track wagering license is not a permit holder in this State, the Commission's grant of an off-track wagering 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.

N.J.A.C. 13:74-2.2(m) sets forth the statutory mandate that 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. 5:5-156.

N.J.A.C. 13:74-2.2(n) indicates that 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; and the Commission shall issue the license only upon approval of the Attorney General.

At N.J.A.C. 13:74-2.2(o), the Commission identifies information that shall be included in an initial off-track wagering license with which the licensee must comply. Subsection (o) requires that the off-track wagering license 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, requiring an annual audit of the off-track wagering licensee's books and records pertaining to off-track wagering, as well as the imposition of any condition consistent with N.J.A.C. 13:74-11.2.

Finally, N.J.A.C. 13:74-2.2(p) sets forth the legal limitation that the Commission shall not issue more than 15 off-track wagering facility licenses and that the Commission shall not issue more than eight such licenses in the two-year period commencing on the effective date of the Act, which is February 1, 2002.

The Commission is proposing to readopt the specially-adopted amendments to N.J.A.C. 13:74-2.2, which has been recodified as N.J.A.C. 13:74-2.3. Prerequisites to and procedures for grant of renewal of an off-track wagering license, with one proposed amendment at subsection (c), which was discussed above. N.J.A.C. 13:74-2.3 addresses applications to renew an off-track wagering license previously issued by

the Commission. As originally adopted, this rule set forth prerequisites and procedures for renewal of an off-track wagering license to the Authority. As addressed above, prior to the enactment of P.L. 2011, c. 26, only the Authority had the statutory right to apply for the grant of an initial off-track wagering license pursuant to N.J.A.C. 13:74-2.1 or the renewal of an initial off-track wagering license on behalf of itself or on behalf of the two other permit holders that are parties to the participation agreement. Because of the amendments made to the Act in P.L. 2011, c. 26, the Authority, the permit holders subject to the participation agreement, horsemen's organizations, and well-suited entities are eligible, under the circumstances set forth in P.L. 2011, c. 26, and the Commission's rules to apply for the grant of an off-track wagering license and for the renewal of any such license. Pursuant to the specially-adopted amendments, which the Commission is proposing to readopt, N.J.A.C. 13:74-2.3 governs all applications for renewal regardless of who is the applicant.

In N.J.A.C. 13:74-2.3(a), the Commission deleted the two references to the "Authority" and replaced it with "applicant." In addition, the reference in subsection (a) to the grant of an initial off-track wagering license issued pursuant to N.J.A.C. 13:74-2.1 was amended to include initial off-track wagering licenses issued to horsemen's organizations and well-suited entities pursuant to N.J.A.C. 13:74-2.2. Similarly, the reference to initial off-track wagering licenses granted pursuant to N.J.A.C. 13:74-2.1 found in subsections (b) and (f) were also amended to reference off-track wagering licenses granted pursuant to N.J.A.C. 13:74-2.2.

The Commission is proposing to delete the specially-adopted amendment made to subsection (c). The specially-adopted amendment deleted the requirement in the rule mandating that a renewal application for an existing off-track wagering facility shall be accompanied by a non-refundable filing fee of \$1,250 and required instead that a renewal application for an existing off-track wagering facility shall be accompanied by a non-refundable filing fee as "required by N.J.S.A. 5:5-131(c)." The Commission is proposing that subsection (c) be amended to revert back to the original language requiring a filing fee of \$1,250.

In subsection (d), as amended in the special adoption, the Commission sets forth the requirements for 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." Any such renewal application on behalf of the Authority or a permit holder that is a party to the participation agreement shall not be considered complete unless the requirements set forth in paragraphs (d)1 and 2 have been met.

Paragraph (d)1 requires that 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 by P.L. 2001, c. 199 (N.J.S.A. 5:5-156) as amended ..."

Paragraph (d)2 requires that an application for the renewal of an initial off-track wagering license must include a copy of a fully executed participation agreement as required by the Act. Subparagraph (d)2i requires that the Authority or the permit holder seeking the grant of the renewal license shall demonstrate that 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 meets the five requirements in subparagraphs (d)2i(1) through (5). These requirements are, respectively, that: each party is in compliance with the participation agreement; is in compliance with all permits; is in compliance with all applicable minimum live race date requirements in the Act; is licensed by the Commission or otherwise qualified to participate in off-track wagering; and is in good standing with the Commission and State.

The specially-adopted amendments to paragraph (d)1 and 2 replaced the deleted requirements, originally set forth at paragraphs (d)2 and 3, which set forth the requirements in the Act regarding the minimum number of race dates and participation agreement prior to the legislative changes in P.L. 2011, c. 26 described above.

The Commission is also proposing to readopt the specially-adopted amendment to subsection (h), which sets forth the requirement that 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.

The Commission is also proposing to readopt the amendment to paragraph (j)3, in which the Commission indicates that the participation agreement, which must meet the requirements of the Act, must also be "consistent with current law."

The Commission is proposing to readopt specially-adopted new N.J.A.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. This rule establishes progress benchmarks, as required by P.L. 2011, c. 26, sec. 3(e), for each off-track wagering licensee to follow "for the timely and expeditious establishment of each off-track wagering facility." The Commission developed these benchmarks in consultation with the New Jersey Economic Development Authority as required by the Legislature. *Ibid.* As mandated by statute, the failure of a licensee to meet these benchmarks shall constitute a basis for the denial by the Commission of the renewal of the off-track wagering license.

Subsection (a) provides that the Commission shall not consider 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) 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." "Within a reasonable time frame" means 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 off-track wagering license and that 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. If the horsemen's organization does not file the application within one year from the date it became eligible to apply or the application it files within such time frame but is determined to be incomplete, the Commission shall deny the application consistent with subsection (d).

In paragraph (a)1, specifically, subparagraph (a)1i through iii, the Commission sets forth benchmarks the horsemen's organization must meet in order for the Commission to determine that the application is complete. First, the horsemen's organization must demonstrate in its application that it has identified a suitable location for the proposed off-track wagering facility. Second, the horsemen's organization must demonstrate that 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. Third, the horsemen's organization must be able to demonstrate that it has met one of the following four requirements set forth in sub-subparagraphs (a)1iii(1) through (4): it has obtained fee title ownership of the proposed property; obtained a leasehold interest in the proposed property for a period of not less than five years; entered into an option agreement with a property owner to acquire either fee title ownership of the proposed property or obtained a leasehold interest in the proposed property for a period of not less than five years; or 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.

In paragraph (b)1, the Commission sets forth requirements, commencing on January 1, 2012, that all entities filing an application for an initial off-track wagering license or an application for the renewal of a license for an off-track wagering facility that is not operational must meet in order for the Commission to approve the application before it. Within one year from the date that either application is filed, the applicant must comply with all of the following four requirements. First, subparagraph (b)1i requires that the applicant must submit to the Commission all information and documentation required by N.J.A.C. 13:74-2.1, 2.2, or 2.3, as applicable. Second, subparagraph (b)1ii requires that the applicant must demonstrate to the Commission that the proposed off-track wagering facility is in a suitable location and the applicant has met one of the following requirements: it has obtained fee title ownership of the proposed property; obtained a leasehold interest in the proposed property

for a period of not less than five years; entered into an option agreement with a property owner to acquire either fee title ownership of the proposed property or obtained a leasehold interest in the proposed property for a period of not less than five years; or 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. Third, subparagraph (b)1iii requires that the applicant must demonstrate 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 and begin operation. In doing so, the applicant shall provide the Commission with a detailed project development budget informed by a qualified professional design and construction team and the budget shall include all hard and soft costs associated with the project to bring the off-track wagering facility into operation.

The applicant must also provide the Commission with a detailed source of capital equal to the project development budget with all committed capital supported by financial statements prepared by a CPA. The detailed source of capital and financial statements must demonstrate the applicant's ability to commit such funds to the establishment of the off-track wagering facility and any third-party capital shall be supported by commitment letters or other documentation demonstrating that such entities are prepared to invest such capital. Fourth, subparagraph (b)1iv requires that the applicant must demonstrate 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. To do so, the applicant must provide the Commission with a third-party market study completed by a qualified firm, which demonstrates the market feasibility of the proposed off-track wagering facility; 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 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.

In paragraph (b)2, the Commission sets forth the requirement, also commencing on January 1, 2012, that an off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers within one year from the date the Commission issues the off-track wagering license.

N.J.A.C. 13:74-2.4(c) provides that upon receiving a request from an applicant or licensee for an extension of time in which to comply with the requirements of paragraph (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 with the deadline set forth therein but the applicant has been precluded from doing so by exigent circumstances beyond its control. Paragraph (c)1 indicates that the duration of any such extension shall be determined by the Commission in its discretion on a case-by-case basis. However, paragraph (c)2 provides that notwithstanding subsection (c), all off-track wagering facilities shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel 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.

Finally, subsection (d) provides that 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 or the renewal of an off-track wagering license, respectively. Subsection (d) indicates that the only extensions that may be applied for and considered by the Commission shall be time extension requests of paragraph (b)2, as authorized by subsection (c). The Commission is proposing to readopt specially-adopted new rule N.J.A.C. 13:74-2.4 in its entirety.

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

Social Impact

The proposed re-adoption of these specially-adopted amendments and new rules and the proposed amendments are intended to, and likely will, result in the establishment of additional off-track wagering facilities in

this State and increase wagering opportunities in New Jersey for persons who choose to participate wagering on horse racing. The three off-track wagering facilities currently licensed and operating in this State have resulted in a net increase in the amount of wagering on horse racing. It is anticipated that the licensure and operation of additional off-track wagering facilities will result a greater net increase in wagering. However, any resulting social impact is due to the legislative decision to facilitate the licensing and operation of additional off-track wagering opportunities and not the proposed readoption or promulgation of these amendments and rules.

Certain funds related to off-track wagering are statutorily-designated for the benefit of horse breeding and development in New Jersey, for backstretch benevolence, a program administered by the Commission that benefits backstretch workers at permitted racetracks and other facilities under the Commission's jurisdiction, and for live race purses and programs designed to aid the New Jersey horsemen. To the extent that the amendments and new rules result in additional wagering on horse racing and, thus, additional monies for such purposes, there will be a beneficial social impact.

It is also anticipated that the rules will promote the economic future of the horse racing industry in this State and, consequently, the ancillary or service industries that support horse racing. The implementation of off-track wagering has fostered the potential for increased commerce, employment, and recreational opportunities in this State. It has also helped better preserve the State's open spaces as, through the Act's allocation of certain of the funds derived through such wagering to live purses and breeding and development, the devotion of land for horse breeding and training is encouraged. Additional off-track wagering facilities will likely result in an increase of these benefits.

As with any expansion of legalized gambling, a potential does exist for negative social implications. The Racing Commission's experience concerning the implementation of off-track wagering demonstrates that, while some citizens support such initiatives in their community, others may oppose it based upon concerns that an increase in the availability of off-track wagering may result in a negative impact on the community through an increased potential for crime or an unwanted increase in traffic. Although the legislative changes set forth in P.L. 2011, c. 26, do not specifically address these concerns, the Act does by requiring that the Commission regulate these areas in an effort to limit the potential for such negative implications, and by requiring that permit holders or successors in interest provide funding to be used by the New Jersey Department of Health and Senior Services for prevention, education, and treatment programs for compulsive gamblers. The Commission believes that the requirements of the Act will sufficiently reduce any increase in the potential for such negative social implications caused by the licensure and operation of additional off-track wagering facilities in this State.

Economic Impact

It is impossible to estimate the total economic impact of the readoption of the specially-adopted amendments and new rules and two proposed amendments. An increase in the number of off-track wagering facilities in this State has potential to generate increased revenues, which will be distributed in accordance with the statutory mandates of the Act but the actual amounts of that increase and the impact are indeterminate.

An increase in the number of off-track wagering facilities will result in an economic impact on those persons or entities who apply for a license to operate the facilities. The Act, as amended, creates an economic impact on applicants who must submit non-refundable filing fees with each application for an initial off-track wagering license. The licensure fee paid by well-suited entities selected in the proposed bidding procedure, and thereby authorized to apply for an initial off-track wagering license, shall equal the amount of the successful bid. This initial licensing fee shall be distributed in equal parts to the New Jersey Thoroughbred Horseman's Association and the Standardbred Breeders' and Owners' Association of New Jersey for programs designed to aid the horsemen. Although indeterminate, the fee monies generated by successful bids could be substantial.

Another economic impact on applicants for an initial off-track wagering license is the requirement that the Commission must hold a public hearing following the submission of a completed application in the

municipality where the proposed off-track wagering facility is to be located. All costs associated with the public hearing must be paid by the applicant.

There will also be an economic impact on persons or entities who have applied for and received an off-track wagering license pursuant to the Act, the license is valid for one calendar year. As a result, to continue the operation of an off-track wagering facility, the licensee must file an application seeking the renewal of that license on an annual basis. The Act requires the submission of a non-refundable filing fee with each application for the renewal of an off-track wagering license, which shall be used by the Commission to cover its expenses associated with off-track and account wagering. Pursuant to the proposed amendment to N.J.A.C. 13:74-2.3(c), the Commission is proposing to establish a filing fee of \$1,250 for all licensees filing an application for renewal. However, the expansion of off-track wagering through an increase in off-track wagering facilities may result in an increase in the regulatory costs of the Commission and result in a proposal to increase this fee.

In establishing any additional off-track wagering facilities, the licensee may choose to convert existing premises into off-track wagering facilities, as was done concerning the off-track wagering facility currently licensed and operating in Vineland, New Jersey, or the licensee may build new facilities. In any event, such endeavors involve substantial costs both in construction and the purchase of new equipment, thereby benefitting the affected construction companies and equipment suppliers. Additionally, substantial costs will likely be incurred by licensees in connection with maintaining the various infrastructures necessary to participate in off-track wagering. These expenditures will also benefit the affected construction companies and equipment suppliers. Additional off-track wagering facilities will also result in an economic benefit to suppliers and vendors of the related facilities.

The Commission believes that any expansion of off-track wagering will also have a positive economic impact on the municipalities where these additional facilities are sited. In addition to the fact that the presence of such facilities results in additional employment opportunities and tax revenues, the legislative changes now require that applicants for an initial off-track wagering license who are the owners of the land, building, and premises of the proposed off-track wagering facility must reach an agreement with the governing body of the local municipality where the proposed off-track wagering 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. However, it bears noting that a lower payment-in-lieu-of-taxes will not provide the maximum property tax payment to the municipality, and depending on the prior occupancy status, may result in a loss of revenue to the municipality.

The rules should also benefit permit holders that operate New Jersey racetracks, as well as the New Jersey horsemen. These entities directly share in revenue from off-track wagering, which must be used to offer increased purses at the racetracks. Larger purses benefit both the racetracks and horsemen's groups by attracting better horses which can, in turn, result in greater attendance at the races, more people wagering or people making larger wagers. Additionally, as noted above, the rules proposed for readoption can be expected to generate funds for backstretch benevolence programs, as well as programs designed to assist compulsive gambling.

The Commission's rules require that off-track wagering licensees utilize an in-State hub facility, which results in costs to each licensee. An increase in the number of licensees utilizing the wagering hub may result in a decreased cost per licensees for those currently paying for the services of the hub. However, the Commission's rules impose certain administrative and operational costs upon the hub operator. The operator is also required to establish and maintain internal control procedures, as well as other records related to off-track wagering, which will require appropriate staffing and administrative costs. An increase in off-track wagering through an expansion of the number of such facilities could result in an increase in the hub's costs.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption 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. 26, and are not subject to any Federal requirements or standards.

Jobs Impact

As noted above, the rules proposed for re-adoption will likely result in the generation of jobs in the State. The opening of additional off-track wagering facilities will create more employment opportunities. The location of those employment opportunities is dependent upon the locations of the off-track wagering facilities. In addition to the employment requirements at such facilities, job opportunities will also arise in terms of the construction of such facilities, and as concerns ancillary industries, which will be needed to supply such facilities with goods and services.

Agriculture Industry Impact

The rules proposed for re-adoption should have a positive impact on agriculture. Horse racing involves the participation of animals, which require farmland for breeding, development, and training. The Act requires that a portion of the funds derived from off-track wagering be devoted to purses for live racing in this State. An increase in off-track wagering facilities will likely lead to increased wagering and may indirectly result in an incentive to expand the devotion of land for such purposes. Additionally, as noted above, certain of the revenues resulting from off-track wagering is to be devoted to horse breeding and development in this State, which will have a direct beneficial impact.

Regulatory Flexibility Analysis

None of the three permit holders that currently have the exclusive rights to establish, license, and operate off-track wagering facilities qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each has more than 100 full-time employees, no regulatory flexibility analysis is required as to these permit holders.

The rules proposed for re-adoption expand the opportunities for persons or entities to apply for licensure, establish, and operate off-track wagering facilities. First eligible for these opportunities are the three horsemen's organizations that currently exist in this State. All three horsemen's organizations have fewer than 100 full-time employees. Should the right to apply for an initial off-track wagering license become available to well-suited entities through the bidding process set forth in the proposed amendments to N.J.A.C. 13:74-2.2(a)2i through vi, it cannot yet be determined if the successful bidders who apply, qualify for and receive an initial off-track wagering license will fall within the definition of a small business. Any reporting, recordkeeping, or compliance requirements imposed as a result of the special adoption on the three horsemen's organizations or any well-suited entities are discussed in the Summary above and any costs are discussed in the Economic Impact statement. There should not be a need for professional services to comply with the special adoption, beyond those discussed in the Summary above.

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. Unless an exemption is applied for and granted, vendors are required to be licensed where they maintain a presence at the premises of an off-track wagering facility, or where they supply racing-related or parimutuel-related equipment, supplies, information, or data to the off-track wagering licensee. These vendors would be required to file a petition with the Commission seeking an exemption on the basis that licensure is unnecessary, or submit a license application to secure a license. Additionally, in a significantly lesser number, other vendors who transact more than \$10,000 annually with an off-track wagering licensee might be required by the Commission to file an application for a vendor's license. However, where any vendor is already licensed by the Commission and it is determined that the vendor's responsibilities to an existing Commission licensee are substantially similar to those to be performed in connection with off-track wagering, an endorsement to the existing license at no cost is the only requirement. These requirements are consistent with the policies of the Act and, in addition to being amply warranted, are necessary to the integrity of off-track wagering. Costs to vendors are discussed in the Economic Impact statement above.

The rules, which will likely result in an increase in off-track wagering, may result in the need for additional hub facilities, if authorized by the

Commission, which would be required to be licensed as a vendor. All employees of any hub operator and those with oversight responsibilities as to the hub facility are required to apply for and receive a Commission-issued license. A hub facility is required to establish and maintain internal control procedures, as well as records related to off-track wagering. A hub facility is also required to test equipment or software before implementation, and submit the results of such testing to the Commission in writing. The rules require that a hub facility be located in New Jersey, and any hub facility seeking to operate in this State would likely qualify as a small business. Costs to hub facilities are discussed in the Economic Impact statement above.

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 calculate payments due to the Commission. It 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 small businesses will have to employ professional services in order to comply with these rules.

Housing Affordability Impact Analysis

The rules proposed for re-adoption will not impact affordable housing in New Jersey. The rules expand the opportunities for persons or entities to apply for licensure, establish, and operate off-track wagering facilities.

Smart Growth Development Impact Analysis

The rules proposed for re-adoption do not affect smart growth development in the State because it has no relevance to housing or other types of development recommended for Planning Areas 1 or 2, or designated centers, under the State Development and Redevelopment Plan. The rules expand the opportunities for persons or entities to apply for licensure, establish, and operate off-track wagering facilities.

Full text of the specially adopted amendments and new rules proposed for re-adoption follows (additions specially adopted May 20, 2011 (see 43 N.J.R. 1445(a)) indicated in boldface **thus**; deletions specially adopted May 20, 2011 (see 43 N.J.R. 1445(a)) indicated in brackets {thus}; additions to the specially adopted amendments and new rules indicated in boldface and underline thus; deletions from the specially adopted amendments and new rules indicated in cursive brackets {thus}):

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:

... "Act" means the Off-Track and Account Wagering Act, P.L. 2001, [c.199] 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 the 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[, provided that] or its assignee 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 the 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;]

1. 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 by 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.

[4.] 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. (No change in text.)

(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, [whether] documentation that 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)-(f) (No change.)

(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 have 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 (h) 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 (h)2i below 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.

i. 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:

(1) 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 if no such agreement has yet been reached, the Authority or permit holder has demonstrated to the satisfaction of the Commission [that the] either:

(A) 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; or

(B) It engaged in substantial, good faith negotiations in an attempt to reach an agreement, in connection with the sale or lease of a racetrack under its control, to obtain, establish, or transfer one or more off-track wagering licenses or facilities, no agreement was

reached as a result of these negotiations and the Authority or permit holder is in the process of making alternative arrangements intended to solicit new persons or entities that possess a good faith interest in the negotiation and execution of any such agreement.

1. In order for the Commission to deem that sufficient progress has been made to meet the requirements of the benchmark in (h)2i(1)(B) above, the Authority or permit holder shall bear the burden of establishing to the satisfaction of the Commission that the planned, alternative arrangements have a reasonable likelihood of soliciting new sources of interest and resulting in negotiations and the eventual execution of an agreement to obtain, establish, or transfer one or more off-track wagering licenses or facilities.

1i. To ensure that Authority or permit holder remains in compliance with the benchmark in (h)2i(1)(B) above, the Commission may require the filing of periodic or regular reports; or

(2) If the Authority or permit holder does not meet the requirements set forth in (h)2i(1) 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, it 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 five years;

(III) Entered into an option agreement with a property owner to acquire either (h)2i(2)(C)(I) or (II) 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) 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. 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.

[(g)] (j) (No change in text.)

[(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.-2. (No change.)

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 proposed off-track wagering facility site is [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.]

(l) 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. 5:5-156.

Recodify existing (i), (j), and (k) as (m), (n), and (o) (No change in text.)

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 P.L. 2011, c. 26, §3 (N.J.S.A. 5:5-130(c)), 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 percent to the New Jersey Thoroughbred Horsemen's Association and 50 percent to the Standardbred Breeders and Owners Association of New Jersey for programs designed to benefit the New Jersey horsemen.

i. To be qualified to submit an application for an initial off-track wagering license as a well-suited entity, a person, persons, association, corporation, partnership, organization, or other entity must be selected as a successful bidder in the bidding process set forth in this subsection.

ii. An initial off-track wagering license shall become available for public bid upon the Commission reaching the following determinations:

(1) The Commission has determined, pursuant to N.J.A.C. 13:74-2.1(h), that one or more of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 shall no longer be considered part of the Authority's or permit holder's share; and

(2) The Commission has determined, pursuant to (b) below, that no horsemen's organization has applied for the available off-track wagering license pursuant to N.J.S.A. 5:5-133 within a reasonable time frame from the date that horsemen's organizations became eligible to apply.

iii. In placing an available off-track wagering license up for bid, the Commission may utilize the services of the Division of Purchase and Property (Division), which is in and of the Department of the Treasury, to advertise, solicit, accept, and evaluate formal sealed bids pursuant to the Division's rules set forth in N.J.A.C. 17:12. The Commission may consult with the Division during the bidding process and ensure that the bidding process:

(1) Includes procedures for the establishment of a minimum bid threshold for the selection of a successful bidder;

(2) Notifies bidders that the awarding of a bid to a successful bidder shall be contingent upon that bidder's ability to establish its eligibility to be licensed as an off-track wagering licensee in compliance with N.J.S.A. 5:5-130 and (i) below;

(3) Requires that, in addition to submitting a monetary bid, a bidder shall submit a conceptual plan describing the off-track wagering facility the bidder intends to establish, the amenities it will offer, and its proposed or intended location; and

(4) Informs bidders that a successful bid shall be conditional upon the successful bidder's compliance with all the provisions of the Act and the applicable rules promulgated by the Commission.

iv. Upon receipt of any evaluation or recommendations, the Commission shall select the successful bidder. In selecting the successful bidder, the Commission shall consider and balance the following factors:

(1) The monetary value of the bid in comparison to other bids submitted;

(2) The level of quality of the proposed facility and the amenities it will offer in striving to be a first-rate experience for the customer that includes the provision of first-class dining facilities;

(3) The potential of the proposed facility and amenities to generate greater interest in the horse racing industry and the sport of horse racing in the State; and

(4) The proximity of the bidder's proposed or intended location for the off-track wagering facility and its impact on other planned or existing off-track wagering facilities and racetracks in the State.

v. The Commission's selection of the successful bidder and the basis for its decision shall be submitted to the Attorney General, for review and approval, within 14 days following the Commission's determination. The Commission's determination 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.

vi. The Commission's selection of a successful bidder and the Attorney General's approval of the successful bidder shall grant that bidder the right to file an application for the issuance of an initial off-track wagering license. Any grant of an initial off-track wagering license is contingent upon the bidder's full compliance with the application process and the bidder's ability to meet the eligibility standards set forth in this section. The Commission's selection of a successful bidder and the Attorney General's approval shall not be construed as granting that bidder the right to receive an initial off-track wagering license.

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 section.

(b) An application for an initial off-track wagering license filed pursuant to this section 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 section 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, §71.; and

3. 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. 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. 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.

(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 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. 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]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 by 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:

i. 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:

(1) In compliance with the participation agreement;

(2) In compliance with all permits;

(3) In compliance with all applicable minimum live race date requirements in the Act;

(4) Licensed by the Commission or otherwise qualified to participate in off-track wagering; and

(5) In good standing with the Commission and State.

[4.] (e) (No change in text.)

[(c)] (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) (No change in text.)

(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) (No change in text.)

[(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.-2. (No change.)

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. (No change.)

[(i)] (k) (No change in text.)

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 (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.

(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:

i. 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;

ii. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable locations and the applicant 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 5 years;
- (3) Entered into an option agreement with a property owner to acquire either (b)1ii(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;

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 and begin operation. 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

(2) 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; 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; and

(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

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 pari-mutuel wagers.

(c) Upon receiving a request by an applicant or licensee for an extension of time in which to comply with the requirements of (b)2 above, 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 in its discretion on a case-by-case basis.

2. Notwithstanding (c) above, all off-track wagering facilities shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel 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 section 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 section, shall be time extension requests of (b)2 above, as authorized by (c) above.

TRANSPORTATION

(a)

**MOTOR VEHICLE COMMISSION
Driver Improvement Program and Probationary
Driver Program
Proposed New Rules: N.J.A.C. 13:19-14**

Authorized By: Motor Vehicle Commission, Raymond P. Martinez, Chair.

Authority: N.J.S.A. 39:2-3, 39:3-13.4, and 39:5-30.2.

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

Proposal Number: PRN 2012-005

Submit written comments by March 3, 2012 to:

Steven E. Robertson, Director
Regulatory & Legislative Affairs
Motor Vehicle Commission
225 East State Street
PO Box 162
Trenton, New Jersey 08666-0162

The agency proposal follows:

Summary

The public comment period for this notice of proposal will be 60 days, since the notice is not listed in the agency rulemaking calendar. This notice of proposal is therefore, excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The purpose of the proposed new rules by the Motor Vehicle Commission (Commission) is to establish standards for the licensing and regulating of driving schools and Statewide safety organizations that will be providing remedial driver education to New Jersey motorists, pursuant to N.J.S.A. 39:3-13.4 and 39:5-30.2.