

2. In evaluating an application filed by the Authority on behalf of itself or on behalf of a permit holder and the Authority or permit holder has been required to make a deposit or post a bond, or irrevocable letter of credit pursuant to N.J.S.A. 5:5-130(b)(1), the Commission shall determine whether the off-track wagering licensee has made substantial progress in the Commission’s judgment pursuant to the benchmarks set forth in N.J.A.C. 13:74-2.7 toward establishing the off-track wagering facility within one year of making the deposit, or posting the bond, or irrevocable letter of credit.

3. In evaluating an application filed by a horsemen’s organization which has not received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1), 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(a).

4. In evaluating an application filed by a horsemen’s organization that has received the sum of \$1 million as provided in N.J.S.A. 5:5-130(b)(1), the Commission shall determine whether the off-track wagering licensee has complied with N.J.A.C. 13:74-2.4(a)3 and has made substantial progress in the Commission’s judgment pursuant to the benchmarks set forth in N.J.A.C. 13:74-2.7 toward establishing the off-track wagering facility within one year from the date the funds were allocated to it by the Commission.

5. In evaluating an application filed by a well-suited entity, the Commission shall determine whether the off-track wagering licensee has made progress in the Commission’s judgment pursuant to the benchmarks set forth in N.J.A.C. 13:74-2.8.]

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

[(j)] (i) [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] **The Commission shall approve the off-track renewal license [shall be issued to the] where the off-track wagering licensee [where it] demonstrates by clear and convincing evidence that:**

1. (No change.)
2. The [grant of an off-track wagering license] renewal [to continue the operations of the off-track wagering facility] will not be inimical to the interests of the public and the horse racing industry in this State;
- 3.-4. (No change.)

(j) **The Commission’s determination on the application shall be submitted to the Attorney General for review and approval. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved 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.**

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

SUBCHAPTER 6. STANDARDS FOR OFF-TRACK WAGERING FACILITIES

13:74-6.11 Proceeds from off-track wagering; money room requirements

(a) All proceeds from wagering at an off-track wagering facility shall be delivered to and deposited within a money room within the off-track wagering facility, which shall be a secure area with limited access. An off-track wagering facility shall develop and implement written procedures, designed to accurately account for and track proceeds from wagering from the time the related wager is placed through delivery to the money room and ultimate distribution therefrom, which are to be included in the internal control procedures filed with the Commission pursuant to N.J.A.C. 13:74-2.1(d), [and] 2.2(e)](d), and 2.3(f).

(b)-(d) (No change.)

(a)

**NEW JERSEY RACING COMMISSION  
Off-Track Wagering and Account Wagering  
Proposed Repeals and New Rules: N.J.A.C. 13:74-2.4, 2.5, and 2.6**

**Proposed Repeals: N.J.A.C. 13:74-2.7 and 2.8**

Authorized By: New Jersey Racing Commission, Judith A. Nason, Acting Executive Director.

Authority: N.J.S.A. 5:5-131.

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

Proposal Number: PRN 2018-098.

Submit written comments by January 4, 2019, to:

Judith A. Nason, Acting Executive Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
PO Box 088  
Trenton, New Jersey 08625-0088  
or via e-mail to [NJRCWebinfo@lps.state.nj.us](mailto:NJRCWebinfo@lps.state.nj.us).

The agency proposal follows:

**Summary**

N.J.A.C. 13:74, Off-Track Wagering and Account Wagering, establishes the procedures required for licensing, operation, and maintenance of off-track wagering facilities and account wagering accounts. Sections of Chapter 74 are proposed for repeal, while new rules are proposed to replace them.

Existing 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, is proposed for repeal.

The New Jersey Racing Commission (Commission) decided to stay the enforcements of the benchmarks in N.J.A.C. 13:74-2.4 at its May 14, 2014 meeting until the legal challenges to the constitutionality of the Off-Track and Account Wagering Act (Act), P.L. 2001, c. 199, in *ACRA Turf Club, LLC v. Zanzuccki*, Civil Action No. 3:12-CV-02775-MAS-DEA (D.N.J. May 2, 2017) were resolved in the Federal District Court. In *ACRA Turf Club, LLC v. Zanzuccki*, the plaintiffs challenged the constitutionality of statutory amendments that required the Commission to promulgate the benchmarks in N.J.A.C. 13:74-2.4. On May 2, 2017, the District Court issued a final judgment dismissing the litigation. The benchmarks in N.J.A.C. 13:74-2.4 are now obsolete as they require specific actions by specific dates and these dates have long passed.

Proposed new N.J.A.C. 13:74-2.4 establishes new benchmarks for measuring the progress of each permit holder with regard to the statutory requirement that each permit holder continue to make progress on an annual basis towards opening its share of off-track wagering facilities.

At N.J.A.C. 13:74-2.4, Progress benchmarks that must be satisfied for a permit holder to maintain its share of off-track wagering facilities,

subsection (a) sets forth the date on which the section shall become effective as January 1, 2020.

Proposed new N.J.A.C. 13:74-2.4(b) establishes the annual benchmarks that must be achieved in order for a permit holder to retain its respective share of unopened off-track wagering facilities. Each permit holder must comply with the benchmarks in this subsection until each off-track wagering facility within its share is open for operation.

Proposed new paragraph (b)1 directs a permit holder to file an application for an initial license for at least one off-track wagering facility within the permit holder's share by December 31, 2020.

Proposed new subparagraphs (b)1i through v list specific documentary requirements the permit holder must submit to the Commission prior to the permit holder's application being deemed complete. Not all of the documents listed in the subparagraphs are required to be submitted simultaneously with the initial application. A permit holder may wait until the initial application is submitted prior to incurring the expense of creating detailed market analyses, prior development plans and budgets, and other such documentation.

Proposed new paragraph (b)2 states that the application must be deemed complete by the Commission by December 31, 2021. Such a timeframe allows the permit holders ample time to obtain and submit all of the documentation required by subparagraphs (b)1i through v.

Proposed new paragraph (b)3 requires the permit holder to open the applied-for off-track wagering facility for business and begin accepting wagers by December 31, 2022.

Proposed new paragraph (b)4 requires each permit holder to comply with the consecutive annual requirements of paragraphs (b)1, 2, and 3, until that permit holder has opened all of the off-track wagering facilities within its share or the unopened off-track wagering facilities within its share will be subject to forfeiture. As an example, the proposed paragraph states that by December 31, 2023, a permit holder must file an application for an initial license for one other off-track wagering facility within its share. Pursuant to the requirements of the proposed paragraph, the Commission must deem the application complete by December 31, 2024 and the applicant must open the off-track wagering facility by December 31, 2025. This three-year process must continue until all of the off-track wagering facilities within a permit holder's share are licensed and operational.

Proposed new N.J.A.C. 13:74-2.4(c) gives any permit holder in the process of complying with the benchmarks listed in subsection (b), the right to one one-year extension of any single benchmark if it can show good cause for being unable to comply with that particular benchmark. Should any permit holder be granted an extension, each remaining and subsequent benchmark shall be likewise extended for the same one-year period. The subsection also states that a permit holder has the right to request a one-year extension during the process of opening each individual off-track wagering facility. However, a permit holder does not have the right to apply for a second extension during the process of establishing the same off-track wagering facility.

Proposed new N.J.A.C. 13:74-2.4(d) explains that the failure of a permit holder to comply with the benchmark requirements of subsection (b) shall result in that permit holder forfeiting its share of unopened off-track wagering facilities pursuant to N.J.S.A. 5:5-130.b(1). The permit holder's share of unopened off-track wagering facilities shall not be transferred to another entity until the permit holder has exhausted its right to appeal the forfeiture.

Existing N.J.A.C. 13:74-2.5, Benchmarks for determining whether a permit holder has made progress since the signing of the participation agreement towards establishing the permit holder's share of the 15 off-track wagering facilities, is proposed for repeal.

On June 20, 2012, the Commission determined that all of the permit holders had made progress toward obtaining an off-track wagering license and establishing an off-track wagering facility since the signing of the Master Off-Track Wagering Participation Agreement. The Commission determined that each permit holder was entitled to retain its share of off-track wagering facilities without making a deposit or posting a bond or irrevocable letter of credit. The Commission reminded the permit holders that each was required to continue to make progress on an annual basis pursuant to N.J.S.A. 5:5-130.b(1). As a result, the benchmarks set forth in existing N.J.A.C. 13:74-2.5 are obsolete and no longer necessary. As

stated above, the benchmarks the permit holders must meet to continue to make progress on an annual basis are being revised and are set forth in proposed N.J.A.C. 13:74-2.4.

The Commission proposes new N.J.A.C. 13:74-2.5, Progress benchmarks that must be satisfied for a horsemen's organization to maintain its acquired share of off-track wagering facilities, to address the process a horsemen's organization must undertake in order to obtain a permit holder's forfeited share of off-track wagering facilities. The proposed new section revises the progress benchmarks that a horsemen's organization must satisfy in order to maintain its acquired share of off-track wagering facilities. The benchmarks were formerly set forth in N.J.A.C. 13:74-2.4(a), which is proposed for repeal.

Proposed new N.J.A.C. 13:74-2.5(a) explains the procedures that must be undertaken by a horsemen's organization should it wish to obtain a permit holder's forfeited share of unopened off-track wagering facilities, as well as the timeframe for doing so. When applying to obtain a permit holder's forfeited share, a horsemen's organization may submit supplemental information with its application for the review of the Commission. The Commission may require additional information to supplement the application.

The subsection also explains that should the Commission receive applications from multiple horsemen's organizations for the forfeited share of a particular permit holder, the Commission will determine which horsemen's organization shall obtain the forfeited share. Similar to the benchmark requirements of N.J.A.C. 13:74-2.4, a horsemen's organization is required to continue to make annual progress towards opening the remaining off-track wagering facilities within its share or risk forfeiture of the unopened off-track wagering facilities within that share.

Proposed new N.J.A.C. 13:74-2.5(a)1 directs the horsemen's organization that obtained the permit holder's forfeited share to file an application for an initial license for at least one off-track wagering facility within the share by December 31 of the year in which the horsemen's organization's petition is approved. The paragraph also states that the horsemen's organization's application deadline may be extended until December 31 of the following year, if the petition to obtain the forfeited share was approved after June 30 of a particular year or for other good cause shown.

Proposed new subparagraphs (a)1i through iv detail requirements with which the horsemen's organization must comply upon submitting an application for an initial off-track wagering license. Such documentation includes a proof of fee title ownership or leasehold interest, proof of sufficient financial resources to pay for the design, construction, and development of the proposed facility, a detailed project development budget, a market feasibility report of the location of the proposed facility, a five-year financial pro forma detailing the project revenues, detailed information on key individuals necessary to operate the proposed facility, and other documentation required pursuant to N.J.A.C. 13:74-2.2.

Proposed new paragraph (a)2 states that the application must be deemed complete by the Commission by December 31 of the year following the year in which the application was submitted. Such a timeframe allows the horsemen's organization ample time to obtain and submit all of the documentation required by subparagraphs (a)1i through iv.

Proposed new paragraph (a)3 requires the horsemen's organization to open the applied-for off-track wagering facility for business and begin accepting wagers by December 31 of the year after which the application was deemed complete.

Proposed new paragraph (a)4 requires each horsemen's organization to comply with paragraphs (a)1 through 3 until that horsemen's organization has opened all of the off-track wagering facilities within its acquired share or the unopened off-track wagering facilities within its acquired share will be subject to forfeiture.

Proposed new paragraph (a)5 explains the process should no qualified horsemen's organization petition to acquire a permit holder's forfeited share within the one-year deadline for doing so.

Proposed new subsection (b) explains that the failure of a horsemen's organization to comply with the benchmark requirements of subsection (a) shall result in that horsemen's organization forfeiting its share of unopened off-track wagering facilities. A horsemen's organization's share of unopened off-track wagering facilities shall not be transferred to

another entity until the horsemen's organization has exhausted its right to appeal the forfeiture.

Existing N.J.A.C. 13:74-2.6, Requirement that deposit, a bond, or irrevocable letter of credit be posted or deposited to retain rights to off-track wagering facilities that have not received an initial license on or before December 31, 2011, is proposed for repeal. As set forth above, the Commission determined on June 20, 2012, that no permit holder was required to make a deposit or post a bond or irrevocable letter of credit. As a result, this section is no longer needed.

The Commission is proposing new N.J.A.C. 13:74-2.6, Progress benchmarks that must be satisfied for a well-suited entity to maintain its right to open an off-track wagering facility, which sets forth the progress benchmarks that a well-suited entity must satisfy should the well-suited entity obtain the right to apply for an off-track wagering license through a successful bid in accordance with N.J.A.C. 13:74-2.2(a)2v. Currently, the rule detailing the annual benchmarks that must be achieved by a well-suited entity that obtains the right to open an off-track wagering facility exist at N.J.A.C. 13:74-2.8, which is proposed for repeal. However, as set forth above, the benchmarks are being revised and will now be set forth at N.J.A.C. 13:74-2.6.

Proposed new N.J.A.C. 13:74-2.6(a) sets forth the approval requirements should a well-suited entity desire to obtain a right to operate one of the 15 off-track wagering facilities in the State. First, any such entity must be recognized by the Attorney General as the successful bidder pursuant to N.J.A.C. 13:74-2.2(a)2v. In addition to the approval of the Attorney General, the well-suited entity must satisfy the Commission that it is making progress on an annual basis towards opening the off-track wagering facility for which its bid was successful.

Proposed new paragraph (a)1 directs the well-suited entity who obtained the right to operate an off-track wagering facility to file an application for an initial license for the off-track wagering facility it was chosen to operate by December 31 of the year in which the well-suited entity's petition is approved. The paragraph also states that the well-suited entity's application deadline may be extended until December 31 of the following year if the entity was approved to obtain the right to operate an off-track wagering facility after June 30 of a particular year or for other good cause shown.

Proposed new subparagraphs (a)1i through iv detail requirements with which the well-suited entity must comply upon submitting an application for an initial off-track wagering license. Such documentary requirements are more rigorous than those required by either the permit holders or horsemen's organizations and include a proof of fee title ownership or leasehold interest, proof of sufficient financial resources to pay for the design, construction, and development of the proposed facility, a detailed project development budget, a market feasibility report of the location of the proposed facility, a third-party market study completed by a qualified firm, a five-year financial pro forma detailing the project revenues, detailed information on key individuals necessary to operate the proposed facility, and other documentation required pursuant to N.J.A.C. 13:74-2.2. A greater documentary burden is required of well-suited entities because the Commission is not familiar with the business operations and financial stability of such an entity, unlike that of the permit holders and New Jersey horsemen's organizations, both of whom submit annual financial audits to the Commission for review.

Proposed new paragraph (a)2 states that the application must be deemed complete by the Commission by December 31 of the year following the year in which the application was submitted. Such a timeframe allows the well-suited entity ample time to obtain and submit all of the documentation required by subparagraphs (a)1i through iv.

Proposed new paragraph (a)3 requires the well-suited entity to open the off-track wagering facility for which it was approved by December 31 of the year after which the application was deemed complete.

Proposed new subsection (b) explains that the failure of a well-suited entity to comply with the benchmark requirements of subsection (a) shall result in that well-suited entity forfeiting its right to open that off-track wagering facility. Should such occur, the Commission shall begin the process of making the forfeited share available to other well-suited entities pursuant to N.J.A.C. 13:74-2.6. No well-suited entity's right to open an off-track wagering facility shall be transferred to another entity until the well-suited entity has exhausted its right to appeal the forfeiture.

Proposed new subsection (c) explains that a well-suited entity's bid amount will be considered as its licensing fee and is non-refundable should the well-suited entity fail to establish the off-track wagering facility for which it was approved and licensed by the deadlines set forth in N.J.A.C. 13:74-2.6(a).

As stated above, N.J.A.C. 13:74-2.4 through 2.8 are proposed for repeal in their entirety, as they are no longer valid and are obsolete.

As the Commission has provided a 60-day comment period for 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 repeals and new rules will impact the horse racing industry in New Jersey. The permit holders will have to continue to make progress in opening the off-track wagering facilities within their share as required by statute. This, in turn, will allow the wagering patrons of New Jersey additional locations at which they can place wagers on horse races. This convenience is a benefit to those looking to place wagers in the State. Opening additional off-track wagering facilities may also increase interest in the sport.

If a permit holder fails to make progress in establishing the new off-track wagering facilities, the rights to the unopened off-track wagering facilities within its share will be made available to horsemen's organizations and to well-suited entities if the horsemen's organizations fail to make progress as required by law. The purpose of these requirements is to increase the likelihood that all 15 off-track wagering facilities will be opened in an expeditious manner.

#### **Economic Impact**

The proposed repeals and new rules will result in additional off-track wagering facilities being opened in the State. An increase in the number of off-track wagering facilities in this State has the potential to generate increased revenues, which will be distributed in accordance with the statutory mandates of the Act.

Such an increase would result in increased revenues being given to the operators of the New Jersey racetracks in the form of additional purse money. Larger purses benefit both the racetracks and the horsemen's groups by attracting better horses that can, in turn, result in greater attendance at the racetracks, as well as an increase in the amount of people making wagers on such races.

#### **Federal Standards Statement**

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the proposed repeals and new rules. The Commission proposes these repeals and new rules pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-131.

#### **Jobs Impact**

The proposed repeals and new rules should create several new jobs. The amount of jobs created and the time at which those jobs become available is dependent upon the opening of the off-track wagering facilities themselves. Each facility will require operations staff, teller staff, and maintenance staff, and each vendor servicing the patrons of the facility will require staff as well. Additional jobs will be created upon the opening of each off-track wagering facility.

#### **Agriculture Industry Impact**

The proposed repeals and new rules may have an insignificant impact on the agriculture industry in New Jersey but there is an extreme unlikelihood that the proposed repeals and new rules will evoke a change in the costs or practices associated with agriculture.

#### **Regulatory Flexibility Analysis**

Due to the fact that none of the three permit holders that currently have the exclusive rights to establish and operate off-track wagering facilities employ more than 100 full-time employees, they do not qualify as small businesses under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the proposed repeals and new rules provide for an opportunity for other entities to obtain the right to establish off-track wagering facilities. The first entities eligible for this opportunity are the three horsemen's organizations that currently exist in this State. All three

horsemen's organizations that exist in this State do not qualify as small businesses because they too employ more than 100 full-time employees.

The final entities eligible for the opportunity to operate an off-track wagering facility in this State are those entities deemed "well-suited." Should a well-suited entity obtain the right to operate an off-track wagering facility, it is impossible to determine at this time whether such an entity will qualify as a small business pursuant to the Regulatory Flexibility Act. However, should an entity qualifying as a small business pursuant to the Regulatory Flexibility Act ever obtain a license to operate an off-track wagering facility in this State, the following shall apply.

The reporting, recordkeeping, and compliance requirements are set forth in the Summary above and are a necessary component of operating an off-track wagering facility. A licensee operating an off-track wagering facility is required to make an application, receive approvals, construct or retrofit the facility, report earnings to the Racing Commission, and renew its license to operate the facility on an annual basis. These requirements are the same for all licensees regardless of the size of the entity holding the license.

Initial compliance costs are minimal and self-incurred. The greatest cost will be the construction or retrofitting of the facility in which the off-track wagering facility will operate. These costs are estimated or known to the applicant prior to applying for a license and are entirely self-incurred. The regulatory costs consist of the application fee and the application requirements, such as providing a survey and market analysis. These costs are minimal and are the same for all licensees regardless of the size of the entity applying for the license.

The proposed repeals and new rules impose the same compliance costs for all potential and existing licensees. There is nothing in the rulemaking that would differentiate the effect or cost of compliance for a small business as compared to a larger entity.

#### **Housing Affordability Impact Analysis**

The proposed repeals and new rules should have no impact on the affordability of housing, nor the average cost of housing, in New Jersey because the proposed repeals and new rules relate to off-track wagering facilities and in no way relate to the real estate market.

#### **Smart Growth Development Impact Analysis**

It is anticipated that the proposed repeals and new rules will not have an impact on smart growth in New Jersey and will not evoke a change in housing production in Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed repeals and new rules relate to off-track wagering facilities and in no way relate to the real estate market.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:74-2.4 through 2.8.

**Full text** of the proposed new rules follows:

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

13:74-2.4 Progress benchmarks that must be satisfied for a permit holder to maintain its share of unopened off-track wagering facilities

(a) This section shall become effective on January 1, 2020.

(b) A permit holder shall retain its share of off-track wagering facilities to be established if the permit holder demonstrates, to the satisfaction of the Commission, that it continues to make progress on an annual calendar basis towards opening its share of off-track wagering facilities. The following requirements shall commence on January 1, 2020, and continue until all of the off-track wagering facilities within the permit holder's share are licensed and fully operational as provided below:

1. By December 31, 2020, the permit holder must file an application for an initial license for at least one off-track wagering facility within the permit holder's share. After filing the application for an initial off-track wagering license, the permit holder shall also demonstrate compliance 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;

ii. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable location and the applicant has obtained fee title ownership of the proposed property or has obtained a leasehold interest in the proposed property for a period of not less than five years;

iii. The applicant must submit a detailed project development budget to the Commission to prove that 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;

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; and

v. The applicant shall supply information on key individuals necessary to operate the proposed off-track wagering facility in order to demonstrate that the applicant has the requisite staff to operate the facility;

2. By December 31, 2021, the permit holder's application must be deemed complete by the Commission. Prior to the application being deemed complete, the applicant must submit all the necessary documentation referenced in (b)1 above and rectify any deficiencies in the application via delivery of all supplemental documentation and information requested, and in the timeframe stated, by the Commission.

3. By December 31, 2022, the applicant must open the off-track wagering facility for business and begin accepting wagers; and

4. Each permit holder shall comply with the consecutive annual requirements of (b)1 through 3 above until that permit holder has opened all of the off-track wagering facilities within its share or the unopened off-track wagering facilities within its share will be subject to forfeiture. For example, by December 31, 2023, the permit holder must file an application for an initial license for at least one other off-track wagering facility within the permit holder's share.

(c) A permit holder may, at any time in the process of opening an off-track wagering facility, request a one-year extension of a single benchmark deadline if it can show good cause for being unable to complete the particular benchmark. A permit holder cannot receive more than one extension during the process of opening each individual off-track wagering facility.

(d) The failure to meet the benchmarks in this section shall constitute a basis for the denial of the initial off-track wagering license for which was applied. The failure to meet the benchmarks in this section shall result in the Commission ordering that the permit holder shall forfeit its share of unopened off-track wagering facilities to be established as required by N.J.S.A. 5:5-130.b(1). A permit holder's share of unopened off-track wagering facilities to be established cannot be transferred until that permit holder has exhausted its right to appeal the forfeiture.

13:74-2.5 Progress benchmarks that must be satisfied for a horsemen's organization to maintain its acquired share of off-track wagering facilities

(a) The horsemen's organizations shall become eligible to petition the Commission to obtain the right to apply for a permit holder's forfeited share of off-track wagering facilities when the permit holder's right to appeal that forfeiture is exhausted. When the permit holder's right to appeal is exhausted, the Commission shall notify, in writing, the horsemen's organizations that are eligible to petition to obtain the right to apply. From the date of this written notice, the horsemen's organizations shall have one year to petition the Commission for the right to apply for the permit holder's forfeited share of unopened off-track wagering facilities. The petition shall include general information about the financial and managerial ability of the horsemen's organization to open and operate the remaining off-track wagering facilities in the permit holder's forfeited share. A horsemen's organization may include supplemental information and documentation in support of its petition. The Commission may request additional information before rendering a

decision on the petition(s) received. The Commission will review all such petitions and determine which petitioner will be awarded the right to apply for the forfeited share. The horsemen's organization granted the right to acquire the permit holder's forfeited share must file an application pursuant to N.J.A.C. 13:74-2.2 and demonstrate to the satisfaction of the Commission that it continues to make progress on an annual calendar basis towards opening the off-track wagering facilities it has acquired in accordance with the requirements in (a)1 through 5 below, which shall commence on the date the Commission approves the petition of a horsemen's organization:

1. By December 31 of the year in which the horsemen's organization's petition is approved, the horsemen's organization must file an application for an initial license for at least one off-track wagering facility within its acquired share. This deadline may be extended, at the request of the horsemen's organization, to December 31 of the following year if the horsemen's organization's petition was approved on a date after June 30 or for other good cause shown. After filing the application for an initial off-track wagering license, the horsemen's organization shall also demonstrate compliance with each of the following requirements:

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

ii. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable location and the applicant has obtained 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;

iii. The applicant has obtained sufficient financial resources to pay for the design, construction, development, and other costs necessary to establish the proposed off-track wagering facility. The applicant shall provide to the Commission, a detailed project development budget informed by a qualified professional design and construction team and documentation that the applicant has either placed monies into escrow or secured an irrevocable letter of credit in an amount equal to or greater than the project development budget; 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 five-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

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

2. By December 31 of the year after the application is submitted, the horsemen's organization's application must be deemed complete by the Commission. Prior to the application being deemed complete, the applicant must submit all the necessary documentation set forth in (a)1 above and rectify any deficiencies in the application via delivery of all supplemental documentation and information requested, and in the timeframe stated, by the Commission;

3. By December 31 of the year following the year in which the application was deemed complete, the off-track wagering facility referred to in the benchmark requirements of (a)1 and 2 above shall be opened for business and begin accepting wagers;

4. Each horsemen's organization shall comply with the consecutive annual requirements of (a)1 through 3 above until that horsemen's organization has opened all of the off-track wagering facilities within its acquired share or the unopened off-track wagering facilities within its acquired share will be subject to forfeiture. For example, by December 31 of the year after the horsemen's organization opened an off-track wagering facility for business, the horsemen's organization must file an application for an initial license for at least one other off-track wagering facility within its acquired share; and

5. Should no horsemen's organization petition to acquire a permit holder's forfeited share within one year of the Commission's written notice that a permit holder's right to appeal the forfeiture of its share has been exhausted, the Commission shall begin the process of making an off-track wagering facility within the forfeited share available to a well-suited entity pursuant to N.J.A.C. 13:74-2.6.

(b) The failure to meet the benchmarks in this section shall constitute a basis for the denial of the initial off-track wagering license for which the horsemen's organization applied. The failure to meet the benchmarks in this section shall result in the Commission ordering that the horsemen's organization shall forfeit its share of unopened off-track wagering facilities to be established. A horsemen's organization's share of unopened off-track wagering facilities to be established cannot be transferred until that horsemen's organization has exhausted its right to appeal the forfeiture.

13:74-2.6 Progress benchmarks that must be satisfied for a well-suited entity to maintain its right to open an off-track wagering facility

(a) A well-suited entity shall file an application for the grant of an off-track wagering license upon the Attorney General's approval of the successful bidder in accordance with N.J.A.C. 13:74-2.2(a)2v. However, the well-suited entity approved by the Attorney General must demonstrate to the satisfaction of the Commission that it continues to make progress on an annual calendar basis towards opening the off-track wagering facility for which its bid was successful. The following requirements shall commence on the date the Attorney General approves the well-suited entity:

1. By December 31 of the year in which the well-suited entity's bid is approved, the well-suited entity must file an application for an initial license for operation of the off-track wagering facility it was chosen to operate. This deadline may be extended at the request of the well-suited entity to December 31 of the following year if the well-suited entity was approved by the Attorney General after June 30 or for other good cause shown. After filing the application for an initial off-track wagering license, the well-suited entity shall also demonstrate compliance with each of the following requirements:

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

ii. The applicant has demonstrated to the Commission that the proposed off-track wagering facility is in a suitable location and the applicant has obtained 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;

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

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

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

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 five-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;

2. By December 31 of the year after the application is submitted, the well-suited entity's application must be deemed complete by the Commission. Prior to the application being deemed complete, the applicant must submit all the necessary documentation set forth in (a)1 above and rectify any deficiencies in the application via delivery of supplemental documentation and information requested, and in the timeframe stated, by the Commission; and

3. By December 31 of the year following the year the application is deemed complete, the off-track wagering facility referred to in the benchmark requirements of (a)1 and 2 above shall be opened for business and begin accepting wagers.

(b) Should a well-suited entity fail to meet the benchmarks established by this section, the well-suited entity's right to open an off-track wagering facility shall be forfeited and the Commission shall begin the process of making the forfeited off-track wagering facility available to another well-suited entity pursuant to N.J.A.C. 13:74-2.2. A well-suited entity's right to open an off-track wagering facility cannot be put up for bid until that well-suited entity has exhausted its right to appeal the forfeiture.

(c) As set forth in N.J.A.C. 13:74-2.2(a)2, the successful bid of a well-suited entity shall be considered a non-refundable filing fee should the well-suited entity fail to open the off-track wagering facility for which it was approved by the deadlines set forth in (a) above.

## (a)

### **NEW JERSEY RACING COMMISSION Issuance of Sports Wagering License to Racetrack Permit Holder**

#### **Proposed Readoption of Special Adopted New Rules with Amendments: N.J.A.C. 13:74D**

#### **Proposed New Rules: N.J.A.C. 13:74D-2.2 and 2.3**

#### **Proposed Repeal: N.J.A.C. 13:74D-1.3**

Authorized By: New Jersey Racing Commission, Judith A. Nason,  
Acting Executive Director.

Authority: N.J.S.A. 5:12A-10 et seq.

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

Proposal Number: PRN 2018-099.

Submit written comments by January 4, 2019, to:

Judith A. Nason, Acting Executive Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
PO Box 088  
Trenton, New Jersey 08625-0088  
or via e-mail to: [NJRCWebinfo@lps.state.nj.us](mailto:NJRCWebinfo@lps.state.nj.us).

The agency proposal follows:

#### **Summary**

N.J.A.C. 13:74D establishes the rules necessary for implementation of sports wagering at racetracks and former racetracks in New Jersey. The Sports Wagering Act (Act), P.L. 2018, c. 33 (N.J.S.A. 5:12A-10 et seq.), grants the New Jersey Racing Commission (Commission) authority to issue initial licenses to conduct sports wagering to racetracks and certain former racetracks as defined by the Act and N.J.A.C. 13:74D. The Commission's authority is limited to the initial licensure of these entities; all license renewals will be conducted by the New Jersey Division of Gaming Enforcement (Division).

Pursuant to the Act, the Commission specially adopted N.J.A.C. 13:74D on June 13, 2018. The rules promulgated by the special adoption were scheduled to expire on March 10, 2019, and must be readopted in

whole or in part to remain effective beyond that date. Further, the proposed readoption of N.J.A.C. 13:74D will afford the public an opportunity to comment on these rules. As the Department has filed this notice prior to March 10, 2019, the expiration date is extended 180 days to September 6, 2019, pursuant to N.J.S.A. 52:14B-5.1.c. A description of the specially adopted new rules proposed for readoption with amendments, new rules, and a repeal follows.

N.J.A.C. 13:74D-1 consists of definitions and general provisions. Other than legally defining pertinent terms used throughout the chapter, this subchapter states the applicability of N.J.A.C. 13:74D and incorporates the Division's rules promulgated pursuant to the Act by reference.

N.J.A.C. 13:74D-1.1 provides definitions for several terms used throughout the chapter.

N.J.A.C. 13:74D-1.2 incorporates the rules of the Division promulgated pursuant to the Act by reference. The Act grants the authority and responsibility to regulate sports wagering to the Division. N.J.A.C. 13:74D-1.2 requires compliance with the Division's rules in order for any racetrack permit holder or certain eligible former racetracks as defined by the Act and this chapter to conduct sports wagering or an online sports pool. Proposed amendments to each subsection within N.J.A.C. 13:74D-1.2 specify that the section also applies to the owner and/or lessee of certain former racetracks, as well as current racetrack permit holders.

N.J.A.C. 13:74D-1.2(a) grants a racetrack permit holder and the owner and/or lessee of certain former racetracks as defined by the Act and this chapter the ability to file an application for a license authorizing it to operate a sports pool, provided the licensee satisfies the provisions of the Act, the Commission's sports wagering rules, and the Division's rules promulgated pursuant to the Act.

N.J.A.C. 13:74D-1.2(b) grants a racetrack permit holder and the owner and/or lessee of certain former racetracks as defined by the Act and this chapter the right to enter into an operating agreement with a casino for the purpose of jointly operating a sports pool at a racetrack or former racetrack. Such an agreement is contingent upon the approval of the Commission and the Division, and joint operation of the facility must be in accordance with the provisions of the Act, the Commission's sports wagering rules, and the Division's rules promulgated pursuant to the Act.

N.J.A.C. 13:74D-1.2(c) grants a racetrack permit holder and the owner and/or lessee of certain former racetracks as defined by the Act and this chapter the right to operate an online sports pool or to contract with an internet sports pool operator licensed as a casino service industry enterprise, or an applicant for such a license, to operate an online sports pool on behalf of the racetrack permit holder or the owner and/or lessee of a former racetrack.

N.J.A.C. 13:74D-1.2(d) states that operation of a sports pool or online sports pool shall comply with the Act and the Division's rules promulgated pursuant to the Act.

N.J.A.C. 13:74D-1.3 is proposed for repeal in its entirety. The section explains the process by which a racetrack permit holder could have applied for a transactional waiver in order to immediately begin conducting sports wagering. The three entities eligible to apply for a transactional waiver have all done so. There are no other entities that qualify to receive a transactional waiver pursuant to the Act, thus this section is obsolete.

N.J.A.C. 13:74D-2 establishes the application process and requirements to which every racetrack or eligible former racetrack must adhere should they wish to open a sports wagering facility.

N.J.A.C. 13:74D-2.1 describes the requirements with which a racetrack permit holder or the owner and/or lessee of certain former racetracks must comply upon submitting an application for a sports wagering license. The section also describes the Commission's responsibilities upon receiving an application. Proposed amendments to each subsection of N.J.A.C. 13:74D-2.1 specify that the section applies to the owner and/or lessee of certain former racetracks, as well as current racetrack permit holders. Additionally, a proposed amendment to the heading of the section adds language referencing the section's applicability to the owner and/or lessee of certain former racetracks.

N.J.A.C. 13:74D-2.1(a) requires a racetrack permit holder or owner and/or lessee of certain former racetracks to submit an application for an