

Mr. Drazin claims that the NJSEA would be unjustly dispossessed of its valuable interest in retaining its share of off-track wagering facilities should the lessee's share of off-track wagering facilities yet to be established be forfeited. Additionally, Mr. Drazin suggests that the "standard should be established by a clear and convincing evidence should be modified to a preponderance of the interest standard ..."

RESPONSE: Mr. Drazin's comments are outside the scope of the proposed amendments to N.J.A.C. 13:74-1.3, 2.1, 2.2, 2.3, and 6.11. The sole purpose of the adopted amendments is to enact grammatical and technical changes made necessary by the adoption of N.J.A.C. 13:74-2.4, 2.5, and 2.6, which is published elsewhere in this issue of the New Jersey Register. Mr. Drazin also filed comments in response to that rulemaking and the Commission has summarized those comments and responded to them in that notice of adoption.

#### Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the adopted amendments. The Commission adopts these amendments pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-134.

Full text of the adoption follows:

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 13:74-1.3 Horsemen's organizations

(a) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall make application for an initial off-track wagering license in its capacity as permit holder pursuant to N.J.A.C. 13:74-2.1. A horsemen's organization that acquired the right pursuant to N.J.S.A. 5:5-130.b(1) to seek licensure of an off-track wagering facility no longer part of a permit holder's share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall make application for an initial off-track wagering license in accordance with N.J.A.C. 13:74-2.2.

(b) Renewal of the initial off-track wagering license shall be sought pursuant to N.J.A.C. 13:74-2.3.

(c) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.4 applicable to permit holders. A horsemen's organization that acquired the right to seek licensure of an off-track wagering facility that is no longer part of a permit holder's share shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.5.

(d) If a horsemen's organization that holds a permit to conduct a race meet at a New Jersey racetrack fails to retain its rights to any unopened off-track wagering facilities originally within its share, those off-track wagering facilities shall be forfeited and made available to the other horsemen's organizations within this State pursuant to N.J.A.C. 13:74-2.4(d). If the other horsemen's organizations do not file an application to obtain a license for the off-track wagering facilities in accordance with N.J.A.C. 13:74-2.2, the off-track wagering facilities shall be made available to be established by a well-suited entity.

### 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 on behalf of a permit holder

(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 required by N.J.S.A. 5:5-130.

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

1. The permit holder or permit holders at Monmouth Park and the thoroughbred and standardbred permit holder or permit holders at the

(a)

### NEW JERSEY RACING COMMISSION Off-Track Wagering and Account Wagering Adopted Amendments: N.J.A.C. 13:74-1.3, 2.1, 2.2, 2.3, and 6.11

Proposed: November 5, 2018, at 50 N.J.R. 2212(a).  
Adopted: October 24, 2019, by New Jersey Racing Commission,  
Judith A. Nason, Acting Executive Director.  
Filed: October 24, 2019, as R.2019 d.119, **without change**.  
Authority: N.J.S.A. 5:5-134.  
Effective Date: December 2, 2019.  
Expiration Date: March 18, 2022.

#### Summary of Public Comment and Agency Response:

The official comment period ended on January 4, 2019. The following is a summary of the comment received and the response of the New Jersey Racing Commission (Commission). The Commission received one comment from Dennis A. Drazin, Esq., President and CEO of Darby Development, LLC.

1. COMMENT: Mr. Drazin "objects to any attempt to regulate benchmarks or amend the progress provisions required by the OTW law." Mr. Drazin claims that it was the Legislature's intent that the entities leasing racetracks from the New Jersey Sports and Exposition Authority (NJSEA) were to be exempted from having to establish off-track wagering facilities, or make progress towards same, and that any share of off-track wagering facilities allocated to the NJSEA would not be forfeited should the lessees fail to meet the benchmarks established by the Commission.

Meadowlands Racetrack have scheduled at least the minimum number of live race dates required by 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 Commission and State);

3. (No change.)

4. If the Authority or a permit holder subject to the participation agreement is the owner of the land, building, and premises of the proposed off-track wagering facility, it shall include a statement evidencing that it has reached an agreement with the governing body of the local municipality within which the proposed off-track wagering facility is to be located, establishing the payment in-lieu-of taxes the Authority or the permit holder must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1;

5.-6. (No change.)

(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 provisions for first-class dining, and, if alcoholic beverages are to be offered at the proposed facility, documentation that the requirements of the Act have been satisfied.

(d) The initial application shall have a written internal controls procedure attached, which shall set forth:

1. The procedures to be implemented to effectively operate and manage the proposed off-track wagering facility;

2. The procedures to be implemented to effectively maintain the integrity of wagering and the security of the proceeds from wagering within the proposed off-track wagering facility;

3. The procedures to be implemented to insure that the off-track wagering licensee complies with the requirements of the Act; and

4. The procedures to be implemented to ensure that a right of first refusal has been offered to certain individuals for certain employment opportunities within off-track wagering facilities.

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

(f) Any initial license granted pursuant to such application shall be for a period of one year.

(g) (No change.)

(h) The Commission may refuse to issue a license if it finds 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.-4. (No change.)

(i) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall 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 being satisfied that these requirements are met, the Commission shall hold a public hearing in the municipality in which the proposed off-track facility is to be located within 45 days of the application being deemed complete. The cost of such a public hearing shall be borne by the applicant.

(j) Between 30 days and 60 days following the closing of the record on the public hearing described in (i) above, the Commission shall make a

final determination on the application. The Commission shall approve the application if it determines that the Authority has demonstrated, by clear and convincing evidence, that:

1.-4. (No change.)

(k) (No change.)

(l) 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 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 the approval of the Attorney General.

(m) Any off-track wagering license shall specify the effective dates of the license, the location of the off-track wagering facility, 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 off-track wagering.

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 for an off-track wagering facility that is no longer part of a permit holder's share

(a) A horsemen's organization or a well-suited entity, as provided for in 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. To be considered by the Commission, the application must be filed after compliance with N.J.A.C. 13:74-2.5(a).

2. An application filed by a well-suited entity shall be accompanied by a non-refundable 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. (No change.)

ii. An initial off-track wagering license shall become available for public bid after:

(1) The Commission has determined, pursuant to N.J.A.C. 13:74-2.5(b) or 2.6(b) that an off-track wagering facility is available for bid; or

(2) The Commission has determined that no horsemen's organization has applied for the available off-track wagering license.

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) (No change.)

(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 (h) below;

(3)-(4) (No change.)

iv. (No change.)

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. 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. (No change.)

3. (No change.)

(b) An application for an initial off-track wagering license filed pursuant to this section shall not be considered complete unless the applicant demonstrates through the application that the requirements of the Act have been satisfied and the applicant has completely answered

each question within the application and complied with the requirements of this section.

(c) (No change.)

(d) The initial application shall have a written internal controls procedure attached, which shall set forth:

1. The procedures to be implemented to effectively operate and manage the proposed off-track wagering facility;

2. The procedures to be implemented to effectively maintain the integrity of wagering and the security of the proceeds from wagering within the proposed off-track wagering facility;

3. The procedures to be implemented to insure that the off-track wagering licensee complies with the requirements of the Act; and

4. The procedures to be implemented to ensure that a right of first refusal has been offered to certain individuals for certain employment opportunities within off-track wagering facilities.

(e) The initial application 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) Any initial license granted pursuant to such application shall be for a period of one year.

(g) (No change.)

(h) 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, permit holders and other off-track wagering licensees in the State. These standards and criteria shall enable the Commission to determine by clear and convincing evidence 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 finds 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.-4. (No change.)

(i) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall 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 being satisfied that these requirements are met, the Commission shall hold a public hearing in the municipality in which the proposed off-track facility is to be located within 45 days of the application being deemed complete. The cost of such a public hearing shall be borne by the applicant.

(j) Between 30 days and 60 days following the closing of the record on the public hearing described in (i) above, the Commission shall make a final determination on the application. The Commission shall approve the application if it determines that the applicant has demonstrated, by clear and convincing evidence, 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. (No change.)

3. The proposed off-track wagering facility site is in an appropriate location.

Recodify existing (l)-(m) as (k)-(l) (No change in text.)

(m) 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 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.

(n) 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, 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 off-track wagering.

13:74-2.3 Prerequisites to and procedures for renewal of an off-track wagering license

(a) These procedures shall apply where the applicant has been granted an initial license for an off-track wagering facility, which initial license has not lapsed, and where the applicant or its successor in interest makes proper application for the renewal of its license.

(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 expire during a calendar year, the Commission on a one-time basis and at no additional cost to the off-track wagering licensee may extend the initial license period to the last day of December of the year in question upon the written request of the licensee if the licensee is in full compliance with the Act, this chapter, and any conditions imposed by the Commission.

(c) (No change.)

(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 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 N.J.S.A. 5:5-156.

(e) The off-track wagering licensee has completely answered each question within the renewal application, attached all documents required by the application, and complied with the requirements of this section.

(f) Should the licensee have changed its written internal control procedure since the filing of a prior application for removal or for the initial grant of the off-track wagering license, the renewal application shall include as attachments, the newly amended written internal control procedures as required by N.J.A.C. 13:74-2.1(d) and 2.2(d).

(g) (No change.)

(h) Following the Executive Director's determination that the renewal application is complete, the Executive Director shall present the application to the Commission at a public meeting of the Commission.

(i) The Commission shall approve the off-track renewal license where the off-track wagering licensee demonstrates by clear and convincing evidence that:

1. (No change.)

2. The renewal 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, 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.

#### 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), 2.2(d), and 2.3(f).

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

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