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

**Readoption with Amendments: N.J.A.C. 13:74D**  
**Adopted New Rules: N.J.A.C. 13:74D-2.2 and 2.3**  
**Adopted Repeal: N.J.A.C. 13:74D-1.3**

Proposed: November 5, 2018, at 50 N.J.R. 2222(a).

Adopted: February 27, 2019, by the New Jersey Racing  
 Commission, Judith A. Nason, Acting Executive Director.

Filed: February 28, 2019, as R.2019 d.029, **without change**.

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

Effective Dates: February 28, 2019, Readoption;  
 April 1, 2019, Amendments, New Rules, and  
 Repeal.

Expiration Date: February 28, 2026.

**Summary of Public Comments and Agency Responses:**

The official comment period ended on January 4, 2019. The following is a summary of the comments received and the responses of the New Jersey Racing Commission (Commission). The Commission received comments from Dennis A. Drazin, Esq., President and CEO of Darby Development, LLC. The Commission also received comments from Stephen D. Schrier, Esq., on behalf of GS Park Racing, L.P.

1. COMMENT: Mr. Drazin raised concerns about the Commission's proposed repeal of N.J.A.C. 13:74D-1.3, a section that codifies the statutory right of each permit holder to immediately obtain a sports wagering license via transactional waiver. Mr. Drazin highlights language in the Summary of the Commission's notice of proposal that indicates that the section is obsolete due to the fact that each of the three permit holders in New Jersey have already acquired a sports wagering license via the transactional waiver created by statute. Mr. Drazin points out that while the New Jersey Thoroughbred Horsemen's Association (NJTHA) has received its transactional waiver for its permit to conduct races at Monmouth Park, "the NJTHA has a separate thoroughbred permit" to conduct thoroughbred racing at the Meadowlands. Mr. Drazin believes that the NJTHA is "eligible to apply for a transactional waiver and is eligible to establish a sports book [in connection with its Meadowlands permit] which carries with it the ability to receive three on-line skins."

Further, Mr. Drazin states that it is possible that "the special permit issued for the Far Hills Steeplechase Meet would carry with it the ability to obtain a transactional waiver." Therefore, Mr. Drazin respectfully concludes that it is misguided for the Commission to claim that "there are no other entities that qualify under the [Sports Wagering] Act" and asks the Commission to reconsider its statement and not adopt the proposed repeal of N.J.A.C. 13:74D-1.3.

RESPONSE: The Commission accepts Mr. Drazin's comment, as he raises a legitimate issue. The Sports Wagering Act (Act), P.L. 2018, c. 33, allows the racetracks that possess a valid permit to conduct live racing to apply for a transactional waiver authorizing them to immediately commence sports wagering through March 8, 2019, which is 270 days from the date of enactment of P.L. 2018, c. 33, at which point the statutory right expires and the racetrack must demonstrate full compliance with the Act, the rules of the Commission, and the applicable rules of the Division of Gaming Enforcement. However, the Commission's proposed repeal of N.J.A.C. 13:74D-1.3 will not be effective until April 1, 2019, pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which is after the statutory date of March 8, 2019, for which the waiver is applicable.

2. COMMENT: Mr. Drazin comments that the Act provides the right to operate a sports pool on the site of the in-field of former racetracks in the State. Mr. Drazin is concerned that the language of N.J.A.C. 13:74D-2.2 could lead to a reasonable interpretation that more than one such sports book may be established at each former racetrack. Mr. Drazin points out that "the Legislative intent was to permit only one sports book on each eligible former racetrack," and, therefore, suggests that the opportunity to operate a sports book should be stated as a privilege for the "owner or lessee" as opposed to the "owner and/or lessee." Mr. Drazin raises the same concerns relating to the language proposed for addition to N.J.A.C. 13:74D-1.2(a), (b), and (c) that indicates the sections apply to "the owner and/or lessee of a former racetrack." Mr. Drazin submits that the language should use the definitive "or" as opposed to the inclusive "and/or" and also should contain a "sports book limitation for each eligible former racetrack site."

RESPONSE: The Commission agrees that the Legislative intent appears to be that one sports wagering license be issued to each racetrack location. The Act defines "racetrack" to include certain former racetracks. In drafting the proposed language at issue in the comment, the Commission chose "owner and/or lessee" to address three permissible scenarios for filing an application for the sports wagering license: the owner of the property may apply for the license; the lessee of the property may apply for the license with the owner's consent; or the owner and the lessee may jointly apply for the license. The phrase "owner or lessee" was not chosen because it could be interpreted that any lessee could independently apply for a license.

3. COMMENT: Mr. Schrier states that the Commission "should issue sports pool licenses only to the former racetrack permit holder that last conducted a Horse Race Meeting at a Former Racetrack." Mr. Schrier claims it is fair, equitable, and "consistent with New Jersey's past practice with respect to the expansion of gaming and the protection of the public interest" to license only the entities that have made "substantial investments in New Jersey's horse racing industry..." Mr. Schrier offers a history of Internet gaming in New Jersey and asserts that with the enactment of the Sports Wagering Law, the Legislature similarly intended for the Commission to "consider an applicant's prior racing and compliance experience in evaluating whether it has demonstrated by clear and convincing evidence its entitlement and suitability" for obtaining a sports wagering license. Further, Mr. Schrier claims that "[t]o construe the Sports Wagering Law as authorizing the issuance of sports pool licenses to parties other than the last permit holder to conduct operations at a former racetrack would effectively render [N.J.A.C. 13:74D-2.1(c)2] meaningless." Finally, Mr. Schrier claims that "participation in the industry is reserved for organizations that already have experience conducting lawful, regulated racing and wagering operations" in order to protect the public and ensure that licensees have an established history of complying with "New Jersey's pervasive regulatory environment" and can be held accountable.

RESPONSE: The Commission thanks Mr. Schrier for his comment. Although Mr. Schrier asserts that the Commission should only issue a

sports wagering license to the last permit holder that conducted a race meet at the eligible former racetracks, he fails to cite any provision of the Act that supports this assertion, nor could the Commission identify any such provision. No language in the Legislative Statement indicates a Legislative intent to limit the grant of the sports wagering license to the last permit holder. Indeed, the last permit holder may no longer have any rights to the eligible "land contained within the racecourse oval." See N.J.S.A. 5:12A-10 (definition of "former racetrack"). As a result, the Commission must reject the commenter's offered suggestion.

Additionally, the Commission disagrees that the provision in N.J.A.C. 13:74D-2.1(c)2, which requires that a permit holder at a current racetrack or the owner and/or lessee of a former racetrack demonstrate good standing with the Commission, is meaningless. Current permit holders must be in good standing. In addition, the owner and/or lessee of the former racetrack may be currently involved in horse racing in New Jersey or may have had some former involvement. As a result, it is reasonable to require good standing with the Commission.

4. COMMENT: Mr. Schrier states that proposed N.J.A.C. 13:74D-2.2 would "potentially allow the owner or lessee of land within the racecourse oval of a former racetrack to subdivide the property among an unlimited number of owners and sub-lessees, with each having the right to seek a sports wagering license." Mr. Schrier then claims that the land that encompassed the former Garden State Park racetrack is now a shopping mall and there are "dozens of lessees of parcels of land that are located in the area of the racing oval."

RESPONSE: As stated above in the Response to Comment 2, the Commission believes that the Legislature intended that one sports wagering license be issued for each racetrack location. N.J.S.A. 5:12A-11.a states "[a] racetrack which holds an initial sports wagering license issued by the racing commission ... may operate a sports pool in accordance with the provisions of this act ..." (Emphasis added.) As a result, the Commission does not agree that N.J.A.C. 13:74D-2.2, as proposed, grants an "unlimited number of owners and sub-lessees" the right to seek a sports wagering license. Further, even if the language could be interpreted as such, the right to seek a license does not guarantee the grant of such license. The Commission has the authority to grant or deny applications for sports wagering licenses. Therefore, the Commission rejects this commenter's concern.

5. COMMENT: Citing pending litigation related to the former Garden State Park properties, Mr. Schrier states that N.J.A.C. 13:74D-2.2(a)2 should be "further amended to require applicants to establish that sports wagering may be legally conducted on the subject property."

RESPONSE: The Commission is aware of the existence of the pending litigation. However, the Commission rejects the comment as unnecessary as N.J.A.C. 13:74D-2.1(b)1 places the burden on applicants seeking an initial sports wagering license of demonstrating to the Commission that the requirements of the Act have been satisfied.

#### Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the rules readopted with amendments, new rules, and a repeal.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:74D.

Full text of the adopted amendments and new rules follows:

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 13:74D-1.1 Definitions

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

"Act" means the Sports Wagering Act, P.L. 2018, c. 33 (N.J.S.A. 5:12A-10 et seq.).

...

#### 13:74D-1.2 Applicability; incorporation of the rules of the Division by reference

(a) A racetrack permit holder or the owner and/or lessee of a former racetrack may file an application for a license authorizing it to operate a sports pool in accordance with the provisions of the Act, this chapter, and

the rules promulgated by the Division pursuant to the Act. The Racing Commission hereby incorporates the rules of the Division applicable to sports wagering promulgated pursuant to the Act by reference (see 50 N.J.R. 1652(a)).

(b) A racetrack permit holder or the owner and/or lessee of a former racetrack that holds a sports wagering license and a casino that holds a sports wagering license may enter into an agreement to jointly operate a sports pool at a racetrack, in accordance with the provisions of the Act, this chapter, and the rules promulgated by the Division pursuant to the Act, provided that the terms of the agreement are approved by the Racing Commission and the Division.

(c) A racetrack permit holder or the owner and/or lessee of a former racetrack that holds a sports wagering license may conduct an online sports pool or may authorize an Internet sports pool operator licensed as a casino service industry enterprise pursuant to P.L. 1977, c. 110, section 92 (N.J.S.A. 5:12-92), or an applicant for such license, to operate an online sports pool on its behalf provided the terms of the agreement are approved by the Racing Commission and the Division.

(d) (No change.)

13:74D-1.3 (Reserved)

### SUBCHAPTER 2. APPLICATION FOR INITIAL SPORTS WAGERING LICENSE

#### 13:74D-2.1 Grant of initial sports wagering license to racetrack permit holder or owner and/or lessee of a former racetrack

(a) The racetrack permit holder or the owner and/or lessee of a former racetrack shall make an application for an initial sports wagering license on a form prescribed by the Racing Commission. The application shall be accompanied by a non-refundable filing fee of \$100,000.

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

1. The permit holder or the owner and/or lessee of a former racetrack demonstrates, and the Racing Commission's investigation into the application confirms, that the requirements of the Act and this chapter have been satisfied;

2. The permit holder or the owner and/or lessee of a former racetrack has completely answered each question within the application, submitted the original and two copies of the application, and has fully complied with all of the Executive Director's requests for additional information;

3.-4. (No change.)

(c) Following the Executive Director's determination that the application for an initial sports wagering license is complete, the Racing Commission shall consider the application at a public meeting to make a final determination on the application.

1. The Racing Commission shall not grant an initial sports wagering license, unless the permit holder or the owner and/or lessee of a former racetrack shall have demonstrated its financial stability, integrity, and responsibility and its good character, honesty, and integrity by clear and convincing evidence. In demonstrating its financial stability, integrity, and responsibility, the permit holder or the owner and/or lessee of a former racetrack shall submit to the Racing Commission information, documentation, and assurances concerning its financial background and resources. The permit holder or the owner and/or lessee of a former racetrack shall document to the Racing Commission, by clear and convincing evidence, that it is in compliance with the Division's rules promulgated pursuant to the Act including, but not limited to, the rules applicable to the amount of cash reserves that must be maintained by operators of sports pools.

2. The permit holder or the owner and/or lessee of a former racetrack shall demonstrate that it is in good standing with the Racing Commission and has complied with all statutes, rules, and orders of the Racing Commission.

(d) The Racing Commission may refuse to issue a license if it shall find that the permit holder or the owner and/or lessee of a former racetrack has failed to demonstrate its suitability for an initial sports wagering license by clear and convincing evidence.

1. If the permit holder obtained a sports wagering license pursuant to a transactional waiver, the permit holder shall be granted up to 365 days from the date the sports wagering license was issued to amend its

application, correct any deficiencies, and demonstrate its suitability for licensure. If the permit holder fails to demonstrate its suitability for licensure, the sports wagering license shall expire.

(e) If the Racing Commission approves the application for the grant of an initial sports wagering license, the Racing Commission shall issue a final determination and order granting the license with such conditions or terms the Racing Commission deems appropriate. In imposing such conditions or terms, the Racing Commission shall order that the permit holder or the owner and/or lessee of a former racetrack comply with the Division's rules promulgated pursuant to the Act applicable to sports pools and online sports pools including, but not limited to, those rules applicable to persons or entities that must be licensed or registered with the Casino Control Commission or the Division.

#### 13:74D-2.2 Grant of initial sports wagering license to a former racetrack

(a) The owner and/or lessee of the property upon which existed a former racetrack may make application for an initial sports wagering license, pursuant to the requirements of N.J.A.C. 13:74D-2.1, to conduct sports wagering on that property, upon satisfying the following prerequisites:

1. The property owner shall provide a copy of the deed to the land and a physical description of same to the Racing Commission's Executive Director to prove ownership.

2. The property lessee shall provide a copy of the lease, which shall run for a period not less than five years from the date of the application, and a copy of the deed, which shall indicate that the land is under fee ownership of the lessor, to the Racing Commission's Executive Director.

#### 13:74D-2.3 Sports wagering by certain persons excluded

(a) No Commission licensee may, at any time, directly or indirectly, place a sports wager in connection with any race where that licensee has performed any service whatsoever, or will participate in the race, where that service performed or participation would be pursuant to the license or licenses issued to such person by the Commission.

(b) All persons appearing on the Racing Commission's self-exclusion list, maintained pursuant to N.J.S.A. 5:5-65.1 and 65.2, shall be excluded from sports wagering as required by the Act.

### SUBCHAPTER 3. OPERATION OF SPORTS POOL AT A RACETRACK OR ONLINE SPORTS POOL BY RACETRACK

#### 13:74D-3.1 Operation of sports pool at a racetrack or former racetrack

A sports pool at a racetrack or former racetrack shall be operated in full compliance with the rules of the Division promulgated pursuant to the Act.

#### 13:74D-3.2 Operation of online sports pool by racetrack permit holder or former racetrack licensee

All applications to operate an online sports pool by a racetrack permit holder or the owner and/or lessee of a former racetrack that has been granted a sports wagering license shall be filed with the Division in accordance with the requirements of its rules promulgated pursuant to the Act. Any online sports pool shall be operated in full compliance with the rules of the Division promulgated pursuant to the Act.

#### 13:74D-3.3 Delegation of Authority to Executive Director

The Racing Commission delegates to the Executive Director, the authority to consult with the Division in accordance with the requirements of the Act or the Division's rules promulgated pursuant to the Act.