

from the public and stakeholders. Accordingly, the Board invites comment on whether the Board should exempt from licensure and business permit requirements the installation or integration of POE, and, if so, any suggested rule language to establish such an exemption.

N.J.S.A. 45:5A-18 sets forth exemptions from the requirements of the Electrical Contractors Licensing Act of 1962. In accordance with this statutory provision, the Board has the authority to exempt from the business permit provisions of the Act, such electrical activities of like character, which in the Board's opinion warrants exclusion from the provisions of the Act. The Board notes that its authority to create an exemption is limited to the licensure and business permit requirements set forth at N.J.S.A. 45:5A-1 et seq., and not that of any other licensing board. The Board welcomes comments as to whether POE is of similar character as to the other established exemptions.

Comments on this notice of pre-proposal should be sent by January 4, 2019, to:

Philameana Tucker, Executive Director, Board of Examiners
of Electrical Contractors
PO Box 45006
Newark, New Jersey, 07101
or electronically at: <http://www.njconsumeraffairs.gov/Proposals/Pages/default.aspx>.

(a)

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

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

Authority: N.J.S.A. 5:5-134.

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

Proposal Number: PRN 2018-097.

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.

The agency proposal follows:

Summary

N.J.A.C. 13:74, Off-Track Wagering and Account Wagering, is proposed for amendment to conform the chapter with the proposed amendments to the rules establishing annual benchmarks the permit holders and/or horsemen's organizations must meet in order to maintain their respective share of unopened off-track wagering facilities (benchmark rules), which repeals and new rules are proposed elsewhere in this issue of the New Jersey Register. The chapter establishes the procedures required for licensing, operating, and maintaining off-track wagering facilities in the State, as well as New Jersey's account wagering system.

Due to proposed amendments to the benchmark rules proposed elsewhere in this issue of the New Jersey Register, numerous technical amendments are required throughout N.J.A.C. 13:74. The technical amendments proposed include the following: removal of references to citations within the existing benchmark rules that are proposed for repeal, as in N.J.A.C. 13:74-1.3(b) and (c); correction of citations throughout the chapter that reference sections of the benchmark rules proposed for amendment, as in N.J.A.C. 13:74-1.3(c), recodified 1.3(d), 2.1(m), 2.2(a)2ii, (a)2ii(1), and (a)2iii(2); 2.3(a) and (k), and 6.11(a); restructuring of certain subsections, paragraphs, and subparagraphs into a more comprehensive format, as in N.J.A.C. 13:74-2.1(d), 2.2(b) and (d), and 2.3(d); addition of references that comport with the proposed amendments

to the benchmark rules, as in N.J.A.C. 13:74-1.3(c) and 2.2(a)1; and recodification of sections and subsections as a result of the proposed repeals and additions of new sections and subsections, as in recodified N.J.A.C. 13:74-1.3(d), 2.2(h) through (n), and 2.3(h) and (i).

Numerous grammatical amendments are proposed throughout the chapter as well. The grammatical amendments proposed include the following: removal of unnecessary or redundant language, as in N.J.A.C. 13:74-1.3(a), (b), and (c); 2.1(a), (b)1 and 2, (c), (e), (f), (h), (i), (j), and (m); 2.2(a) and (a)2ii, (e), (f), (h), and recodified (i); and 2.3(a), (h), recodified (i) and (i)2, and (k); clarification of the language of several sections, subsections, and paragraphs, as in N.J.A.C. 13:74-2.1(i) and (m); 2.2(a)2, (b), (i); and 2.3(e); correction of the improper use of plural forms, as in N.J.A.C. 13:74-1.3(e); and correction of improper punctuation, as in N.J.A.C. 13:74-2.1(b)4.

In addition to the general technical and grammatical amendments proposed throughout the chapter, there are several proposed amendments that are summarized below.

N.J.A.C. 13:74-1.3(d) is proposed for deletion because the subsection requires compliance with the deposit requirements of N.J.A.C. 13:74-2.6, a section that is proposed for repeal in the changes to the benchmark rules.

The heading of N.J.A.C. 13:74-2.1 is proposed for amendment to clarify the section's application to initial licenses granted to the Authority "on behalf of a permit holder."

A amendment is proposed to N.J.A.C. 13:74-2.1(l). Presently, the subsection requires the New Jersey Racing Commission (Commission) to submit its determination on an application to the Attorney General, for review and approval, within three days. Such a requirement is inconsistent with the statute granting the Governor a 10-day period to review the Commission's minutes and approve, veto, or take no action on them. Thus, the Commission cannot submit an action to the Attorney General prior to the expiration of the Governor's 10-day review period.

N.J.A.C. 13:74-2.1(n) is proposed for deletion as it is unnecessary and restates the statutory tenets of the Off-Track and Account Wagering Act (Act), P.L. 2001, c. 199, already governing the actions of the Commission.

The heading of N.J.A.C. 13:74-2.2 is proposed for amendment to rename the section as follows: "Prerequisites to and procedures for grant of initial 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." The proposed section heading clarifies the origin of the off-track wagering facility that may be acquired by a horsemen's organization or well-suited entity.

Proposed amendments to N.J.A.C. 13:74-2.2(a)2ii clarify that a single off-track wagering facility will be posted for public bid even though there may be rights to multiple off-track wagering facilities within a horsemen's organization's forfeited share.

Proposed amendments to N.J.A.C. 13:74-2.2(b) will restructure the subsection by incorporating the language of paragraphs N.J.A.C. 13:74-2.2(b)1 and 3 into the text of existing subsection (b). N.J.A.C. 13:74-2.2(b)2 is proposed for deletion as the paragraph is unnecessary and restates tenets already imposed by the Act. Subsection (b), in its proposed form, will exist as a single subsection as opposed to being broken down into multiple paragraphs.

N.J.A.C. 13:74-2.2(h) is proposed for deletion as the subsection references time frames that have already elapsed.

An amendment is proposed to recodified N.J.A.C. 13:74-2.2(m). The existing subsection requires the Commission to submit its determination regarding the application to the Attorney General, for his or her review and approval, within three days. Such a requirement is inconsistent with the statute granting the Governor a 10-day period to review the Commission's minutes and approve, veto, or take no action on them. Thus, the Commission cannot submit an action to the Attorney General prior to the expiration of the Governor's 10-day review period.

N.J.A.C. 13:74-2.2(p) is proposed for deletion as the subsection is unnecessary and restates tenets of the Act.

An amendment proposed to N.J.A.C. 13:74-2.3(b) clarifies that a licensee must make a written request to extend the initial license.

Several amendments are proposed to N.J.A.C. 13:74-2.3(d). The language of existing N.J.A.C. 13:74-2.3(d)1 is proposed for incorporation into N.J.A.C. 13:74-2.3(d) with the result that the proposed form of the subsection will no longer be broken down into paragraphs. N.J.A.C.

13:74-2.3(d)2 is proposed for deletion to eliminate the requirement that a renewal application contain a copy of a fully executed participation agreement.

An amendment proposed to N.J.A.C. 13:74-2.3(f) requires submission of updated internal control procedures should the internal controls procedures for any of the off-track wagering facilities be altered since the time of the most recent license renewal, or, if the license has not yet been renewed, since the time of the initial grant of the off-track wagering license.

N.J.A.C. 13:74-2.3(h) is proposed for deletion as the subsection refers to a specific date in time which has elapsed, making the subsection and its accompanying paragraphs obsolete.

Proposed new N.J.A.C. 13:74-2.3(j) will mirror language found in N.J.A.C. 13:74-2.1 and 2.2, stating that “[t]he 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.”

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

Social Impact

The proposed amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no social impact.

Economic Impact

The proposed amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no economic impact.

Federal Standards Statement

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

Jobs Impact

The proposed amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no impact on jobs.

Agriculture Industry Impact

The proposed amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no agricultural impact.

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 amendments 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 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 amendments 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 amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no impact on the affordability of housing, nor the average cost of housing, in this State.

Smart Growth Development Impact Analysis

The proposed amendments are necessary technical and grammatical changes made in conjunction with the proposed repeals and new rules to the benchmark rules. These technical and grammatical changes will have no 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 amendments relate to off-track wagering and account wagering.

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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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 [which obtained] **that acquired** the right pursuant to N.J.S.A. 5:5-130[(b)(1)].**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) [A horsemen’s organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall make application for the renewal of an] **Renewal of the initial** off-track wagering license [in its capacity as permit holder in accordance with N.J.A.C. 13:74-2.3(h)1 and 2. A horsemen’s organization which obtained 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 the renewal of an off-track wagering license in accordance

with N.J.A.C. 13:74-2.3(h)3 and 4] **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[(b) and 2.7(a)] applicable to permit holders. A horsemen's organization [which obtained] **that acquired** the right [pursuant to N.J.S.A. 5:5-130(b)(1)] to seek licensure of an off-track wagering facility **that is** 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 be subject to the progress benchmarks in N.J.A.C. 13:74-2.4(a) and 2.7(b)]**2.5.**

[(d) A horsemen's organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall, if applicable, comply with the deposit requirements in N.J.A.C. 13:74-2.6(b)2 and the retention of eligibility requirements in N.J.A.C. 13:74-2.6(c) applicable to permit holders. A horsemen's organization which obtained 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, if applicable, comply with the return of allocation requirements in N.J.A.C. 13:74-2.6(e)1 and the retention of eligibility requirements in N.J.A.C. 13:74-2.6(c)2.]

[(e)] **(d)** If a horsemen's organization [which] **that** holds a permit to conduct a race meet at a New Jersey racetrack fails to retain its rights to [an] **any unopened** off-track wagering [facility in accordance with the requirements of P.L. 2011, c. 205, the] **facilities originally within its share, those** off-track wagering [facility] **facilities** shall [not] be **forfeited and made available** [to that horsemen's organization to be established. Under these circumstances, any such off-track wagering facility shall be made available to be established by one or both of] **to the other** [two] 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 [facility] **facilities** in accordance with [N.J.S.A. 5:5-130(b)(2) and the Commission's rules] **N.J.A.C. 13:74-2.2,** the off-track wagering [facility] **facilities** shall be made available to be established by a well-suited entity [pursuant to N.J.S.A. 5:5-130(c)].

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 [entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26] **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 Meadowlands Racetrack have scheduled at least the minimum number of live race dates required by [P.L. 2001, c. 199, as amended (N.J.S.A. 5:5-156)].;

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

3. (No change.)

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

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[, as amended by P.L. 2011, c. 26,] have been satisfied.

(d) The initial application [form] shall have [attached] a written internal controls procedure **attached**, which shall set forth [the]:

1. **The** procedures to be implemented to effectively operate and manage the proposed off-track [wager] **wagering** facility[, and the];

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 [internal control procedures shall include a] **procedures to be implemented** to [foster and] insure that the off-track wagering licensee complies with the requirements of the Act[, which creates a right of first refusal as to certain individuals for certain employment opportunities within off-track wagering facilities.]; **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 [form] shall be accompanied by a certification, signed and dated by a high managerial agent of the Authority, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(f) [The initial application for an off-track wagering facility may be filed with the Commission at any time following the effective date of the Act, and any] **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 [shall] 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 [within 14 days] review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon [the Executive Director] being satisfied that these requirements are met, [and consistent with the public notice requirements of the Act,] the Commission [within 45 days of the receipt of the completed application, certification and non-refundable \$2,500 filing fee] shall [at the cost of the Authority] hold a public hearing in the municipality in which the proposed off-track facility is to be located **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 [by clear and convincing evidence] has demonstrated, [through its application and internal control procedures] **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[, within three business days following the Commission's determination]. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. The Commission shall issue the license upon **the** approval of the Attorney General.

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

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

13:74-2.2 Prerequisites to and procedures for grant of initial off-track wagering license to a horsemen's organization or a well-suited entity **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 [P.L. 2011, c. 26, § 3] [(N.J.S.A. 5:5-130(c))],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)].**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 [pursuant to N.J.A.C. 13:74-2.6(h) upon the Commission reaching the following determinations] **after**:

(1) The Commission has determined, pursuant to N.J.A.C. 13:74-2.4(d), 2.5,2.5**(b)** or 2.6[(b)2, 2.6(c), or 2.7]**(b)** that [one or more of the 15] **an off-track wagering [facilities authorized by N.J.S.A. 5:5-136 shall no longer be considered part of the Authority's or permit holder's share; and] 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 [pursuant to N.J.S.A. 5:5-133 within a reasonable time frame from the date that horsemen's organizations became eligible to apply in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.4(a); a horseman's organization that has applied for an initial off-track wagering license has failed to make progress on an annual basis pursuant to the benchmarks in N.J.A.C. 13:74-2.4(a)2; or a horseman's organization that has received the sum of \$1 million has failed to obtain a license in compliance with N.J.A.C. 13:74-2.4(a)3 or a horsemen's organization that has received the sum of \$1 million has failed to make substantial progress in establishing the off-track wagering facility in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.7 within one year from the date the funds were allocated to it by the Commission].

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 [(i)] **(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[, within 14 days following the Commission's determination]. The Commission's determination shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision.

vi. (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[:

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

[2. If the applicant for an initial off-track wagering license pursuant to this section is the owner of the land, building and premises of the proposed off-track wagering facility, it shall include a statement evidencing that it has reached an agreement with the governing body of the local municipality within which the proposed off-track wagering facility is to be located establishing the payment in-lieu-of taxes the applicant must pay to the municipality for the first five years of operation of the off-track wagering facility as required by N.J.S.A. 5:5-151.1, pursuant to P.L. 2011, c. 26, § 7; and

3. The] **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 [form] shall have [attached] a written internal controls procedure **attached**, which shall set forth [the]:

1. **The** procedures to be implemented to effectively operate and manage the proposed off-track [wager] **wagering** facility[, and the];

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 [internal control procedures shall include a] procedures to [foster and] **be implemented to** insure that the off-track wagering licensee complies with the requirements of the Act[, which creates a right of first refusal as to certain individuals for certain employment opportunities within off-track wagering facilities.]; **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 [form] shall be accompanied by a certification, signed and dated by a high managerial agent of the applicant, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(f) [The initial application for an off-track wagering facility may be filed with the Commission at any time following the effective date of the Act, as amended, and any] **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 that 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 horsemen's organization has applied for a license pursuant to N.J.S.A. 5:5-133 within a reasonable time frame from the date the horsemen's organization became eligible to apply utilizing the benchmarks set forth in N.J.A.C. 13:74-2.4(a) and (a)1. If the Commission determines that the organization did not apply for a license within a reasonable time frame, the horsemen's organization shall no longer be considered eligible to license, establish and operate the off-track wagering

facility. In evaluating an application for an off-track wagering license 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 horsemen's organization has applied for a license pursuant to N.J.S.A. 5:5-133 within one year from the date the funds are allocated to it by the Commission to obtain a license for the off-track wagering facility.]

[(i)] (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)].b and 130[(c)].c, the Commission shall assess the qualifications of the organization or entity and, in doing so, apply substantially similar standards and criteria to those the Commission applies to the Authority, [its assignees, if any, and other] permit holders and **other off-track wagering** licensees in the State. These standards and criteria shall enable the Commission to determine by clear and convincing evidence [in the opinion and discretion of the Commission] that the person or persons applying for licensure on behalf of the organization or entity are well-suited to receive licensure. The Commission may refuse to issue a license if it [shall] 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.)

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

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

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

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

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

13:74-2.3 Prerequisites to and procedures for [grant of] 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 [within a particular municipality], which initial license has not lapsed, [where the grant of that initial license occurred pursuant to the provisions of the Act and N.J.A.C. 13:74-2.1 and 2.2,] and where the applicant or its successor in interest makes proper application for the renewal of [an initial or previously renewed] **its** license [for an off-track wagering facility itself subject of an initial license grant].

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

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

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

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

(1) In compliance with the participation agreement;

(2) In compliance with all permits;

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

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

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

(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) [The] **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, [a] the newly amended** written internal control[s] procedures as required by N.J.A.C. 13:74-2.1(d) and 2.2(d).

(g) (No change.)

[(h) In evaluating an application for the renewal of an off-track wagering license to be issued after December 31, 2011, the effective date of P.L. 2011, c. 205, for a facility that has not commenced operation in compliance with the Act, the Commission shall determine whether the off-track wagering licensee has made progress in establishing the off-track wagering facility pursuant to the applicable benchmarks set forth in N.J.A.C. 13:74-2.4.

1. 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 not 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 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(b).

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.

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,