NEW JERSEY RACING COMMISSION

Issuance of Sports Wagering License to Racetrack Permit Holder


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.

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 newly adopted rules proposed for readoption along 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 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...
The commission will not consider an application for a new sports wagering license unless the following are satisfied: The applicant must be in full compliance with the requirements of the Act and the Commission’s rules (N.J.A.C. 13:74D-2.1(b)); the applicant has previously answered each question in the application, submitted the original and two copies of the application (a proposal for a new requirement), and has complied with any of the Executive Director’s requests for additional information (N.J.A.C. 13:74D-2.1(b)); the applicant has provided a one-time right of first refusal offer of employment at the racetrack to persons employed by the applicant on June 11, 2018 (N.J.A.C. 13:74D-2.1(b)); and the application is accompanied by a certification signed by a high managerial agent attesting to the veracity of the information in the application (N.J.A.C. 13:74D-2.1(b)).

The Commission has evaluated the rules proposed for readoption with amendments, new rules, and a repeals. The rules proposed for readoption with amendments, new rules, and a repeal will have a social impact in the State of New Jersey. The proposed amendments may expand the existing authority to conduct sports wagering to two additional locations that qualify as “former racetracks” pursuant to the Act. Two additional wagering locations will serve to provide wagering patrons with more opportunities to place wagers on sporting events. Allowing patrons access to sports wagering is the purpose of the Act and this rulemaking will expand that purpose to the full extent contemplated by the Legislature.

The rules proposed for readoption with amendments, new rules, and a repeal will have an impact on the agricultural industry in the State. Accordingly, no further analysis is required.

The rules proposed for readoption with amendments, new rules, and a repeal may expand the existing authority to conduct sports wagering to two additional locations that qualify as “former racetracks” pursuant to the Act. Two additional wagering locations will serve to provide wagering patrons with more opportunities to place wagers on sporting events. Allowing patrons access to sports wagering is the purpose of the Act and this rulemaking will expand that purpose to the full extent contemplated by the Legislature.

The rules proposed for readoption with amendments, new rules, and a repeal will have an impact on the agricultural industry in the State. Accordingly, no further analysis is required.
The rules proposed for readoption with amendments, new rules, and a repeal create the opportunity for two additional entities to conduct sports wagering at the sites of two former racetracks in the State. However, those two entities are entirely unknown at this point and any specific analysis would be purely speculative in nature. Further complicating the analysis is that the Racing Commission is not the body regulating the operation of sports wagering at the former racetracks. The Racing Commission is only reviewing the application for an initial license to conduct sports wagering and granting the initial license. Once the Racing Commission grants the initial license, all regulatory oversight, including the renewal of said license, will pass to the Division of Gaming Enforcement.

Therefore, in the limited scope of the Racing Commission’s oversight in this matter, the compliance requirements and costs are minimal. Any entity seeking licensure at one of the two locations described in the rules proposed for readoption with amendments, new rules, and a repeal will have to make application to the Racing Commission. The application is identical for all entities, regardless of size, and the application fee is identical for all applicants, regardless of size. Any compliance, reporting, or recordkeeping costs thereafter are the province of the Division of Gaming Enforcement and are not subject to the Racing Commission’s regulatory oversight and, therefore, outside the scope of this rulemaking.

Housing Affordability Impact Analysis
The Commission has evaluated the rules proposed for readoption with amendments, new rules, and a repeal and determined that they will not have an impact on housing affordability, or the average cost of housing, in the State. Accordingly, no further analysis is required.

Smart Growth Development Impact Analysis
The Commission has evaluated the rules proposed for readoption with amendments, new rules, and a repeal and determined that they will not have an impact on smart growth in the State 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 rules proposed for readoption with amendments, new rules, and a repeal relate to sports wagering. Accordingly, no further analysis is required.

Racial and Ethnic Community Criminal Justice and Public Safety Impact Statement
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 readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:74D.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:74D-1.3.

Full text of the proposed amendments and new rules follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

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:


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 at a racetrack, 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. [2.] 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.

[3.] 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 [in accordance with N.J.A.C. 13:74D-1.3], 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.

(c) 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 N.J.A.C. 13:74D-2.1] of the Division promulgated pursuant to the Act.

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

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

(a) For the purpose of ensuring the expeditious and effective implementation of sports wagering at racetracks, the Racing Commission hereby delegates to the Executive Director, the authority to adopt new rules and/or amend and/or repeal existing rules in accordance with the requirements of section 4.b of the Act through September 9, 2018 (the 90-day period following the effective date of the Act).

(b) The Racing Commission delegates to the Executive Director, the authority to issue orders and conditions applicable to sports wagering at racetracks through March 8, 2019 (270 days following the effective date of the Act).

(c) 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 [through March 8, 2019 (270 days following the effective date of the Act)].

(d) The Racing Commission delegates to the Executive Director, the authority to approve the terms of agreements in accordance with the requirements of the Act or the Division’s rules promulgated pursuant to the Act through March 8, 2019 (270 days following the effective date of the Act).]