

CHAPTER 74

**OFF-TRACK WAGERING AND
ACCOUNT WAGERING**

Authority

N.J.S.A. 5:5-30 and 5:5-127 et seq.

Source and Effective Date

R.2007 d.335, effective September 20, 2007.
See: 39 N.J.R. 2606(a), 39 N.J.R. 4422(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 74, Off-Track Wagering and Account Wagering, expires on September 20, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 74, Off-Track Wagering and Account Wagering, was adopted as R.2002 d.174, effective June 3, 2002. See: 33 N.J.R. 4064(a), 34 N.J.R. 1953(a).

Subchapter 12, "Self-Exclusion List" Rules, was adopted as new rules by R.2004 d.399, effective October 18, 2004. See: 36 N.J.R. 2980(a), 36 N.J.R. 4828(a).

Chapter 74, Off-Track Wagering and Account Wagering, was re-adopted as R.2007 d.335, effective September 20, 2007. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS

13:74-1.1 Definitions

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

"Account holder" means a resident of this State, 18 years of age or older, who establishes an account through which account wagers are placed.

"Account wagering" means a form of pari-mutuel wagering in which an account holder may deposit money in an account with the account wagering licensee and then use the account balance to pay for pari-mutuel wagers by the account holder.

"Account wagering licensee" means the New Jersey Sports and Exposition Authority, provided that the Commission has granted its approval for the Authority to establish an account wagering system.

"Account wagering system" means the system through which account wagers are processed by the account wagering licensee.

"Act" means the Off-Track and Account Wagering Act, P.L. 2001, c. 199, as amended.

"Applicant" means the New Jersey Sports and Exposition Authority or another entity that submits an application to the Commission for a license to establish and conduct an off-track wagering facility pursuant to the Act.

"Authority" means the New Jersey Sports and Exposition Authority created by section 4 of P.L. 1971, c.137 (N.J.S.A. 5:10-4).

"Closed-loop system" means a system of telephone, computer or other electronic based wagering as approved by the Commission, whose key elements shall be located in this State. The key elements shall include, but not be limited to, the hub facility, permanent information databases, banking databases, system monitoring equipment and account information representatives including those situated at the phone bank. The non-key elements of such system, as determined by the Commission upon application to and approval by it, may be located outside this State.

"Commission" means the New Jersey Racing Commission created by section 1 of P.L. 1940, c.17 (N.J.S.A. 5:5-22).

"Delay period" means the time difference between off-time and the start of a simulcast horse race.

"Dormant account" means a wagering account, established pursuant to the Act and this chapter, which has remained inactive for a continuous period of 24 months in that, during such 24-month continuous period, no valid pari-mutuel wagers were made utilizing funds in that account, no valid deposits or credits were made to the wagering account, and no valid debits or withdrawals were made to the wagering account.

"Executive Director" means the Executive Director of the Commission.

“Horsemen’s organization” means the New Jersey Thoroughbred Horsemen’s Association, the Standardbred Breeders’ and Owners’ Association of New Jersey, the Thoroughbred Breeders’ Association of New Jersey or another organization or group representing a majority of horsemen who participate in horse race meetings conducted within this State.

“Hub facility” means a facility located in this State which acts as an intermediary between each off-track wagering facility and an in-State sending track or out-of-State sending track; and which acts as an intermediary between the account wagering licensee and an in-State host track or out-of-State host track, with respect to the transmission of pari-mutuel wagering data. The hub facility shall be responsible for generating all reports necessary for the reconciliation of payments between the off-track wagering licensee or off-track wagering facilities, the account wagering licensee, sending tracks and the Commission. The hub facility may also, but is not required to, perform other functions, including the transmission of pictures of simulcast horse races to off-track wagering facilities and pari-mutuel non-wagering data.

“In-State host track” means a racetrack within this State that is operated by a permit holder which conducts a horse race upon which account wagers are placed.

“In-State sending track” means a racetrack within this State that is operated by a permit holder and is equipped to conduct off-track simulcasting.

“In-State track” means an in-State host track or an in-State sending track.

“Internal control procedures” means the written procedures required to be maintained and updated as necessary, for Commission approval, by:

1. The off-track wagering licensee, which sets forth the operational procedures to effectively operate the racing and pari-mutuel wagering aspects of each off-track wagering facility and to protect the fiscal soundness, technical reliability and integrity of wagering;
2. The account wagering licensee, which sets forth the operational procedures to effectively operate the racing and pari-mutuel wagering aspects of the account wagering system and to protect the fiscal soundness, technical reliability and integrity of wagering; and
3. The hub facility, which sets forth the operational procedures to effectively operate the hub facility in connection with off-track wagering, account wagering, any other racing related functions performed by the hub facility, and to protect the fiscal soundness, technical reliability and integrity of wagering.

“Interstate common pool” means a pari-mutuel pool established in this State, in another state or in another country, within which is combined the pari-mutuel pools of one or more receiving tracks located in one or more states or countries, upon a race at an out-of-State sending track or out-

of-State host track for purposes of establishing payoff prices to winning pari-mutuel ticket holders in various jurisdictions participating in the interstate common pool.

“Manual merge” means the process used in the event of a systems or communications failure by which the off-track wagering licensee, the account wagering licensee and hub facility transmits to an in-State track or out-of-State track through telephone, facsimile machine, cellular telephone or other means of communication, the off-track wagering licensees or account wagering licensees pari-mutuel information and the process by which the in-State track or out-of-State track includes such pari-mutuel wagers in the common pari-mutuel pool in such event.

“Minus pari-mutuel pool” means a pari-mutuel pool in which insufficient monies have been wagered to permit the minimum payoffs of winnings required by the rules of pari-mutuel wagering governing the race.

“New Jersey Racing Industry Special Fund” means the fund established pursuant to section 27 of the Act, N.J.S.A. 5:5-153.

“Off-time” means when wagering is ceased prior to the start of a horse race by a signal transmitted from an in-State track or out-of-State track to the totalisator, through which the account wagering system or an off-track wagering facility is conducting wagering, or in the event that the transmission of data has been interrupted, by the totalisator in accordance with the internal controls of the hub facility.

“Off-track simulcasting” means the simultaneous video transmission which may include a simultaneous audio transmission, of horse races conducted live at in-State or out-of-State racetracks to off-track wagering facilities and pari-mutuel wagering at those off-track wagering facilities on the results of those races.

“Off-track wagering” means pari-mutuel wagering at an off-track wagering facility within this State.

“Off-track wagering facility” means a licensed facility within this State, other than a racetrack or casino simulcast facility operated within the premises of an Atlantic City casino, where no live racing is conducted.

“Off-track wagering licensee” means the Authority or its assignee or assignees or another entity to which the Commission has granted its approval to conduct an off-track wagering facility as provided for in the Act.

“Out-of-State host track” means a racetrack in a jurisdiction other than this State, the operator of which is lawfully permitted to conduct a horse race meeting and which conducts horse races upon which account wagers may be placed.

“Out-of-State sending track” means a racetrack in a jurisdiction other than this State, which is equipped to conduct off-track simulcasting and the operator of which is lawfully permitted to conduct a horse race meeting and to

provide simulcast horse races to off-track wagering facilities within this State.

“Out-of-State track” means an out-of-State host track or an out-of-State sending track.

“Outstanding pari-mutuel ticket” means a winning or refundable pari-mutuel ticket that is not claimed within six months of sale, which six month period is to be calculated as set forth in this chapter.

“Pari-mutuel” means any system whereby wagers with respect to the outcome of a horse race are placed with or in a wagering pool conducted by an authorized person, and in which the participants are wagering with each other and not against the person conducting the wagering pool.

“Participation agreement” means the written contract entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26, that provides for the establishment or implementation of either an off-track wagering facility or facilities or an account wagering system. Each such contract shall set forth the manner in which the off-track wagering facility or facilities or the account wagering system shall be managed, operated and capitalized, as well as how expenses and revenues shall be allocated and distributed by and among the Authority and the other eligible participants subject to the agreement.

“Permit holder” means the holder of an annual permit issued by the Commission to conduct a horse race meeting within this State.

“Phone bank” means a facility located within this State operated by the account wagering licensee or an assignee or assignees, as approved by the Commission, the functions of which facility shall include the processing of all account wagers placed by telephone and, unless otherwise approved by the Commission, such other functions related to account wagering and the administration thereof as set forth in this chapter.

“Racetrack” means the facility within this State where a permit holder conducts a live horse race meeting or meetings with pari-mutuel wagering.

“Racing costs” means the prospective and actual costs for all licensing, investigation, operation, regulation, supervision and enforcement activities and functions performed by the Commission.

“Scratch” means the withdrawal of an entered horse from a race after the closing of overnight entries.

“Self-service pari-mutuel machine” means a mechanical, electrical or other device connected to a totalisator which upon the insertion of a credit voucher, coupon or currency, or any combination thereof, and the selection of a permissible wager, automatically issues a pari-mutuel ticket together with a credit voucher for any balance which may be due; and which, upon the insertion of a winning or refunded pari-mutuel ticket, reads the ticket and automatically issues a

credit voucher in the amount of the correct payout; and which, upon the entry of an account wagering account number and correct personal identification number by a patron, allows the patron to access his or her wagering account for the purposes of placing wagers by selecting a permissible simulcast wager in an amount not to exceed the balance of the patron’s account.

“Simulcast horse races” means horse races conducted at an in-State sending track or an out-of-State sending track, as the case may be, and transmitted simultaneously by picture to a receiving track or an off-track wagering facility.

“Successor in interest” means:

1. The party to whom, with the prior approval of the Commission, the annual permit to conduct a horse race meeting issued by the Commission has been transferred; or
2. The party to whom, with the prior approval of the Commission and Attorney General, an initial off-track wagering license, renewed off-track wagering license, initial account wagering license, or renewed account wagering license has been transferred or assigned.

“Takeout” means that portion of a wager that is deducted from or not included in the pari-mutuel pool, and which is distributed other than to persons placing wagers.

“Totalisator” means a computer situated within the hub facility which, among other things, directly or indirectly through one or more other totalisators receives pari-mutuel wagering information, calculates payoffs for winning pari-mutuel tickets, generates reports with respect to such information, and in the event that the transmission of data from a sending or host track has been interrupted, automatically ceases wagering in accordance with the internal control procedures of the hub facility.

“Wagering account” means an account through which an account holder may place account wagers through the account wagering system.

“Well-suited entity” means a person, persons, association, corporation, partnership, organization or other entity authorized to apply for an off-track wagering license pursuant to N.J.S.A. 5:5-130(c), which meets the standards, criteria and qualifications set forth in N.J.A.C. 13:74-2.2 by clear and convincing evidence as determined by the Commission.

Special Amendment, R.2011 d.174, effective May 20, 2011 (to expire November 16, 2011).

See: 43 N.J.R. 1445(a).

In definition “Act”, substituted “c. 199, as amended” for “c.199”; added definitions “Applicant”, “Horsemen’s organization” and “Well-suited entity”; in definition “Off-track wagering licensee”, substituted “or its assignee or assignees or another entity to which” for “, provided that”, deleted “for the authority” following “approval”, and inserted “as provided for in the Act”; and in definition “Participation agreement”, inserted “entered into prior to February 23, 2011, the effective date of P.L. 2011, c. 26,” and “subject to the agreement”.

In accordance with N.J.S.A. 52:14B-5.1c, the provisions of R.2011 d.174 expired on May 14, 2012.

See: 44 N.J.R. 42(a).

Readoption of special amendment, R.2012 d.183, effective November 5, 2012.

See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

Provisions of R.2011 d.174 readopted without change.

13:74-1.2 Rules of the Racing Commission

Except as otherwise provided in the Act or this chapter, racing and the conduct of pari-mutuel wagering in off-track wagering facilities, or in connection with account wagering, shall be subject to the rules of the Racing Commission. These rules shall be applicable to all persons licensed by the Commission and every patron of an off-track wagering facility or of the account wagering system.

Special Amendment, R.2011 d.174, effective May 20, 2011 (to expire November 16, 2011).

See: 43 N.J.R. 1445(a).

Deleted "the rules of" preceding "racing".

In accordance with N.J.S.A. 52:14B-5.1c, the provisions of R.2011 d.174 expired on May 14, 2012.

See: 44 N.J.R. 42(a).

Readoption of special amendment, R.2012 d.183, effective November 5, 2012.

See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

Provisions of R.2011 d.174 readopted without change.

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

(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.

(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. All parties to the participation agreement are licensed by the Commission, or otherwise qualified to participate in off-track wagering;

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. The Authority demonstrates through the application that the requirements of the Act have been satisfied; and

6. The Authority has completely answered each question within the application and complied with the requirements of this section.

(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 which shall set forth the procedures to be implemented to effectively operate and manage the proposed off-track wager facility, and the procedures to be implemented to effectively maintain the integrity of wagering and the proceeds from wagering within the proposed off-track wagering facility. The internal control procedures shall include a procedure to foster and insure that the off-track wagering licensee complies with the requirement of the Act, which creates a right of first refusal as 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 initial license granted pursuant to such application shall be for a period of one year.

(g) In evaluating an application for an off-track wagering license, the Commission shall consider the proximity of the applicant's proposed site to other planned or existing off-track wagering facilities and to racetracks in this State. If, in the opinion of the Commission, the establishment of the facility at its proposed location would be inimical to the interests of another planned or established off-track wagering facility, or to a State racetrack, the Commission shall reject the application and require the applicant to consider alternative sites for the proposed facility.

(h) The Commission may refuse to issue a license if it shall find 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. Proof of financial resources sufficient to enable the Authority or permit holder to establish and conduct a quality off-track wagering facility or facilities with appropriately staffed and managed operations;
2. Evidence of good character, honesty, competency and integrity;
3. The absence of a conviction for a crime involving fraud, dishonesty or moral turpitude; and
4. All requirements and considerations set forth in N.J.A.C. 13:74-5.8.

(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.

(j) Between 30 days and 60 days following 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, that:

1. The plan for the proposed facility, including its size, seating capacity, parking and services to be provided reflects appropriate standards of quality;
2. The grant of a license to establish the proposed off-track wagering facility will not be inimical to the interest of the public and the horse racing industry in this State;
3. 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
4. The proposed off-track wagering facility site is in an appropriate location.

(k) An off-track wagering license shall be issued only if the permit holders in this State schedule at least the minimum number of race dates required by N.J.S.A. 5:5-156.

(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 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.

Special Amendment, R.2011 d.174, effective May 20, 2011 (to expire November 16, 2011).

See: 43 N.J.R. 1445(a).

Section was "Prerequisites to and procedures for grant of initial off-track wagering license". In (a), inserted "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"; rewrote (b)1; in (b)2, inserted "that is consistent with current law"; added new (b)4; recodified former (b)4 and (b)5 as (b)5 and (b)6; rewrote (b)5 and (c); added new (g), (h) and (i); recodified former (g) and (h) as (j) and (k); in (k)3, inserted "and is consistent with current law" and inserted "and" at the end; in (k)4, substituted "in an appropriate location." for "not in an area zoned residential;"; deleted (k)5 and (k)6; added new (l); and recodified former (i) through (k) as (m) through (o).

(i) 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 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) 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 off-track renewal license shall be issued to the off-track wagering licensee where it demonstrates by clear and convincing evidence that:

1. The plan for the continued operation of the facility, including its size, seating capacity, parking and services to be provided, reflects appropriate standards of quality;
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. 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
4. The off-track wagering licensee is in compliance with the Act, this chapter and any conditions imposed upon it by the Commission.

(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.

Special recodification from N.J.A.C. 13:74-2.2 by R.2011 d.174, effective May 20, 2011 (to expire November 16, 2011).
See: 43 N.J.R. 1445(a).

In (a), substituted "applicant" for "Authority" twice, and inserted "and 2.2"; in (b), inserted "or 2.2"; in (c), substituted "required by N.J.S.A. 5:5-131(c)" for "of \$1,250"; rewrote (d); recodified former (d)4 as new (e) and former (e) and (f) as new (f) and (g); in (f), inserted "and 2.2(d)"; added new (h); recodified former (g) through (i) as (i) through (k); and in (j)3, inserted "and is consistent with current law".

In accordance with N.J.S.A. 52:14B-5.1c, the provisions of R.2011 d.174 expired on May 14, 2012.

See: 44 N.J.R. 42(a).

Readoption of special recodification and amendment, R.2012 d.183, effective November 5, 2012.

See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

Provisions of R.2011 d.174 readopted with change: in (c), substituted "of \$1250" for "as required by N.J.S.A. 5:5-131(c)"; and rewrote (h).

13:74-2.4 Benchmarks for the determination of progress applicable to the establishment of an off-track wagering facility prior to its operation

(a) An application for the grant of an initial off-track wagering license filed by a horsemen's organization pursuant to N.J.S.A. 5:5-130(b)(2) shall not be considered by the Commission unless the application is filed within a reasonable time frame from the date the horsemen's organization became eligible to apply for an initial license. For purposes of this section, the phrase "reasonable time frame" shall mean that any such application must be filed with the Commission within one year of the date that the horsemen's organization became eligible to apply for the particular initial license. Additionally, the filed application shall, within one year of the date that the horsemen's organization became eligible to apply for the particular initial license, be determined to be complete by the Racing Commission's Executive Director. Where an application is not filed within one year of the date that the horsemen's organization became eligible to apply for an initial license, or where such application is filed within such time frame but is determined not to be complete by the Racing Commission's Executive Director within that same time period, the application shall be denied by the Commission consistent with (d) below.

1. In order for its application to be found to be complete, and in addition to the other requirements of this chapter, the horsemen's organization shall demonstrate through its application that it has met the following benchmarks:

- i. It has identified a suitable location for the proposed off-track wagering facility;
- ii. It has entered into 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; and
- iii. The horsemen's organization can demonstrate that it has met one of the following benchmarks, it has:

- (1) Obtained fee title ownership of the proposed property;
- (2) Obtained a leasehold interest in the proposed property for a period of not less than five years;
- (3) Entered into an option agreement with a property owner to acquire either (a)1iii(1) or (2) above; or
- (4) Executed a letter of intent with the current property holder in sufficient detail to demonstrate the material factors of a purchase or lease or agreement.

(b) Commencing on January 1, 2012, any applicant filing an application for an initial off-track wagering license or for the renewal of a license for an off-track wagering facility that is not operational must demonstrate compliance with each of the following requirements:

1. Within one year from the date the application is filed, the applicant shall comply with each of the following requirements:

i. The applicant has submitted to the Commission all information and documentation required by N.J.A.C. 13:74-2.1, 2.2 or 2.3, as applicable;

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

(1) Obtained fee title ownership of the proposed property;

(2) Obtained a leasehold interest in the proposed property for a period of not less than 5 years;

(3) Entered into an option agreement with a property owner to acquire either (b)1ii(1) or (2) above; or

(4) Executed a letter of intent with the current property holder in sufficient detail to demonstrate the material factors of a purchase or lease or agreement;

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

(1) A detailed project development budget informed by a qualified professional design and construction team. The budget shall include all hard and soft costs associated with the project to bring the off-track wagering facility into operation; and

(2) A detailed source of capital equal to the project development budget. All committed capital shall be supported by financial statements prepared by a CPA and shall demonstrate the applicant's ability to commit such funds to the establishment of the off-track wagering facility. Any third-party capital shall be supported by commitment letters or other documentation demonstrating that such entities are prepared to invest such capital; and

iv. The applicant has demonstrated to the Commission that the operational capacity and market feasibility of the proposed off-track wagering facility will benefit the horse racing industry in this State. The applicant shall provide to the Commission:

(1) A third-party market study completed by a qualified firm, which demonstrates the market feasibility of the proposed off-track wagering facility;

(2) A 10-year financial pro forma detailing the projected revenues and expenses of the proposed off-track wagering facility in sufficient detail to support an acceptable market rate of return on the project; and

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

2. Within one year from the date the Commission issues an off-track wagering license, the off-track wagering facility shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers.

(c) Upon receiving a request by an applicant or licensee for an extension of time in which to comply with the requirements of (b)2 above, the Commission may, in its discretion, grant an extension if it determines that the applicant or licensee has made all reasonable efforts to comply therewith but has been precluded from doing so by exigent circumstances beyond its control.

1. The duration of an extension shall be determined by the Commission in its discretion on a case-by-case basis.

2. Notwithstanding (c) above, all off-track wagering facilities shall be fully operational for the simulcasting of horse races and the acceptance of pari-mutuel wagers within two years from the date the off-track wagering license was issued and the Commission shall not grant any extension that would be inconsistent with this requirement.

(d) The failure of an applicant or licensee to meet the benchmarks in this section shall constitute a basis for the denial of an initial off-track wagering license or the renewal of an off-track wagering license, respectively. The only extensions that may be applied for and considered by the Commission, pursuant to this section, shall be time extension requests of (b)2 above, as authorized by (c) above.

Special new rule, R.2011 d.174, effective May 20, 2011 (to expire November 16, 2011).

See: 43 N.J.R. 1445(a).

In accordance with N.J.S.A. 52:14B-5.1c, the provisions of R.2011 d.174 expired on May 14, 2012.

See: 44 N.J.R. 42(a).

Readoption of special new rule, R.2012 d.183, effective November 5, 2012.

See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

Provisions of R.2011 d.174 readopted without change.

13:74-2.5 Benchmarks for determining whether a permit holder has made progress since the signing of the participation agreement toward establishing the permit holder's share of the 15 off-track wagering facilities

(a) A permit holder subject to the participation agreement entered into prior to the effective date of P.L. 2011, c. 26 shall have made progress toward establishing its share of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 since the signing of the participation agreement.

1. The Commission may allow a permit holder to retain its share of off-track wagering facilities that have not received a license pursuant to N.J.S.A. 5:5-133 on or before the effective date of P.L. 2011, c. 205 without

making a deposit or posting a bond or irrevocable letter of credit on or before June 28, 2012, as required by N.J.S.A. 5:5-130(b)(1), if the Commission finds that the permit holder is making progress as of that date toward obtaining an off-track wagering license and establishing an off-track wagering facility in accordance with the benchmarks set forth in (a)1i(1) and (2) below and the permit holder demonstrates on an annual basis that it continues to make progress in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.4(b).

i. In determining whether the permit holder has made progress toward obtaining an initial off-track wagering license for, and the establishment of, an off-track wagering facility within its share, the Commission will consider the following benchmarks:

(1) A permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it has entered into an agreement, in connection with good faith negotiations over the sale or lease of a racetrack under its control, to transfer allocated off-track wagering licenses or facilities to an individual or entity that is a bona fide prospective purchaser or lessee, or if no such agreement has yet been reached, the permit holder has demonstrated to the satisfaction of the Commission either:

(A) The execution of such an agreement is imminent based upon the portions of such an agreement agreed upon in principle by the parties as evidenced by a memorandum of understanding or similar accord; or

(B) Negotiations concerning such an agreement have been unsuccessful and the permit holder has plans for soliciting new sources of interest or entering into new negotiations that, in the judgment of the Commission, have a reasonable likelihood of resulting in a successful conclusion.

I. In order for the Commission to deem that sufficient progress has been made to meet the requirements of the benchmark in (a)1i(1)(B) above, the permit holder shall bear the burden of establishing to the satisfaction of the Commission that the plans for soliciting new sources of interest or entering into new negotiations have a reasonable likelihood of resulting in a successful conclusion.

II. To ensure that the permit holder remains in compliance with the benchmark in (a)1i(1)(B) above, the Commission may require the filing of periodic or regular reports; or

(2) If a permit holder does not meet the requirements set forth in (a)1i(1) above, the permit holder shall be deemed to have made progress toward establishing its share of off-track wagering facilities if it can demonstrate to the Commission that as of the date

upon which a deposit, bond, or irrevocable letter of credit is due:

(A) It has identified a suitable location for a proposed off-track wagering facility;

(B) It has entered into 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; and

(C) The permit holder can demonstrate that it has met one of the following benchmarks, it has:

I. Obtained fee title ownership of the proposed property;

II. Obtained a leasehold interest in the proposed property for a period of not less than five years;

III. Entered into an option agreement with a property owner to acquire either (a)1i(2)(C)I or II above; or

IV. Executed a letter of intent with the current property holder in sufficient detail to demonstrate the material factors of a purchase or lease or agreement.

New Rule, R.2012 d.183, effective November 5, 2012.
See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

13:74-2.6 Requirement that deposit, a bond, or irrevocable letter of credit be posted or deposited to retain rights to off-track wagering facilities that have not received an initial license on or before December 31, 2011

(a) Any of the 15 off-track wagering facilities authorized by N.J.S.A. 5:5-136 that have not received an initial license pursuant to N.J.S.A. 5:5-133 on or before December 31, 2011, the effective date of P.L. 2011, c. 205, shall each be subject to a cash deposit, a bond, or an irrevocable letter of credit to be posted or deposited by the permit holder in the amount of \$1 million for each facility in the permit holder's share that remains to be licensed, which deposit shall be paid to the Commission on or before June 28, 2012.

(b) A permit holder that has made a deposit or posted a bond, or irrevocable letter of credit pursuant to (a) above in connection with an off-track wagering facility in the permit holder's share that remains to be established shall obtain a license and make substantial progress in the Commission's judgment pursuant to the progress 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.

1. A permit holder that has obtained a license and made substantial progress in full compliance with (b) above in the Commission's judgment shall have the deposit, bond or irrevocable letter of credit returned to it at the end of the one-year period.

2. If, within this one-year period, a permit holder fails to obtain a license for the off-track wagering facility or fails to make substantial progress in full compliance with (b) above in the Commission's judgment, the amount deposited or posted by the permit holder shall be distributed by the Commission to the representative horsemen's organization in this State for use in establishing an off-track wagering facility or facilities pursuant to N.J.S.A. 5:5-130(b)(2).

3. Pursuant to N.J.S.A. 5:5-130(b)(2), a representative standardbred horsemen's organization shall have the right to establish any off-track wagering facility not established by the permit holder at Freehold Raceway and to receive any deposits, bonds, or irrevocable letters of credit forfeited by that permit holder.

(c) Any off-track wagering facility within a permit holder's share that has not received an initial license on or before December 31, 2011 and for which a deposit, bond, or irrevocable letter of credit is not made or posted by the permit holder on or before June 28, 2012 shall no longer be considered as part of the permit holder's share and the off-track wagering facility shall be available to be established by a horsemen's organization in this State as provided by N.J.S.A. 5:5-130(b)(2).

1. Pursuant to N.J.S.A. 5:5-130(b)(2), a representative standardbred horsemen's organization shall have the right to establish any off-track wagering facility not established by the permit holder at Freehold Raceway.

2. Any horsemen's organization that has not received the amount deposited or posted by a permit holder pursuant to N.J.S.A. 5:5-130(b)(1) shall make application for an off-track wagering license pursuant to N.J.S.A. 5:5-133 in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.4(a). If the Commission determines that a horsemen's organization failed to comply fully with the benchmarks set forth in N.J.A.C. 13:74-2.4(a), the horsemen's organization shall no longer be considered eligible to license, establish and operate the off-track wagering facility.

(d) Notwithstanding subsection (a) above, if the Commission determines that a permit holder is making progress toward obtaining an off-track wagering license and establishing an off-track wagering facility according to the benchmarks set forth in N.J.A.C. 13:74-2.5, the Commission may allow a permit holder to retain its share of off-track wagering facilities to be established without making a deposit or posting a bond or irrevocable letter of credit provided the permit holder continues to make progress on an annual basis in accordance with the benchmarks set forth in N.J.A.C. 13:74-2.4(b).

(e) A horsemen's organization that has received an allocation of funds from the Commission pursuant to N.J.S.A. 5:5-130(b)(1) shall obtain a license in compliance with N.J.A.C. 13:74-2.4(a)3 and shall make substantial progress in the Commission's judgment pursuant to the progress benchmarks set forth in N.J.A.C. 13:74-2.7 toward establishing the off-track wagering facility or facilities within one year from the date the funds are allocated to the horsemen's organization by the Commission.

1. If, within this one-year period, the horsemen's organization fails to obtain a license for the off-track wagering facility or fails to make substantial progress in full compliance with (e) above in the Commission's judgment, the horsemen's organization shall return to the Commission the funds allocated to it in their entirety at the end of the one-year period, and the Commission shall return such funds to the permit holder originally making the deposit, or posting the bond or irrevocable letter of credit, to be used for capital improvements at the permit holder's racetrack.

2. If, within this one-year period, the horsemen's organization fails to obtain a license for the off-track wagering facility or fails to make substantial progress in full compliance with (e) above in the Commission's judgment, the off-track wagering facility shall no longer be considered to be eligible to be established by a horsemen's organization pursuant to N.J.S.A. 5:5-130(b)(2) and shall be available to be established by a well-suited entity pursuant to the bidding procedure set forth in N.J.A.C. 13:74-2.2(a)2.

(f) Any off-track wagering facility that, pursuant to (b)2 or (c) above, is no longer part of a permit holder's share and is no longer eligible to be established by a horsemen's organization pursuant to (c)2 or (e)2 above shall be available to be established by a well-suited entity in accordance with the bidding procedure set forth in N.J.A.C. 13:74-2.2(a)2, upon proper application pursuant to N.J.A.C. 13:74-2.2, and in accordance with the provisions in N.J.S.A. 5:5-34 and the Act.

New Rule, R.2012 d.183, effective November 5, 2012.
See: 44 N.J.R. 42(a), 44 N.J.R. 2889(a).

SUBCHAPTER 3. APPLICATION FOR INITIAL ACCOUNT WAGERING LICENSE; APPLICATION FOR RENEWAL OF ACCOUNT WAGERING LICENSE

13:74-3.1 Prerequisites to and procedures for grant of initial account wagering license

(a) An application for an initial account wagering license shall be made by the Authority on a form prescribed by the Commission, accompanied by a non-refundable filing fee of \$7,500.