

STATEMENTS OF POLICY

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

STATE HARNESS RACING COMMISSION

STATE HORSE RACING COMMISSION

[7 PA. CODE CH. 133]

Procedures for New or Amended Pari-Mutuel License Applications

The State Horse Racing Commission and the State Harness Racing Commission (Commissions), as departmental administrative commissions within the Department of Agriculture (Department), hereby establish the following statement of policy and procedure for the issuance of licenses to conduct horse race meetings.

Background and Authority

The Race Horse Industry Reform Act (4 P. S. §§ 325.101—325.402) (act) provides that a corporation may apply to the appropriate commission for a license to conduct horse race meetings at which pari-mutuel wagering is permitted.

The act provides that no more than six corporations may be licensed by the State Horse Racing Commission. The act provides that no more than five corporations shall be licensed by the State Harness Racing Commission.

The Commissions have determined that it is in the public interest under the act and in the best interest of the racing industry in this Commonwealth to establish a process to issue the available licenses and that the process shall treat applicants comparatively as members of a group.

Fiscal Impact

The statement of policy has no fiscal impact on the Commonwealth, political subdivisions or the general public.

Paperwork Requirements

The statement of policy does not impose additional paperwork requirements upon the Commonwealth.

Contact Persons

For information regarding the statement of policy, contact Gregory C. Santoro, Chief Counsel or Jorge M. Augusto, Assistant Counsel, Department of Agriculture, 2301 N. Cameron Street, Room 201, Harrisburg, PA, (717) 787-8744.

Finding

The Commissions find that the public interest will be served by the establishment of this statement of policy.

Order

The Commissions, under the act, order that:

(a) The regulations of the Department and the Commissions are amended by adding a statement of policy in 7 Pa. Code §§ 133.1—133.7 to read as set forth in Annex A.

(b) The Commissions shall submit this order and Annex A to the Office of General Counsel for approval as required by law.

(c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

DENNIS C. WOLFF,
Secretary

Department of Agriculture

ANTON J. LEPLER,
Executive Secretary

State Harness Racing Commission

BENJAMIN H. NOLT, Jr.,
Executive Secretary

State Horse Racing Commission

Fiscal Notes: 37-21 and 34-65. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART V-A. RULES OF PROCEDURE

CHAPTER 133. NEW OR AMENDED PARI-MUTUEL LICENSE APPLICATIONS—STATEMENT OF POLICY

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§ 133.1. Introduction and definitions.

(a) The Commissions have authority to issue licenses to conduct horse race meetings.

(b) Any corporation may apply for a license to conduct horse race meetings at which pari-mutuel wagering is permitted.

(c) Applicants should be aware that the act authorizes a limited number of licenses to be issued. Not every applicant will be issued a license.

(d) The license gives its holder the privilege to conduct horse race meetings at which pari-mutuel wagering is permitted. The license does not give its holder a property right.

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

(1) *Act*—The Race Horse Industry Reform Act (4 P. S. §§ 325.101—325.402).

(2) *Commissions*—The State Harness Commission and the State Horse Racing Commission.

§ 133.2. Eligibility.

Any corporation is eligible to apply for an available license under this chapter.

§ 133.3. Application requirements.

The following procedures and requirements are established for license applications:

(1) Applications shall be submitted using the Commission's application form.

(2) Applications shall be submitted by the application closing date, which is published by the appropriate Commission in a notice substantially similar to the Application Notice form set forth in § 133.4 (relating to Application Notice).

(3) An applicant shall follow the procedures and requirements of the Application Notice for the application to be considered.

(4) A Commission may reject an incomplete application. Applicants who submit new applications which the Commissions deem deficient or incomplete will be given the balance of the 60-day time period or 30 days, whichever is longer, to correct the deficiency.

(5) Each Commission reserves the right to:

(i) Request additional information regarding any aspect of the application or the applicant's plan.

(ii) Require explanation or revision of the applicant's plan.

(iii) Require clarification of any aspect of the applicant's plan.

(6) Applications shall be submitted to the following addresses:

(i) State Horse Racing Commission
c/o Executive Secretary
2301 N. Cameron Street, Room 304
Harrisburg, Pennsylvania 17110

(ii) State Harness Racing Commission
c/o Executive Secretary
2301 N. Cameron Street, Room 301
Harrisburg, Pennsylvania 17110

§ 133.4. Application Notice.

The Application Notice to be published under § 133.3 (relating to application requirements) shall be in substantially the following form:

NOTICE

PROCEDURES FOR NEW OR AMENDED PARI-MUTUEL LICENSE APPLICATIONS

PREMISES

1. LICENSE REQUIRED FOR ALL HORSE RACE MEETS. The Race Horse Industry Reform Act (act of December 17, 1981, P.L. 435 No. 135) (4 P.S. Sec. 325.101 et seq.) (Act) provides that no corporation shall have the right to conduct any horse race meet except on obtaining a license from either the State Horse Racing Commission or the State Harness Racing Commission.

2. LIMITED NUMBER OF THOROUGHBRED RACING LICENSES. Sec. 325.405(a) of the Act provides that no more than six corporations shall be licensed by the State Horse Racing Commission to conduct a pari-mutuel meet;

3. LIMITED NUMBER OF HARNESS RACING LICENSES. Sec. 325.205(b) of the Act provides that no more than five corporations shall be licensed by the State Harness Racing Commission to conduct a pari-mutuel meet;

4. MORE APPLICATIONS FILED THAN AVAILABLE LICENSES. The Commissions have received more

applications for thoroughbred and harness licenses than are authorized by the Act. The Commissions do not have the power under the Act to issue licenses to all applicants for thoroughbred and harness licenses. The Commissions are not obligated to issue any license despite the availability of a license. Each Commission will be charged with reviewing the pending applications submitted under its respective jurisdiction as set forth in the Act.

5. INFORMATION ABOUT APPLICATION PROCEDURE. The Commissions believe that it is in the public interest under Section 325.209 of Act and the best interests of the racing industry in this Commonwealth to establish an administrative review process to treat the applicants as a comparative group for thoroughbred and harness horse race meeting license applications presently pending before the Commissions as well as any new applications or renewals.

IN CONSIDERING THE PRESENT PENDING APPLICATIONS AND ANY NEW APPLICATIONS, THE COMMISSIONS ADOPT A POLICY TO INCLUDE THE FOLLOWING STEPS:

A. CONSIDERATION GROUP. APPLICATION CLOSING DATES. The Commissions will consider applications for racing licenses made under Section 325.209 of the Act comparatively as part of a consideration group identified by an application closing date that is published by the Commission. Application closing dates will be published anytime that the respective Commissions receive or have pending before them more than one (1) application for a license.

B. APPLICATIONS. In order to qualify to be placed into the consideration group for an available license, each new or amended application must be made using the application form available from the Commissions. At a minimum, each new or amended application must contain the standards set forth in Appendix A.

No consideration shall be given to any application which is deemed to be untimely filed or deficient by the appropriate Commissions.

C. APPLICATION CLOSING DATE. The Commissions hereby establish an application closing date of _____, 200__, as a due date after which no new applications shall be accepted. Within that same period, any previously submitted application, which the Commission has deemed deficient by notice to the applicant, must be re-submitted to the appropriate Commission with the deficiency corrected;

D. RESUBMISSION AFTER NOTICE OF DEFICIENCY. Applicants who submit new applications which the Commissions deem deficient will be given the balance of the 60-day time period or 30 days, whichever is longer, to correct the deficiency;

E. AMENDMENT OF APPLICATION FORM. Commissions reserve the right to amend license application forms at any time. If Commissions amend the application forms, Commissions will establish an amended application closing date at least thirty (30) days after the date of the amendment. All applicants with applications pending at the time of the Commissions' amendment to the license application form will have until such amended application closing date to resubmit or supplement their applications; however, no new applications can be received during the amended application period;

F. GROUP CONSIDERATION BY RESPECTIVE COMMISSIONS. The Commissions hereby establish a policy in which all new and/or amended applications received by application closing date shall be placed into a single group for comparative consideration by each respective Commission;

G. PROCESS. The respective Commissions will consider all written applications within a consideration group, and, after consideration and comparison of all such written applications, may issue available licenses in numbers authorized by the Act to those applicants who, in the sole judgment of the appropriate Commission, will best serve the public interest, convenience and necessity.

H. ISSUANCE OF LICENSES. No license shall be issued until all new and/or amended written applications in the respective consideration group have been considered and examined by the appropriate Commission.

§ 133.5. Procedure.

(a) All applications received by the application closing date set forth in the Application Notice shall be placed into a single group for comparative consideration by each respective Commission.

(b) No license will be issued until all applications in the respective consideration groups have been examined and considered by the appropriate Commission.

(c) A Commission may hold a hearing and provide for public comment under § 133.6 (relating to public hearing and public comment). The Commission may also hold any other type of hearing(s) it deems necessary and appropriate to allow participation by other interested persons as set forth in the notice in § 133.6

(d) A Commission will notify an applicant by mail that a license has been issued. A Commission shall notify by mail all applicants to whom licenses have not been issued.

(e) An applicant may appeal the denial of a license under the act.

§ 133.6. Public hearing and public comment.

(a) Upon the filing of an application by a corporation, and after the application closing date, the Commission will place the following notice or a similar notice in a newspaper of general circulation in the county in which the facility is to be located, if the Commission deems a hearing necessary:

TO WHOM IT MAY CONCERN:

The Pennsylvania State _____ Racing Commission hereby gives notice that an application was filed by _____ in which the corporation seeks approval to conduct pari-mutuel wagering at _____. A public hearing concerning this matter will be held on _____, 20____ at _____. Public comment is requested. Interested persons are invited to submit written comments to the Pennsylvania State _____ Racing Commission, Agriculture Building, Room _____, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. Public comments may be submitted up to 48 hours prior to the date set for public hearing. The purpose of the public hearing is to assist the Commission in assessing the impact the proposed facility will have on the local community and to assist the Commission in determining whether the public interest, convenience or necessity will be served by approving the license application. A person who believes

the proposed facility will affect his or her business or residence and who wishes to speak at a public hearing must submit name, address, telephone number, and a brief summary of their statement to the Commission at the address set forth above at least 48 hours prior to the time of the public hearing. The Commission may also receive testimony from nonlocal participants either at the above hearing site or at a subsequent hearing date in Harrisburg, Pennsylvania.

(b) The notice of public hearing will be published on at least 4 consecutive days in a prominent section of a newspaper of general circulation for the county in which the facility is to be situated.

(c) The purpose of the public hearing will be to assist the Commission in assessing the impact a proposed facility will have on the local community as required by the act. The public hearing shall be held in the county in which the proposed facility is to be situated.

(d) A person who wishes to speak at the public hearing shall submit the name, address, telephone number and a brief summary of his statement at least 48 hours prior to the time of the public hearing to the respective Commission at one of the following addresses:

(1) State Harness Racing Commission, Agriculture Building, Room 301, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(2) State Horse Racing Commission, Agriculture Building, Room 304, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(e) The Commission may set reasonable limits upon the time allowed for oral statements, may disallow statements not offered for the purpose set forth in subsection (c) and may set general rules for the conduct of the hearings, including how presentations may be made, testimony given, examination and cross-examination of witnesses or any other matter.

§ 133.7. Contact information.

Inquiries shall be directed to one of the following:

(1) State Harness Racing Commission
c/o Executive Secretary
Agriculture Building, Room 301
2301 North Cameron Street
Harrisburg, Pennsylvania 17110

(2) State Horse Racing Commission
c/o Executive Secretary
Agriculture Building, Room 304
2301 North Cameron Street
Harrisburg, Pennsylvania 17110

APPENDIX A

To qualify to be placed into the consideration group for an available license, each new or amended application must, at a minimum, contain:

1. Documentation of an ownership interest (copy of a lease, purchase option or purchase agreement) in the proposed land.

2. A pro-forma financial statement projecting among other things attendance, handle and revenue at the proposed racetrack facility.

3. A detailed itemized list of projected costs of operation for the proposed racetrack facility.

4. A complete and accurate listing of all funding sources, including any and all financial documents and letters and personal contacts.

5. A complete listing of officers, directors, shareholders or other persons having a beneficial or equitable ownership in the applicant or its parent organization.

6. A correct and detailed description of the acreage for the proposed facility, including a detailed description of the physical facility and architectural renderings, where

the applicant proposes to conduct live horse/harness race meetings with pari-mutuel wagering.

7. The number of projected live race days.

8. A detailed construction/project timeline for completion of the proposed facility.

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