

**CHAPTER 189. NONPRIMARY LOCATIONS—
TEMPORARY REGULATIONS**

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§ 189.1. Definitions.

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

Applicant—A duly licensed racing entity seeking to relocate an existing operational nonprimary location or reopening of a previously operational nonprimary location with the Commission.

Architect—A person licensed to practice the profession of architecture.

Center of the racetrack—The point located at the center of the area circumscribed by the inside rail of the racetrack.

Charitable institution—A building occupied in whole or in part by an organization dedicated to the relief of a certain class of persons either by financial assistance, education or care on a not-for-profit basis and exempt from taxation under the Internal Revenue Code (26 U.S.C.A. §§ 1—7872).

Church—A building occupied in whole or in part by an organization engaged in religious worship or instruction.

Engineer—A person licensed to practice the profession of engineering.

Facility—The buildings or internal areas of buildings under the lease, possession, ownership or control by a licensed racing entity.

Handle—The total amount of money wagered.

Hospital—A building used in whole or in part for the extended, overnight, medical care of ten or more sick, wounded, aged or infirm persons.

Local resident—A person whose residence is within 10 miles of a proposed nonprimary location.

Nonprimary location—A facility in which pari-mutuel wagering is conducted by a licensed racing entity in accordance with this chapter other than the racetrack where live racing is conducted. Commonly known as off-track wagering (OTW) facility.

Public park or playground—Land owned by the Commonwealth or a county, township, municipality, borough, school district or other governmental unit within this Commonwealth, open to the public for recreational purposes.

Race related information—Current odds, program changes, order of finish and other information typically displayed to patrons at the racetrack on the infield tote board, with respect to a race upon which patrons of a nonprimary location may wager.

School—A building used during the majority of the calendar year, in whole or in part, for educational or instructional purposes on a not-for-profit basis by an organization accredited by the Department of Education.

Relocation or Reopen Petition—shall mean a petition filed with the Commission by a licensed racing entity seeking to relocate an existing operational nonprimary location or to reopen a previously licensed and operational nonprimary location.

§ 189.2. Applicability.

(a) In accordance with section 9331(a) of the act (relating to pari-mutuel wagering at nonprimary locations), the Commission may approve a licensed racing entity to continue to operate a nonprimary location where it has previously conduct pari-mutuel wagering on horse races conducted by the licensed racing entity. This chapter applies to the relocation of existing operational nonprimary locations or to the reopening of a previously operational nonprimary location operated by a licensed racing entity.

(b) The chapter shall not apply to a petition by the licensed racing entity for the reconstruction, refurbishment or realignment of the physical facility, layout or floor space of an existing operational nonprimary location.

§ 189.3. General provisions.

(a) Only a licensed racing entity may apply for the relocation or reopening of a nonprimary location.

(b) A duly licensed racing entity corporation may seek approval by the Commission for the relocation of an existing operational nonprimary location or for the re-opening of a previously operational nonprimary location by submitting a Relocation or Reopen Petition with the Commission.

RELOCATION OR REOPENING OF A NONPRIMARY LOCATION

§ 189.11. Relocation or reopen petition and fees.

(a) A relocation or reopen petition, whichever is applicable, shall be in the form prescribed by the Commission and shall be accompanied by the necessary documents, information, architectural renderings, exhibits and any other information requested by the Commission.

(b) The Commission shall establish, adopt and publish the applicable relocation or reopen fee which must accompany the specific petition sought by the licensed racing entity. The licensed racing entity shall reimburse the Commission for any investigative, legal or administrative costs and fees associated with the review and approval of the petition.

§ 189.12. Filing of a petition; documentation required.

(a) A petition and the documentation required shall be submitted as follows:

(1) Part I requires the submission of the following information, exhibits and documentation:

(i) The address of the location or physical location.

(ii) The name, address and telephone number of the owner of the real estate upon which the location will be situated.

(iii) A copy of the lease, purchase option or purchase agreement for the location.

(iv) The zoning of the location.

(v) A statement indicating whether the location is situated within 300 feet of a church, hospital, charitable institution, school, public park or playground.

(vi) A pro forma financial statement projecting attendance, handle and revenue at the location.

(vii) A statement of the projected cost of operation of the location.

(viii) A statement of the sources of funds used to construct the location including a copy of the loan commitment letter, loan documents or other

documents setting forth the terms relating to the financing of the location and a certification that the licensed corporation's State and local tax obligations are not in arrears.

(ix) A statement of the projected revenue and taxes to be paid to the State and local government.

(x) The anticipated impact on attendance, handle and purse structure at licensed facilities conducting live racing in this Commonwealth.

(xi) The areas from which the applicant expects to attract patrons to the location.

(xii) The population of the area within 35 air miles to the location.

(xiii) The number and types of full-time and part-time jobs to be created at the location.

(xiv) The number of jobs at the location to be filled by local residents.

(xv) The number and types of jobs to be created by the construction or renovation of the location.

(xvi) The distance between the location and racetracks conducting live racing in this Commonwealth.

(xvii) The owner and description of other businesses or uses to be conducted at the location.

(2) Part II requires the submission of the following information, exhibits and documentation:

(i) The number of floors, total square footage and seating capacity of the facility.

(ii) A description of the dining accommodations and concession areas to be contained in the facility, including the types of food and beverages to be available, the seating capacity and a description of the kitchen areas.

(iii) The number and location of fire escapes and emergency exits at the facility.

(iv) The number of rest rooms to be contained in the facility.

(v) A description of the general demeanor of the facility, including its decor and lighting, the type of seating to be provided and the areas of the facility where patrons can handicap races.

(vi) A description of the exterior and interior of the facility.

(vii) The architectural or engineering drawings of the physical location or internal facility.

(viii) A description of the heating, air conditioning, smoke removal and climate control equipment; and smoke and fire detectors to be used in the facility.

(ix) The provisions made to assure that the facility is accessible to the physically handicapped.

(x) A description of the parking areas to be provided at the location, including the name, address and telephone number of the owner of the parking facilities; a copy of lease agreements for parking; the number of parking

spaces to be provided; the charge to be imposed for parking; and a description of traffic control to be provided.

(xi) A summary of any contracts relating to, and a complete description of, the pari-mutuel or totalisator equipment to be used in the facility and a statement describing the compatibility of that equipment with the equipment being used at the primary racetrack of the licensed corporation and the equipment in use at the other primary racetracks which will be transmitting their races to the facility. Copies of the contracts may be requested by the Commission.

(xii) A summary of contracts relating to, and a description of, the equipment to be used to include money wagered in common pari-mutuel pools, including the number of betting windows and stand-alone terminals to be provided. Copies of the contracts may be requested by the Commission.

(xiii) A summary of contracts relating to, and a description of, the equipment to be used for receiving transmissions of races and race related information. Copies of the contracts may be requested by the Commission.

(xiv) The name, address and telephone number of persons supplying equipment to the location.

(xv) A description of the procedures to be used to resolve patron complaints at the location.

(3) Part III requires the submission of the following information, exhibits and documentation:

(i) The plan the applicant intends to institute to recruit, train and upgrade employees on an equal opportunity basis.

(ii) Copies of contracts for the provision of goods and services to the location, including a notation of which contracts are with minority or female-owned businesses.

(iii) The name, address and telephone number of the location mutuel manager and whether that person is the holder of a license issued by the Commission.

(iv) The name, address and telephone number of the location director of security and whether that person is the holder of a license issued by the Commission.

(v) The name, address and telephone number of the general manager of the location and whether that person is the holder of a license issued by the Commission.

(vi) The names of the vendors and concessionaires providing goods or services, or both, to the location and whether the vendors or concessionaires hold a license issued by the Commission.

(vii) A description of the security plan for the location and a copy of the contracts relating to security at the location.

(viii) A copy of insurance policies applicable to the location.

(ix) A statement indicating whether an application has been made to the Liquor Control Board for a license or the transference of a license, permitting the sale or consumption of alcoholic beverages at the location and action taken on that application.

(x) A statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the location.

(xi) The applicant's strategy for preserving the integrity of live racing in this Commonwealth.

(xii) A copy of building, fire, occupancy, health and sanitation or other permits required by the Commonwealth or a county, township or municipality in which the location is situated.

(b) The Commission and its staff shall make an initial assessment of the specific petition to determine if it is complete, accurate and in accordance with the previous provisions. An incomplete petition or if the appropriate fee is not included with the petition, shall not be reviewed or considered by the Commission.

(c) The Commission may employ the services of architects, engineers, accountants or other specialists to assist in the evaluation of a petition or to inspect work performed at a nonprimary location.

§ 189.13. Review of petition.

(a) Prior to granting approval of a petition for the relocation of an existing operational nonprimary location or the reopening of a previously operational nonprimary location by the licensed racing entity, the Commission, will conduct its due diligence and review of the proposed location and facility. To further its review, the Commission may:

(1) Require an oral presentation by the Petitioner as determined by the Commission;

(2) Receive and utilize documents, transcripts and information from other racing, gaming or zoning regulatory entities, in or outside of this Commonwealth;

(3) Seek written public comments from interested persons from the county in which the proposed facility will be located, as set forth in § 189.14 (relating to written public comment);

(4) Conduct a public comment hearing, if necessary, in accordance with the provisions set forth in § 189.15 (relating to public comment hearing); or

(5) Adopt any other procedure deemed necessary and appropriate to assist it in the review of the proposed facility.

§ 189.14. Written public comment.

(a) If the Commission determines, in its sole discretion, the need for written public comment relating to the relocation of an existing nonprimary facility or the

re-opening of a previously operational nonprimary location, the Commission may utilize the following procedures:

(1) The Commission shall provide notice of the licensed racing entity's submitted petition and location at its monthly public meeting immediately following receipt of the petition or it may publish the notification of the licensed racing entity's petition in the *Pennsylvania Bulletin*.

(2) There shall be a 30-day period following notice as set forth in subsection (1) during which written comments may be submitted by interested persons.

(3) Written public comment shall be limited to verifiable residents of the county in which the proposed facility will be relocated or reopened.

(4) Written comments submitted during the 30-day comment period will be retained and incorporated into the record to be reviewed and considered by the Commission.

(b) The purpose of the written public comments is to assist the Commission in assessing the impact the relocation of an existing nonprimary facility or the reopening of a previously operational nonprimary location may have on the local community.

Cross References

This section cited in 7 Pa. Code § 189.13 (relating to review of petition); and 7 Pa. Code § 189.15 (relating to public comment hearing).

§ 189.15. Public comment hearing.

(a) The Commission will provide an opportunity for the licensed racing entity or any other interested agency, person or group of persons within the county where the proposed facility will be located to submit a written request for a public comment hearing regarding the nonprimary location petition.

(b) The written request seeking a public comment hearing must:

(1) be filed within the 30-day time period set forth in § 189.14 (relating to written public comment);

(2) clearly and concisely identify the specific interest of the person filing the request, including name, address, telephone number, of the requesting person; and

(3) set forth the specific reasons why a hearing is warranted.

(c) The Commission shall review the written request for a public comment hearing to determine whether the public comment hearing would assist it in assessing and evaluating the proposed location and whether the petition is consistent with the best interests of racing and the standards for approval set forth in these regulations.

(d) If the Commission determines, in its sole discretion, the need for a public comment hearing relating to the licensed racing entity's petition, the Commission shall:

- (1) Inform the requesting petitioner;
- (2) Publish notice of the proposed public comment hearing in the *Pennsylvania Bulletin*, post it on the Commission's web site, and if practicable, publish notice of the public comment hearing in a newspaper of general circulation for the county in which the proposed nonprimary facility will be located;
- (3) Identify and coordinate with the local municipality the proposed location and time for the public comment hearing;
- (4) Designate a Commissioner, assign a hearing officer or appoint another Commission designee to conduct the public meeting and receive public comments;
- (5) Develop and post on the Commission's web site the procedures that will be used to conduct the public comment hearings. At its discretion, the Commission may terminate, recess, reconvene and continue the public comment hearing.

Cross References

This section cited in 7 Pa. Code § 189.13 (relating to review of petition).

§ 189.16. Intervention in a nonprimary location petition.

(a) This subsection pertains exclusively to intervention in a petition for the relocation of an existing nonprimary facility or the reopening of a previously operational nonprimary location under this section and is not applicable to other hearings before the Commission. The right to intervene in a hearing under this section is within the sole discretion of the Commission.

(1) A person wishing to intervene in the matter before the Commission shall file a petition to intervene in accordance with this subsection.

(2) A person may file a petition to intervene under this subsection if the person has an interest in the proceeding which is substantial, direct and immediate and if the interest is not adequately or otherwise represented in the matter.

(3) Petitions to intervene in nonprimary location matters shall be filed within 30 days from the date of published notice by the Commission of the receipt of the nonprimary location petition.

(4) Petitions to intervene must set out clearly and concisely the facts demonstrating the nature of the alleged right or interest of the petitioner, the grounds of the proposed intervention, and the position of the petitioner in the proceeding. The petitioner shall fully and completely advise the licensed racing entity and the Commission of the specific issues of fact or law to be raised or controverted and cite provisions or other authority relied upon.

(5) The licensed racing entity seeking the relocation or reopening of the nonprimary location may file an Answer to a Petition to Intervene, and in default thereof, will be deemed to have waived any objection to the granting of the petition. If made, answers shall be filed within 10 days after the date the

petition to intervene is filed with the Commission, unless for cause the Commission prescribes a different time. A complete copy of the Answer to the Petition to intervene shall be served on the Commission and the petitioner who seeks to intervene.

(6) Except when the Commission determines that it is necessary to develop a comprehensive evidentiary record, the participation of a person granted the right to intervene in the nonprimary location matter will be limited to the presentation of evidence through the submission of written statements attested to under oath. The written statements shall be part of the evidentiary record.

(b) This section supersedes any conflicting provisions contained in the Commission's administrative regulations relating to practice and procedure and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure).

§ 189.17. Standards for approval.

(a) Under section 9331 (relating to pari-mutuel wagering at nonprimary locations) of the act, the Commission will consider the following in determining whether to grant or deny approval of a petition:

(1) Whether the proposed relocated or reopened facility contains or has access to amenities such as the restaurants and handicapping facilities required by the act.

(2) Whether the facility will create jobs in the construction and service industries as well as continue to create jobs within the racing and wagering industry.

(3) Whether the facility will have a positive, neutral or negative impact on the integrity of live racing, including its effect on the attendance, handle and purse structure of live racing.

(4) The anticipated impact on the local community, including the potential for job creation on an equal opportunity basis and the effect on local businesses.

(5) The quality of the physical facilities and services to be provided.

(6) The public interest.

(7) Whether the applicant plans to institute measures to ensure that employees are recruited and trained for positions on an equal opportunity basis and that contracting opportunities are open to all firms.

(8) Information, documents or exhibits submitted as part of a petition.

(b) No single factor will be paramount. In rendering a decision, the Commission will determine whether the proposed relocated or reopened nonprimary location is in the best interests of racing.

(c) Approval of a relocated or reopened nonprimary location is granted upon the condition that the licensed racing entity accept and continue to observe the rules of the Commission. The approval of a nonprimary location does not prevent the Commission from ordering modification of the facility or operations at the

nonprimary location if the Commission finds evidence of noncompliance with the act, this chapter or that the construction or reconstruction of the facility is not being performed as set forth in the approved petition.

(d) Approval issued by the Commission will contain the following conditions:

(1) The Commission, its agents or employees will have immediate and complete access to the areas where activity is being or will be conducted under the act or this part, as necessary to determine compliance with the act and this part, upon presentation of appropriate credentials and without advance notice or a search warrant.

(2) Records and reports pertaining to activities conducted under the act or this part shall be produced for inspection upon demand by the Commission, its agents or employees.

REQUIREMENTS FOR THE NONPRIMARY LOCATION

§ 189.21. Concessionaires or vendors.

(a) A person, firm, concessionaire or vendor which holds a concession, right or privilege to perform a service or sell an item at a nonprimary location operated by a licensed racing entity shall be licensed by the Commission.

(b) The licensed racing entity, if requested by the Commission, shall provide a copy of an audited financial statement reflecting its operations at each nonprimary location.

§ 189.22. Display of races and race related information at a nonprimary location.

(a) The following shall be offered to patrons at every nonprimary location:

(1) Audio and video coverage of every race upon which patrons of the nonprimary location are permitted to wager, including coverage of the horses in the paddock and while scoring.

(2) Video coverage of race related information for every race upon which patrons of the nonprimary location are permitted to wager.

(b) A nonprimary location shall be equipped with a system permitting the reception of transmissions of races and race related information without interference or interception.

(c) A licensed corporation operating a nonprimary location shall develop and implement a security system to protect the equipment being used to receive transmissions of races and race related information from tampering.

(d) If the reception of the video coverage of a race is interrupted, the audio coverage of the race shall continue to be presented.

(e) If the reception of the audio coverage of the race is interrupted, the video coverage of the race shall continue to be displayed.

(f) If the reception of the audio and video coverage of a race is interrupted during the running of the race, wagering being conducted on future races at the nonprimary location shall cease until the transmissions are restored. If the interruption of audio or video coverage, or both, prevent the display of a race at the nonprimary location, a replay of the race shall be displayed at the nonprimary location as soon after the restoration of coverage as possible.

(g) At least 30 minutes prior to the beginning of wagering at the nonprimary location, a test of the equipment used to receive and display races and race related information at the nonprimary location shall be conducted to ensure that the system is operating properly.

§ 189.23. Wagering requirements.

(a) Wagering on races at a nonprimary location shall be conducted using the pari-mutuel system of wagering.

(b) A nonprimary location shall be equipped with:

(1) A communication system that permits communication among the pari-mutuel department of the nonprimary location and the pari-mutuel department and Judges of racetracks conducting races on which patrons of the nonprimary location may wager.

(2) A system capable of ensuring that money wagered on a particular race is included in the pari-mutuel pool of the racetrack conducting the race.

(3) A system capable of ensuring that pari-mutuel machines at the nonprimary location lock upon the ringing of the bell or upon the closing of wagering for any reason.

(c) Pari-mutuel wagering on races shall be conducted using pari-mutuel tickets sold from machines approved by the Commission. No pari-mutuel machine will be approved unless it is compatible with the system required by subsection (b)(2).

(d) The transmission of wagering data between the nonprimary location and the racetrack conducting a race upon which wagering is permitted shall be independent of the transmission of audio and video coverage of the race and race related information. The system shall be tested at least 30 minutes prior to the beginning of wagering at the nonprimary location.

(e) Patrons at nonprimary locations shall be afforded the same wagering opportunities on a particular race as patrons at the racetrack. Patrons at the racetrack shall be afforded the same wagering opportunities on a particular race as patrons at nonprimary locations. Winning pari-mutuel tickets purchased at a facility within a racetrack enclosure shall be cashed at a facility within the racetrack enclosure.

(f) Persons employed in the pari-mutuel department of a nonprimary location operated by a licensed corporation of the Commission shall be considered pari-mutuel employees of the licensed corporation for purposes of reports to the Commission and the Department of Revenue.

(g) Reports of pari-mutuel wagering required by this part shall reflect the request information separately for each nonprimary location operated by the licensed corporation.

(h) The stop betting command shall be noted by the ringing of the bell at the nonprimary location or other device as approved by the Commission.

(i) A licensed corporation shall submit written notice of its intention to suspend or terminate operations at a nonprimary location at least 60 days prior to the suspension or termination. The 60-day notification period may be reduced by the Commission for good cause shown.

§ 189.24. Location mutuel manager.

An individual shall be designated as a location Mutuel Manager at each nonprimary location who shall:

- (1) Oversee the pari-mutuel operations at the nonprimary location.
- (2) Receive communications from the Mutuel Manager of each racetrack conducting races upon which patrons of the nonprimary location may wager.
- (3) Oversee the operation of the equipment being used to include money wagered at the nonprimary location in the pari-mutuel pool at the racetrack conducting the race and suspend wagering at the nonprimary location if the money wagered is not being transmitted to the pari-mutuel pool at the racetrack conducting the race.
- (4) Be responsible for ensuring that laws and regulations governing pari-mutuel wagering are observed at the nonprimary location.
- (5) Be licensed by the Commission.

OPERATION OF A NONPRIMARY LOCATION

§ 189.31. Maintenance of a nonprimary location facility.

(a) A licensed racing entity that relocates or reopens a nonprimary location shall:

- (1) maintain the grounds, premises, physical facility, internal or external, at the nonprimary location so as to be neat and clean, painted and in good repair, with special consideration for the comfort and safety of patrons, employees and other persons whose business requires their attendance;
- (2) maintain in good working order the equipment being used to transmit and receive audio and video signals, to display the audio and video signals and to include money wagered in common pari-mutuel pools.

(b) Plans for renovations, rehabilitations or changes to be made to a nonprimary location after the beginning of operations shall first be approved by the Commission before being implemented.

§ 189.32. Impermissible conduct.

- (a) While at a nonprimary location, no person may:

- (1) Use improper, profane or indecent language to a racing official, licensee or Commission employee.
- (2) Disturb the peace or make himself obnoxious to others.

§ 189.33. Power of eviction or ejection.

The licensed racing entity may exercise its statutory authority and common law rights to evict a patron from a nonprimary location if the facility is also located within a licensed gaming facility. If a patron is ejected from the floor of the nonprimary location for lawful reasons, the patron shall not be entitled to a hearing.

§ 189.34. Inspection authorization.

(a) The Commission, its agents or employees will have access to, and require the production of, books and papers, documents and physical evidence pertinent to a matter being investigated under the act or this part.

(b) At least annually, the Commission, its agents or employees will inspect the nonprimary location to determine whether the licensed racing entity is maintaining its nonprimary location in good condition and whether adequate provision for rehabilitation and capital improvements has been made.

(c) Inspections of nonprimary locations shall be made during the normal business hours of the nonprimary location.

§ 189.35. Nondiscrimination.

A licensed racing entity may not discriminate against an employee, applicant for employment, independent contractor or other person because of race, color, religious creed, ancestry, National origin, age, sex or nonjob related handicap or disability.

§ 189.36. Admission of minors.

No licensed corporation may permit a person who is 21 years of age or younger to wager at a nonprimary location. Except that: This section does not prohibit persons 18 years of age or younger who are legally employed from being on the nonprimary location premises for the sole purpose of performing their duties as employees. If the relocated or reopened nonprimary location is constructed within a duly licensed gaming facility or casino, the licensed racing entity may exclude anyone from its facility under the age of 21.

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