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Authority

The provisions of this Chapter 171 issued under sections 102, 213, 218, 225.1 and 234 of the Race Horse Industry Reform Act (4 P. S. §§ 325.102, 325.213, 325.218 and 325.234), unless otherwise noted.

Source

The provisions of this Chapter 171 adopted January 12, 1990, effective January 13, 1990, 20 Pa.B. 186, unless otherwise noted.

GENERAL PROVISIONS**§ 171.1. Definitions.**

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

Applicant—A licensed corporation that files a Nonprimary Location Statement with either the Commission or the State Harness Racing Commission.

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

Calendar year—The period beginning 12:01 a.m. on January 1 and extending through 12 p.m. on December 31.

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 areas of buildings under the possession, ownership or control of a licensed corporation at a nonprimary location.

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 parcel or contiguous parcels of real estate on which a licensed corporation conducts or proposes to conduct pari-mutuel wagering other than its racetrack.

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.

Statement—A Nonprimary Location Statement.

§ 171.2. Applicability.

Except as expressly amended by this chapter, this part applies to each nonprimary location operated by a corporation licensed by the Commission. Obligations of a licensed corporation with respect to its racetrack location apply to its nonprimary location. The privileges conferred by the granting of a license to an employe, concessionaire or vendor of a licensed corporation are applicable to a nonprimary location operated by the licensed corporation.

APPLICATION FOR A NONPRIMARY LOCATION

§ 171.21. Nonprimary Location Statement.

- (a) Only a licensed corporation may apply for approval of a nonprimary location.
- (b) A corporation licensed by the Commission may apply for approval of a nonprimary location by submitting a Statement to the Commission.
- (c) A Statement shall be in the form prescribed by the Commission and shall be accompanied by the documents, information and exhibits requested by the Commission.

Cross References

This section cited in 58 Pa. Code § 171.24 (relating to consideration of a Statement by the Commission and the State Harness Racing Commission).

§ 171.22. Filing of a Statement; documentation required.

- (a) A Statement will be considered, and may be submitted, in three parts as follows:
 - (1) Part I requires the submission of the following information, exhibits and documentation:
 - (i) The address of the 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 of the location.
 - (xiii) The number and types of full 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.
 - (xviii) A nonrefundable fee of \$1,000.
- (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 of the facility.
 - (vii) The architectural or engineering drawings of the 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) Copies of contracts relating to, and a complete description of, the pari-mutuel or totalizator 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.

(xii) Copies 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.

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

(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) The admission or seating fee to be charged at the location.

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

(x) A statement indicating whether 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.

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

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

(xiii) 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) Upon receipt of the information, documents and exhibits required in Part I of the Statement, and if the information, documents and exhibits are complete and indicate compliance with the act and this part, the Commission will request public comments and schedule a public hearing as described in § 171.23 (relating to public hearings and public comment). Within 60 days of the later of the expiration of the public comment period or holding of the public hearing, the Commission will forward written notice of its decision concerning the proposed site of the nonprimary location to the applicant or request additional information from the applicant. A request for additional information shall toll the 60-day period described within this subsection. The Commission will act upon information received pursuant to a request for additional information within 60 days of receipt of the information. If the Commission denies approval of Part I of a Statement, the applicant may submit a revised statement for consideration by the Commission. The Commission will act upon a revised statement submitted under this subsection within 60 days of receipt of the revised Statement.

(c) Upon receipt of the information, documents and exhibits required in Part II of the Statement, and if the information, documents and exhibits are complete and indicate compliance with the act and this part and following approval of the site of the nonprimary location as submitted in Part I of the Statement, the Commission will begin consideration of the proposed facility. Within 60 days of the later of either the written approval of Part I of the Statement, or the receipt of the information, documents and exhibits requested in Part II of the Statement, the Commission will forward written notice of its decision concerning the proposed facility to the applicant or request additional information from the applicant. A request for additional information shall toll the 60-day period described in this

subsection. The Commission will act upon information received under a request for additional information within 60 days of receipt of the information. If the Commission denies approval of Part II of a Statement, the applicant may submit a revised statement for consideration by the Commission. The Commission will act upon a revised Statement submitted under this subsection within 60 days of receipt of the revised statement.

(d) Pari-mutuel wagering at a nonprimary location may not be commenced until the Commission has issued written approval of the information, documents and exhibits requested in Part III of the Statement. Within 30 days of completion of construction and renovation of the facility and the receipt of the information, documents and exhibits requested in Part III of the Statement, the Commission will either forward written notice of its decision concerning approval of the nonprimary location or request additional information. A request for additional information shall toll the 30-day period described in this subsection. The Commission will act upon information received under a request for additional information within 30 days of receipt of the information. If the Commission denies approval of Part III of a Statement, the applicant may submit a revised Statement for consideration by the Commission. The Commission will act upon a revised Statement submitted under this subsection within 30 days of receipt of the revised Statement.

(e) The Commission may employ the services of architects, engineers, accountants or other specialists to assist in the evaluation of a Statement or to inspect work performed at a nonprimary location. The applicant is responsible for costs or charges incurred or received by the Commission in connection with these services. If an inspection discloses that the facility is not being constructed in substantial compliance with the information, documents and exhibits submitted in connection with the Statement, the Commission may do one or more of the following:

- (1) Refuse to issue, or revoke, operational approval of the nonprimary location.
- (2) Impose a penalty authorized by the act.

Notes of Decisions

Jurisdiction

Pursuant to the specific language of these regulations, the Pennsylvania State Horse Racing Commission will give approval of the nonprimary location after the receipt of the information, documents and exhibits requested in Part III of the Statement. Since the Commission's order with respect to Part I of the Statement did not dispose of all claims or all parties, it is not a final order which can be properly appealed to the Commonwealth Court and therefore, the Court lacked subject matter jurisdiction. *Contact II, Inc. v. State Horse Racing Commission*, 664 A.2d 181 (Pa. Cmwlth. 1995).

Cross References

This section cited in 58 Pa. Code § 171.24 (relating to consideration of a Statement by the Commission and the State Harness Racing Commission).

§ 171.23. Public hearing and public comment.

(a) Upon the filing of a Statement by a corporation licensed by the Commission, the Commission will place the following notice in a newspaper of general circulation in the county in which the nonprimary location is to be situated:

TO WHOM IT MAY CONCERN:

The Pennsylvania State Horse Racing Commission hereby gives notice that a Nonprimary Location Statement was filed on the ____ day of _____, 19__ by _____ in which the corporation seeks approval to conduct pari-mutuel wagering at a Nonprimary Location at _____. A public hearing concerning this matter will be held at _____ on _____, 19_____ at _____. Public comment is requested. Interested parties are invited to submit written comments to the Pennsylvania State Horse Racing Commission, Agriculture Building, Room 306, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. Public comments may be submitted up to, and including, the date set for public hearing. The purpose of the public hearing is to assist the Commission in assessing the impact the proposed nonprimary location will have on the local community. A person who believes the proposed nonprimary location will affect their business or residence and who wishes to speak at the public hearing must submit their 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.

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

(c) The purpose of the public hearing will be to assist the Commission in assessing the impact that a proposed nonprimary location will have on the local community as required by section 218(g)(5)(iii) of the act (4 P. S. § 325.218(g)(5)(iii)). The public hearing shall be held in the county in which the proposed nonprimary location is to be situated.

(d) A person who wishes to speak at the public hearing shall submit his 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 Commission at the following address: State Horse Racing Commission, Agriculture Building, Room 306, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408.

(e) The Commission may set reasonable limits upon the time allowed for oral statements and may disallow statements not offered for the purpose set forth in subsection (c).

Notes of Decisions*Hearing Site*

The State Horse Racing Commission did not abuse its discretion in choosing a hearing site within the county, but not the township, in which the proposed facility was located, especially where the

township did not introduce any evidence suggesting that members of the community were unable to attend because of the location. *East Lampeter Township v. State Horse Racing Commission*, 704 A.2d 703 (Pa. Cmwlth. 1997).

The Commission may waive the requirement for advance submission statements when doing so furthers legislative intent and party is not prejudiced. *Upper Merion Township v. State Horse Racing Commission*, 602 A.2d 459 (Pa. Cmwlth. 1992).

Residents who were provided notice and attended a public hearing but failed to request an evidentiary hearing or intervene in the application process until after an order was issued, waived their objections to the administration of the hearing. *Cashdollar v. State Horse Racing Commission*, 600 A.2d 646 (Pa. Cmwlth. 1991).

Public Objections

Residents who were provided notice and attended a public hearing but failed to request an evidentiary hearing or intervene in the application process until after an order was issued, waived their objections to the administration of the hearing. *Cashdollar v. State Horse Racing Commission*, 600 A.2d 646 (Pa. Cmwlth. 1991).

Time of Notice

The State Horse Racing Commission did not abuse its discretion in publishing a timely hearing notice over a holiday weekend. *East Lampeter Township v. State Horse Racing Commission*, 704 A.2d 703 (Pa. Cmwlth. 1997).

Waiver of Requirements

The Commission may waive the requirement for advance submission statements when doing so furthers legislative intent and a party is not prejudiced. *Upper Merion Township v. State Horse Racing Commission*, 602 A.2d 459 (Pa. Cmwlth. 1992).

Cross References

This section cited in 58 Pa. Code § 171.23 (relating to filing of a Statement; documentation required); and 58 Pa. Code § 171.24 (relating to consideration of a Statement by the Commission and the State Harness Racing Commission).

§ 171.24. Consideration of a Statement by the Commission and the State Harness Racing Commission.

(a) The approval of the State Harness Racing Commission is necessary for the establishment of a nonprimary location in the secondary market area of a racetrack.

(b) The following procedures, in addition to those in §§ 171.21—171.23 (relating to Nonprimary Location Statement; filing of a Statement; documentation required; and public hearing and public comment) apply when the approval of the Commission and the State Harness Racing Commission is necessary as set forth in subsection (a):

(1) The Statement and information, documents and exhibits required to be submitted with the Statement shall be submitted to the Commission according to the schedule established in § 171.22.

(2) The Commission will consider the Statement in accordance with the schedule established in § 171.22 and will:

(i) Notify the State Harness Racing Commission of the scheduling of the public hearing as set forth in § 171.23.

(ii) Invite the State Harness Racing Commission to participate in the public hearing.

(iii) Permit the State Harness Racing Commission to review public comments received.

(iv) Provide one copy of the Statement to the State Harness Racing Commission.

(3) If the Commission approves Part I of the Statement, written notice of the approval will be given to the State Harness Racing Commission.

(4) The State Harness Racing Commission has 30 days from the date of the written notice required by paragraph (3) to deny approval of Part I of the Statement. The failure of the State Harness Racing Commission to deny approval of Part I of the Statement constitutes approval of Part I of the Statement.

(5) Upon the approval by the State Harness Racing Commission of Part I of the Statement, or the expiration of the 30-day denial period, and the submission of the information, documents and exhibits requested in Part II of the Statement, the Commission will begin consideration of Part II of the Statement.

(6) If the Commission approves Part II of the Statement, written notice of the approval will be given to the State Harness Racing Commission.

(7) The State Harness Racing Commission has 30 days from the date of the written notice required by paragraph (6) to deny approval of Part II of the Statement. The failure of the State Harness Racing Commission to deny approval of Part II of the Statement constitutes approval of the Statement by the State Harness Racing Commission.

(8) An order issued under this section may be executed by the Executive Secretary of the State Harness Racing Commission following the polling of the members of the State Harness Racing Commission by telephone. Action taken under this paragraph shall be ratified by the State Harness Racing Commission at its next public meeting.

§ 171.25. Standards for approval.

(a) Under section 218(g)(5)(ii) and (iii) of the act (4 P. S. § 325.218(g)(5)(ii) and (iii)), the Commission will consider the following in determining whether to grant or deny approval of a Statement:

(1) Whether the facility planned contains 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 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 Statement.
- (b) No single factor will be paramount. In rendering a decision, the Commission will determine whether the proposed nonprimary location satisfies the legislative intent of the General Assembly as expressed in section 218(g)(5)(ii) of the act.
- (c) The Commission will not approve a Statement which proposes the construction of a facility that:
- (1) Has a seating capacity that is less than 50% of the maximum lawful occupancy of the facility.
 - (2) Does not contain a restaurant providing table service and offering a menu which includes appetizers, entrees and desserts.
 - (3) Is intended to offer only wagering opportunities to the public or serve solely as a betting parlor.
 - (4) Does not contain color television monitors of a size and in a number sufficient to allow patrons to conveniently view the races upon which they may wager.
- (d) Ownership or control of a nonprimary location may be transferred from one licensed corporation to another licensed corporation only with the consent of the Commission. The consent of the State Harness Racing Commission is also necessary if the racing activities of one of the licensed corporations is regulated by the State Harness Racing Commission.
- (e) Approval of a nonprimary location is granted upon the condition that the licensed corporation accept and 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 or this chapter or that the construction or reconstruction of the facility is not being performed as set forth in the approved Statement. The decision of the Commission to disapprove, suspend, revoke or modify approval of a nonprimary location will be made after notice and a hearing and shall be an appealable adjudication of the Commission.
- (f) In evaluating the public interest, the impact on the local community, and the potential for job creation of a nonprimary location as required by section 218(g)(5)(iii) of the act, the Commission will consider whether the applicant

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

Notes of Decisions

Approval of Facility

Regulations promulgated under Race Horse Industry Reform Act (4 P. S. § 325.101 et seq.) will not allow approval of a "Turf Club" facility unless the facility contains a restaurant providing table service and menu items including appetizers, entrees and desserts. *Southco, Inc. v. Concord Township*, 713 A.2d 607 (Pa. 1998).

REQUIREMENTS FOR A NONPRIMARY LOCATION

§ 171.41. Facility requirements.

- (a) A nonprimary location facility shall contain:
 - (1) An adequate number of free drinking water fountains and rest rooms for use of patrons.
 - (2) Facilities and design to ensure that the facility is accessible to the physically handicapped.
 - (3) Amenities, such as the restaurants and handicapping facilities required by the act.
- (b) A facility that is located in Pittsburgh, Philadelphia or Scranton shall possess a certificate of compliance with fire-safety requirements issued by the appropriate fire-safety authority of that city. A facility that is located somewhere other than in Pittsburgh, Philadelphia or Scranton shall possess a certificate of occupancy issued by the Department of Labor and Industry under the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235), known as the Fire and Panic Act.
- (c) A person employed at a nonprimary location by a licensed corporation, concessionaire or other person or entity shall obtain a license from the Commission under §§ 163.51 and 163.56 (relating to persons required to be licensed; and requirements).
- (d) Persons employed at a nonprimary location shall display an identification badge as described in § 165.92(b) (relating to identification cards and badges) while working at the nonprimary location.
- (e) Only telephones or other communication equipment approved by the Commission may be installed or operated at a nonprimary location. Except as expressly authorized by the Commission, telephones or communications equipment installed or operated at a nonprimary location shall be connected to a central switchboard.

Cross References

This section cited in 58 Pa. Code § 171.45 (relating to wagering requirements).

§ 171.42. Concessionaires.

(a) A person, firm, association, group or corporation which holds a concession, right or privilege to perform a service or sell an item at a nonprimary location operated by a licensed corporation shall be licensed by the Commission and shall submit to the Commission a copy of each report, advice or other document which that person, firm, association, group or corporation furnishes or is required to furnish to the licensed corporation to substantiate rentals, service fees or similar financial or business arrangements between the parties.

(b) A person, firm, association, group or corporation operating a concession, performing a service or selling an item at a nonprimary location shall submit the following reports to the Commission:

(1) An audited profit and loss statement reflecting its operations at each nonprimary location. This report shall state the gross revenues derived during the reporting period as well as expenses paid or accrued during the reporting period. Income and expense items shall be shown in detail. This profit and loss statement shall be filed with the Commission by January 31 and reflect operations during the preceding calendar year.

(2) Certified financial statements, including a Balance Sheet, Income Statement and a Statement of Change In Financial Position. These financial statements shall be submitted within 75 days of the end of the calendar year in the case of a person, or the fiscal year in the case of a firm, association, group or corporation.

(3) Upon request of the Commission:

(i) Copies of weekly payrolls of persons employed at a nonprimary location including the name and address of each person.

(ii) Copies of written contracts and agreements and a summary of verbal contracts and agreements at a nonprimary location.

- (iii) A list of the owners of the firm, association, group or corporation.
- (iv) A list of the officers and directors and the compensation paid to each of them.
- (4) Upon the sale or transfer of an ownership interest in a concessionaire, an affidavit setting forth the information required by section 204 of the act (4 P. S. § 325.204) and Chapter 165, Subchapter C (relating to issuance and transfer of stock).

§ 171.43. Transmission of races and race related information to nonprimary locations.

(a) A licensed corporation permitting patrons of a nonprimary location to wager on races it conducts shall install a system permitting the transmission of audio and video coverage of the races it conducts and race related information from the racetrack to the nonprimary location. The system shall transmit this audio and video coverage without interception or interference, either by encoding the signal or by other means. The system shall include a means of transmitting the audio portion of the coverage independently of the video coverage if the video coverage is interrupted.

(b) A licensed corporation permitting patrons of a nonprimary location to wager on races it conducts shall transmit the following to the nonprimary location:

(1) Live audio and video coverage of the races it conducts, including coverage of the horses in the paddock and during the post parade.

(2) Video coverage of race related information.

(c) A licensed corporation permitting patrons of a nonprimary location to wager on races it conducts shall:

(1) Be responsible for displaying the information transmitted to the nonprimary location under subsection (b) at the nonprimary location.

(2) Provide an audio and video transmission that is an exemplary depiction of the races it conducts.

(3) Provide continuity of programming between races.

(d) A licensed corporation permitting patrons of a nonprimary location to wager on races it conducts shall include in its video coverage of a race:

(1) A digital display of the actual time of day.

(2) The name of the racetrack from which the video transmission emanates.

(3) The number of the race being displayed.

(4) Wagering information including odds, probable payoffs and pool totals.

(e) If the transmission of the video coverage of a race is interrupted, the transmission of the audio coverage of the race shall be continued.

(f) If the transmission of the audio coverage of the race is interrupted, the transmission of the video portion of the coverage shall be continued.

(g) If the transmission of the audio and video coverage of a race is interrupted prior to the start of the race, wagering being conducted on the race and future races at the nonprimary location shall cease until the transmissions are restored. If the interruption of audio or video coverage, or both, prevents 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.

(h) A licensed corporation conducting a race upon which patrons of a nonprimary location may wager shall make and retain a video record of transmissions to the nonprimary location. This record shall be in decoded form, on 1/2-inch video cassette and shall be delivered to the Commission upon request. This record shall be retained for 60 days.

(i) At least 30 minutes prior to the commencement of the transmission of audio and video coverage of each program of races and race related information, the licensed corporation conducting the races shall transmit a test program of its audio and video coverage to ensure that the system is operating properly.

(j) A licensed corporation shall provide a list of persons or other entities, including nonprimary locations known to be capable of receiving the audio and video coverage of its races or in possession of equipment capable of decoding its transmissions.

(k) A licensed corporation permitting patrons of a nonprimary location to wager on races it conducts shall implement a security system to protect the equipment used to transmit audio and video coverage of its races and race related information from tampering.

§ 171.44. 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 during the post parade.

(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) A licensed corporation operating a nonprimary location shall make and retain a record of coverage displayed at the nonprimary location. These copies shall be retained for 60 days and shall be in decoded form on 1/2-inch video cassette and shall be delivered to the Commission upon request.

(h) At least 30 minutes prior to the commencement 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.

§ 171.45. 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 board of stewards 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 off-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). No more than 20% of the pari-mutuel machines used in a facility may be stand-alone terminals, without the written consent of the Commission.

(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 commencement 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) Notwithstanding § 171.41 (relating to facility requirements), persons employed in the pari-mutuel department of a nonprimary location operated by a licensed corporation of the Commission are subject to the requirements of §§ 163.51 and 165.125 (relating to persons required to be licensed; and personnel) and shall be considered pari-mutuel employees of the licensed corporation for purposes of reports to the Commission and the Department of Revenue.

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

(h) The stop betting command shall be noted by the ringing of the off-bell at the nonprimary location. The Commission may order that the stop betting command at the nonprimary location be given prior to the start of races.

(i) Pari-mutuel wagering shall be permitted at a nonprimary location only on the days authorized by the Commission. Sixty days prior to the date of proposed initial operation, and no later than November 1 of each succeeding year, a licensed corporation desiring to conduct pari-mutuel wagering at an approved nonprimary location shall submit a Request for Days of Operation stating the desired operational dates for the succeeding year to the Commission. In determining whether to grant the requested dates, the Commission will be guided by the act and this chapter.

(j) On authorized days of operation, no business may be conducted at a facility unless operated by or under a contract with the licensed corporation operating the nonprimary location and approved by the Commission.

(k) 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. This 60-day notification period may be reduced by the Commission for good cause shown.

§ 171.46. Location mutuel manager.

An individual shall be designated as a location mutuel manager at each nonprimary location. This individual 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.

§ 171.47. Number of nonprimary locations permitted.

(a) A licensed corporation authorized to hold race meetings at a primary racetrack location at which more than one license is so authorized may be granted approval for two nonprimary locations except that no approval will be granted if the approval would result in the number of nonprimary locations for any primary racetrack exceeding four. For purposes of this section, the term “primary racetrack” includes a racetrack at which either horse or harness race meetings, or both, are being conducted.

(b) A licensed corporation authorized to hold race meetings at a primary racetrack location at which only one license is so authorized may be granted approval for three nonprimary locations.

(c) Notwithstanding subsection (a) or (b), the Commission may approve one additional nonprimary location during the calendar year 1989 and 1990 for one corporation licensed to conduct race meetings at the primary racetrack location.

(d) Recognizing that the approvals referred to in subsection (c) may only be granted in 1989 and 1990 respectively, and recognizing the increased risk placed upon construction workers and the public if the pace of construction is accelerated, the Commission adopts the following interpretation. A nonprimary location subject to subsection (c) shall be deemed to be approved at the time when the Commission approves the information contained in Part I of the Statement. This approval is subject to revocation if the information contained in Parts II and III of the Statement is not approved. Other Statements shall be deemed approved only when all parts of the Statement have been approved.

(e) A primary racetrack location at which more than one licensed corporation is so authorized shall be awarded a maximum of six nonprimary locations. A primary racetrack location at which only one licensed corporation is so authorized shall be awarded a maximum of five nonprimary locations.

OPERATION OF A NONPRIMARY LOCATION

§ 171.61. Operation of a single nonprimary location by more than one licensed corporation.

(a) When a site is approved by the Commission as a nonprimary location established by more than one licensed corporation, by agreement between the licensed corporations and with the approval of the Commission, one licensed corporation may operate the pari-mutuel equipment at the nonprimary location.

(b) If a single nonprimary location is established by more than one licensed corporation, each corporation is responsible for ensuring that the act and this part are observed at the nonprimary location.

(c) Licensed corporations desiring approval for the operation of a nonprimary location by more than one licensed corporation shall file and obtain approval of the agreement governing operation of the nonprimary location from the Commission.

§ 171.62. Maintenance of a nonprimary location facility.

(a) A licensed corporation that establishes a nonprimary location shall maintain the grounds and the facility 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.

(b) A licensed corporation that establishes a nonprimary location shall 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.

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

§ 171.63. 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 employe.

(2) Disturb the peace or make himself obnoxious to others.

(b) Wagering within the confines of a nonprimary location other than through pari-mutuel machines approved by the Commission is prohibited. A person making a handbook or wagering with a handbook, or soliciting wagers to be made on races received at the nonprimary location or on races elsewhere, shall be ejected from the nonprimary location and denied further admission. No gaming device other than that permitted by law will be allowed within a nonprimary location. Cards, dice and petty games of chance are prohibited.

§ 171.64. Ejections.

(a) The Commission or a licensed corporation may eject a person from a nonprimary location under the same circumstances as set forth in the act or this part.

(b) A person ejected from the racetrack enclosure of a licensed corporation shall be excluded from all nonprimary locations of the licensed corporation.

(c) A person ejected from a nonprimary location shall be excluded from the racetrack enclosure and all nonprimary locations of the licensed corporation.

§ 171.65. Conditions of approval.

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

§ 171.66. 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 following facilities of licensed corporations for the purposes set forth in subsection (c):

(1) The racetrack at which the licensed corporation conducts 50% or more of its live races.

(2) Nonprimary locations operated by the licensed corporation.

(c) The purpose of the annual inspections authorized in subsection (b) is to determine whether the licensed corporation is maintaining its racetrack and nonprimary locations in good condition and whether adequate provision for rehabilitation and capital improvements has been made.

(d) The Commission, its agents and employees may conduct inspections, including follow up inspections, of racetracks and nonprimary locations as necessary to ascertain compliance or noncompliance with the act or this part.

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

§ 171.67. Enforcement.

(a) If a licensed corporation fails to maintain its racetrack or nonprimary locations in good condition or fails to make adequate provision for rehabilitation and capital improvements, the Commission will direct the licensed corporation to institute appropriate remedial measures.

(b) If a licensed corporation fails to institute the remedial measures directed by the Commission, the Commission may:

(1) Suspend or revoke the approval of one or more nonprimary locations operated by the licensed corporation.

(2) Suspend or revoke the license of the licensed corporation to conduct live racing.

(3) Impose other penalties authorized by the act.

(c) If an inspection of a nonprimary location discloses that the operation of a nonprimary location is not in compliance with the act or this chapter, the Commission may do one or more of the following:

- (1) Order the licensed corporation operating the nonprimary location to institute corrective measures necessary to achieve compliance with the act and this chapter.
- (2) Suspend or revoke approval for the nonprimary location.
- (3) Impose a fine not to exceed \$5,000 on the licensed corporation operating the nonprimary location.

(d) If the licensed corporation refuses access to the Commission, its agents or employees, or refuses to produce papers, documents or physical evidence upon demand by the Commission, its agents or employees, the Commission may do one or more of the following:

- (1) Suspend or revoke the approval of nonprimary locations operated by the licensed corporation.
- (2) Suspend or revoke the license of the licensed corporation to conduct live racing.
- (3) Impose other penalties authorized by the act.

§ 171.68. Nondiscrimination.

A licensed corporation 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 non-job related handicap or disability.

§ 171.69. Proximity to certain uses.

In determining whether a nonprimary location satisfies the legislative intent of the act, the Commission will consider the proximity of the nonprimary location to a church, hospital, charitable institution, school, public park or playground. In its consideration of these factors, the Commission will be guided by the laws of the Commonwealth regulating the sale of alcoholic beverages as set forth in section 4 of the Liquor Code (47 P. S. § 4-404).

§ 171.70. Interpretation of conducting a race meeting.

No licensed corporation will be considered as conducting a race meeting at a racetrack at which it has not scheduled more than 50% of its races during the current year.

§ 171.71. Admission of minors.

No licensed corporation may permit a person who is 17 years of age or younger to wager at a nonprimary location. No licensed corporation may permit a person who is 17 years of age or younger to attend a nonprimary location unless the person is accompanied by a parent or guardian. This section does not prohibit per-

sons 17 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.

§ 171.72. Reports.

Reports required to be filed by a licensed corporation with respect to its operations and records required to be maintained shall also be filed and maintained separately for each nonprimary location operated by the licensed corporation.

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