

**BEFORE THE PENNSYLVANIA
STATE HORSE RACING COMMISSION**

IN RE: :
NON-PRIMARY LOCATION :
(OFF-TRACK WAGERING FACILITIES) : **Administrative Docket 2019-13**
PETITION PROCESS :
Standardbred & Thoroughbred Racing :

ORDER

AND NOW, this 30th day of April, 2019, in accordance with its general jurisdiction to regulate all pari-mutuel horse racing activities, including licensed racing entities and their respective facilities, the Commission hereby finds that the existing Non-primary Location (“OTWs”) horse and harness regulations found at 58 Pa. Code, Chapter 171 and 58 Pa. Code, Chapter 189 are inconsistent and in direct conflict with the statutory provisions set forth in §9331 of the Racing Act (3 Pa. C. S. §9331). Since no new OTW licenses are permitted by the Racing Act, the Commission hereby intends to consolidate, update and modify the existing OTW regulations as those regulations relate to petitions by licensed racing entities to relocate existing operational facilities and/or to re-open previously operational OTW facilities.

In the interim, pursuant to its authority set forth in §9311(h) of the Racing Act (h)) (relating to the adoption of temporary regulations), the Commission hereby adopts the following temporary regulation specifically modifying and replacing the existing regulations relating to the procedures governing public input hearings and the Commission’s determination whether those hearings are necessary in the course of the Petition process. This Order and the attached Annex A adopting the temporary regulation shall be published in the *Pennsylvania Bulletin* and shall be posted on the Commission’s website. This temporary regulation shall become effective upon publication.

**BY THE PENNSYLVANIA
STATE HORSE RACING COMMISSION:**



Russell C. Redding, Chairman

Annex A

PENNSYLVANIA DEPARTMENT OF AGRICULTURE STATE HORSE RACING COMMISSION

PART IV

Procedures for Relocation or Re-establishment of Non-Primary Locations

Section 1. Review of petition.

(a) Prior to granting approval of a Petition for the relocation of an existing operational non-primary location or the re-opening of a previously operational non-primary 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 Pennsylvania;
- (3) Seek written public comments from interested persons from the county in which the proposed facility will be located, as set forth in section 2;
- (4) Conduct a public comment hearing, if necessary, in accordance with the provisions set forth in section 3; or
- (5) Adopt any other procedure deemed necessary and appropriate to assist it in the review of the proposed facility.

(b) In addition to other factors, the Commission may consider the standards set forth in 58 Pa. Code §171.25 or §189.25 for approval of a Petition for the relocation of an existing operational non-primary location or the re-opening of a previously operational non-primary location.

Section 2. Written public comment.

(a) If the Commission determines, in its sole discretion, the need for written public comment relating to the relocation of the non-primary facility or the re-opening of a previously operational non-primary location, the Commission may utilize the following procedures:

(1) The Commission shall provide notice of the racing licensed entity's Petition and location at its monthly public meeting immediately following receipt of the Petition or it may publish such 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 (a) during which written comments may be submitted by interested persons.

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

(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 non-primary facility or the re-opening of a previously operational nonprimary location may have on the local community.

Section 3. 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 non-primary location Petition.

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

(1) be filed within the 30-day time period set forth in section 2 above;

(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.

(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 non-primary location matters shall be filed within 30 days from the date of published notice by the Commission of the receipt of the non-primary 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 non-primary 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 non-primary 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).

(This temporary regulation specifically modifies and replaces, in its entirety, sections 58 Pa. Code 171.23 and 58 Pa. Code 189.23 of the existing Horse and Harness regulations respectively.)