

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION
233 RICHMOND STREET
PROVIDENCE, RHODE ISLAND 02903**

CONCISE EXPLANATORY STATEMENT

Racing & Athletics Regulation 8 – License Applications

The Department of Business Regulation (“Department”) hereby adopts Racing & Athletics Regulation 8 (“Regulation”) effective May 3, 2007 and makes this statement in accordance with R.I. Gen. Laws § 42-35-2.3. The Department adopts this Regulation in order to establish standards and procedures for the issuance of licenses to all Key Employees, Operations Employees, Service Employees, Non-Employees, Concessionaires, vendors, greyhound owners, and kennel owners at any Dog Racing Track or Gaming Facility, as well as any other Non-Employees at any Dog Racing Track or Gaming Facility who have access to any area of the Dog Racing Track or Gaming Facility. Additional purposes of this Regulation include ensuring the safety, security, and integrity of Dog Racing Tracks and Gaming Facilities, and to generally assist the Department in carrying out the administration and enforcement of the terms and provisions of R.I. Gen. Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served.

There are twenty-two differences between the text of the proposed regulation as published in accordance with R.I. Gen. Laws § 42-35-3 and the rule as adopted, other than editing changes. These changes were made, in part, as a result of comments received at the hearing on the proposed amendments. Additional changes were made to make the Regulation consistent with Departmental practices, grammatically consistent, and to enhance readability and understanding. The differences are:

1. The Table of Contents section at Page 1 of the Regulation was amended to reflect the changes explained below.
2. Those applications specific to one facility have been removed from the Regulation and replaced with more general applications for use at both facilities.
3. The name “Lincoln Park” was changed to “Twin River” throughout the Regulation and the appended applications.
4. The language in Section 2 of the Regulation was modified to more clearly describe the purpose of the Regulation.
5. The term “Occupational employee” defined in Section 3 of the Regulation, as well as in the titles of some of the Applications, was changed to “service

employee” in order to make it consistent with the statute and the application forms.

6. The defined term “Non-Employee” was clarified both in Section 3 of the Regulation and in the titles of the Applications to more accurately and clearly distinguish employees of Gaming Facility or Dog Racing Track from non-employees. Additionally, the “Non-Employee” Applications are intended to encompass all Persons who may have access to the non-public areas of the Dog Racing Track or Gaming Facility.
7. Section 4 of the Regulation was amended to reflect the changes made in the Applications, as explained below.
8. The annual renewal application deadline in Section 5 of the Regulation was changed to “October 1 of the year prior to the licensing year.”
9. Section 6 of the Regulation was amended to require Applicants to deliver completed applications to the Department in a sealed envelope, in order to maintain confidentiality of application information.
10. Section 7 of the Regulation was expanded to ensure the confidentiality of the information demanded on the applications. Section 7 requires applicants to deliver completed applications “via hand-delivery to the Department’s offices at the Dog Racing Track or the Gaming Facility or by First Class Mail to the Department’s office at 233 Richmond Street, Providence Rhode Island 02903.”
11. Appendix A at Page 2, Paragraph 11 was amended to correct a typographical error. The word “Service” was replaced with the word “Operations.”
12. Appendix A at Page 5, the demand for the Applicant’s cell phone number has been removed from the application. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
13. Appendix A at Page 5, the line demanding the Applicant’s Social Security Number was marked “Confidential.” Where applicable, corresponding changes were made to the other applications amended to the Regulation.
14. Appendix A at Page 5, the section entitled “Check the Appropriate Box” was amended to remove the question regarding the race of the Applicant. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
15. Appendix A at Page 7, Question 7 was amended to remove the demands for the current marital status of the Applicant, and for the names of the

Applicant's former spouses. Where applicable, corresponding changes were made to the other applications amended to the Regulation.

16. Appendix A at Page 9, the section entitled "Civil, Criminal and Investigatory Proceedings" was marked "Confidential." Where applicable, corresponding changes were made to the other applications amended to the Regulation.
17. Appendix A at Page 9, the section entitled "Instructions" at Paragraph A was amended to remove Line 5, which stated, "The offense or offenses happened a long time ago." Where applicable, corresponding changes were made to the other applications amended to the Regulation.
18. Appendix A at Page 10, the question regarding whether the Applicant has been convicted of any offense has been limited to "convictions that occurred in the last twenty years," and the question asking whether the Applicant has been arrested for any offense has been limited to "arrests that occurred in the last ten years." Where applicable, corresponding changes were made to the other applications amended to the Regulation.
19. Appendix A at Page 10, the question regarding whether the Applicant has been "pardoned" for any offense has been removed. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
20. Appendix A at Page 11, Question 12 was amended to remove the specific demands regarding polygraph exams and grand jury testimony. Question 12 was also amended to remove the demand regarding whether the Applicant has ever been called to testify before any governmental agency or investigatory body. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
21. Appendix A at Page 11, Question 13 has been amended to remove the specific demand regarding "matrimonial matters." Where applicable, corresponding changes were made to the other applications amended to the Regulation.
22. Appendix A at Page 13, Question 16 has been amended as follows: "Within the past 10 years, have you held an ownership interest of 5% or greater in any business(es)." Where applicable, corresponding changes were made to the other applications amended to the Regulation.
23. Appendix A at Page 13, Question 17 has been amended to demand only bankruptcies filed or adjudicated "within the past ten years." Where applicable, corresponding changes were made to the other applications amended to the Regulation.

24. Appendix A at Pages 14-15, Questions 19-20 were marked “Confidential: Not Subject to Public Access Without Court Order.”
25. Appendix A at Page 15, Question 20 was amended to remove the demands for the Applicant’s bank account numbers and/or safe deposit box numbers. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
26. Appendix A at Page 19, entitled “Statement of Applicant” was amended to clarify the areas the Department may search without a warrant. The Department notes that the waiver language contained in the proposed regulation has been contained in all previous Racing & Athletics employee license applications for at least the past twenty years. This language was never intended and has never been interpreted to include an unlimited waiver of an employee’s Fourth Amendment rights or to allow warrantless searches of an employee’s home. Rather, this language was intended to allow the Department to conduct a warrantless search of a licensee’s work area and locker at the workplace. The waiver language was amended accordingly. Where applicable, corresponding changes were made to the other applications amended to the Regulation.
27. Appendix A at Page 20, entitled “Release Authorization” was amended to remove “Selective Service Boards,” “Educational Institutions,” and “Financial and Other such Institutions” from the authorization. The language was amended accordingly. Where applicable, corresponding changes were made to the other applications amended to the Regulation.

A number of comments were made during the hearing process that the Department considered, but declined to adopt fully. Those comments were:

1. One commenter suggested amending the Regulation so that firefighters posted at Lincoln Park would be exempt from filing an application under this Regulation pursuant to R.I. Gen. Laws § 23-28.6-1, *et seq.* (Exhibit 2). It is the Department’s understanding that firefighters are independent contractors, and therefore not required to be licensed. As such, there is no need to make the suggested amendment.
2. A commenter, on behalf of the R.I. ACLU, suggested that the applications should be amended to provide greater safeguards against identity theft; to remove the demands for information about spouses and family members; to remove the waiver of one’s Fourth Amendment Rights; to remove the demand for an applicant’s social security number; and to remove the demands for arrest and marital information because these demands are unreasonably invasive and may violate state law. The comments regarding the waiver of Fourth Amendment rights and the demand for spousal information are addressed above, and the application has been amended accordingly. The

Department has deemed the information on the application regarding social security numbers necessary to assist the Department in carrying out the administration and enforcement of the terms and provisions of R.I. Gen. Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. Furthermore, the Department is required to collect the social security numbers of all licensees pursuant to R. I. Gen. Laws § 5-76-3, which requires every state department to furnish the tax administrator with the social security number of each of its licensees on an annual basis. As such, the Department declines to adopt the proposed amendments. Although R.I. Gen. Laws § 28-5-7 makes it “an unlawful employment practice... for any employer” to request arrest or marital information, the Department is not an employer and therefore may require applicants to provide such information prior to issuance of a state license. Furthermore, the Department has determined that it requires arrest information because it often takes several months, if not years, for a criminal matter to reach resolution in our judicial system. Prior to the ultimate resolution of the criminal charge, the Department requires this information to carry out the administration and enforcement of the terms and provisions of R.I.Gen.Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. As such, the Department declines to adopt the suggested amendments.

3. Several commenters suggested that the applications should be amended to remove some of the demands for information including bank account numbers, the identification of ex-spouses, the content of grand jury testimony, and the waiver of one’s Fourth Amendment rights because the information demanded is overly invasive or unnecessary. The comments regarding bank account numbers, spousal information, grand jury testimony and the waiver of Fourth Amendment rights are addressed above, and the application has been amended accordingly. The Department notes that the remaining information requested is necessary to assist the Department in carrying out the administration and enforcement of the terms and provisions of R.I.Gen.Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. Furthermore, the Department states that all application information will be kept under lock and key at the Department’s offices; it will not be shared with the employer, and it will not be released to the public without a court order. As such, the Department declines to adopt the suggested amendments.
4. A commenter suggested that the Operations Employee Application (Appendix A) should be amended because it demands unnecessary personal information and is longer than the applications used by the Department in the past, and in comparison to the applications used by other states. The commenter noted that the Nevada Gaming Employee Registration Application (Exhibit 4) is only 2 pages long, the New Jersey Employee License Renewal Application (Exhibit 5) is only 3 pages long, and the Michigan Occupational License Renewal Form (Exhibit 6) is only 3 pages long. The Department notes that while the proposed Rhode Island Operations Employee Application (Appendix A of the Regulation) is twenty (20) pages long, this is an initial

application which each individual employee must complete only one time. After an Operations Employee has completed Appendix A, subsequent renewal applications will be submitted online using Appendix E of the Regulation, which is substantially shorter than the initial application. As such, the Department declines to adopt the suggested amendment.

5. A commenter, on behalf of the AFL-CIO, suggested that the applications should be amended because much of the information demanded is overly invasive, unnecessary, and requiring it may put some people out of work. Some of the comments regarding the demands for information contained in the applications are addressed above, and the application has been amended accordingly. The Department has deemed the remainder of the information requested on the applications necessary to carry out the administration and enforcement of the terms and provisions of R.I. Gen. Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. As such, the Department declines to adopt the suggested amendments.
6. A commenter, on behalf of the SEIU, suggested that the proposed Regulation be amended because the bank account information requested is overbroad and invasive. Further, the commenter stated that there is no link between consumer debt or credit problems and theft. The comments regarding bank account numbers are addressed above, and the application has been amended accordingly. Based on its own research, as well as the testimony of Lieutenant Rose of the State Police, the Department has determined that consumer debt or credit problems can potentially motivate people to engage in theft. As such, the Department declines to adopt the suggested amendments.
7. A commenter, an attorney for the SEIU and UAW 7770, suggested amending the regulation because the proposed license application is unlawful for five reasons.
 - i. First, the definition of “operations employee” is vague and overbroad, and could include virtually every employee at the facility. The definition of “operations employee” is addressed above, and the regulation has been amended accordingly.
 - ii. Second, it contains an unconstitutional waiver of Fourth Amendment rights, allowing warrantless searches of home, person, and personal property pursuant to State v. Bailey. The comments regarding the waiver of Fourth Amendment rights are addressed above, and the application has been amended accordingly.
 - iii. Third, the demands for information such bank account numbers, business interests, civil and criminal history, and personal information on the proposed application is an unlawful and illegal invasion of privacy under Rhode Island law. The comments

regarding bank account numbers, spousal information, and grand jury testimony are addressed above, and the application has been amended accordingly. The Department notes that it is required to collect from the Office of the Attorney General all records of criminal information regarding the applicant pursuant to R.I. Gen. Laws § 42-14-14. Furthermore, the Department has determined that the State's need to carry out the administration and enforcement of the terms and provisions of R.I. Gen. Laws § 41-4-1 *et seq.* significantly outweighs the privacy concerns raised. As such, the Department declines to adopt the suggested amendments.

- iv. Fourth, the demands for disclosure of grand jury testimony fail to accommodate the general presumption in favor of keeping grand jury testimony secret. The comments regarding grand jury testimony are addressed above, and the application has been amended accordingly.
- v. Fifth, the regulation is pre-empted by the NLRA, as it interferes with the union's right to collectively bargain and protect its members by imposing new employment terms and conditions outside the collective bargaining process. These terms include the consent to warrantless searches and the demands for disclosure of financial and personal information. The comments regarding the waiver of Fourth Amendment rights, bank account numbers, and other personal information are addressed above, and the application has been amended accordingly.

- 8. A commenter, on behalf of Unite Here!, suggested that the applications be amended to remove the waiver of Fourth Amendment rights because food and beverage workers, as well as lead-out employees, do not handle money, and the waiver is therefore unnecessary for those employees. The comments regarding the waiver of Fourth Amendment rights are addressed above, and the application has been amended accordingly. However, the Department notes that although many of the employees mentioned by the commenter may not handle State money in their current positions, those employees may bid into other positions which do require the handling of State money. As such, the Department declines to adopt the proposed amendments.
- 9. A commenter read a statement from Senator Paul W. Fogarty (See Exhibit 8). Senator Fogarty suggests that the application forms be amended to remove the demands for personal information, arrest information, expunged records, and the waiver of Fourth Amendment rights. The comments regarding the waiver of Fourth Amendment rights and certain personal information are addressed above, and the application has been amended accordingly. The Department notes that the Operations Employee Application specifically excludes expunged records from Question 10 at Page 9. The Department has

determined that it requires arrest information because it often takes several months, if not years, for a criminal matter to reach resolution in our judicial system. Prior to the ultimate resolution of the criminal charge, the Department requires this information to carry out the administration and enforcement of the terms and provisions of R.I.Gen.Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. As such, the Department declines to adopt the proposed amendments.

10. A commenter from the Rhode Island State Police stated that State Police support the proposed regulation, as drafted. He explained that the amendments made to the applications had to be updated to reflect 2007 standards. He also respectfully disagreed with another commenter's statement that there is no causal relationship between consumer debt or credit problems and criminal activity. The commenter explained that the State Police do, in fact, often see people who are deeply in debt or heavily mortgaged engage in criminal behavior as a result of their financial circumstances.
11. The Department received a letter from the R.I. Commission for Human Rights dated January 26, 2007. In its letter, the Commission expressed concern that certain questions on the application regarding race, country of birth, date of birth, and the arrest record of applicants may violate R.I. Gen. Laws § 28-5-7(4). The Commission also expressed concern about the questions on the application regarding whether an applicant has testified before a governmental agency or has been a party to a lawsuit. Finally, the Commission noted that "the use of the answers to some proposed questions may be unlawful under the theory of adverse impact if the answers to those questions have the effect of screening out protected class members and are not justified by business necessity." The comments regarding the race of the applicant are addressed above, and the application has been amended accordingly. The Department notes that although R.I. Gen. Laws § 28-5-7 makes it "an unlawful employment practice... for any employer" to request arrest or marital information, the Department is not an employer and therefore may require applicants to provide such information prior to issuance of a state license. Furthermore, the Department has determined that it requires arrest information because it often takes several months, if not years, for a criminal matter to reach resolution in our judicial system. Prior to the ultimate resolution of the criminal charge, the Department requires this information to carry out the administration and enforcement of the terms and provisions of R.I.Gen.Laws §§ 41-4-1 *et seq.* so that the public interest may effectively be served. As such, the Department declines to adopt the suggested amendments. Regarding the comments concerning an applicant's testimony before governmental agencies or participation in a lawsuit, the Department notes that the mandates contained in R.I.Gen.Laws § 28-5-7(5) apply only to an "employer or employment agency, labor organization, placement service, training school or center or, or any other employee referring source." As explained above, the Department, as a licensing body, does not fit into any of those categories.

Finally, the Department notes that it does not intend to use any of the information collected via the applications to discriminate against any protected class.