

such account is opened or closed. Such requests must be honored within five business days of the request. For purposes of this section, a request for withdrawal will be considered honored if it is processed by the fantasy sports operator, notwithstanding a delay by a payment processor, credit card issuer, or the custodian of a financial account.

(c) A fantasy sports operator shall not allow a participant’s account to be overdrawn unless caused by payment processing issues outside of the control of the fantasy sports operator.

(d) A fantasy sports operator may decline to honor a request to withdraw funds if the fantasy sports operator believes in good faith that the participant engaged in either fraudulent conduct or conduct that would put the fantasy sports operator in violation of the law. In such cases, the fantasy sports operator shall:

- 1. Provide notice to the participant of the nature of the investigation of the account; and
- 2. Conduct an investigation in a reasonable and expedient fashion, providing the participant additional written notice of the status of the investigation every 10th business day starting from the day the original notice was provided to the participant.

13:45A-36.18 Renewal of permit

- (a) Fantasy sports operator permits shall be renewed annually.
- (b) Fantasy sports operators shall submit a renewal form and the permit fee as set forth in N.J.A.C. 13:45A-36.19 to the Division 45 days prior to the expiration date of the permit.

13:45A-36.19 Fees

- (a) The Division shall charge the following non-refundable fantasy sports operator permitting fees:
 - 1. Application fee \$500.00
 - 2. Permit fee:
 - i. For fantasy sports operator with fantasy sport gross revenue up to \$49,999 \$5,000
 - ii. For fantasy sports operator with fantasy sport gross revenue between \$50,000 to \$99,000 \$10,000
 - iii. For fantasy sports operator with fantasy sport gross revenue between \$100,000 to \$250,000 \$20,000
 - iv. For fantasy sports operator with fantasy sport gross revenue over \$250,000 \$50,000

(a)

NEW JERSEY RACING COMMISSION
Off-Track Wagering and Account Wagering
Adopted Amendments: N.J.A.C. 13:74-1.3, 2.1, 2.2,
2.3, and 6.11

Proposed: November 5, 2018, at 50 N.J.R. 2212(a).
 Adopted: October 24, 2019, by New Jersey Racing Commission,
 Judith A. Nason, Acting Executive Director.
 Filed: October 24, 2019, as R.2019 d.119, **without change**.
 Authority: N.J.S.A. 5:5-134.
 Effective Date: December 2, 2019.
 Expiration Date: March 18, 2022.

Summary of Public Comment and Agency Response:
 The official comment period ended on January 4, 2019. The following is a summary of the comment received and the response of the New Jersey Racing Commission (Commission). The Commission received one comment from Dennis A. Drazin, Esq., President and CEO of Darby Development, LLC.
 1. COMMENT: Mr. Drazin “objects to any attempt to regulate benchmarks or amend the progress provisions required by the OTW law.” Mr. Drazin claims that it was the Legislature’s intent that the entities leasing racetracks from the New Jersey Sports and Exposition Authority (NJSEA) were to be exempted from having to establish off-track wagering facilities, or make progress towards same, and that any share of off-track wagering facilities allocated to the NJSEA would not be forfeited should the lessees fail to meet the benchmarks established by the Commission.

Mr. Drazin claims that the NJSEA would be unjustly dispossessed of its valuable interest in retaining its share of off-track wagering facilities should the lessee’s share of off-track wagering facilities yet to be established be forfeited. Additionally, Mr. Drazin suggests that the “standard should be established by a clear and convincing evidence should be modified to a preponderance of the interest standard ...”

RESPONSE: Mr. Drazin’s comments are outside the scope of the proposed amendments to N.J.A.C. 13:74-1.3, 2.1, 2.2, 2.3, and 6.11. The sole purpose of the adopted amendments is to enact grammatical and technical changes made necessary by the adoption of N.J.A.C. 13:74-2.4, 2.5, and 2.6, which is published elsewhere in this issue of the New Jersey Register. Mr. Drazin also filed comments in response to that rulemaking and the Commission has summarized those comments and responded to them in that notice of adoption.

Federal Standards Statement

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the adopted amendments. The Commission adopts these amendments pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-134.

Full text of the adoption follows:

SUBCHAPTER 1. GENERAL PROVISIONS

13:74-1.3 Horsemen’s organizations

(a) A horsemen’s organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall make application for an initial off-track wagering license in its capacity as permit holder pursuant to N.J.A.C. 13:74-2.1. A horsemen’s organization that acquired the right pursuant to N.J.S.A. 5:5-130.b(1) to seek licensure of an off-track wagering facility no longer part of a permit holder’s share that does not hold a permit to conduct a horse race meeting at a New Jersey racetrack shall make application for an initial off-track wagering license in accordance with N.J.A.C. 13:74-2.2.

(b) Renewal of the initial off-track wagering license shall be sought pursuant to N.J.A.C. 13:74-2.3.

(c) A horsemen’s organization that holds a permit to conduct a race meeting at a racetrack in New Jersey shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.4 applicable to permit holders. A horsemen’s organization that acquired the right to seek licensure of an off-track wagering facility that is no longer part of a permit holder’s share shall be subject to the progress benchmarks in N.J.A.C. 13:74-2.5.

(d) If a horsemen’s organization that holds a permit to conduct a race meet at a New Jersey racetrack fails to retain its rights to any unopened off-track wagering facilities originally within its share, those off-track wagering facilities shall be forfeited and made available to the other horsemen’s organizations within this State pursuant to N.J.A.C. 13:74-2.4(d). If the other horsemen’s organizations do not file an application to obtain a license for the off-track wagering facilities in accordance with N.J.A.C. 13:74-2.2, the off-track wagering facilities shall be made available to be established by a well-suited entity.

SUBCHAPTER 2. APPLICATION FOR INITIAL OFF-TRACK WAGERING LICENSE; APPLICATION FOR RENEWAL OF OFF-TRACK WAGERING LICENSE

13:74-2.1 Prerequisites to and procedures for grant of initial off-track wagering license to the Authority on behalf of a permit holder

(a) The Authority shall make an application for an initial off-track wagering license on a form prescribed by the Commission, accompanied by a non-refundable filing fee of \$2,500. An initial application, accompanied by the non-refundable filing fee, shall be filed for each off-track wagering facility proposed by the Authority on behalf of itself or a permit holder or permit holders subject to the participation agreement required by N.J.S.A. 5:5-130.

(b) An application for an initial off-track wagering license shall not be considered complete unless:

- 1. The permit holder or permit holders at Monmouth Park and the thoroughbred and standardbred permit holder or permit holders at the

Meadowlands Racetrack have scheduled at least the minimum number of live race dates required by N.J.S.A. 5:5-156;

2. The Authority includes within the application a copy of a fully executed participation agreement that is consistent with current law, the terms of which encompass the license period, which it has entered into with all parties or successors in interest that held a valid race permit in 2000 (who are each in compliance with said permit, who are each in compliance with any minimum live race dates requirements of the Act, and who each are in good standing with the Commission and State);

3. (No change.)

4. If the Authority or a permit holder subject to the participation agreement is the owner of the land, building, and premises of the proposed off-track wagering facility, it shall include a statement evidencing that it has reached an agreement with the governing body of the local municipality within which the proposed off-track wagering facility is to be located, establishing the payment in-lieu-of taxes the Authority or the permit holder must pay to the municipality for the first five years of the operation of the off-track wagering facility pursuant to N.J.S.A. 5:5-151.1;

5.-6. (No change.)

(c) The initial application form, as prescribed by the Commission, shall include disclosure requirements concerning, but not limited to, the physical plan, location and the proposed hours of operation of the proposed off-track wagering facility subject of the specific application including the space relationship between wagering and non-wagering related amenities, the number of jobs expected to be created at the proposed facility, the gross revenues expected to be generated by the facility, the fire evacuation plan for the proposed facility, the type of food and beverages to be available, which shall include provisions for first-class dining, and, if alcoholic beverages are to be offered at the proposed facility, documentation that the requirements of the Act have been satisfied.

(d) The initial application shall have a written internal controls procedure attached, which shall set forth:

1. The procedures to be implemented to effectively operate and manage the proposed off-track wagering facility;

2. The procedures to be implemented to effectively maintain the integrity of wagering and the security of the proceeds from wagering within the proposed off-track wagering facility;

3. The procedures to be implemented to insure that the off-track wagering licensee complies with the requirements of the Act; and

4. The procedures to be implemented to ensure that a right of first refusal has been offered to certain individuals for certain employment opportunities within off-track wagering facilities.

(e) The initial application shall be accompanied by a certification, signed and dated by a high managerial agent of the Authority, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(f) Any initial license granted pursuant to such application shall be for a period of one year.

(g) (No change.)

(h) The Commission may refuse to issue a license if it finds that the applicant has failed to demonstrate its suitability for licensure by clear and convincing evidence. The Authority or permit holder shall bear the burden of demonstrating to the Commission by clear and convincing evidence that the person or persons applying for licensure on behalf of the Authority or permit holder possess the necessary qualifications to obtain licensure for an off-track wagering facility in accordance with standards and criteria that shall include, but not be limited to:

1.-4. (No change.)

(i) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon being satisfied that these requirements are met, the Commission shall hold a public hearing in the municipality in which the proposed off-track facility is to be located within 45 days of the application being deemed complete. The cost of such a public hearing shall be borne by the applicant.

(j) Between 30 days and 60 days following the closing of the record on the public hearing described in (i) above, the Commission shall make a

final determination on the application. The Commission shall approve the application if it determines that the Authority has demonstrated, by clear and convincing evidence, that:

1.-4. (No change.)

(k) (No change.)

(l) The Commission's determination on the application shall be submitted to the Attorney General for review and approval. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. The Commission shall issue the license upon the approval of the Attorney General.

(m) Any off-track wagering license shall specify the effective dates of the license, the location of the off-track wagering facility, the periods of time during the calendar year, and the hours of operation during which off-track wagering is permitted at the facility, and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit of the off-track wagering licensee's books and records pertaining to off-track wagering.

13:74-2.2 Prerequisites to and procedures for grant of initial off-track wagering license to a horsemen's organization or a well-suited entity for an off-track wagering facility that is no longer part of a permit holder's share

(a) A horsemen's organization or a well-suited entity, as provided for in N.J.S.A. 5:5-130.c, shall make an application for an initial off-track wagering license on a form prescribed by the Commission.

1. An application filed by a horsemen's organization shall be accompanied by a non-refundable filing fee of \$2,500. To be considered by the Commission, the application must be filed after compliance with N.J.A.C. 13:74-2.5(a).

2. An application filed by a well-suited entity shall be accompanied by a non-refundable license fee in the amount of the successful bid pursuant to N.J.S.A. 5:5-130.d(2), which shall be distributed 50 percent to the New Jersey Thoroughbred Horsemen's Association and 50 percent to the Standardbred Breeders and Owners Association of New Jersey for programs designed to benefit the New Jersey horsemen.

i. (No change.)

ii. An initial off-track wagering license shall become available for public bid after:

(1) The Commission has determined, pursuant to N.J.A.C. 13:74-2.5(b) or 2.6(b) that an off-track wagering facility is available for bid; or

(2) The Commission has determined that no horsemen's organization has applied for the available off-track wagering license.

iii. In placing an available off-track wagering license up for bid, the Commission may utilize the services of the Division of Purchase and Property (Division), which is in and of the Department of the Treasury, to advertise, solicit, accept, and evaluate formal sealed bids pursuant to the Division's rules set forth in N.J.A.C. 17:12. The Commission may consult with the Division during the bidding process and ensure that the bidding process:

(1) (No change.)

(2) Notifies bidders that the awarding of a bid to a successful bidder shall be contingent upon that bidder's ability to establish its eligibility to be licensed as an off-track wagering licensee in compliance with N.J.S.A. 5:5-130 and (h) below;

(3)-(4) (No change.)

iv. (No change.)

v. The Commission's selection of the successful bidder and the basis for its decision shall be submitted to the Attorney General, for review and approval. The Commission's determination shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision.

vi. (No change.)

3. (No change.)

(b) An application for an initial off-track wagering license filed pursuant to this section shall not be considered complete unless the applicant demonstrates through the application that the requirements of the Act have been satisfied and the applicant has completely answered

each question within the application and complied with the requirements of this section.

(c) (No change.)

(d) The initial application shall have a written internal controls procedure attached, which shall set forth:

1. The procedures to be implemented to effectively operate and manage the proposed off-track wagering facility;

2. The procedures to be implemented to effectively maintain the integrity of wagering and the security of the proceeds from wagering within the proposed off-track wagering facility;

3. The procedures to be implemented to insure that the off-track wagering licensee complies with the requirements of the Act; and

4. The procedures to be implemented to ensure that a right of first refusal has been offered to certain individuals for certain employment opportunities within off-track wagering facilities.

(e) The initial application shall be accompanied by a certification, signed and dated by a high managerial agent of the applicant, attesting that the disclosures within the application and within its attachments are true, accurate, and complete.

(f) Any initial license granted pursuant to such application shall be for a period of one year.

(g) (No change.)

(h) In evaluating an application for an off-track wagering license filed by a horsemen's organization or a well-suited entity pursuant to N.J.S.A. 5:5-130.b and 130.c, the Commission shall assess the qualifications of the organization or entity and, in doing so, apply substantially similar standards and criteria to those the Commission applies to the Authority, permit holders and other off-track wagering licensees in the State. These standards and criteria shall enable the Commission to determine by clear and convincing evidence that the person or persons applying for licensure on behalf of the organization or entity are well-suited to receive licensure. The Commission may refuse to issue a license if it finds that the applicant has failed to demonstrate its suitability for licensure by clear and convincing evidence. These standards and criteria shall include, but not be limited to:

1.-4. (No change.)

(i) Following a determination that the application for an initial off-track wagering license is complete, the Executive Director shall review the application in accordance with the Act to insure that the application is in due form and meets the requirements of law in all respects. Upon being satisfied that these requirements are met, the Commission shall hold a public hearing in the municipality in which the proposed off-track facility is to be located within 45 days of the application being deemed complete. The cost of such a public hearing shall be borne by the applicant.

(j) Between 30 days and 60 days following the closing of the record on the public hearing described in (i) above, the Commission shall make a final determination on the application. The Commission shall approve the application if it determines that the applicant has demonstrated, by clear and convincing evidence, that:

1. The plan for the proposed facility, including its size, seating capacity, parking, and services to be provided reflects appropriate standards of quality including, but not limited to, first-class dining;

2. (No change.)

3. The proposed off-track wagering facility site is in an appropriate location.

Recodify existing (l)-(m) as (k)-(l) (No change in text.)

(m) The Commission's determination on the application shall be submitted to the Attorney General for review and approval. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved by the Attorney General within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. The Commission shall issue the license upon approval of the Attorney General.

(n) Any off-track wagering license issued to the applicant shall specify the effective dates of the license, the location of the off-track wagering facility, the periods of time during the calendar year and the hours of operation during which off-track wagering is permitted at the facility and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit

of the off-track wagering licensee's books and records pertaining to off-track wagering.

13:74-2.3 Prerequisites to and procedures for renewal of an off-track wagering license

(a) These procedures shall apply where the applicant has been granted an initial license for an off-track wagering facility, which initial license has not lapsed, and where the applicant or its successor in interest makes proper application for the renewal of its license.

(b) A renewal license for an off-track wagering facility, as issued by the Commission, shall run for a one year period commencing January 1 and ending on December 31 of the same year. Where, however, an initial one-year off-track wagering license granted pursuant to the procedure set forth in N.J.A.C. 13:74-2.1 or 2.2 shall expire during a calendar year, the Commission on a one-time basis and at no additional cost to the off-track wagering licensee may extend the initial license period to the last day of December of the year in question upon the written request of the licensee if the licensee is in full compliance with the Act, this chapter, and any conditions imposed by the Commission.

(c) (No change.)

(d) A renewal application filed by the Authority on behalf of itself or on behalf of a permit holder that is a party to the participation agreement shall not be considered complete unless the permit holder or permit holders at Monmouth Park and the thoroughbred and standardbred permit holder or permit holders at the Meadowlands Racetrack have scheduled at least the minimum number of live race dates required by N.J.S.A. 5:5-156.

(e) The off-track wagering licensee has completely answered each question within the renewal application, attached all documents required by the application, and complied with the requirements of this section.

(f) Should the licensee have changed its written internal control procedure since the filing of a prior application for removal or for the initial grant of the off-track wagering license, the renewal application shall include as attachments, the newly amended written internal control procedures as required by N.J.A.C. 13:74-2.1(d) and 2.2(d).

(g) (No change.)

(h) Following the Executive Director's determination that the renewal application is complete, the Executive Director shall present the application to the Commission at a public meeting of the Commission.

(i) The Commission shall approve the off-track renewal license where the off-track wagering licensee demonstrates by clear and convincing evidence that:

1. (No change.)

2. The renewal will not be inimical to the interests of the public and the horse racing industry in this State;

3.-4. (No change.)

(j) The Commission's determination on the application shall be submitted to the Attorney General for review and approval. The determination of the Commission shall be deemed approved by the Attorney General if not affirmatively approved or disapproved within 14 days of the date of submission. The decision of the Attorney General shall be deemed a final decision. The Commission shall issue the license upon approval of the Attorney General.

(k) A renewed off-track wagering license issued to the off-track wagering licensee shall specify the effective dates of the renewal license, the location of the off-track wagering facility, the periods of time during the calendar year and the hours of operation during which off-track wagering is permitted at the facility, and prescribe any other conditions or terms the Commission deems appropriate, including, but not limited to, the requiring of an annual audit of the off-track wagering licensee's books and records pertaining to the off-track wagering.

SUBCHAPTER 6. STANDARDS FOR OFF-TRACK WAGERING FACILITIES

13:74-6.11 Proceeds from off-track wagering; money room requirements

(a) All proceeds from wagering at an off-track wagering facility shall be delivered to and deposited within a money room within the off-track wagering facility, which shall be a secure area with limited access. An off-track wagering facility shall develop and implement written procedures,

designed to accurately account for and track proceeds from wagering from the time the related wager is placed through delivery to the money room and ultimate distribution therefrom, which are to be included in the internal control procedures filed with the Commission pursuant to N.J.A.C. 13:74-2.1(d), 2.2(d), and 2.3(f).

(b)-(d) (No change.)

(a)

NEW JERSEY RACING COMMISSION

Off-Track Wagering and Account Wagering

Adopted Repeals and New Rules: N.J.A.C. 13:74-2.4, 2.5, and 2.6

Adopted Repeals: N.J.A.C. 13:74-2.7 and 2.8

Proposed: November 5, 2018, at 50 N.J.R. 2217(a).

Adopted: October 24, 2019, by New Jersey Racing Commission,
Judith A. Nason, Acting Executive Director.

Filed: October 24, 2019, as R.2019 d.120, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 5:5-131.

Effective Date: December 2, 2019.

Expiration Date: March 18, 2022.

Summary of Public Comments and Agency Responses:

The official comment period ended on January 4, 2019. The following is a summary of the comments received and the responses of the New Jersey Racing Commission (Commission). The Commission received comments from Dennis A. Drazin, Esq., President and CEO of Darby Development, LLC and from James C. Meyer, Esq., on behalf of Freehold Raceway Off Track, LLC (FROT) and ACRA Turf Club, LLC (ACRA).

1. COMMENT: Mr. Drazin comments that the “original intention of the Legislation which led to the N.J.A.C. Regulations made it clear that in the event the NJSEA leased the racetracks to a private entity” the lease would “satisf[y] the benchmark provisions ...” Mr. Drazin informs the Commission that the New Jersey Sports and Exposition Authority (NJSEA) and the New Jersey Thoroughbred Horsemen’s Association (NJTHA) have repeatedly “taken the position that ... the Legislature clearly intended ... that the benchmark for a lessee of the track was satisfied once the NJSEA leased the racetracks to the NJTHA.” Mr. Drazin comments that N.J.S.A. 5:5-130.e states that a permit holder “shall be deemed to have made progress towards establishing its OTW facilities if the racetracks under the permit holder’s control” were leased to a private entity.

RESPONSE: The Commission disagrees with the statutory interpretation proffered in Mr. Drazin’s comment. Proposed N.J.A.C. 13:74-2.4 establishes benchmarks for the statutory requirement at N.J.S.A. 5:5-130.b(1) that a permit holder must demonstrate that it “continues to make progress on an annual basis.” The State racetrack lease exemption referenced in the comment only applied to the initial statutory mandate, now moot, which required each permit holder to demonstrate to the Commission within 180 days from the effective date of P.L. 2011, c. 205 (effective January 17, 2012 but retroactive to December 31, 2011) that it has made progress since the signing of the participation agreement “toward establishing the permit holder’s share of the 15 off-track wagering facilities ...” *Ibid.* Pursuant to the statute, failure to demonstrate progress toward establishing its share of OTWs since the signing of the participation agreement resulted in the permit holder having to make a cash deposit, bond, or irrevocable letter of credit in the amount of \$1 million for each unopened OTW within the permit holder’s share. At its June 20, 2012 meeting, after reviewing the submissions of each permit holder, the Commission determined that none of the permit holders were subject to the deposit requirement because each had demonstrated the necessary initial progress toward establishing its share of OTWs. The Commission informed each permit holder that in order to retain its rights to the unopened OTWs within its share, each permit holder must comply

with the requirements of the statute by “continuing to make progress on an annual basis.”

Previous-N.J.A.C. 13:74-2.5 (as of the publication of this notice of adoption, prior versions of N.J.A.C. 13:74-2.4, 2.5, 2.6, 2.7, and 2.8 have been repealed and replaced with newly adopted N.J.A.C. 13:74-2.4, 2.5 and 2.6. For ease of reference, the previous, now-repealed versions will be identified as “Previous-N.J.A.C. 13:74 ...” and the newly adopted rules will be identified as “N.J.A.C. 13:74 ...”), which established the benchmarks for the initial determination as to whether a permit holder has made progress since the signing of the participation agreement toward establishing its share of OTWs, is now repealed as it is moot. As stated above, the State racetrack lease exemption applied only to the benchmarks originally set forth in previous-N.J.A.C. 13:74-2.5. The State racetrack lease exemption does not apply to the new benchmarks established at N.J.A.C. 13:74-2.4.

2. COMMENT: Mr. Drazin states that the “NJSEA and the State of New Jersey should not be at risk of losing valuable assets that were included in the lease” to the Monmouth Park and New Meadowlands permit holders. Mr. Drazin asserts that “it certainly was not intended that if there was a default in the lease provisions and the NJSEA took back the operation of the track, that the NJSEA should lose their asset (OTW rights).” Mr. Drazin then repeats his interpretation of the legislative intent as his basis for stating his objection “to the establishment of new benchmarks to measure progress which carries with it the risk of losing OTW rights if an additional initial license is not applied for by December 31, 2020.” Mr. Drazin concludes his comment by stating that the “NJTHA has a valid lease with the State (NJSEA), including these rights.”

RESPONSE: As noted in the Response to Comment 1 above, the State racetrack lease exemption does not apply to the benchmarks requiring the continuation of progress on an annual basis. The Legislature imposed this progress mandate on the permit holders. After the NJSEA leased the racetracks, it ceased to be a permit holder and the obligation was transferred to the NJTHA, along with the transfer of the NJSEA’s rights, pursuant to the terms of the lease, to the off-track wagering facilities. These benchmarks are adopted pursuant to statutory mandate. The Commission, therefore, disagrees with Mr. Drazin’s statutory interpretation.

3. COMMENT: Mr. Drazin points out that the benchmarks were to be developed “in consult with the New Jersey Economic Development Authority ...”

RESPONSE: The Commission consulted with the New Jersey Economic Development Authority on November 11, 2017, when developing the new benchmarks.

4. COMMENT: Mr. Drazin claims that part of the NJTHA’s failure to build additional OTWs are objections lodged by New Meadowlands Racetrack, LLC pursuant to a joint agreement “restricting OTW’s within a twenty mile radius [of the Meadowlands] unless the New Meadowlands consents.” Mr. Drazin claims that several sites for OTWs were proposed but all were rejected by New Meadowlands Racetrack, LLC.

RESPONSE: Mr. Drazin references a private agreement between the NJTHA and New Meadowlands Racetrack, LLC. Any disputes related to this private agreement do not fall within the jurisdiction of the Commission and are outside the scope of this rulemaking.

5. COMMENT: Mr. Drazin comments that a complication arises with the forfeiture provision because if a permit holder forfeited its share of OTWs, a horsemen’s organization would be able to acquire that share and would not be subject to the 20-mile restriction imposed by the private agreement. Further, Mr. Drazin claims that the Commission has informed the NJTHA that it would not have the same opportunities to acquire a permit holder’s forfeited share of OTWs as the Standardbred Breeders and Owners Association (SBOA) or Thoroughbred Breeders’ Association (TBA) because of the NJTHA’s status as a permit holder. Mr. Drazin believes that the horsemen’s organizations should be treated equally and that “the NJTHA should have the same rights to obtain a permit holder’s forfeited share as the SBOA.”

RESPONSE: Any geographical restrictions imposed upon the NJTHA by private agreement are not the result of any rule or action of the Commission. The NJTHA is able to apply to acquire a forfeited share of OTWs yet to be opened when allowed by the statute. However, it appears Mr. Drazin is referencing the provision at N.J.A.C. 13:74-1.3(d), which is