

**Regulatory Flexibility Analysis**

The proposed amendments will only affect the operations of New Jersey casino applicants, licensees, and their online gaming partners, none of which qualifies as a “small business” as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they employ more than 100 persons full-time in the State of New Jersey. Accordingly, a regulatory flexibility analysis is not required.

**Housing Affordability Impact Analysis**

The proposed amendments will have no impact on the affordability of housing in New Jersey and it is very unlikely that they would evoke a change in the average costs associated with housing because the proposed amendments concern the operational requirements for online gaming and sports wagering operators and their casino and racetrack partners.

**Smart Growth Development Impact Analysis**

The proposed amendments will not have an impact on smart growth and it is extremely unlikely that they would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern the operational requirements for online gaming and sports wagering operators and their casino and racetrack partners.

**Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State of New Jersey because the proposed amendments concern the operational requirements for online gaming and sports wagering operators and their casino and racetrack partners. This rulemaking does not impact the ability of people subject to the criminal justice system to work in the casino or racetrack facilities or impact on their ability to be employed by online gaming and sports wagering operators. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

13:690-1.3 Internet or mobile gaming accounts

(a)-(c) (No change.)

(d) A patron’s Internet or mobile gaming account may be funded through the use of:

1.-8. (No change.)

9. A transaction at a sports wagering kiosk; [or]

**10. One or more gift cards that comply with (f)1, (g)2, and (u) below; or**

[10.] **11.** (No change in text.)

(e) (No change.)

(f) Prior to any withdrawal, if a patron used a credit or debit card to fund an Internet or mobile gaming account, any remaining balance in the account up to the amount of the deposit shall be refunded to the patron’s credit or debit card account used to fund the Internet or mobile gaming account; provided that a credit or debit card issuer permits the return of a withdrawal from an Internet or mobile gaming account funded by the credit or debit card of the issuer.

**1. All gift cards shall have a play-through requirement of their full deposit amount (a one-time play-through requirement) prior to such funds being eligible for withdrawal. Such play-through requirement shall not be limited by time or number of wagering sessions. Nothing in this subsection shall prevent amounts deposited on a particular game or wager from being uploaded to a patron’s account for further wagering.**

(g) Funds may be withdrawn from a patron’s Internet or mobile gaming account for the following:

1. (No change.)

2. A cash-out, regardless of the deposit method used, at the cashier’s cage, if requested by a known patron; **provided, however that if the cashout is from an account in which gift cards are more than 50 percent of the patron’s deposits, the patron’s image shall be captured**

**by still camera or by surveillance for identification confirmation purposes and such image shall be permanently retained;**

3.-9. (No change.)

(h)-(t) (No change.)

**(u) A patron who uses one or more gift cards to fund his or her online wagering account or online sports wagering account shall not deposit more than \$500.00 from such gift cards on any one gaming day.**

(a)

**NEW JERSEY RACING COMMISSION**

**Horse Racing  
The Pick (N)**

**Proposed Amendment: N.J.A.C. 13:70-29.52**

Authorized By: New Jersey Racing Commission, Sara Ben-David, Acting Director.

Authority: N.J.S.A. 5:5-30.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-109.

Submit written comments by December 6, 2024, to:

Thomas Salerno, Assistant Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
PO Box 088  
Trenton, New Jersey 08625-0088  
or email to: [NJRCWebinfo@njoag.gov](mailto:NJRCWebinfo@njoag.gov)

The agency proposal follows:

**Summary**

This notice of proposal is one of two rulemakings being proposed by the New Jersey Racing Commission (Commission) relating to the Pick (N) rules. This notice of proposal is the result of a petition for rulemaking filed by John F. Heims, Esq., in-house counsel for Monmouth Park, requesting that the Commission amend N.J.A.C. 13:70-29.52, the rule that governs the Pick (N) for thoroughbred racing. By separate notice, the Commission is proposing the same amendment to its Pick (N) rule for harness racing, N.J.A.C. 13:71-27.56.

The petitioner asks the Commission to add a new subsection (p), which would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carry-over, on a selected day in accordance with subsection (l) of the rule. Carry-over is that percentage of the pool that remains when no one successfully selects all winning horses in the Pick (N). The petitioner states that the purpose of the request for rulemaking is that the proposed change will allow the racetrack to remain competitive with out-of-State racetracks and to maximize handle and profits.

On December 21, 2023, the Commission filed the required notice of receipt of petition for rulemaking with the Office of Administrative Law (OAL), which was published in the February 5, 2024 New Jersey Register at 56 N.J.R. 221(c).

On January 24, 2024, the Commission took action with regard to the petition and determined, in accordance with N.J.A.C. 1:30-4.2(a)3 and 13:1D-1.3(d)3, to refer the matter for further deliberations, to be concluded within 90 days of the referral, to review whether the petition is consistent with the wagering rules of other state racing commissions and to assess the effect of the petition on the industry. In accordance with N.J.A.C. 1:30-4.2 and 13:1D-1.3, a notice of action on the petition for rulemaking was filed with the OAL on February 9, 2024, and published in the March 18, 2024 New Jersey Register at 56 N.J.R. 439(b).

On April 24, 2024, the Commission took further action with regard to the petition and determined, in accordance with N.J.A.C. 1:30-4.2(a)2 and 13:1D-1.3(d)2, to grant the petition for rulemaking and propose amendments at N.J.A.C. 13:70-29.52, consistent with the wagering rules of other state racing commissions and the Association of Racing Commissioners International’s (ARCI) Model Pick (N) Rule. In

accordance with N.J.A.C. 1:30-4.2 and 13:1D-1.3, a second notice of action on the petition for rulemaking was filed with the OAL on June 7, 2024, and published in the July 1, 2024 New Jersey Register at 56 N.J.R. 1203(a).

Pursuant to the existing rule, the Pick (N) carry-over is to be added to the subsequent Pick (N) pool until distributed as a result of the successful selection of all the winning horses. N.J.A.C. 13:70-29.52(b). If there is carry-over on the last day designated for distribution and no bettor selects the winning horse in those designated races, the total amount of the pool shall be paid to the bettor or bettors who selected the largest number of winning horses in those races on that day. N.J.A.C. 13:70-29.52(l).

As stated, the petitioner requested that the Commission add a new subsection (p), which would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carry-over, on a selected day in accordance with subsection (l) of the rule.

The Commission has determined that an amendment can be made to allow the Pick (N) pool, including the carry-over, to be paid on a day selected by the racetrack; however, such relief should proceed by formal request, rather than 48-hour notice. The Commission specifically proposes amendments at N.J.A.C. 13:70-29.52 that are based upon the rules of other major racing jurisdictions and the Model Pick (N) Rule of the ARCI pertaining to the distribution of Pick (N) pools and carry-over. California, Delaware, Kentucky, New York, and the ARCI all require the permit holder to submit a written request to its respective state racing commission for permission to distribute the carry-over on a specific date and performance, and require the racing commissions in those jurisdictions to approve the request, in writing. Delaware, Kentucky, New York, and the ARCI also require that the written request contain justification for the distribution and an explanation of the benefit to be derived. Substantively, the above jurisdictions and the ARCI limit the time period when a request can be submitted to no greater than one year from the specified date.

Further, California, Kentucky, Delaware, and the ARCI provide that if the Pick (N) carry-over distribution is designated for a specific date and performance, and there are no wagers selecting the first-place finisher in each of the Pick (N) contests, the entire pool shall be distributed as a single price pool to those bettors whose selection finished first in the largest number of Pick (N) contests. In this instance, the Pick (N) carry-over shall be designated for distribution on a specific day and performance only upon written approval from the Commission as provided above or on the closing performance of the meet.

Accordingly, the Commission proposes to amend N.J.A.C. 13:70-29.52 to designate the Pick (N) carry-over for distribution on a specific day and performance only upon written approval from the Commission granted in response to a written request submitted as provided above, or upon the closing performance of the meet.

Existing N.J.A.C. 13:70-29.52(n), which allows the racetrack association to contribute funds to the net Pick (N) pool or carry-over pool with the written approval of the Commission, is relocated to N.J.A.C. 13:70-29.52(p).

N.J.A.C. 13:70-29.52(n) is proposed for amendment to require permit holders to submit a written request for permission to distribute the Pick (N) carry-over on a specific performance for a specified date no greater than one year from the date the request is submitted. Further, the request must contain justification for the distribution and an explanation of the benefit to be derived.

The existing language at N.J.A.C. 13:70-29.52(o), which allows unforeseen circumstances to be resolved with general pari-mutuel practice and decisions regarding distribution to be determined final, is relocated to N.J.A.C. 13:70-29.52(q).

N.J.A.C. 13:70-29.52(o) is proposed for amendment to require that if the Pick (N) carry-over is designated for distribution on a specified date and performance in which there are no wagers selecting the first place finisher in each of the Pick (N) contests, the entire pool shall be distributed as a single price pool to those whose selections finished first in the greatest number of Pick (N) contests. The Pick (N) carry-over shall be designated for distribution on a specified date and performance only upon written approval from the Commission or upon the closing performance of the meet.

Notably, N.J.A.C. 13:70-29.52(l), which allows permit holders to distribute carry-over on the last day of the meet, is not being proposed for amendment.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

#### **Social Impact**

The Commission believes that the proposed amendments will have a positive social impact. It is anticipated that enabling the permit holders to request to pay out the Pick (N) carry-over on a selected day will enable them to remain competitive with racetracks in the states that currently allow this flexibility. In addition, the amendments may enable permit holders to attract more bettors, increase wagering, maximize handle and profits, and generate more excitement for New Jersey racing.

#### **Economic Impact**

The Commission has evaluated this rulemaking and determined that no costs will be incurred due to this rulemaking. It is possible, but purely speculative, that the proposed amendments will have a positive economic impact if the wagering handle increases, which will generate more purse money and breeders' awards for the racing industry.

#### **Federal Standards Statement**

A Federal standards analysis is not required as there are no Federal standards or requirements applicable to the proposed amendments. The Commission proposes these amendments pursuant to the rulemaking authority set forth at N.J.S.A. 5:5-30.

#### **Jobs Impact**

The Commission has evaluated the proposed rulemaking and determined that it will not generate or eliminate any jobs in the State.

#### **Agriculture Industry Impact**

The Commission has evaluated the proposed amendments, which concern the Pick (N) carry-over distribution, and determined that they will not have an impact on the agricultural industry in the State. Accordingly, no further analysis is required. It is possible, but purely speculative, that a positive impact on the agricultural industry could result if the wagering handle increases that may assist New Jersey's breeding industry by resulting in additional revenue for breeders' awards.

#### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required as the proposed amendments will have no impact on the reporting, recordkeeping, or compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

#### **Housing Affordability Impact Analysis**

The Commission has evaluated the proposed amendments, which concern the distribution of the Pick (N) carry-over, and determined that they will not have an impact on housing affordability or evoke a change in the average costs associated with housing in the State. Accordingly, no further analysis is required.

#### **Smart Growth Development Impact Analysis**

The Commission has evaluated the proposed rulemaking, which concerns the distribution of the Pick (N) carry-over, and determined that it will not have an impact on housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan. Accordingly, no further analysis is required.

#### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

The Commission has evaluated the proposed amendments and determined that they will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the proposal follows (additions indicated in boldface **thus**):

#### SUBCHAPTER 29. MUTUELS

13:70-29.52 The Pick (N)  
(a)-(m) (No change.)

(n) A written request for permission to distribute the Pick (N) carry-over on a specific performance may be submitted to the Commission. The request must be for a specified date no greater than one year from the date the request is submitted and contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution.

(o) The Pick (N) carry-over shall be designated for distribution on a specified date and performance only upon the written approval from the Commission granted in response to a written request submitted pursuant to (n) above or upon the closing performance of the meet.

1. Should the Pick (N) carry-over be designated for distribution on a specified date and performance in which there are no wagers selecting the first place finisher in each of the Pick (N) contests, the entire pool shall be distributed as a single price pool to those whose selections finished first in the greatest number of Pick (N) contests.

Recodify existing (n)-(o) as (p)-(q) (No change in text.)

## (a)

### NEW JERSEY RACING COMMISSION

#### Harness Racing The Pick (N)

#### Proposed Amendment: N.J.A.C. 13:71-27.56

Authorized By: New Jersey Racing Commission, Sara Ben-David,  
Acting Director.

Authority: N.J.S.A. 5:5-30.

Calendar Reference: See Summary below for explanation of  
exception to calendar requirement.

Proposal Number: PRN 2024-110.

Submit written comments by December 6, 2024, to:

Thomas Salerno, Assistant Director  
Department of Law and Public Safety  
New Jersey Racing Commission  
PO Box 088  
Trenton, New Jersey 08625-0088  
or email to: [NJRCWebinfo@njoag.gov](mailto:NJRCWebinfo@njoag.gov)

The agency proposal follows:

#### Summary

This notice of proposal is one of two rulemakings being proposed by the New Jersey Racing Commission (Commission) relating to the Pick (N) rules. In this rulemaking, the Commission proposes to amend N.J.A.C. 13:71-27.56, the Pick (N) rule for harness racing, to mirror the amendments the Commission is separately proposing at N.J.A.C. 13:70-29.52, which is the Pick (N) rule for thoroughbred racing. This rulemaking will ensure consistency in the rules governing horseracing in New Jersey.

The proposed amendments to the thoroughbred rule are the result of a petition filed by John F. Heims, Esq., In-House Counsel for Monmouth Park, requesting that the Commission amend N.J.A.C. 13:70-29.52. The petitioner asks the Commission to add a new subsection (p), which would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carry-over, on a selected day in accordance with subsection (l) of the rule. Carry-over is that percentage of the pool that remains when no one successfully selects all winning horses in the Pick (N). The petitioner states that the purpose of the request for rulemaking is that the proposed change will allow the racetrack to remain competitive with out-of-State racetracks and to maximize handle and profits.

On December 21, 2023, the Commission filed the required notice of receipt of petition for rulemaking with the Office of Administrative Law (OAL) which was published in the February 5, 2024 New Jersey Register at 56 N.J.R. 221(c).

On January 24, 2024, the Commission took action with regard to the petition and determined, in accordance with N.J.A.C. 1:30-4.2(a)3 and 13:1D-1.3(d)3, to refer the matter for further deliberations, to be concluded within 90 days of the referral, to review whether the petition is

consistent with the wagering rules of other state racing commissions and to assess the effect of the petition on the industry. In accordance with N.J.A.C. 1:30-4.2 and 13:1D-1.3, a notice of action on the petition for rulemaking was filed with the OAL on February 9, 2024, and published in the March 18, 2024 New Jersey Register at 56 N.J.R. 439(b).

On April 24, 2024, the Commission took further action with regard to the petition and determined, in accordance with N.J.A.C. 1:30-4.2(a)2 and 13:1D-1.3(d)2, to grant the petition for rulemaking and propose amendments to N.J.A.C. 13:70-29.52, consistent with the wagering rules of other state racing commissions and the Association of Racing Commissioners International's (ARCI) Model Pick (N) Rule. In accordance with N.J.A.C. 1:30-4.2 and 13:1D-1.3, a second notice of action on the petition for rulemaking was filed with the OAL on June 7, 2024, and published in the July 1, 2024 New Jersey Register at 56 N.J.R. 1203(a). Pursuant to the existing thoroughbred rule, the Pick (N) carry-over is to be added to the subsequent Pick (N) pool until distributed as a result of the successful selection of all the winning horses. N.J.A.C. 13:70-29.52(b). If there is carry-over on the last day designated for distribution and no bettor selects the winning horse in those designated races, the total amount of the pool shall be paid to the bettor or bettors who selected the largest number of winning horses in those races on that day. N.J.A.C. 13:70-29.52(l).

As stated, the petitioner requested that the Commission add a new subsection (p), which would allow the racetrack, upon 48-hour notice to the Commission, to elect to pay out an entire Pick (N) pool, including the carry-over, on a selected day in accordance with subsection (l) of the rule. The Commission has determined that the amendment proposed by the petitioner is not in the best interest of racing.

The Commission has determined that an amendment can be made in the thoroughbred rule at N.J.A.C. 13:70-29.52 to allow the Pick (N) pool, including the carry-over, to be paid on a day selected by the racetrack, subject to a formal request process. For consistency, the Commission proposes here to make the same amendment at N.J.A.C. 13:71-27.56 relating to harness racing. The Commission specifically proposes amendments at N.J.A.C. 13:71-27.56 that are based upon the rules of other major racing jurisdictions and the Model Pick (N) Rule of the ARCI pertaining to the distribution of Pick (N) pools and carry-over. California, Delaware, Kentucky, New York, and the ARCI all require the permit holder to submit a written request to its respective state racing commission for permission to distribute the carry-over on a specific date and performance, and require the racing commission of that jurisdiction to approve the request, in writing. Delaware, Kentucky, New York, and the ARCI also require that the written request contain justification for the distribution and an explanation of the benefit to be derived. Substantively, the above jurisdictions and ARCI limit the time period when a request can be submitted to no greater than one year from the specified date. Further, California, Kentucky, Delaware, and the ARCI provide that if the Pick (N) carry-over distribution is designated for a specific date and performance, and there are no wagers selecting the first-place finisher in each of the Pick (N) contests, the entire pool shall be distributed as a single price pool to those bettors whose selection finished first in the largest number of Pick (N) contests. In this instance, the Pick (N) carry-over shall be designated for distribution on a specific day and performance only upon written approval from the Commission as provided above or on the closing performance of the meet.

Accordingly, the Commission proposes to amend N.J.A.C. 13:71-27.56 to designate the Pick (N) carry-over for distribution on a specific day and performance only upon written approval from the Commission granted in response to a written request submitted as provided above, or upon the closing performance of the meet.

Pursuant to the existing rule, the Pick (N) carry-over is to be added to the subsequent Pick (N) pool until distributed as a result of the successful selection of all the winning horses. N.J.A.C. 13:71-27.56(b). If there is carry-over on the last day designated for distribution and no bettor selects the winning horse in those designated races, the total amount of the pool shall be paid to the bettor or bettors who selected the largest number of winning horses in those races on that day. N.J.A.C. 13:71-27.56(j).

Existing N.J.A.C. 13:71-27.56(l), which allows the racetrack association to contribute funds to the net Pick (N) pool or carry-over pool