

**Proposed New Rule: N.J.A.C. 13:69E-1.28Y**

**Proposed Amendments: [N.J.A.C. 13:69E-1.28A](#), [1.28D](#), and [1.28S](#)**

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**Slot Machine Approvals; Persistent State Game Approvals; Skill-Based Gaming**

Authorized By: David Rebeck, Director, **Division of Gaming Enforcement**.

Authority: N.J.S.A. 5:12-69.a, 70.a, and 100.b and h.

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

Proposal Number: PRN 2017-132.

Submit written comments by September 15, 2017, to:

Charles F. Kimmel, Deputy Attorney General  
**Division of Gaming Enforcement**  
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or electronically at: [rulecomments@njdge.org](mailto:rulecomments@njdge.org).

The agency proposal follows:

**Summary**

The **Division of Gaming Enforcement (Division)** is proposing to make amendments and add a new rule to [N.J.A.C. 13:69E](#).

Proposed new N.J.A.C. 13:69-1.28Y sets forth standards for **skill-based gaming** machines. As set forth in proposed new N.J.A.C. 13:69E-1.28Y(a) and (b), these are games in which the outcome of a player's wager is based in whole or in part on a player's manual dexterity, mental ability, generalized knowledge, or other **skill** rather than upon pure chance. Proposed new N.J.A.C. 13:69E-1.28Y(c) provides that for games in which part of the game outcome depends on chance while some portion depends on **skill**, the game must achieve a return to player of 83 percent. However, games that rely completely on a player's **skill** do not need to achieve a specific return to player. Players must be informed of, or have sufficient information to derive, the optimal strategy for a game. Proposed new N.J.A.C. 13:69E-1.28Y(d) requires all **skill-based** games to provide a sufficient explanation to allow

potential patrons to understand the game's rules and how a winning outcome is achieved. Proposed new N.J.A.C. 13:69E-1.28Y(e) prohibits, unless otherwise disclosed to the patron, a game from being altered during game play to make an event more or less likely to occur. This will prevent a patron who is highly skilled to suddenly see the game becoming harder to play because the game recognizes and reacts to a patron's **skill** level. However, proposed new N.J.A.C. 13:69E-1.28Y(f) and (g) specifically allow one patron to gain an advantage over other competing patrons by purchasing or being awarded some game enhancement, so long as all players are aware of the possibility of such feature's availability. Such features must be presented to the patron with [page=2186] clear rules for attaining them and each patron must have sufficient information to make an informed decision as to whether to seek to obtain such a feature. Under proposed new N.J.A.C. 13:69E-1.28Y(h), all possible outcomes that are displayed to the patron must be available at the time a wager is initiated. Proposed new N.J.A.C. 13:69E-1.28Y(i) requires disclosure to patrons whenever the outcome of a wager is dependent in whole or in part on a patron's **skill**. Proposed N.J.A.C. 13:69E-1.28Y(j) authorizes the use of an identifier to determine which **skill**-based games are available to a particular patron. Proposed new N.J.A.C. 13:69E-1.28Y(k) requires notification to a patron whenever he or she is playing against a skilled opponent, including a computer. The computerized opponent cannot have access to information not available to the patron, and the patron must be able to cancel a wager rather than proceeding to play against a skilled opponent. Peer-to-peer **gaming** must be monitored for any indication of collusion or money laundering, as set forth in proposed new N.J.A.C. 13:69E-1.28Y(l). Finally, a **skill**-based game may make itself more favorable to patrons in order to achieve an actual return to player, as authorized by proposed new N.J.A.C. 13:69E-1.28Y(m).

Proposed amendments to existing [N.J.A.C. 13:69E-1.28A\(g\)](#), (h), and (j) remove provisions relating to **skill** and strategy features from this rule, as they are more appropriately located in proposed new N.J.A.C. 13:69E-1.28Y. The proposed deletion of [N.J.A.C. 13:69E-1.28A\(k\)](#) removes an obsolete provision about slot machine mapping for virtual reels and replaces it with a more appropriate rule followed in other states, such as Nevada. The rule proposed for amendment specifies that the game must display the result chosen randomly and cannot substitute another combination with the same result, as this could mislead a patron. The amendment proposed at recodified [N.J.A.C. 13:69E-1.28A\(x\)](#) adds language allowing the **Division**, in appropriate cases, to deviate from the general rule that re-spin awards or free games must display the number of games or spins remaining. The existing rule has the unintended effect of preventing the award of a mystery number of free games. The proposed amendment addresses that issue by allowing the **Division** to approve such games on a case-by-case basis. The remaining subsections in the rule are recodified.

Proposed amendments to [N.J.A.C. 13:69E-1.28D\(a\)](#) and (b) clarify that persistent state systems, in which a patron's achievement of a certain level of gameplay carries over the next time the patron plays the same game, can be based on both the achievement of certain gameplay or solely on the patron's identity. As an example, if a game based on the legend of Robin Hood has five levels of Sherwood Forest to play through, a player who gets through two levels may, as prior to this amendment, start on level three the next time he or she plays the game. These amendments would allow an operator to recognize a premium player and start such player on level three immediately, without having had to play through

the first two levels. The **Division** recognizes this as a business decision rather than a regulatory issue, and has amended the rules accordingly.

Proposed new [N.J.A.C. 13:69E-1.28S\(e\)](#) states that for New Jersey First submissions for Internet games, a conspicuous notice to patrons is required stating that the game is in field trial and any issues should be reported to the **Division**. Such notice is already required for land-based slot machines.

This notice of proposal is not required to be referenced in a rulemaking calendar since a public comment period of 60 days is provided. See [N.J.A.C. 1:30-3.3\(a\)5](#).

### **Social Impact**

The proposed new rule and amendments will clarify standards for slot machine games, providing assistance to game manufacturers and patrons alike as to expectations for slot machine **gaming** offered at Atlantic City casinos. Proposed new [N.J.A.C. 13:69E-1.28Y](#) will set forth standards for games based partially or totally on the **skill** or manual dexterity of the player, creating opportunities for casinos in Atlantic City to market themselves to a younger player demographic.

### **Economic Impact**

The proposed new rule and amendments may permit New Jersey casinos to introduce new and more interesting **gaming** machines on their casino floors and allow them to make marketing advances toward attracting younger patrons. This could result in increased interest and financial gain for the casino industry.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rule and amendments are authorized by the provisions of the Casino Control Act, [N.J.S.A. 5:12-1](#) et seq., and are not subject to Federal law.

### **Jobs Impact**

The proposed new rule and amendments will not have any impact on the number of jobs in the State of New Jersey.

### **Agriculture Industry Impact**

The proposed new rule and amendments will have no impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

The proposed new rule and amendments will only affect the operations of New Jersey casino

licensees and slot machine manufacturers, none of which qualify 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 new rule and amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed amendments and new rule would evoke a change in the average costs associated with housing because the proposed new rule and amendments concern the conduct of **skill-based gaming** at New Jersey casinos.

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

The proposed new rule and amendments will not have an impact on smart growth and there is an extreme unlikelihood that the proposed amendments and new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment plan in New Jersey because the proposed new rule and amendments concern the conduct of **skill-based gaming** at New Jersey casinos.

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

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:69E-1.28A Standards for the approval of a slot machine game

(a)-(f) (No change.)

(g) A slot machine game that requires [skilled] strategy choices, such as video poker, shall:

1.-3. (No change.)

[(h) When a slot machine offers a play which relies on the knowledge of a patron, such as a trivia challenge, or their physical dexterity, such as a game utilizing a joystick, the overall payout percentage shall be calculated based on the play of the least knowledgeable or skilled patron.]

[(i)] **(h)** (No change in text.)

[(j) When a slot machine offers a play as an extension of a game and the theoretical RTP is based upon the optimal play of the patron, the slot machine shall disclose the optimal strategy or provide mathematically sufficient information for the patron to derive optimal strategy.]

(k) Slot machines shall comply with **Division** rules for random number generators (RNGs) and shall not permit a symbol above or below the top jackpot symbol to be mapped more than six times more frequently than any other symbol on a reel strip.]

**(i) After the selection of game outcome, the gaming equipment must not make a variable secondary decision that affects the result shown to the player. For instance, the RNG chooses an outcome that game will lose. The game must not substitute a particular type of loss to show the player.**

Recodify existing (l)-(w) as **(j)-(u)** (No change in text.)

[(x)] **(v)** All free game and re-spin awards must display the remaining number of games left following each free game or re-spin **unless otherwise approved by the Division.**

[page=2187] [(y)] **(w)** (No change in text.)

13:69E-1.28D Standards for a persistent state system

(a) A persistent state system (PSS) means all hardware and software used to [award or reveal bonus] **alter game play** features contained within approved slot machine software. The [additional bonus features] **game play alterations** may not be available to all patrons and may only become available when the patron has achieved specific game play thresholds **or based on the patron's unique identifier**. A PSS may also be used to recognize a particular patron for the purpose of restoring previously earned thresholds on each subsequent visit to a slot machine that utilizes the same PSS.

(b) [Each] **Unless the PSS-related game play feature is awarded based on a unique patron identifier, each** slot machine that utilizes a PSS shall contain, in its help screen, a clear description of each [PSS related bonus] **PSS-related game play** feature including the requirements for achieving game play thresholds. Additionally, patrons shall be notified each time a game play threshold has been achieved.

(c)-(h) (No change.)

13:69E-1.28S New Jersey First submissions and approvals

(a)-(d) (No change.)

**(e) Games that are field tested as part of a New Jersey First submission in conjunction with an approved Internet gaming system shall provide conspicuous notice, similar to what is required in (d) above, to all patrons in a manner approved by the Division.**

[(e)] **(f)** (No change in text.)

**13:69E-1.28Y Skill-based gaming**

(a) For purposes of this subsection the term "identifier" means any specific and verifiable fact, used by a slot machine or skill-based game, concerning a player or group of players, which is based upon objective criteria relating to the player or group of players, including, without limitation:

1. The frequency, value, or extent of predefined commercial activity;
2. The subscription to, or enrollment in, particular services;
3. The use of a particular technology concurrent with the play;
4. The skill of the player;
5. The skill of the player relative to the skill of any other player participating in the same game; and/or
6. The degree of skill required by the game.

(b) Skill-based gaming means any Division-approved casino game where game outcome is dependent in whole or in part upon the player's physical dexterity and/or mental ability.

(c) All skill-based games shall comply with N.J.S.A. 5:12-100.e as follows:

1. Slot machine games with a skill-based component (hybrid games) shall be required to theoretically pay out a demonstrable percentage of all amounts wagered, which shall not be less than 83 percent. This percentage shall be supported by a mathematical model or by simulated play sufficient to establish compliance with the required return to player (RTP). Such hybrid games shall either:

- i. Disclose optimal strategy to achieve the highest theoretical RTP; or
- ii. Provide sufficient information for the patron to derive optimal strategy in order to achieve the highest theoretical RTP; and

2. Games that rely entirely on skill or do not utilize a random number generator (RNG) to determine the game outcome are not required to achieve a minimum theoretical hold percentage.

(d) All skill-based games shall display in a readily available, accurate, and non-misleading manner:

1. The rules of play;

2. The amount required to wager on the game;
3. The amount to be paid on winning wagers;
4. Any rake or fee charged to play the game;
5. The total amount wagered by the player;
6. That the outcome of the game is affected by player skill; and
7. Such additional information sufficient for the player to reasonably understand the game.

(e) Except as otherwise disclosed to the player, once a game containing a skill-based feature is initiated, no aspect or function of the gaming device may be altered during the play of the game based on the skill of the patron to make an event more or less likely to occur.

(f) Skill-based games may contain a feature allowing patrons to gain an advantage over other patrons provided that all patrons are advised of that feature. Such features may include, but are not limited to, patron purchased enhancements, randomly awarded enhancements, or other advantages.

(g) Skill-based games offering a feature that allows patrons to gain an advantage over other patrons shall:

1. Clearly describe to all patrons that the feature is available and the benefit it gives to patrons;
2. Disclose the method for obtaining the feature; and
3. Provide patrons with sufficient information to make an informed decision, prior to game play, as to whether or not to compete against a patron who possesses such a feature.

(h) All possible game outcomes that are displayed to the patron of a skill-based game shall be available upon the initiation of each play of a game upon which a player makes a wager or initiates play.

(i) Gaming devices that offer games of skill or hybrid games shall indicate prominently on the gaming device that the outcome of the game is affected by player skill.

(j) Skill-based games may use an identifier to determine which games are presented to or available for selection by a player.

**(k) Skill-based games may offer patrons the opportunity to compete against a computerized or a skilled house-sponsored opponent provided that the licensee or electronic game:**

- 1. Clearly and conspicuously discloses when a computerized or skilled house-sponsored opponent is participating;**
- 2. Provides the patron with the ability to elect whether or not to play against a computerized or house-sponsored opponent; and**
- 3. Prevents the computerized or house-sponsored opponent from having access to information that is otherwise unavailable to a patron (that is, the opponent's hole cards or upcoming events).**

**(l) Peer-to-peer skill-based gaming shall be monitored for collusion and money laundering activity using an automated feature, or in accordance with the internal controls of the casino licensee.**

**(m) A skill-based game or slot machine with a skill-based component may provide an adaptive feature to increase the payback percentage in order to improve the actual RTP.**