

LAW AND PUBLIC SAFETY

NEW JERSEY RACING COMMISSION

Harness Racing

Payments

Proposed Amendments N.J.A.C. 13:71-4.1 and 27.41

Authorized By: New Jersey Racing Commission, Frank Zanzuccki, Executive Director

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

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

Proposal Number: PRN 2007 - 224

Submit written comments by September 14, 2007 to:

Michael Vukcevich, Deputy Director  
New Jersey Racing Commission  
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The agency proposal follows:

### **Summary**

The New Jersey Racing Commission (Racing Commission) is interested in obtaining public comment regarding the proposed amendment to N.J.A.C. 13:71-27.41 Payments. The proposed amendment would allow racing associations to use the net pool pricing method to determine payments due on the races offered at their racing facility. The Racing Commission is proposing the amendment to N.J.A.C. 13:71-27.41 Payments to allow permit holders the option to use the net pool pricing method in determining pari-mutuel prices. The net pool pricing method is currently used in the majority of major

racing states to determine pari-mutuel prices.

Currently the rule reflects payments due on all wagers to be made using the gross pool pricing method, which allows multiple wagering sites to wager on races conducted in New Jersey using the takeout rates and breakage rules in place in New Jersey. This method, the gross pool pricing method, has been used to determine payments due on pari-mutuel wagers prior to races being simulcast to other jurisdictions, as well as when races were simulcast from New Jersey racetracks to other wagering facilities in the United States.

To accommodate different jurisdictions utilizing their own take-out rates and breakage rules, the net pool pricing method was established in approximately 1995. At the time this method was used sparingly by jurisdictions that permitted it; however, its use at these facilities was discontinued after a short period of time.

When a change, in 2004, in the withholding laws of the United States Internal Revenue Service determined that for tax purposes a wager made in a country other than the United States was not subject to the withholding rules, many of the jurisdictions that permitted use of net pool pricing began to again utilize this method. As a result, Canada, where wagers previously formed a separate wagering pool on United States races, wagered directly into United States racing pools. This resulted in Canada (which has mandated federal and provincial take out requirements in excess of most United States racing jurisdictions) wagering increased sums of money into those United States jurisdiction's wagering pools. This proved to increase the profits realized for both the wagering facilities in Canada, as well as the facilities permitting net pool pricing in the United States resulting in additional United States jurisdictions approving

the use of the net pool pricing method. Presently, the majority of major racing jurisdictions other than New Jersey, permit the use of the net pool pricing method.

The proposed amendment to N.J.A.C. 13:71-27.41, Payments, will allow permitholders a choice to conduct wagering using the gross pool pricing method, which is currently the only method used in New Jersey, or permitholders may request and receive approval from the Racing Commission to use the net pool pricing method.

Any changes in the method of calculating payments must receive approval from the Commission prior to enacting the change in method for calculating payments. The Racing Commission will judge each request on what it deems to be in the best interest of racing before granting approval for a change in the method of calculating payments.

In addition, definitions of gross pool pricing and net pool pricing are being added to N.J.A.C. 13:71-4.1 Definitions to define the characteristics of each respective pari-mutuel payment method.

The Racing Commission is of the opinion that New Jersey facilities not being able to use the net pool pricing method places the New Jersey permitholders at a competitive disadvantage with other racing jurisdictions that permit net pool pricing.

The Racing Commission is providing a 60 day comment period for the proposal. Therefore, this notice is excepted from the rulemaking calendar requirement in accordance with N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The social impact of the proposed rule amendment will be positive allowing permitholders the option of using the net pool pricing method. The permitholder will be

able to request and offer wagering using the gross pool pricing method or the net pool pricing method based on their business decisions as well as the preference of the clientele attending their venue. A positive impact gained from this amendment will be realized by the majority of the wagering public in the form of larger wagering pools. A small portion of the wagering public may view the net pool pricing method in a negative manner as a result of potential differences in pricing as comparable to the gross pool pricing method and the added difficulty in using wagering information available on the totalisator board in determining potential payout prices.

### **Economic Impact**

The proposed rule amendment will likely have a positive economic impact on the racing associations, casino simulcasting facilities and the account wagering system. The net pool pricing method has been shown to increase the wagering amount from Canada, in the jurisdictions that utilize this method. This increase in wagering has resulted in increased revenue for the permitholder as well as larger wagering pools for the wagering public.

### **Federal Standard Impact**

A Federal standard's analysis is not required because the rules of racing are dictated by State statute N.J.S.A. 5:5-22 et seq and are not subject to any Federal requirements or standards.

### **Jobs Impact**

The proposed amendment will not result in the generation or loss of jobs.

### **Agriculture Industry Impact**

The proposed amendment will have no impact on the agriculture industry in the State.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as defined in Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The New Jersey racetracks affected by the amendment are not small businesses, as each employs more than 100 people full-time.

### **Smart Growth Impact**

The proposed amendment will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Program.

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

13:71-4.1 Definitions

(a) (No change)

(b) The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

...

**“Gross pool pricing” means the historic method of calculating pari-mutuel prices using the take out and breakage rules of the host tracks jurisdiction. Pari-mutuel prices calculated using the gross pool pricing method are the same for all jurisdictions in the pari-mutuel pool.**

...

**“Net pool pricing” means the method of calculating pari-mutuel prices established in 1995 that allow each jurisdiction to use their takeout and breakage rates to calculate a pari-mutuel price without jurisdictions altering their take out rate and breakage rate to accommodate another racing jurisdiction’s takeout and breakage**

**rates. Pari-mutuel prices calculated using the Net Pool Pricing method may differ slightly for each jurisdiction in the pari-mutuel pool.**

13:71-27.41 Payments

(c) Payments due on all wagers shall be made in conformity with the well established practice of the pari-mutuel system known as the “gross pool pricing” method as defined in N.J.A.C. 13:71-4.1 Definitions. However, with the prior approval of the Commission, payments due on all wagers may be made in conformity with the “net pool pricing” method as defined in N.J.A.C. 13:71-4.1.

1. The Racing Commission shall consider such applications on a case by case basis in the best interest of racing before granting approval for a change in the method of payment.
2. The Racing Commission may approve or disapprove, at a public meeting, applications from permitholders for a change in the method of calculating payments. All requests must be filed with the Racing Commission a minimum of 30 days prior to a scheduled public meeting and must include the reason and supporting justification for the request.
3. The application shall include a certification from the totalisator company confirming the method of calculation has been successfully programmed, tested and conforms with the permitholder’s rules of the wager in all respects.

4. The application shall include a description by the permit holder of notification provided to the public explaining the impact of net pool pricing.

(b) - (e) (No change)

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Frank Zanzuccki, Executive Director