

# SENATE . . . . . No. 2321

---

Senate, August 19, 2019 – Communication from the Massachusetts Gaming Commission (under the provisions of Section 9B of Chapter 128A of the General Laws) submitting proposed amendments to regulations for 205 CMR 6.35: Pick (n) Pools.

---

## The Commonwealth of Massachusetts

\_\_\_\_\_  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
\_\_\_\_\_

August 15, 2019

The Honorable Michael D. Hurley  
Senate Clerk  
Office of the Clerk of the Senate  
24 Beacon Street  
Room 335 – State House  
Boston, MA 02133

Dear Mr. Hurley,

Pursuant to M.G.L. c. 128A, §9B, the Massachusetts Gaming Commission (“Commission”) hereby files proposed amendments to regulations **205 CMR 6.35; Pick (n) Pools**. A draft of the proposed language is enclosed for your review. The amendments describe the addition of further wagers to the regulation.

These regulations are largely governed by M.G.L. c.128A §9. A public hearing was held regarding these proposed amendment on August 1, 2019. If you have any questions or need additional information, please feel free to reach me at [shara.n.bedard@state.ma.us](mailto:shara.n.bedard@state.ma.us) or (617) 979-8458. Thank you for your attention to this matter.

Respectfully submitted

Massachusetts Gaming Commission  
By:  
Shara N. Bedard  
Paralegal

Enclosures.

## 205 CMR 6.35: Pick (n) Pools

- (1) The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. The association must obtain written approval from the Commission concerning the scheduling of Pick (n) contests, the designation of one of the methods prescribed in 205 CMR 6.35(2), and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) format require prior approval from the Commission. (ARCI c. 9 cal. § G(1))
- (2) The Pick (n) pool shall be apportioned under one of the following methods:
  - (a) Method 1, Pick (n) with Carryover. The net Pick (n) pool and carryover, if any, shall be distributed as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the remainder shall be added to the carryover.
  - (b) Method 2, Pick (n) with Minor Pool and Carryover. The major share of the net Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the major share shall be added to the carryover.
  - (c) Method 3, Pick (n) with No Minor Pool and No Carryover. The net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded.
  - (d) Method 4, Pick (n) with Minor Pool and No Carryover. The major share of the net Pick (n) pool shall be distributed to those who selected the first place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If the greatest number of first-place finishers selected is one, the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded.
  - (e) Method 5, Pick (n) with Minor Pool and No Carryover. The major share of net Pick (n) pool shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are

no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded. (ARCI c. 9 cal. § G(2))

- (f) Method 6, Pick (n) with Minor Pool and No Carryover: The major share of net Pick (n) pool shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool shall be combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded.
- (g) Method 7, Pick (n) with Carryover and “Unique Winning Ticket” Provision: The net Pick (n) pool and carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there is no unique ticket selecting the first-place finisher in each of the Pick (n) contests, or if there are no wagers selecting the first-place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, and the major share shall be added to the carryover. Associations may suspend previously approved unique winning ticket wagering with the prior approval of the Commission. Any carryover shall be held until the suspended unique winning ticket wagering is reinstated. Where there is no correct selection of the first-place finisher in at least one of the Pick (n) contests, based upon the official order of finish, the day’s net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool. In obtaining authorization for operating the Pick (n) pool under this subsection, associations must clearly identify which definition under ARCI c. 9 cal. § G(16)(b) will be relied upon for determining the existence of a unique winning ticket.
- (h) Method 8, Pick (n) with the Pool Split into Three Shares, One Share having a Carryover: The share percentages are determined by the pool host and approved by the Commission. The first share of the net Pick (n) pool and the carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The second share of the net Pick (n) pool shall be distributed to those who selected (n-1) of the Pick (n) contests, based upon the official order of finish and a third share of the Pick (n) pool shall be distributed to those who selected (n-2) of the Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the first share shall be added to the carryover. If there are no wagers selecting (n-1) of the Pick (n) contests, this second share shall be added to the carryover. If there are no wagers selecting (n-2) of the Pick

(n) contests, this third share shall be added to the carryover. Where there is no correct selection of the first-place finisher in at least one of the Pick (n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool amount, if any, shall be carried over to the next scheduled corresponding pool.

- (i) Method 9, Pick (n) with the Pool Split into Three Shares, with Carryovers, and a Unique Winning Ticket Provision: The share percentages are determined by the pool host and approved by the Commission. The first share of the net Pick (n) pool and the first share carryover, if any, shall be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The second share of the net Pick (n) pool shall be distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the second share of the net Pick (n) pool shall be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests, and the first share shall be added to the first share carryover. The third share and the third share carryover, if any, shall be distributed to the holder of a unique winning ticket that selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there is no unique winning ticket selecting the first-place finisher in each of the Pick (n) contests, the third share shall be added to the third share carryover. For greater certainty, the holder of a unique winning ticket shall receive both the first share, and first share carryover, if any as well as the third share, and the third share carryover, if any. Where there is no correct selection of the first-place finisher in at least one of the Pick (n) contests, based upon the official order of finish, the day's net pool shall be refunded and the previous carryover pool(s) amount(s), if any, shall be carried over to the next scheduled corresponding pool. In obtaining authorization for operating the Pick (n) pool under this subsection, associations must clearly identify which definition under ARCI c. 9 cal. § G(16)(b) will be relied upon for determining the existence of a unique winning ticket.

(3) If there is a dead heat for first in any of the Pick (n) contests involving:

- (a) contestants representing the same betting interest, the Pick (n) pool shall be distributed as if no dead heat occurred;
- (b) contestants representing two or more betting interests, the Pick (n) pool shall be distributed as a single price pool with each winning wager receiving an equal share of the profit. (ARCI c. 9 cal. § G(3))

(4) Should a betting interest in any of the Pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at the host association for the contest at the close of wagering on that contest, shall be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two or more favorites is identical, the substitute selection shall be the betting interest with the lowest program number. The totalisator shall produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination. (ARCI c. 9 cal. § G(4))

(5) The Pick (n) pool shall be canceled and all Pick (n) wagers for the individual performance shall be refunded if:

- (a) at least three contests included as part of a Pick 4, Pick 5 or Pick 6 are canceled or declared “no contest”;
  - (b) at least four contests included as part of a Pick 7, Pick 8 or Pick 9 are canceled or declared “no contest”;
  - (c) at least five contests included as part of a Pick 10 are canceled or declared “no contest”. (ARCI c. 9 cal. § G(5))
- (6) If at least one contest included as part of a Pick (n) is canceled or declared “no contest”, but not more than the number specified in 205 CMR 6.35(5), the net pool shall be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests for that performance. Such distribution shall include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances. (ARCI c. 9 cal. § G(6))
- (7) The Pick (n) carryover may be capped at a designated level approved by the Commission so that if, at the close of any performance, the amount in the Pick (n) carryover equals or exceeds the designated cap, the Pick (n) carryover will be frozen until it is won or distributed under other provisions of 205 CMR 6.35. After the Pick (n) carryover is frozen, 100% of the net pool, part of which ordinarily would be added to the Pick (n) carryover, shall be distributed to those whose selection finished first in the greatest number of Pick (n) contests for that performance. (ARCI c. 9 cal. § G(7))
- (8) A written request for permission to distribute the Pick (n) carryover on a specific performance may be submitted to the Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. (ARCI c. 9 cal. § G(8))
- (9) Should the Pick (n) carryover 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 selection finished first in the greatest number of Pick (n) contests. The Pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:
- (a) upon written approval from the Commission as provided in 205 CMR 6.35(8);
  - (b) upon written approval from the Commission when there is a change in the carryover cap, a change from one type of Pick (n) wagering to another, or when the Pick (n) is discontinued;
  - (c) on the closing performance of the meet or split meet. (ARCI c. 9 cal. § G(9))
- (10) If for any reason, the Pick (n) carryover must be held over to the corresponding Pick (n) pool of a subsequent meet, the carryover shall be deposited in an interest-bearing account approved by the Commission. The Pick (n) carryover plus accrued interest shall then be added to the net Pick (n) pool of the following meet on a date and performance so designated by the Commission. (ARCI c. 9 cal. § G(10))

- (11) With the written approval of the Commission, the association may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap. (ARCI c. 9 cal. § G(11))
- (12) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited. This shall not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data. (ARCI c. 9 cal. § G(12))
- (13) The association may suspend previously-approved Pick (n) wagering with the prior approval of the Commission. Any carryover shall be held until the suspended Pick (n) wagering is reinstated. An association may request approval of a Pick (n) wager or separate wagering pool for specific performances. (ARCI c. 9 cal. § G(13))