

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

FILED 12-15-14 2:04 PM ARCHIVES DIVISION SECRETARY OF STATE

<u>Oregon Racing Commission</u>	462
Agency and Division	Administrative Rules Chapter Number
<u>Karen Parkman</u>	(971) 673-0208
Rules Coordinator	Telephone
<u>Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232</u>	
Address	

RULE CAPTION

Rule implements regulation of pari-mutuel wagering for "Instant" or historical racing

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
1-20-15	10:00 a.m.	PSOB 800 NE Oregon Street Portland, OR97232	Charles Williamson

11:00 a.m.

RM 10

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:
462-200-0700

AMEND:
N/A

REPEAL:
N/A

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.
N/A

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.
N/A

Statutory Authority:
ORS 462.270 (3)

Other Authority:
N/A

Statutes Implemented:
SB 1537, ORS 462.155, ORS 462.010, ORS 462.270 (3)

RULE SUMMARY

Rule allows the agency to govern the Instant Racing 1-2-3 with Pick N wager. This wager will be offered on a pari-mutuel wagering device with historic races.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

<u>01-20-2015 11:00 a.m.</u>	<u>Karen Parkman</u>	<u>karen.parkman@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form

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SECRETARY OF STATE

Oregon Racing Commission
Agency and Division

462
Administrative Rules Chapter Number

Rule implements regulation of pari-mutuel wagering for "Instant" or historical racing

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Adopt: 462-200-0700 (Instant Racing 1-2-3 with Pick N)

Statutory Authority:

ORS 462.270 (3)

Other Authority:

N/A

Statutes Implemented:

SB 1537, ORS 462.155, ORS 462.010, ORS 462.270 (3)

Need for the Rule(s):

ORS 462.155 and SB 1537 (Instant Racing Legislation) provides that the ORC may allow a race meet operator holding a Class A license to conduct mutuel wagering at the licensee's race course. Portland Meadows is the only Class A licensee in Oregon. With the support of the racing industry they seek to implement the Instant Racing legislation by conducting such wagering. The ORC has promulgated a rule that provides a detailed description of the mutuel wager called Instant Racing 1-2-3 with Pick N wager. The ORC is the regulatory authority for mutuel wagering and all wagers sought to be implemented require ORC approval.

Documents Relied Upon, and where they are available:

- 1) Association of Racing Commissioners International Inc.
Model rules referenced in chapter 9, section 5. Wagering on historic racing.
- 2) Senate Bill 1537
ORS 462.155
- 3) Understanding Technical Testing of Historic Racing Terminal
- 4) TRPB Statistical Testing of Instant Racing
- 5) Memorandum of Understanding between ORC & Thoroughbred Racing Protective Bureau
- 6) Oregon Lottery
OAR 177-040-0061
- 7) Wyoming
Historic Racing Regulations
- 8) Kentucky
 - a) Administrative rules for historical racing 810 KAR 1:120
 - b) Checklist
 - c) Conditions to conduct historical horse races, Thoroughbred Kentucky Horse Racing Commission
- 9) Gaming laboratories Inc. (GLI)
Gaming device and systems testing
- 10) General Historic Racing Information

- 11) Background Information on Instant Racing
Kilpatrick, Townsend & Stockton LLP
- 12) GLI - Proposal for Consultation Services
- 13) Testimony of Stephen S. Walters before the ORC - November 15, 2007
- 14) Litigation File
MEC Oregon Racing, Inc., dba Portland Meadows, Licensee
OAH Case No: 700263
Agency Case No: 862 P 500-691

15) Report of the Fiscal Impact Advisory Committee

The agency also relied upon staff and stakeholder knowledge, analysis of current practice of instant racing wagering in other jurisdictions and

Fiscal and Economic Impact:

Fiscal and Economic Impact:

Impact on the Oregon Racing Commission:

The ORC will incur additional cost in regulating the new mutuel wager. Costs include contracting with outside vendors such as Gaming Laboratories, Inc (GLI) and possibly the Thoroughbred Racing Protective Bureau for testing, certification and audit services. Most of the additional audit, accounting, reconciliation and tote report analysis will be absorbed by existing staff as we already provide this oversight for mutuel wagering taking place at Portland Meadows, the Off Track Betting sites and the fairs. Annual cost of these additional services is difficult to project with precision as the implementation of new wagers within the Instant Racing framework will affect cost. The annual additional expense to the agency however will likely range between \$20,000-\$40,000.00. The ORC collects a 1% tax on all mutuel wagering handle at Portland Meadows to fund ORC operations and industry initiatives. It is anticipated that the tax revenue derived from handle on Instant Racing will exceed the cost of regulation thereby resulting in a net gain to the agency. The tax revenue is wholly dependent on the handle and as with any new mutuel wagering option it is difficult to predict how popular a wager it will become.

Impact on Portland Meadows and Horsemen:

Portland Meadows will be investing in self-service Instant Racing terminals to support the wager. They will also be renovating a room on the first floor grandstand where the terminals will be located. They project to have 150 terminals in operation at the outset and measure customer demand before any change to that figure. Les Bois Park in Boise Idaho is currently operating with 200 terminals as they seek to bolster the industry in Idaho. Portland Meadows is already conducting mutuel wagering on the premises 363 days per year and have 24 hour security in place. They state that there may be slight increases in the cost of security, accounting and reporting resulting in additional staff being added. Since these functions are already in place the impact will be minimal. Because mutuel wagering is their core business, implementation of Instant Racing will not have a significant additional cost. If the Instant Racing wager is successful and handle increases substantially the operator and the horsemen will benefit. There are only 36 live race days this fiscal year and that is a direct result of the lack of available purse money. The extent of the benefit to the industry from Instant Racing is not known at this time. Instant Racing has produced mixed results in other areas of the country. Markets such as Portland, with many other gaming options available, tend to be less successful than pockets of the country with fewer options. The operator and the horsemen feel that even if only moderately successful the revenue will allow the commercial race meet operation to continue and get back to a program of racing 72 days per year. Any increase in the racing schedule will provide ancillary benefits. Veterinarians, farriers, grooms, feed suppliers, farmers and Portland Meadows employees are among the groups that will benefit from a more robust horse racing industry. Without Instant Racing the industry will not survive in Oregon.

Impact on Tribal Gaming:

The Klamath Tribe and several other tribal groups have indicated that they feel the implementation of Instant Racing will, or could, have a negative economic impact on their gaming revenues. Pursuant to the authorizing legislation Instant Racing can only be conducted on the premises of a Class A licensee of the ORC. Given that Portland Meadows is the only Class A licensee in Oregon and that there are no tribal casinos in close proximity it is highly improbable that the addition of this mutuel wager will have any impact on tribal gaming.

We do not anticipate the rule to have a significant economic or fiscal impact on state agencies, other than the ORC. No significant economic or fiscal impact is anticipated on units of local government, business, nonprofit organizations or the public. The Portland Police Bureau and Oregon Lottery Commission both indicated they felt the rule would have no impact on them.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

Statement of Cost of Compliance:

There is no impact on local governments, the public or state agencies as the rule governs a specific type of mutuel wager derived from the ARCI Model Rules and applies only to the Class A licensee, Portland Meadows.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

There is no cost of compliance on small business. Portland Meadows is the only business subject to the rule. Cost of compliance include additional tote reports, filing tax payments, producing reports for horsemen and the ORC. These costs are minimal as the addition of Instant Racing mutuel wagering is simply an extension of their existing core business. The costs associated with the implementation, as distinguished from compliance, are identified in the preceding section.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

N/A

c. Equipment, supplies, labor and increased administration required for compliance:

N/A

How were small businesses involved in the development of this rule?

The rules do not apply to small businesses, therefore they were not involved in the rule development process. Representatives from industry groups, including horsemen, Portland Meadows, stakeholders, and the public have been involved in the Instant Racing legislation. The rule is a modified version of the rule proposed by the Association of Racing Commissioners International (ARCI) for Instant Racing.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:

A Fiscal Impact Advisory Committee was convened and produced a report and recommendation. Oregon Lottery, Portland Police Bureau, Tribal interests, Restaurant and Lodging Association, Portland Meadows and various horsemen's groups were invited to be on the committee.

The rule itself is derived from the ARCI Model Rule which has been the industry standard for many years.

01-20-2015 11:00 a.m.	Karen Parkman	karen.parkman@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

462-200-0700

Instant Racing 1-2-3 with Pick N

(1) Instant Racing 1-2-3 with Pick N is mutuel wagering which requires selection of the first three finishers for a single contest selected from a historical library of previously run contests that are replayed from a central video server according to the following procedures:

(a) The contest from the historical library is selected at random before the player enters any selection.

(b) The player may examine one or more charts including past performance information showing the relative merits of the contestants as they actually were on the day of the contest.

(c) After examining one or more charts the player has the option to proceed with the selected contest (in which case the player selects three horses) or to bypass the selected contest (in which case a new contest from the historical library is selected at random and the process begins again).

(d) After the player's selections are registered, the identity of the contest is revealed, a video segment of the contest finish is shown, and the actual official results are displayed.

(e) A player wins by matching some or all of the first three finishers in one of several different ways. Any winnings may be collected instantly.

(f) A player must risk a second unit bet in the wager to qualify for the highest value pool(s) (for example the Pick N, matching the first finisher in N consecutive contests).

(2) Wager Amount:

(a) Acceptable wagering units shall be no lower than \$0.05 and no higher than \$20.

(b) The player may enter only one or two unit bets per play.

(3) Pool Split: After the applicable takeout has been deducted from the wager, the remaining amount shall be apportioned among several separate pools which have been carried over from previous contests played by all players:

(a) The remaining amount (after takeout) of the first unit bet shall be apportioned among the first unit bet pools, including one pool for each of several ways to win, and to the first Seed Pool when it is below its designated cap amount.

(b) The remaining amount (after takeout) of the second unit bet, if wagered, shall be apportioned among the second unit bet pools (for example the Pick N), and to the second Seed Pool when it is below its designated cap amount.

(4) Ways to Win for the First Unit Bet: For players who risked either one or two unit bets in each wager, some or all of the following ways to win, or other similar ways approved by the Commission, may be declared:

- (a) 3 Exact Order: The player's selections correctly match the first three finishers in exact order.
 - (b) 3 Any Order: The player's selections correctly match the first three finishers in any order.
 - (c) Top 2 Exact Order: The player's top two selections correctly match the first two finishers in exact order.
 - (d) 3 to get Top 2: Any of the player's three selections correctly match the first two finishers in any order.
 - (e) Top Pick Wins Contest: The player's top selection correctly matches the first (winning) finisher.
 - (f) Any 2 of 3: The player's selections correctly match any two of the first three finishers in any order.
 - (g) Second Pick Wins Contest: The player's second selection correctly matches the first (winning) finisher.
 - (h) Any Pick Wins Contest: Any one of the player's selections correctly matches the first (winning) finisher.
- (5) Ways to Win for the Second Unit Bet: For players who risked two unit bets in each wager, some or all of the following ways to win, or other similar ways approved by the Commission, may be declared:
- (a) Pick N: The player has won the Top Pick Wins Contest pool in N consecutive plays, with two unit bets in each wager. After winning the Pick N pool, the player must start over accumulating wins to be eligible for either the Pick N pool or the Pick N-1 pool again.
 - (b) Pick N-1: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays, with two unit bets in each wager.
 - (c) Pick N Consolation: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays and then has lost in the next, with two unit bets in each wager. The Pick N Consolation shall be declared as a way to win only when the Pick N-1 pool has not been.
- (6) Payment Calculation:
- (a) For each way to win except the Pick N Consolation, the winning price shall be the entire amount in the pool for which the wager qualifies, less the price round-off (breakage).
 - (b) For the Pick N Consolation, the winning price shall be a designated percentage of the amount in the Pick N pool, less the price round-off (breakage). The remaining amount of the Pick N pool carries forward for the next Pick N winner.
 - (c) When the first unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.

- (d) When the second unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.
- (e) When the second unit bet qualifies to win, its winning price shall be added to the winning price from the first unit bet.
- (f) Each way to win has a minimum payout amount for winning wagers, which shall be posted.
- (g) In the case of a minus pool, the minimum payout amount shall not be less than the amount of one unit bet wagered.
- (h) If two players qualify to win the same pool within a short time, the first winner shall be paid the current pool and the second shall be paid the new pool, which begins with the minimum payout amount.
- (7) Dead Heat: A contest that has a dead heat for first, second, or third shall not be used for Instant Racing 1-2-3 with Pick N wagering.
- (8) Coupled Entries, Mutuel Fields:
- (a) A contest involving coupled entries or mutuel fields shall not be used for Instant Racing 1-2-3 with Pick N wagering if there are two or more betting interests live for a single contestant number.
- (b) The one remaining live betting interest of a coupled entry or mutuel field shall be represented by its contestant number without a letter. For example, contestant number "1" represents either contestant "1" or "1A".
- (9) Seed Pool: To cover the cases when one of the minimum payout amounts is paid, the Seed Pool is accumulated from a designated percent of wagers.
- (a) Each time a pool's minimum payout amount is paid in excess of the actual amount available in the pool, the shortfall shall be deducted from the Seed Pool.
- (b) After a pool is paid, the actual amount of the pool may be seeded from the Seed Pool to a specified initial amount less than or equal to its minimum payout amount.
- (c) While the Seed Pool is below a designated cap amount, the allotments to the other pools are each decreased and the difference shall be allotted to the Seed Pool.
- (d) The Seed Pool of the first unit bet shall be kept separate from that of the second unit bet.
- (10) Commission Approval:
- (a) The takeout rate may not exceed a maximum rate approved by the Commission. Subject to that restriction, the takeout rate shall be set by the race meet licensee and reported to the Commission.
- (b) The method of apportioning wagers to each of the pools shall be approved by the Commission.

- (c) The method of seeding pools shall be approved by the Commission.
- (d) The number of pools and specific "Ways to Win", declared from time to time by the race meet licensee from the list set forth above or other similar ways, shall be approved by the Commission.
- (e) When a Pick N Consolation has been declared as a way to win, the percentage of the Pick N pool to be paid as a consolation shall be approved by the Commission.
- (f) Should the Instant Racing 1-2-3 with Pick N pools be designated for termination or mandatory distribution on a specific date, a method approved by the Commission shall be used.
- (g) The method for selecting contests and past performance charts shall be certified by an independent authority that is approved by the Commission.

(11) Additional Requirements:

- (a) Contests shall be randomly selected from a historical library of actual contests that were previously held. Only contests that were held at licensed racetracks may be used. The contests contained in the historical library need not all have the same number of entrants.
- (b) The total amount in each mutuel pool shall be posted at all times.
- (c) Minimum payouts shall be posted at all times.

(12) Interpretation:

- (a) Instant Racing 1-2-3 with Pick N shall be considered a form of interstate simulcast wagering.
- (b) In the event of any inconsistency between the provisions of this rule regarding Instant Racing 1-2-3 with Pick N and the provisions of any other rule, the provisions of this rule shall control.