

## Notice of Proposed Rule

**DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**  
**Division of Pari-Mutuel Wagering**

RULE NO: RULE TITLE

61D-14.038: Percentage Payout and Odds

PURPOSE AND EFFECT: The purpose and effect of the proposed rule will be to implement and interpret Florida Statutes that relate to rules regulating the conduct of slot machine operations at pari-mutuel racing facilities.

SUMMARY: The rule has been substantially reworded to improve clarity and updated to specify that the minimum theoretical payout percentage is to be maintained at all times during the required schedule of testing.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 551.103(1), 551.122 FS.LAW IMPLEMENTED: 551.103(1)(c), (d), (e), (h) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: June 24, 2009, 9:00 a.m. – 5:00 p.m.

PLACE: Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, North Broward Regional Service Center, 1400 West Commercial Blvd., Suite 195, Ft. Lauderdale, Florida 33309

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Mary Polombo at (850)413-0750. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mary Polombo, Clerk, Division of Pari-Mutuel Wagering, 1940 North Monroe Street, Tallahassee, Florida 32399-1035

THE FULL TEXT OF THE PROPOSED RULE IS:

(Substantial rewording of Rule 61D-14.038 follows. See Florida Administrative Code for present text.)

61D-14.038 Percentage Payout and Odds.

(1) An independent test laboratory licensed by the state (laboratory) shall:(a) Certify a slot machine game for play in Florida only when the manufacturer's Payout and Retention (PAR) sheet for that slot machine game indicates a probable minimum payout percentage of at least 85 percent of all credits played over the mathematical (lifetime) cycle of the game at a 95 percent level of confidence;(b) Test each slot machine game independently to certify that the game meets the probable minimum payout indicated on the manufacturer's PAR sheet at a 99 percent level of confidence;(c) Certify in writing to the Office of Slot Operations, Division of Pari-Mutuel Wagering, North Broward Regional Service Center, 1400 West Commercial Boulevard, Suite 165, Ft. Lauderdale, Florida 33309-3787:1. The game's minimum and maximum theoretical payout percentage;2. The game has been tested and meets the provisions of Chapter 551, F.S., and Chapter 61D-14, F.A.C.; and3. The game performs as described in the manufacturer's PAR sheet.(2) A slot machine game manufacturer or distributor shall provide a PAR sheet to the slot machine licensee and the division at the address in paragraph (1)(c) of this rule upon delivery of each slot machine game to a slot machine licensee in Florida. The volatility index for the game shall be reflected on each manufacturer's PAR sheet.(3) Upon the alteration or revision of any previously certified game, the slot machine manufacturer shall submit the game to the laboratory which shall re-evaluate the minimum theoretical payout percentage and provide an amended report to the division complying with subsection (1) of this rule.(4) Slot machine games used at Florida slot machine licensee facilities shall:(a) Have a total payout over the cycle of both the bonus and non-bonus part of the game combined that conforms to the minimum theoretical payout percentage of 85 percent;

(b) Meet the minimum theoretical payout percentage of the game at all times pursuant to the reporting frequency required in subsection (5) of this rule; and

(c) Meet the minimum theoretical payout percentage of the game when playing at the lowest end of a non-linear paytable.

(5) The slot machine licensee shall create a quarterly report using the facility based monitoring system (FBMS), for each slot machine game offered for play during the quarter or any part of a quarter, that includes:

(a) The lifetime actual payout to the end of the respective quarter;

(b) The actual number of plays for the game's lifetime;

(c) The theoretical payout percentage; and

(d) The minimum number of handle pulls required to reach the minimum payout percentage as indicated on the PAR sheet.

(6) The quarterly report required by subsection (5) of this rule shall be filed with the division at the address in paragraph (1)(c) of this rule, electronically or in writing, for each of the following periods:

(a) January 1 through March 31;

(b) April 1 through June 30;

(c) July 1 through September 30; and

(d) October 1 through December 31.

(7) If the report required by subsection (5) of this rule shows that a slot machine game's actual payout is less than 85 percent and the game has surpassed the minimum number of handle pulls required to reach the minimum payout percentage as indicated on the PAR sheet for the slot machine, the slot machine licensee shall:

(a) Notify the division in writing of the identity of the slot machine game;

(b) Remove the game from play;

(c) Recompute the slot machine game payout percentage using the FBMS; and

(d) Determine whether the recomputation of the payout percentage reveals that the slot machine game falls within or outside of the volatility range.

(8) Based on the result of the recomputations required in subsection (6) of this rule, the slot machine licensee shall either:

(a) Return the slot machine game to play if the recomputed payout percentage is within the volatility range; or

(b) Contact an independent test laboratory licensed by the state to investigate the slot machine game if the recomputed payout percentage is not within the volatility range. The slot machine licensee shall require the laboratory to investigate the slot machine game's operation and provide the licensee with a written recomputation of the payout percentage and a determination that the slot machine game is operating within or outside of its volatility range.

(9) If, in two consecutive quarterly reports, a slot machine game fails to remain within its volatility range, the slot machine licensee shall remove the slot machine game from play until the slot machine game operating software program is replaced with an operating software program that meets the requirements of the testing in subsection (1) of this rule.

(10) Each slot machine licensee shall maintain records demonstrating:

(a) The quarterly report results required in subsection (5) of this rule for each slot machine game that has been placed on the gaming floor;

(b) The actual payout percentage for each slot machine game at the time of each quarterly report required in subsection (5) of this rule;

(c) The recomputed payout percentage for each slot machine game and whether the payout percentage is within its volatility range; and

(d) Any record regarding software operating programs were replaced pursuant to subsection (8) of this rule.

(11) The records generated under this rule shall be maintained consistent with Rule 61D-14.080, F.A.C. Rulemaking Specific Authority 551.103(1), 551.122 FS. Law Implemented 551.103(1)(c), (d), (e), (h) FS. History--New 6-25-06, Amended \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: David J. Roberts, Director, Division of Pari-Mutuel Wagering

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Charles W. Drago, Secretary, Department of Business and Professional Regulation

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: May 5, 2009

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: March 16, 2007