

ND RACING COMMISSION
Gunner laCour, Director
March 14, 2016

Administrative Rules Committee
Legislative Assembly
Rough Rider Room, State Capitol
Representative Bill Devlin, Chairman

In September of 2014, the North Dakota Racing Commission began work on amendments to administrative rules 69.5-01-08 and 69.5-01-11 governing Pari-Mutuel Wagering Systems, Simulcasting and Account Deposit Wagering. After over a year and a half of discussions with industry stakeholders and multiple revisions, the Commission has finally brought forward the set of modern rules before you for consideration.

As I noted in my last appearance before the Administrative Rules Committee in December of 2014, the majority of the rule revisions before you represent the Commission's efforts to update our rules to reflect modern standards. The Commission recognizes that a regulatory body can only be as effective as the rules that govern it. This is the Commission's step towards overhauling its rules with the support of our model rules body, the Association of Racing Commissioners International or ARCI as they are commonly known. These rules represent best practices in the equine industry

and are the result of input from many participating jurisdictions of which North Dakota is one. When adopting the ARCI model rules, jurisdictions can be assured that they represent the industry's most comprehensive and efficient regulatory methods. With the significant changes proposed today, the Commission seeks to establish and maintain a position at the forefront of racing regulation.

First, I would like to begin by discussing the revisions to the Pari-mutuel Wagering Systems in administrative rules chapter 69.5-01-08. You will note that the vast majority of the changes result from an adoption by reference of the standard wagers found in Part I of the ARCI model wagering rules (note the less traditional wagers are contained in Part II). These are the standard wagers available at most tracks throughout the nation. For the most part the ARCI rules simply replace and update those wagers already found in our rules. The primary difference is that the descriptions of the wagers, the calculation of payouts and distribution of pools has been updated, clarified and supplemented by examples of payouts. These changes serve to ensure that each wager type is presented as clearly as possible with modern revisions to ensure the security and fairness of the pari-mutuel pools.

Adopting the ARCI standard wagering rules would include five additional wagers which are not currently present in our rules; Exacta (n), Pick (n) Position (x), Team Wager, Future Wager, and Match Rival. While I am happy to discuss each one in depth if requested, I believe that a general summation of the additional rules will serve to elucidate the reason for their inclusion in the ARCI model rules. With regard to the Exacta (n) and Pick (n) Position (x) pools, these are simply extensions of long standing bet types spread across several races in a day. The Team Wager and Match Rival wager provide standard wagers that are unique only in that they group the betting interests into teams or selections based on owners/trainers/jockeys. Finally, the Future Wager is a long standing tradition that has been implemented for many years for races such as the Kentucky Derby which allows for the placement of a win wager in advance of race day in order to drive excitement and anticipation for the upcoming meet.

As you can see these wagers have gained acceptance throughout the U.S. and were subsequently included in the ARCI model rules based on their ability to engage patrons and drive attendance. In this way they are nearly identical to some of our unique wagers already found in our rules such as the

Pick 1-2-3 and the Pick 1-2-3-4-5. However, what is of primary importance here is uniformity across jurisdictions for the support and development of racing interests in our state. The model ARCI rules were developed for this very purpose on a national level.

Moving on to those sections which have not been wholly replaced, the majority of the changes are made to incorporate sections or important aspects of the ARCI model rules into current wagering operations. You can see such changes in the later pages of the proposed rule change, covering important aspects of wagering operations such as how complaints are to be handled, display of betting information, and refunds for short fields. These types of changes represent essential building blocks of appropriate regulation that have been missing from our rules. Both the Commission and wagering providers will benefit from the clear procedures and obligations outlined in these rules. Again, I am happy to discuss any specific section if there are questions.

There are only two sections where changes have been made that are not related to the ARCI model rules. These sections are the Pari-mutuel Plus (formerly the Mad Scramble) and the 123Racing Pick-n-Wager. With regard to

the Pari-mutuel Plus, these changes were instituted to more accurately reflect the intent of the wager as initially presented to the Commission. While the Commission put forward this wager type for inclusion in the rules, the final drafting by the Commission was ultimately much narrower than intended. This has resulted in no use of this rule since its inclusion. The changes allow for variation in the number of betting interests that can be involved in the wager. For example, the wager could be offered on all winning horses in four designated races and at the same time be offered on all winning horses in eight races. Previously this was limited to only six races. The revisions also allow for the total group of potential bonus numbers assigned to the tickets to be chosen from a larger or smaller group depending on the difficulty of the wager.

With regard to the changes to the 123Racing Pick-n-Wager, these too have been proposed to allow for some variation within the wager type to drive patron interest. These simple changes allow for tournaments (often used promotionally) to be conducted with two dollar, five dollar, etc. buy-ins to provide a variety of wagers and returns. Additionally, the changes allow for the service provider to host this on behalf of a site operator due to the unique

software required to operate these tournaments, particularly this proprietary style tournament. While these changes are somewhat negligible, they provide enough room for a variety of offerings to drive interest in racing.

The changes specifically identified herein are intended to ensure that the legislature is fully informed about the changes to be made, particularly with regard to wagering. However, those singled out for discussion represent only a small portion of the changes proposed. The Commission has no intent to expand gambling in any significant way as we are well aware of the legislature's stance on such issues. These changes are simply intended to implement best practices and bring our wagering rules in line with other jurisdictions. As our live racing depends heavily on the success of our wagering entities, particularly wagering from out-of-state, it is key that within the confines of pari-mutuel wagering rules our providers are held to the highest standards in the industry. These changes are primarily intended to implement those standards which will support proper regulation and widespread acceptance of our wagering providers in the industry.

As with every revisions to its rules, the Commission is cognizant that its primary goal must be the implementation of the most comprehensive and

efficient regulatory methods. As discussed, much of the previous section was replaced to provide for the modern ARCI model rules. Similarly, the Simulcast and Account Deposit Wagering rules found in chapter 69.5-01-11 have been revised to incorporate as much of the ARCI model rules as possible. As we are a charitable gaming state, our rules can sometimes be unique to provide for the charity relationship with the service providers. Therefore, unlike the last chapter, wholesale adoption by reference was not possible. Rather, where the model rules provided a more clear description, stricter requirements, additional requirements, or a more modern explanation of wagering transactions, these rules were included in such a way so as to work within the charitable gaming system.

The Commission also put forward some changes of its own devise to address items which had no specific ARCI rule. Many of these are fairly minor and are often the product of our specific Commission experience. Examples include the rules governing the disclosure and retirement of Thoroughbred Racing Association codes to better track wagering, requirements for processes and procedures to address odds manipulation, and the addition of clear operating procedures when licensees interact with our independent auditing

service. The Commission believes that these unique rules take another step beyond those found in ARCI to ensure that our regulatory processes are not just compliant with best practices, but are leading the way for the industry.

I would particularly like to highlight the new requirements for problem gambling information to be clearly presented in both physical and on-line locations. Many of our providers already voluntarily display such information. However, the Commission has been working hand-in-hand with the problem gambling program at Lutheran Social Services to identify the most effective methods of reaching problem gamblers. The Commission sees this as a further opportunity to ensure that these methods are being employed broadly within our industry to protect and help those with gambling problems.

Finally, I would note there are a number of minor changes to Commission requirements and procedures that are based on what has and has not worked at a basic operational level for the Commission as methods of wagering have evolved over time. These changes are meant to help streamline the Commission's efforts to allow for the highest level of regulatory oversight with the resources available and to reduce redundancy or unnecessary requirements. Racing and wagering methods have changed quite

a bit since 1990 when these rules originally came into effect. A comprehensive review and update, such as completed here, was long overdue.

Overall, the changes presented today represent an important step in further developing credibility and effectiveness of horse racing in North Dakota that has already garnered so much attention from many industry participants. North Dakota has slowly but surely developed a reputation for excellence both nationally and internationally. It is critically important to further the positive developments we have seen both in the growth of private business and effective regulation with a proper set of tools for the Commission in the form of modern administrative rules.

The rule change process began on September 16, 2015 when the Racing Commission Director presented the foregoing administrative rule changes to the Commission. The Racing Commission authorized the Director to draft the appropriate amendments.

On September 29, 2015, the Racing Commission contacted the ND Newspaper Association requesting them to publish an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules. The North Dakota Newspaper Association was paid \$1,679.60 to publish the notice. A Full

Notice of Intent to Adopt and Amend Administrative Rules and the proposed rules and amendments were also sent to John Bjornson of the Legislative Council on September 29, 2015.

The public hearing was conducted in the North Dakota Racing Commission Office on November 2, 2015. No member of the public attended the meeting. No comments, either oral or written, were received at the meeting.

As stated in the public hearing notice, written comments could be made to the Racing Commission until November 12, 2015. There were no written comments by the public. There were no oral concerns, objections, or complaints submitted by the public for the Racing Commission's consideration with regard to the rule change.

The changes to the rules related to the provision of bonds and letters of credit implement Senate bill number 2071 from the most recent legislative session. This was an agency bill without a sponsor. There are no changes related to any federal statute or regulation.

Neither the Governor nor a member of the Legislative Assembly has filed a written request for a regulatory analysis and the rule is not expected to

have an impact on the regulated community in excess of \$50,000; therefore, a regulatory analysis was not completed.

A small entity regulatory analysis and small entity economic impact statement was completed and is attached.

A fiscal note was completed and is attached.

A constitutional takings assessment was not required for this requested rule change.

The adopting of this rule was not an emergency and the administrative rule process was followed.

SMALL ENTITY REGULATORY ANALYSIS

1. Establishing less stringent compliance or reporting requirements.

Pari-mutuel wagering is a highly regulated field requiring multiple levels of oversight. The compliance and reporting requirements provided in the proposed rules either represent current industry practices as established by the Association of Racing Commissioners International or current practices in North Dakota. In either case, less stringent requirements would not provide for effective regulation and bring North Dakota below the standards of other jurisdictions. Thus, less stringent requirements cannot be implemented.

2. Establishing less stringent schedules or deadlines for compliance or reporting requirements.

The schedules and deadlines set forth in the proposed rules are either related to customer claims/complaints or reporting wagering activity/tax payments to the Racing Commission. In the case of customer claims/complaints, the rules provide a short window in which the entity must respond to Commission requests for information in order to provide for expedited resolution of these issues. While the window for response is small, it is more than sufficient to provide time for review and written response while supporting Commission efforts to assist customers in resolving their concerns.

With regard to reports of wagering activity and tax payments, the revisions to the rules provide schedules and deadlines which reflect the more modern systems now in place at both the Commission and wagering entity. Through its work with CHRIMS Inc., a pari-mutuel accounting and auditing firm, the Commission now has a system which monitors all wagering activity on a daily basis. Therefore, the reporting requirements previously established in our rules provide unnecessary duplication of effort. The proposed rules reduce the number of reports to those necessary for effective monitoring and auditing of wagering with modern advances in technology. Thus the schedules and deadlines established in these sections are actually less onerous than those previously applied.

3. Consolidating or simplifying compliance or reporting requirements.

With regard to the schedules and deadlines set forth in the proposed rules related to customer claims/complaints, these rules are not significantly different than those previously established. Rather, they more clearly establish a step by step procedure to resolve customer claims/complaints. Any further consolidation or simplification would result in reduced effectiveness as they have already been streamlined to expedite resolution.

Regarding wagering activity and tax payments, per the answer to question 2, the proposed rules are designed to consolidate and simplify these reporting requirements based on advances in modern technology. Further consolidation or simplification is not possible without a loss of effectiveness.

4. Establishing performance standards that replace design or operational standards in the proposed rule.

Not applicable as there are no performance standards that may be replaced by design or operational standards.

5. Exempting small entities from all or part of the proposed rule.

Small entities cannot be exempted without a significant negative impact to effective regulatory oversight.

SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Small entities that may be subject to the proposed rule.
Service Providers (Simulcast and Account Deposit Wagering Companies), Site Operators (Charities), and Associations (racetrack operators)
2. The administrative or other costs required for small entities to comply with the proposed rule.
No additional costs are expected.
3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.
Response times for claims/complaints may be reduced. Regulation reflects current best practices, thus improved oversight of companies provided for consumers. No additional costs anticipated to customers.
4. The probable effect of the rules on state revenues.
The modification to currently existing wager rules may produce some revenue increases, though the full effect is not yet known. All other aspects of the rule should have no effect on state revenues.
5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.
Pari-mutuel wagering is a highly regulated field requiring multiple levels of oversight. The compliance and reporting requirements provided in the proposed rules either represent current industry practices as established by the Association of Racing Commissioners International or current practices in North Dakota. In either case, less intrusive methods would not provide for effective regulation and bring North Dakota below the standards of other jurisdictions. Thus, less intrusive requirements cannot be implemented.
The proposed rules do not have a material associated cost; therefore, less costly methods cannot be implemented.

FISCAL NOTE

The adoption of the Association of Racing Commissioners International (ARCI) Pari-Mutuel Wagering Rules will not have any fiscal effect as the Commission currently employs wagering rules substantially similar to those found in ARCI. Further, where ARCI rules have been added rather than superseding prior rules, these additional rules simply reduce to writing operating procedures implemented in current practice as a necessary part of engaging in the larger national industry where such uniform processes and procedures are applied.

With regard to modifications made to our unique ND wagering types, these changes may allow the operator to offer these wagers in a form more desirable to players. This may result in an increased revenue stream; however, as these wagers are unique to ND and these variations have not yet been implemented, it is not possible to identify any fiscal effect.

Regarding the adoption of ARCI Simulcast and Account Deposit Wagering Rules, these rules are purely designed to increase regulation or reduce to writing current practices and will have no fiscal effect. The increased regulation will not be so burdensome on the agency as to result in increased expenditures.