

## MEMO

**TO:** Administrative Rules Committee

**FROM:** James P. Wang, Chairperson, State Gaming Commission

**RE:** N.D.A.C. Article 99-01.3 - Games of Chance

**DATE:** June 14, 2012

This is a reply to the North Dakota Legislative Council's May 22, 2012, letter. The procedures followed by the Gaming Commission in adopting the Games of Chance rules to be published in the July 2012, supplement to the North Dakota Administrative Code are:

1. **Question:** Whether the rules resulted from statutory changes made by the Legislative Assembly.

**Response:** The rules primarily resulted from addressing industry issues and clarifying the rules.

2. **Question:** Whether the rules related to federal statute or regulation.

**Response:** No.

3. **Question:** A description of the rulemaking procedures followed in adopting the rules.

**Response:** On behalf of the State Gaming Commission, the Gaming Division of the Office of Attorney General drafted a working document of proposed rule changes. The document reflected input from a variety of sources over the preceding two years, including input from a 20 person volunteer Gaming Advisory Board representing all areas of the gaming industry. The Gaming Commission, Advisory Board, representatives of the Gaming Division, organizations, and distributors met to critique the working document. It was revised for public hearings.

A notice of public hearing was filed with the Legislative Council on November 8, 2011. The notice was published once in all official county newspapers.

A notice was placed in the December 2011 *Gaming Update* newsletter sent to all gaming organizations, distributors, manufacturers, Advisory Board members, Gaming Commission members, and other interest parties notifying them of scheduled public hearings. Copies of the proposed rules were available at the hearings and, on request, were sent free to any interested person. A copy of the proposed rules was also placed on the Office of Attorney General's web page.

Public hearings were held in Grand Forks, Fargo, Minot, and Bismarck on December 13-16, 2011. Forty-seven people attended the hearings and a written record was made of the comments. Three written comments were also received. Twenty-five comments were expressed on the draft Administrative rules. The State Gaming Commission,

Gaming Advisory Board, and Gaming Division evaluated the comments. The Commission adopted many of the proposed rules without major change, adopted a few of the proposed rules after changing them by compromise or clarification, and did not adopt some of the proposed rules.

The Office of Attorney General examined and approved the State Gaming Commission's final version of adopted rules as to their legality. The Commission through the Office of Attorney General's Gaming Division filed the rules with the Legislative Council.

4. **Question:** Whether any person presented a written or oral concern, objection, or complaint for agency consideration with regards to these rules.

**Response:** Yes. Reference the attached January 16, 2012, document titled "**Public Comments on Proposed Gaming Rules**". This document includes a summary of all oral and written public comments, and the decision of the Gaming Commission on each comment.

5. **Question:** The approximate cost of giving public notice and holding public hearings on the rules and the approximate cost of developing and adopting the rules.

**Response:** The approximate cost is:

Publishing notices of public hearings.....	\$2,144
Mailing notice of the public hearings.....	\$ 230
Printing/copying proposed rules.....	\$ 75
Mailing proposed rules.....	\$ 20
Holding public hearings .....	<u>\$ 501</u>
Total.....	\$2,970

Note: The total amount excludes the cost of staff time of about 200 hours applied in drafting, typing, proofreading, and critiquing the proposed rules and participating in public hearings and meetings.

6. **Question:** An explanation of the subject matter of the rules and the reasons for adopting the rules.

**Response:** The rules address industry issues and clarify items.

The rules relate to organization licenses and permits; general rules; accounting rules; bingo; quick shot bingo card marking devices; raffles; pull tabs; sports pools; twenty-one; poker; calcuttas; paddlewheels; pull tab and prize board dispensing devices; eligible uses; distributors; and manufacturers.

7. **Question:** Whether a regulatory analysis was required by North Dakota Century Code (NDCC) Section 28-32-08 and whether a regulatory analysis was issued.

**Response:** A regulatory analysis was not required or issued.

8. **Question:** Whether a regulatory analysis or economic impact statement of impact on small entities was prepared and issued as required by NDCC Section 28-32-08.1.

**Response:** Yes. Reference the November 8, 2011, document titled “**Small Entity Regulatory Analysis and Economic Impact Statement on Proposed Administrative Rules**”. This document includes a summary of the regulatory analysis and economic impact statement concerning small entities.

9. **Question:** Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency.

**Response:** No.

10. **Question:** Whether a constitutional takings assessment was prepared as required by NDCC Section 28-32-09.

**Response:** A constitutional taking assessment was not required or prepared.

11. **Question:** If the rules were adopted as emergency (interim final) rules under NDCC Section 28-32-03.

**Response:** No.

STATE GAMING COMMISSION  
c/o Office of Attorney General  
600 E. Boulevard Ave., Dept.125  
Bismarck, ND 58505-0040

Public Comments on Proposed Gaming Rules  
January 16, 2012

LIST OF WRITTEN COMMENTS (ATTACHED) AND SUMMARY OF VERBAL PUBLIC COMMENTS ON PROPOSED NEW RULES, AMENDMENTS, AND REPEAL OF RULES RELATED TO NORTH DAKOTA ADMINISTRATIVE CODE ARTICLE 99-01.3, GAMES OF CHANCE ADMINISTRATIVE RULES.

**Notification and Conduct of Public Hearings**

1. Notification was sent to the North Dakota Newspaper Association for publication in the 52 county newspapers during the week of November 16 - 22, 2011.
2. Notifications were mailed to distributors, organizations, manufacturers, and members of the Gaming Advisory Board and State Gaming Commission through the December 2011 *Gaming Update Newsletter* mailed in early December.
3. The Office of Attorney General conducted four public hearings for the State Gaming Commission as follows:

<u>Date</u>	<u>City</u>	<u>Attendance</u>
December 13, 2011	Grand Forks	8
December 14, 2011	Fargo	30
December 15, 2011	Minot	4
December 16, 2011	Bismarck	5

**Written Comments**

1. North Dakota Association for the Disabled, Inc. (NDAD) – Public Hearing Comments from NDAD (no specific date listed on the letter received at the December 13, 2011, hearings).
2. Plains Art Museum – Subject: Language for the “unresolved” issues. Letter drafted by Karen Breiner, Gaming Manager, dated December 12, 2011, which was received at the December 13, 2011, hearing.
3. Letter from Frank R. Portscheller (no specific date listed on the letter received at the December 14, 2011, hearing).

**Legend to Status – Decision by the Gaming Commission at its Meeting of January 16, 2012**

- A – The proposed new rule, amendment, or repealed rule was adopted without major change.
- C – The proposed new rule, amendment, or repeal was partially changed by compromise or clarification.
- N – The proposed new rule, amendment, or repealed rule was not adopted or the rule was deleted.
- N/A – The comment, such as a question or remark, was not expressed to change a proposed new rule, amendment, or repealed rule, or the comment is moot because of other action taken on that or a related rule.

## Public Comments

### Chapter 99-01.3-03 – Accounting Rules

<u>Number</u>	<u>Page</u>	<u>Citation</u>	<u>Comment</u>	<u>Status</u>
1.	17	99-01.3-03-02(3)	Request made to allow organizations to make additional deposits of non-gaming funds into the gaming account without approval from the AG's office. Seventeen out of 30 individuals at the Fargo public hearing supported this proposed change. See letter # 2 for suggested language.	C
2.	22	99-01.3-03-09(1)	Concern expressed that the current master inventory records for pull tabs is not clear. Current requirements regarding "date placed" and "date closed" rather than pre-2010 language which simply stated "period played" are not defined. Gaming employees are not sure if it is the date the deal or game was placed into play.	C

### Chapter 99-01.3-04 – Bingo

3.	26	99-01.3-04-01	Request made to remove that Quick shot is "the only" bingo game that may or may not have a winning player. Replace "the only" with "a". Some lead-up games in bingo may also not have a winning player. Questioned why the reference to "or twenty-four number bingo" was required. Could Quick shot be more than 24 numbers? See letters # 1 & 2.	C
4.	31	99-01.3-04-03(17)	Requested that a new definition of lead-up games be added. See letters # 1 & 2.	C
5	33	99-01.3-04-03(29)(a)	Question asked why the change from "site <u>or</u> organization" to "site <u>and</u> organization" was made.	N/A

6.	34	99-01.3-04-06	Suggested change that the Paper card count receipting method, which now includes floorworker sales, be limited for gaming sites not exceeding \$_____ in gross proceeds for bingo for a quarter. See letter # 2.	A
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**Chapter 99-01.3-04.1 - Quick Shot Bingo Card Marking Devices**

7.	36	99-01.3-04.1-01	Questioned why we define quick shot bingo as 24 balls or numbers. Could it be more than 24 numbers?	N/A
8.	36	99-01.3-04.1-03(1)	Do we need to add "numbers" entered into the quick shot bingo card marking device site operating system for clarification?	C
9.	37	99-01.3-04.1-03(5)(f)	Should we allow players to use more than one device if they are available?	A
10.	37	99-01.3-04.1-03(5)(h)	Questioned how organizations prevent individuals from sharing a device particularly a husband and wife who take turns playing the device.	C
11.	37	99-01.3-04.1-03(5)(i)	Questioned the need for a player presenting their receipt when other information is obtained from customers (driver's license held, etc.).	A
12.	37	99-01.3-04.1-03(6)	Questioned whether a policy is needed for lost receipts.	C
13.	37	99-01.3-04.1-03(7)	Question asked when the automatic rollover of winning credits will be allowed by customer. AG note: This would require a law change.	N/A
14.	38	99-01.3-04.1-03(16)	Requested that gift certificates be allowed as a normal part of business without approval from the AG's office.	A
15.	38	99-01.3-04.1-04	Question asked how long redemption receipts need to be retained by the organization.	N/A

### **Chapter 99-01.3-08 - Twenty-One**

16.	60	99-01.3-08-09	Could the rules be changed to allow that if a single twenty-one betting space allows \$1 wagers, the second betting space being played by this same player, could be required to have a higher bet limit. AG note: This would require a law change.	N/A
17.	60	99-01.3-08-09	Request to allow an increase in the minimum bets on an open twenty-one table, with only current players allowed to continue playing at their lower bet limit, but that all new players would be required to play at the new minimum bet amount. Therefore, no players would be required to move to another table.	N/A
18.	66	99-01.3-08-11(16)	Requested a clarification of fanning twenty-one wager chips and the payment of a player's winning wager and tip bet.	C

### **Chapter 99-01.3-09 - Poker**

19.	71	99-01.3-09-01(2)	Requested change to make the word "reward" plural by making it "reward(s)".	C
20.	72	99-01.3-09-02(3)(a)	Request to allow satellite buy-in prizes to be transferable from the winning player to another player. Organizations not concerned about individuals selling their buy-in prize. Comment that receipts may be needed if buy-ins prizes are transferred to other player.	C
21.	72	99-01.3-09-02(3)	Concern expressed that satellite tournament buy-in prizes are being double taxed as gross proceeds. Suggestion to modify the gaming tax return to adjust for satellite prizes. Comment that if the gaming tax return is modified paperwork does not need to be changed. Suggestion to treat the buy-in like a coupon or gift certificate with a line on the paperwork to deduct it from gross proceeds. See letters # 1 & 2.	A

22.	72	99-01.3-09-02(3)	Suggestion to clean up language in subdivision (a) and (b). Require that organizations may "only" award a buy-in to a larger tournament to winning players of each satellite. See letter # 2.	C
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**Chapter 99-01.3-15 - Distributor**

23.	99	99-01.3-15-02(1)	The new language restricting a distributor from being a shift manager has the same effect as restricting the conduct. See comments in # 24.	C
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24.	99	99-01.3-15-02(3)(a)	Comment that new rule is trying to fix something that is not broke. Would force employees out of their jobs. Difficult to find good help. Comment that this is an unnecessary rule change. Request to go back to previous language. Twenty-four out of 30 at the Fargo hearing did not like the change. See letters # 2 & 3. One individual commented that they were surprised that this was ever allowed.	C
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25.	104	99-01.3-15-06(7)(b)	A question was asked about not requiring the new "maximum cost per play is \$5.00" on existing inventory of sports pool boards. A statement from one distributor indicated that the change had already been made by using a rubber stamp.	A
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Public Hearing Comments from NDAD

Page 26 - take out "the only" from the quick shot description that has been added.

Page 31 – add after #17 - In bingo games where there is a lead-up game that may be won if a pattern is obtained in a set amount of numbers called leading up to the main game, there may or may not be a winner for the lead-up games.

Page 72

Satellite poker prizes – need to adjust the gross proceeds from the satellite tournament for the amount of the buy-in prizes to the larger tournament. Otherwise will be double taxing the gross proceeds. Maybe treat it like a coupon for bingo - have a line on the paperwork for buy-in prizes given away to be deducted from the gross proceeds?

December 12, 2011

(2)

**Subject: Language for the “unresolved” issues:**

pg. 17 – Any additional deposit of non-gaming funds into a gaming account must be approved by the attorney general (99-01.3-03-02 (3)).

Suggested change: *Additional deposit of non-gaming funds into a gaming account is allowable, or Organizations may make additional deposits of non-gaming funds into the gaming account.*

p.34 – Addressing the new language excluding floorworker sales (99-01.3-04-06).

Suggested change: *including floorworker sales for gaming sites not exceeding \$ \_\_\_\_\_ in gross proceeds for bingo for a quarter.*

pg. 72 – Language needed to address the accounting of Satellite fees so that they are not double taxes (99-01.3-09-02).

Suggested change: Modify the tax return to adjust for satellite prizes.

Clean up language on pg 72. Change lettering position of current language. Letter (b.) becomes (a.); (c.) becomes (b.); and (d.) becomes (c.) Move language in (a). down to position (d.).

Change language in the current (a.) to: *An organization may only award a buy-in to a larger tournament to multiple winning players of each satellite. ~~however,~~ The buy-in prize is nontransferable to another player and is not considered part of gross proceeds for tax return purposes.*

pg. 99 – Addresses employees of a distributor conducting pull tabs, etc...

Suggested change: Revert to original language.

pg 26 & pg 31– Bingo Lead-up up games

Suggested changes: pg 26 - Quick shot, or twenty-four number bingo, is a game in which all of the numbers are pre-drawn and is ~~the only a~~ bingo game that may or may not have a winning player, and if there is a winner player, the player is not required to timely call out the word “bingo”. Pg 31 add after 17 – *An organization my conduct lead-up games where multiple winning patterns may be played on the same card and where one or all of the prize patterns has a winner, or An organization may conduct lead-up games where multiple winning patterns are played on the same card and at least one of the prize patterns is a winner.*

This is suggested language. Please give suggestions for further modification to ensure clarity.

Karen Breiner  
Gaming Manager  
Plains Art Museum

Regarding proposed new language in Chapter 99-01.03-15-01, which would restrict employees of a distributorship from being employed by a gaming organization and conducting certain games of chance; and also working as a shift manager.

I first worked both for a distributor and a gaming organization at the same time in June of 1980; and did for many years; and ~~am~~ now working for both again.

It wasn't a problem then, it isn't a problem now; and although my memory might not be what it once was; I don't believe it's ever been a problem.

So <sup>do</sup> we now want to force people out of jobs, and force employers to lose valuable employees simply because it might someday be a problem!?

My understanding is that gaming division staff did not even realize that this had been going on. Isn't that alone the best indication that this isn't really a problem.

It ain't broke, so there's no need to fix it.

Thank you,

Frank R. Portscheller

*Revert to original language*

State Gaming Commission  
c/o Office of Attorney General  
Gaming Division

Small Entity Regulatory Analysis and Economic Impact Statement on Proposed  
Administrative Rules  
North Dakota Administrative Code Article 99-01.3 Games of Chance

**PURPOSE**

In accordance with North Dakota Century Code (N.D.C.C.) § 28-32-08.1, this is a regulatory analysis and economic impact statement regarding the effect of proposed administrative rules on organizations and distributors (small entities) that operate games of chance or sell gaming equipment in the State of North Dakota.

The proposed rules that will affect organizations and distributors are:

Section 99-01.3-01	Organization Licenses and Permits
Section 99-01.3-02	General Rules
Section 99-01.3-03	Accounting Rules
Section 99-01.3-04	Bingo
Section 99-01.3-04.1	Quick Shot Bingo Card Marking Devices
Section 99-01.3-05	Raffles
Section 99-01.3-06	Pull Tabs, Club Special, Tip Board, Seal Board, Prize Board, and Punchboard
Section 99-01.3-07	Sports Pools
Section 99-01.3-08	Twenty-one
Section 99-01.3-09	Poker
Section 99-01.3-10	Caluttas
Section 99-01.3-11	Paddlewheels
Section 99-01.3-12	Pull Tab Dispensing Devices
Section 99-01.3-12.1	Prize Board Dispensing Devices
Section 99-01.3-14	Eligible Uses
Section 99-01.3-15	Distributors
Section 99-01.3-16	Manufacturers of Pull Tabs, Paper Bingo Cards, Pull Tab Dispensing Devices, Bingo Card Marking Devices, Card Shuffling Devices, and Quick Shot Bingo Card Marking Devices

**SMALL ENTITY REGULATORY ANALYSIS**

The Office of Attorney General's Gaming Division prepared this 'Small Entity Regulatory Analysis' on behalf of the State Gaming Commission, before it adopted proposed rules

on the law, N.D.C.C. chapter 53-06.1 (Games of Chance). Through this analysis, the division considered the impact of the proposed rules on the public health, safety, and welfare in addressing the objectives of the law, and considered each of these methods for reducing the impact of the proposed rules on small entities by:

1. Establishing less stringent compliance or reporting requirements;
2. Establishing less stringent schedules or deadlines for compliance or reporting requirements;
3. Consolidating or simplifying compliance or reporting requirements;
4. Establishing performance standards for organizations and distributors to replace design or operational standards required by proposed rules; and
5. Exempting organizations and distributors from all or part of the requirements contained in proposed rules.

In regard to methods 1, 2, 4, and 5 above, the proposed rules do not unilaterally impose compliance or reporting requirements, schedules or deadlines, or performance standards on all organizations and distributors. Rather, organizations and distributors, as a condition of licensure to operate games of chance and sell gaming equipment, voluntarily agree to comply with certain compliance or reporting requirements, schedules or deadlines, or performance standards which would not otherwise apply to them. Nonprofit organizations comply with the proposed rules in exchange for financial support of eligible uses with net proceeds earned and distributors for financial gain (sales revenue) will, on an annual license renewal basis, make informed decisions whether this benefit exceeds their cost and or inconvenience of complying with the rules by renewing or not renewing their licenses.

In regard to method 3 above, the proposed rules implemented changes that allow select organizations to reduce the cost of conducting games by offering less stringent requirements while maintaining control over vulnerable assets.

The primary mission of the gaming industry is to maximize net proceeds earned for the benefit of charitable uses. The economic interests of the gaming organizations and distributors are basically linked – both apply high standards of administrative and operational controls to ensure the integrity of the gaming industry. The proposed rules reflect this commitment.

To be profitable, the gaming industry must maintain a positive public image, and players must be confident that the games are fair and honest. The success of the gaming industry is dependant on how well it is regulated, through rules, to maintain its public image and confidence. If a gaming organization or distributor is a small business, its size cannot be a discretionary factor for imposing less stringent compliance or reporting requirements, schedules or deadlines, performance standards, or exempting them from compliance. Otherwise, the gaming industry would fail its responsibility to protect the

industry and its customer from crimes that could cause irreparable harm to the public image and confidence, including a major reduction in net proceeds. This responsibility cannot be diminished, disclaimed, evaded, or ignored because a gaming organization or distributor is a small business.

Notwithstanding the above, the State Gaming Commission deleted and revised rules to reduce the impact of the rules on small and large organizations, including:

1. Deleted a rule that would have required an organization to:
  - A. Notify our office in the event that serial numbers on stamped games are different from the serial numbers provided by a distributor.
2. Revised the rules to:
  - A. Implement new law changes passed by the 2011 legislative assembly;
  - B. Clarify the intent of several rules to ensure that unnecessary procedures are not being performed;
  - C. Implement rules for the conduct and play of quick shot bingo card marking devices; and
  - D. Assist in the success of poker tournaments.

The gaming rules are comprehensive, yet reasonable, and generally reflect reasonable internal controls to ensure the integrity, security, and fairness to gaming operations in the state.

## **SMALL ENTITY ECONOMIC IMPACT STATEMENT**

The Office of Attorney General's Gaming Division prepared this 'Small Entity Economic Impact Statement' on behalf of the State Gaming Commission before it adopted proposed rules on the games of chance law. The office considered the impact of the proposed rules on each of these items:

1. Entities subject to proposed rules.

Statement: Only North Dakota based gaming organizations and distributors that are licensed by the Office of Attorney General will be subject to the proposed rules.

2. The administrative and other costs required for complying with the proposed rules.

Statement: The State Gaming Commission and Office of Attorney General appoints a 21 person Gaming Advisory Board with representation from the

industry, legislature, and local law enforcement to review all proposed rules to assure that all requirements are not overly burdensome and are in the best interest of the gaming industry.

3. The probable cost and benefit to private persons and consumers who are affected by proposed rules.

Statement: There are no probable costs to private persons and consumers affected by the proposed rules. The benefit to private persons and consumers is the entertainment value of playing games of chance and having a fair and honest chance to win.

4. The probable effect of proposed rules on state revenues.

Statement: Gaming taxes forecast for the 2011-2013 biennium are \$9,000,000, which was reduced by \$6,800,000 due to the elimination of pull tab and bingo excise taxes by the 2011 legislature. There is no probable effect on state revenue from the proposed rules.

5. Any less intrusive or less costly alternative methods of achieving the purpose of the proposed rules.

Statement: For the reasons expressed in the 'Regulatory Analysis,' less intrusive or less costly alternative methods of achieving the purpose of the proposed rules is generally not possible. The State Gaming Commission must apply a high level of regulatory control to minimize financial and criminal risk.