

ND RACING COMMISSION
Winston E. Satran, Director
9:00 a.m., September 13, 2012

Administrative Rules Committee
Legislative Assembly
Rough Rider Room, State Capitol
Representative Kim Koppelman, Chairman

The North Dakota Racing Commission began the administrative rules process in October of 2011 to add an additional fee for the use of the Mad Scramble wager by account deposit wagering companies.

The proposed rule change did not result from statutory changes made by the Legislative Assembly. The rule change came through negotiations between the North Dakota Racing Commission and the account deposit wagering companies that are promoting the use of the Mad Scramble wager which was passed into Administrative Law on July 1, 2011.

The rule change process began on October 18, 2011 when the Racing Commission Director presented to the Commission the addition of a fee for use of the Mad Scramble wager. The Racing Commission authorized the Director to draft an amendment to allow for an increase in payments to the State of North Dakota for operating costs associated with use of the Mad Scramble wager.

On October 26, 2011 the Racing Commission contacted the ND Newspaper Association requesting them to publish an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules Relating to Account Deposit Wagering and Licensing Fees. There were also two links added to the Racing Commission website directing individuals to the Public Hearing Notice and to the Proposed Rule and Amendment. A Full Notice of Intent to Adopt and Amend Administrative Rules Relating to Account Deposit Wagering and Licensing Fees and the proposed rule and amendment were also sent to John Walstad of the Legislative Council on October 26, 2011.

The public hearing was conducted in the Fort Lincoln Room at the State Capitol on November 29, 2011. No one from the public attended the meeting.

As stated in the public hearing notice, written comments could be made to the Racing Commission until December 9, 2011. 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 only oral comment was made by the Director of Racing, Winston Satran, where he made the request to the Commission on April 5, 2012 that the use fee be reduced from 1.5% to 1.25%. When the negotiations were being conducted with the account deposit wagering companies, the State tax was not included in the discussion. After review, the requirement of one-sixteenth of one percent for each of the funds – General Fund, Purse Fund, Promotion Fund, and Breeders' Fund – was not considered in the original negotiations. Racing Commissioner Andrew Maragos made the motion to reduce the fee from 1.5% to 1.25% on every dollar wagered. The motion was passed unanimously.

The Newspaper Association was paid \$1484.24 for the public notice.

The Mad Scramble wager is a new wager being introduced into horse racing in the U.S. market and internationally. The North Dakota Racing Commission drafted the wager and managed it through the administrative rule process. This wager is innovative and is intended to be used throughout the horse racing industry. It has the potential to generate significant revenue which would further develop the breeding of horses in North Dakota and stimulate a small developing horse industry in our state.

The additional fee attached to the Mad Scramble was developed to provide an additional revenue source which would alleviate the need for General Fund dollars supporting the expense of operating the Racing Commission and to supplement horse racing and the cost of operating the tracks.

No regulatory analysis was issued. The Mad Scramble wager is a new wager that was implemented into law in North Dakota and does not exist in any other state. Information does not currently exist to determine the fiscal impact within the account deposit wagering companies that will market this wager. At this time the Racing Commission does not have the ability to determine the success of this wager; therefore, cannot ascertain the impact on the regulated community. The only effect is the additional fee to the license for the Mad Scramble wager if offered by the account deposit wagering company.

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

A fiscal note was not completed. This wager is new and financial information does not currently exist.

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. **Was establishment of less stringent compliance or reporting requirements for small entities considered?** The Racing Commission did not consider less stringent requirements. The additional licensing fee of one and one-half percent was negotiated with the account deposit wagering entity.
2. **Was the establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities?** Less stringent schedules were considered and the implementation of the rule affects all entities on the date prescribed by the legislative committee enacting administrative rules into law.
3. **Was consolidation or simplification of compliance or reporting considered?** This new rule will require compliance and will ensure public and governmental confidence.
4. **Were performance standards established for small entities for replacement design or operational standards required in the proposed rules?** No changes in performance or operational standards were part of this rule. The Racing Commission clarified the authority and oversight of the wagering process.
5. **Was exemption for small entities from all or part of these requirements in the proposed rules considered?** No consideration was given to either large or small entities; the rule increases the fee revenue for the use of the Mad Scramble wager.

Small Entity Economic Impact Statement

1. **Which small entities will be subject to these proposed rules?** All licensed simulcast and account deposit wagering providers.
2. **What are the administrative and other costs required for compliance with the proposed rules?** There are no additional costs required for compliance with the proposed rules.
3. **What is the probable cost and benefit to the private persons and consumers who may be affected by these proposed rules?** There will be no probable costs to private persons or consumers for the implementation of section 69.5-01-05-02.1 Mad Scramble Wager Licensing Fee. The additional one and one half percent will be a portion of the takeout on each individual wager.
4. **What is the probable affect on state revenues?** The implementation of the rule is intended to substantially increase revenue into the State General Fund and the Operations, Promotion, Purse, and Breed funds administered by the ND Racing Commission.
5. **Are there less intrusive or less costly methods of achieving the purpose of the proposed rules?** The rule is designed to increase revenue into the State General Fund and the Operations, Promotion, Purse, and Breed funds, which will enhance horse production and horse racing in North Dakota.