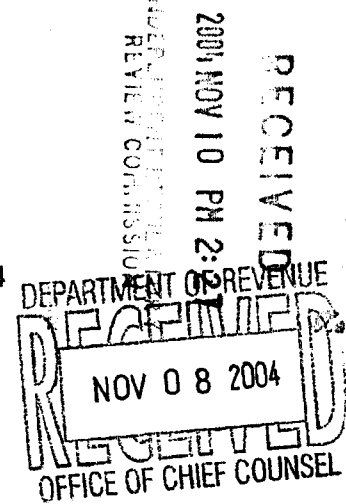


**NATIONAL ASSOCIATION OF FUNDRAISING TICKET MANUFACTURERS**

Energy Park Financial Center  
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November 5, 2004



Ms. Mary R. Sprunk  
Office of Chief Counsel  
PA Department of Revenue  
Dept. 281061  
Harrisburg, PA 17128-1061

Re: Local Option Small Games of Chance  
Proposed Rulemaking

Dear Ms. Sprunk:

I represent the National Association of Fundraising Ticket Manufacturers (hereinafter NAFTM) a group of six manufacturers of games of chance supplies. All of the NAFTM members are registered with the Department to sell games of chance supplies in the Commonwealth of Pennsylvania and as a result, all are directly affected by the proposed rules. We have just recently obtained a copy of the proposed rules and offer the following comments for your consideration.

**§901.1 Definitions**

“Dispensing Machine”. While the definition excludes any device “commonly known as a ‘slot machine’ or video poker” we believe that the definition is open to several types of devices that look and operate like slot machines but may not be considered slot machines under various interpretations of the law. For that reason, we suggest amending the last sentence of the definition to read:

... The term shall not include any device commonly known as a “slot machine” or video poker” device, nor shall it include any device that is activated by the insertion of a coin, currency, token or an equivalent, and that contains as one of its components a video display monitor that is capable of displaying numbers, letters, symbols or characters in winning or losing combinations.

“Flare” The definition of “flare” is inconsistent with the language contained in §901.608. That section mandates that a flare must comply with the NAGRA standards for pull-tab flares. Those standards have been almost universally adopted

throughout the country and we encourage you to conform the proposed definition to the NAGRA standard. The proposed definition is lacking in two major respects. First, it does not require the manufacturer to include the game form number or the game serial number on the flare—both of which are critical to regulatory tracking. Second, by requiring the flare to describe the “nature of and rules for conducting a pull-tab game or punchboard”, the rule mandates too much information. This has the effect of limiting the space available for critical information and forces the flares to be enlarged to the point that they are not useful for the licensed organizations, nor conducive to packaging with each deal.

“Hold ticket” The definition of “hold ticket” needs to reflect that there may be more than one prize awarded. Hence, the first sentence should read: “...A ticket in a subset of pull-tabs in a deal or punches in a punchboard one of more of which are designated in advance as a winning ticket or punch for a specific prize or prizes.”

“Manufacturer registration certificate or certificate” This definition is worded in a manner that is too broad. Manufacturers doing business in Pennsylvania also produce and sell product in approximately 40 other states and most of the Canadian Provinces. The product *produced* at these manufacturing facilities will be “approved” for Pennsylvania sales and otherwise. The definition is worded in such way that it can be interpreted that the only product that may be manufactured is that “approved by the Department”. We suggest that the definition be re-worded as follows:

A document issued by the Department, upon application, to a manufacturer authorizing the manufacturer to sell games of chance that have been approved by the Department to distributors licensed in the Commonwealth of Pennsylvania.

“Pull-tab” The department may want to consider the definition of Pull-tab contained in the NAGRA standards. We suggest adoption of that definition (albeit without the commentary). Accordingly, the definition would read:

Pull-tab. Pull-tab means the gaming pieces used in a game of chance, which are made completely of paper or paper products with concealed numbers or symbols that must be exposed by the player to determine wins or losses.

The NAGRA definition encompasses folded and banded tickets (jar tickets) as well as the more common breakopen tickets (tickets with one or more perforated window tabs)

“Seal Card” The most common definition of seal card is:

Seal card means a board or placard used in conjunction with a deal of pull-tabs that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters or symbols. The seal card may serve as the game flare if it meets all the requirements of a flare.

The seals may be covered with paper, laminated paper, or latex. The above definition does not limit the seals to paper covers as does the proposed rule.

### **§901.23 Manufacturers**

(3) Sales Invoice. This section is confusing for two reasons. First, the specific requirements for sales invoices are mandated in §901.425, so presumably, although not clear, the information required by this part is additional. Second, the language of this part is too broad. It seems to require that for each sales invoice the manufacturer list all games approved by the Department for sale in Pennsylvania—which is lengthy, to say the least. Such a practice would make each invoice extremely long and nearly impossible to use for the tracking of the specific product sold pursuant to the invoice.

### **§901.30 Prohibited Practices**

- (c) Prices. This proposed language needs clarification. We suggest separating manufacturers from distributors. Manufacturers should be prohibited (and are under federal law) from fixing prices among each other. Distributors should face similar restrictions. However, between a manufacturer and distributor there will be agreed upon pricing. Typically, the manufacturer will establish a price schedule and the distributor will attempt to negotiate off that schedule, depending on the volume of product purchased. Under the proposed language, it says (although probably unintentionally) that the manufacturer and distributor cannot agree with one another on the prices charged for games of chance or goods.

### **§901.102 Manufacturer registration and game approval forms**

(b) requires a request for game approval to be submitted to the Department on a form prescribed by the department. The rule lacks any indication as to the content of the form or any attachments that may be required to be submitted with the form (i.e. game promotional fliers as is now the case). It would be helpful if the information were contained in the proposed rule so that the manufacturers could review and comment, if necessary, on the specific information that will be required. This is particularly critical since a denial of a game approval can cause significant financial loss to the manufacturer.

### **§901.103 Manufacturer registration form contents**

In light of the Department's authority to inspect the premises where manufacturing activities occur, we believe it is critical for the application to include all of the locations at which games of chance are manufactured by the applicant. How can an adequate background investigation be conducted if it is not known where the applicant, and under what condition the applicant, manufactures product for sale into Pennsylvania? What if the manufacturer does not actually manufacture the product but purchases completed or nearly completed product from unlicensed and undisclosed subcontractors?

Several Manufacturers use trade names in addition to logos. Subpart (11), which is not included in the proposed rule, requires the application to include “the logo” used by a manufacturer. We believe that this subpart should also require all trade names used by the manufacturer so that the department can easily match a deal with its manufacturer, even if the deal is marketed under a trade name.

Subpart (12) proposes to require a notarized “affidavit for *each* dispensing machine” sold in the commonwealth. We believe that this should be modified to say each type of dispensing machine. It seems that if a particular line of dispensing machines are identical in all respects and all meet the requirements of the rule, one notarized affidavit should be sufficient to cover all of the identical machines.

#### **§901.109 Registration certificate**

This section requires a Pennsylvania registration certificate to be “conspicuously displayed” on the premises of the manufacturer. We suggest modifying this section to require the certificate to be maintained on the premises. Manufacturers obtain licenses in multiple jurisdictions, none of which require the posting of a license or certificate. Moreover, a manufacturing facility is not like a club or licensed organization’s premises where the public has an interest in ensuring the activity is licensed. Manufacturer’s facilities are private, closed to the public, and generally not accessible to distributors except by invitation. They are not retail outlets where distributors purchase products. Posting of the certificate would be seen by virtually no one other than the employees of the company, which serves no regulatory benefit.

#### **§901.117 Denial, Suspension and revocation**

This section indicates that the suspension of a registration certificate *is not* appealable. Language in the rule that indicates a certificate is not a vested right cannot override the basic constitutional concept of due process. The suspension of a certificate will cause significant financial losses to a manufacturer; result in the inability to sell product in the Commonwealth; and may result in disciplinary action in other states where the manufacturer is licensed. Whether there is a pre-deprivation hearing or a post-deprivation hearing may be a matter for legal debate, but a rule proscribing ANY hearing deprives a manufacturer of basic property interests that are constitutionally protected.

Subpart (d)(3) indicates that the department will mail the notice of suspension to the resident designee. Most companies use service of process companies as their resident designees. These companies are not owned by the manufacturer and are not the appropriate recipient of such a significant notice. Any notice should be mailed to the Manufacturer’s primary business address as listed on its application for a registration certificate. This is the only way to ensure that the notice is properly served.

Consistent with the above comments, we believe that §901.161 should be amended to include board jurisdiction for the review of a suspension of a manufacturer’s certificate.

**§901.421 Distributor License Copy**

Because each distributor license will have a license number, we suggest modifying this section to require the manufacturer to maintain the license number of each distributor to which it sells games of chance. Most manufacturers have relatively sophisticated computer software which is programmed to deal with the regulatory limitations in various states. The distributor's license numbers could be entered in to the program so that the information is available and accurate. Maintaining a hard copy is cumbersome and inconsistent with current technology.

**§901.425 (1) sales invoices**

Please see the comments to section 901.23 regarding reconciliation of these two sections.

**§901.601 Uniform minimum quality standards**

NAFTM not only supports the NAGRA standards, we actively participated in the development of them. The current NAGRA standards have been in place since 1992. It is likely that they will be updated and revised. We suggest making it clear that the rules are incorporating the NAGRA standards as they may be amended from time to time.

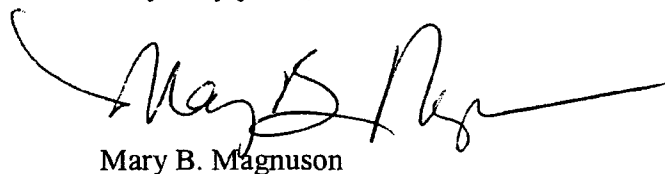
**§901.608 (b)**

Please see the comments to the definition of "flare" above. Again both sections should be consistent.

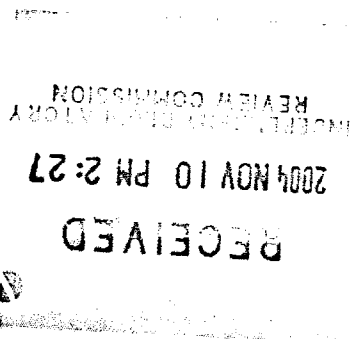
(c) (1) This subpart is unclear and confusing in that it requires a flare to be "printed on or made part of each pull-tab in a deal" A flare cannot be "printed on each pull-tab nor can it be made a part of each pull-tab in a deal. However, the subpart could be amended to say "...or made a part of each pull-tab deal." This is repetitive, given that the definition of "pull-tab game" is a deal and its corresponding flare. But, otherwise, the subpart makes no sense.

Thank you for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to contact me.

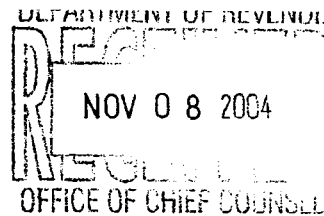
Very truly yours,



Mary B. Magnuson



Original: 2438



PENNSYLVANIA STATE ASSOCIATION OF TOWNSHIP SUPERVISORS

November 5, 2004

Mary R. Sprunk  
Office of Chief Counsel  
Department of Revenue  
Dept. 281061  
Harrisburg, PA 17128-1061

Dear Ms. Sprunk:

We are writing to you on behalf of the 1,456 townships represented by the Association to comment on the Proposed Rulemaking on Local Option Small Games of Chance that was published in the October 9, 2004 issue of the *Pennsylvania Bulletin*.

Our primary concern with this regulation is the change to the enforcement and investigation provisions. Sections 901.24, 901.28, and 901.214 are amended to remove provisions concerning enforcement and investigations by the district attorney and local enforcement officials. In the proposed regulation, the enforcement provisions would be consolidated under Subchapter I. Enforcement. This change appears to eliminate local law enforcement officials from the investigative and enforcement provisions. We question why this was done. If a violation is discovered, must an individual go straight to the district attorney instead of the local law enforcement officials or local police department?

Thank you for the opportunity to comment on this regulation. We would like to work with the Department on these issues and to resolve the concerns of our members. If you would like to discuss this issue further, please contact me at the Association's office.

Sincerely,

Elam M. Herr  
Assistant Executive Director

cc: Robert Nyce

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