

STATE OF MINNESOTA  
MINNESOTA RACING COMMISSION

In the Matter of the Proposed Rules  
Governing Horse Medication.

STATEMENT OF NEED  
AND REASONABLENESS

GENERAL

The Minnesota Legislature, during the 1985 session, amended preexisting laws with respect to racehorse medication. The new law stated, in pertinent part, that "the commission must adopt rules to allow the use of (1) topical external applications that do not contain anesthetics or steroids; (2) food additives; (3) Furosemide or other pulmonary hemostatic agents if the agents are administered under the visual supervision of the veterinarian or assistant veterinarian employed by the commission; and (4) nonsteroidal anti-inflammatory drugs, provided that the test sample does not contain more than three micrograms of the substance or metabolites thereof per milliliter of blood plasma. For purposes of this clause, "test sample" means any bodily substance including blood, urine, saliva, or other substance as directed by the commission, taken from a horse under the supervision of the commission veterinarian and in such manner as prescribed by the commission for the purpose of analysis." The legislature further directed the commission to "adopt emergency rules to implement the provisions of this subdivision." Finally, the Legislature put certain provisions into the law that "Notwithstanding chapter 14, the emergency rules adopted under section 2 shall expire on November 15, 1985, and the commission must publish proposed permanent rules under Minnesota Statutes, sections 14.14 to 14.28, by October 1, 1985."

The commission did publish emergency rules that became effective the day following final enactment, and has regulated the area of horse medication under the emergency rules for the inaugural season of pari-mutuel racing in Minnesota. The commission has found the rules to be effective in enforcing its regulatory function and believes that the rules have worked to the benefit of all concerned. The rules have, in almost every instance, been complied with by horsemen, veterinarians, and always by commission staff. The burdens of the emergency rules have not been overly due, and have served to protect the health, safety and welfare of the public, the participants, and of the animals themselves. It is the intention of the commission, therefore, to propose permanent rules that are identical to those of the emergency rules.

The rulemaking process involved in establishing the content of the emergency rules spanned several months and many public meetings. During the process, the commission directly solicited rules and recommendations from other racing jurisdictions. Horse racing statutes, medication and testing rules, standards, policies and forms have been secured from governmental regulators throughout the United States and Canada. The commission also received comments from veterinarians, chemists, humane society representatives, horse trainers, jockey representatives, track operators, and regulators on an ongoing basis and at a seminar of related subjects hosted by the commission in September, 1984.

Many other regulators, private individuals and organizations, veterinary chemists and other interested parties have made significant contributions to the substance and form of the rules now proposed.

The most important contribution to the rules now proposed is the experience of utilizing the rules in the day to day regulation of horse racing in Minnesota in 1985. There were minor problems in the initial stages of the race meeting at Canterbury Downs, but the problems were not related to the rules, but rather in the practical application of the rules to the logistical setting of the existing race facilities. Once the participants became accustomed to the routine created by of the rules, compliance became a normal chain of events in a racing day. It is the success of the racing experience to date, and the success of the rules as they were applied in a practical setting that most supports the rules that are being proposed.

#### 1. Medication

Chapter 7890 of the proposed rule is dedicated to satisfying the legislative mandate of Minn. Stat. §240.24 (1984), as amended by LAWS 1985, ch. 211 §4, for the promulgation and enforcement of rules governing medication of race horses at licensed race tracks within the state. Part 7890.0100 defines terms used within the chapter. Most important in the proposed definitions is subpart 6, which is the definition of medication. The definition describes what actions are necessary to consider a substance medication. The substance must have the ability to prevent, cure or alleviate the effects of any disease, condition, ailment or infirmity. A critical component of the definition is the statement that medication may alter the behavior, attitude, temperament, or performance of a horse, including athletic performance. This language is vital to protect the integrity of the horse racing contest, and to ensure that the public is not subjected to wagering on a horse that has been tampered with through medications that could ultimately affect the outcome of a race. The term medication includes

all analgesics, anesthetics, depressants, narcotics, stimulants, tranquilizers, and other classifications of medications. It was necessary to identify the categories of medications, in the event a disciplinary ruling would have to be issued disciplining a trainer or veterinarian for using any of the prohibited medications.

Perhaps the most important element in the proposed definition is the language found in items A through D. The language in these items delineate the exceptions made by the Legislature to allow the use of certain substances under controlled conditions.

Item A excludes Bute (phenylbutazone), a nonsteroidal anti-inflammatory drug (NSAID), from being termed a medication, provided that the test sample does not contain more than three micrograms of the substance or metabolites thereof per milliliter of blood plasma. This exception was made in the rules to allow trainers and veterinarians to administer a therapeutic amount of the substance to horses. The three microgram level essentially prohibits the administration of Bute within 24 hours of a race, when given in small dosages. In states that profess to have a "no medication" rule, trace levels of Bute are permitted, and in some cases to nearly the three microgram level proposed in the rule. It has been determined that the small amount may be a residue from use during training, and not as a result of administration for racing purposes. The exclusion of amounts of Bute less than three micrograms per milliliter is reasonable because it makes the participants aware of the amount that is permissible, and indicates to them a reasonable cutoff time and amount of the medication to be administered. It should be noted, that there are many equine NSAIDs available for use. The racing commission has

chosen to limit this classification of medication to Bute as, at this time, Bute is the only NSAID that has documented research for quantifying amounts of the substance in blood plasma. To ensure proper identification, quantity, and effect of NSAIDs, the commission has acted responsibly in restricting its use to Bute. Additionally, it has been documented through extensive research that levels up to five micrograms of bute per milliliter of blood plasma will not result in the interference in the detection of any other drug in a test sample. This exclusion, which allows the use of Bute in a controlled environment, is necessary for at least two reasons. First, horses are athletes that require rigorous training and ultimately expend tremendous efforts in a race, and are at times in need of medication such as Bute. Trainers use Bute in their training regimen to assist a horse in alleviating normal aches and pains and to allow a horse to relax better during rest hours. There is no prohibition against such administration and the three microgram level protects horsemen from receiving positive laboratory reports for a substance that may have been retained in the horse's system. Second, Bute has been proven to be an effective therapeutic medication in relieving the symptoms of traumatic arthritis, inflammation and other related minor problems, and reduces fever. It is both humane and sensible to allow a horse the use of the available treatment so long as there is not more than three micrograms of the substance in the horse at the time it participates in a race.

Item B excludes from the definition of medication Lasix®, provided however, that if it is administered to a confirmed bleeder on a day that it is entered to race, it must be given under the visual supervision of the commission veterinarian and at a dose level not to exceed 250 milligrams (five milliliters of a 50 milligrams/milliliters or five percent solution) per administration. Lasix®

is the trade name for furosemide, a powerful diuretic used by both horses and humans. The purpose of administering Lasix® is to reduce the likelihood of exercise induced pulmonary hemorrhaging (bleeding) by horses. Athletes, including marathon runners, football players, and race horses often bleed from the lungs. By administering Lasix® to a horse prior to running, the amount of fluid in the lungs is reduced thereby allowing freer breathing and less stress on the fragile capillaries. When this occurs, a horse is able to perform to its capabilities. The action also reduces the risk of the horse either choking on the accumulation of blood in the nasal passage or losing large amounts of blood due to profuse bleeding caused by the hemorrhaging. When a horse either chokes or bleeds profusely, the risk of it becoming a danger to other participants in the race becomes very real. By using Lasix® prior to a race, the risks are minimized and additionally, the public is able to wager on a horse that should be able to perform at its optimum level.

The exclusions to the definition of medication found in items C and D are necessary to put into perspective what a medication is, what it does, and the effect that it may render in a horse. Items C and D exclude from medications topical applications of antiseptics, ointments, salves, DMSO, leg rubs and leg paints and orally ingested food additives such as vitamins and electrolytes. It is necessary to make such exceptions to allow for the normal day to day care, health, and welfare of the horse. The horse, as has been stated, is an athlete and daily training in such a physically demanding sport causes wear and tear.

All of the excepted substances found in items A through D are necessary to keep a race horse in top competitive shape, subsequently assisting the

horse to compete at its maximum potential with a minimum of discomfort and stress. The proposed definition of medication is necessary to help horse owners, trainers, veterinarians, and other participants become aware of which medications are permissible to be used and what effect the use of such substances will have on horses. The information is necessary for the participants to make sound judgments in their treatment and care of horses. Finally, the proposed definition is necessary to achieve continuity and conformance with the proposed medication rules as a whole.

The proposed definition of medication was based upon definitions used in California and Colorado, but was supplemented with language submitted by veterinarians and veterinary chemists from New York, Ohio, Colorado, Nebraska, and the University of Minnesota College of Veterinary Medicine. The excluded substances were initially structured after the definition found in the Arkansas rules of racing, a state that permits no medication, and LAWS of the Minnesota Legislature.

The proposed definition is reasonable for at least three reasons. First, the participants are informed as to what constitutes a medication, thereby informing them of what substances may be in their possession or prescribed to them. This assists the participants to avoid the use of prohibited medications within 48 hours of post time of a race in which a horse is scheduled to run. Second, the exceptions made in items A through D, including Bute and Lasix® under tightly controlled conditions, certain leg rubs, antibiotics, and food additives are reasonable because their use is not intended to alter a horse's behavior or performance, but rather is intended to provide proper humane care for the horse and to allow the horse to compete at its best. Third, the proposed

definition of medication, including exceptions, is reasonable because horse owners and trainers, veterinarians and veterinary chemists, regulators and other participants in horse racing are accustomed to the terms in the definition due to their exposure to similar terms in other jurisdictions. It is common practice in all racing jurisdictions to allow the use of vitamins, leg rubs and antiseptics at any time to properly care for the horse. It is also common in the majority of jurisdictions to allow for the use of NSAIDs and furosemide under controlled conditions. The proposed definition has been drafted in collaboration with other racing jurisdictions, regulators, chemists, veterinarians, and existing rules. No undue burden is imposed. The definition is, therefore, reasonable.

Minn. Stat. §240.24 mandates that no medication shall be administered to a horse within 48 hours of post time of a race in which the horse is scheduled to run. Part 7890.0110 of the proposed rule satisfies the intent of the legislation by clarifying the types of administration that are prohibited, who is prohibited from performing such administration, and the time period to which such prohibition is confined.

The proposed rule is necessary for many reasons. The sport of horse racing offers large amounts of prize money and provides the ability for persons to wager on the outcome of such races. Temptation to abuse the sport for personal gain is ever present. One area that is most suspect and potentially vulnerable is that of illegal drugging of horses. Many professionally accepted therapeutic medications are available to horse owners and trainers. The administration of such medications in and of itself is not a danger to the credibility and integrity of racing. However, if such medications are used to stimulate,



depress, desensitize, or alter the psychic state of a horse, such medications must not be allowed to be administered to a horse within close proximity of race time. Proposed part 7890.0110 is necessary to enforce the prohibition of such medication being administered to a horse. The rule is explicit in its intent and is necessary to safeguard the integrity of racing. The proposed part 7890.0110 is reasonable because it effectually serves to enforce the legislative intent to protect the integrity of each race run at a licensed racetrack. The burdens are not undue, as the ability to care for a horse has not been diminished, but has reduced the potential for abuse of the medication rule.

Part 7890.0120 of the proposed rule details the reporting procedures required of veterinarians practicing at licensed racetracks. It requires that veterinarians submit daily reports of all medications and other substances which the veterinarian prescribed, administered, or dispensed for horses stabled at the racetrack. The part also outlines the reporting procedures that are required when administering Bute to a horse that is entered into a race. The proposed part also requires that the veterinarians keep daily logbooks detailing other professional services performed at the racetrack, and that such logbooks must be made immediately available to the commission veterinarian upon request. The proposed rule is necessary to maintain strict controls over all veterinary and medicinal activities being performed on the premises, and the time and manner of such practices. The proposed rule is also necessary to act as a deterrent for veterinarians to administer any medication in contravention of applicable state laws and commission rules. The requirements also establish a basis for veterinarians to act ethically and responsibly in their day to day activities.

The proposed part 7890.0120 is reasonable. All racing jurisdictions have rules relating to practices of veterinarians at licensed racetracks and reporting procedures involved therewith. The records that are required to be kept by the proposed rule are not unusual nor are they severe. The rule places no undue burden upon the veterinarians, and it is reasonable to regulate compliance.

Proposed rule part 7890.0130 establishes that the findings of the official chemist of any medication or Bute exceeding the allowable test level shall be prima facie evidence that such medication or substance was carried in the body of the horse while participating in a race. The finding also is considered prima facie evidence that the trainer, and if applicable, the substitute trainer was negligent in the handling or care of the horse. Finally, the proposed part states that the fact that purse money has been distributed prior to the issuance of the report shall not be evidence that no violation has occurred. The proposed rule part is necessary to establish that the finding of the chemist is the basis and the evidence for establishing that a horse has been improperly medicated. The proposed rule also establishes the burden of guilt upon the trainer or his or her substitute for the illegal medication. Additional tests are often required to be performed on test samples, which requires additional time. Purse money may have been paid by the racing association prior to the receipt of the official laboratory result. The rule is necessary to establish that the payment of the purse in no way establishes that a violation has not occurred. This is necessary to protect the commission's case against a trainer for acting improperly in his medication procedures.

The proposed rule part is reasonable. The rule establishes what evidence

is considered to identify a rule violation. It also allows the laboratory the additional time needed to do supplemental testing without an implied assumption that a trainer is innocent on the basis of having received purse monies. It is common in all racing jurisdictions to use the laboratory reports as the evidence to prosecute medication or drug violators. Horsepersons are accustomed to the rules and therefore no undue burden is imposed.

Part 7890.0140, subparts 1 through 6 of the proposed rule places certain requirements upon veterinarians and trainers of horses that display symptoms of exercise induced pulmonary hemorrhaging or "bleeding". The proposed rule sets out what criteria must be met to consider a horse a bleeder, methods of detection, and restrictions against such bleeders participating in races. The proposed rule is necessary to establish procedures for the identification of bleeders for three distinct reasons. First, continued symptoms of bleeding by a horse in a race can pose a potential threat to such horse and other participants in a race. Second, to be eligible use bleeder medication (Lasix®), a horse must first be identified as a bleeder. The proposed rule stipulates what criteria must be met and makes clear that the decision to allow a horse to use such medication rests with the commission veterinarian. Third, the proposed rule provides language that forces a trainer to give a horse the necessary treatment and rest that will help the reduce the likelihood of future bleeding.

Subparts 7 through 10 of the proposed part 7890.0140 implements the procedures that must be followed for the confinement, deadline, and administration of Lasix® to a confirmed bleeder entered to race. Further it makes clear that the trainer of the horse is responsible for it while it remains in the security area. The proposed rule is necessary to regulate all aspects of the administration

of bleeder medication. It is clearly stated that horses must be in a detention barn, under the supervision of the commission veterinarian not less than four hours prior to receiving Lasix®. This is to ensure that no other medications are administered to the horse within that time period. Because Lasix® is a diuretic, it would have the ability to dilute and flush other substances from the horse's system within the four hour period. The recommended dosage of the manufacturer of Lasix® is double the amount allowed by the proposed rule. However, by confining the treatment time to four hours prior to post time, the dosage allowed by the proposed rule still permits the therapeutic effect while safeguarding against the potential for diluting urine or blood samples. Additonally, the proposed rule requires that blood samples must be taken from horses prior to the administration of Lasix® as backup should a sample appear to have more than the allowed level of Lasix® or another pulmonary hemostatic agent. The proposed rule, in summary, requires detention of horses in a controlled enviroment prior to racing, causes blood samples to be taken prior to the administration of Lasix®, supervision of administration by the commission veterinarian, regulates the dosage of the substance, and causes the trainer to be responsible for the horse while it is in the detention barn. The proposed rule is necessary for the protection of the public and to assist the participants in following proven medical procedures.

Part 7890.0150 of the proposed rule requires the operators of the racetrack to identify in the daily racing program which horses have been treated with Bute and/or Lasix®. The commission strongly feels that the public has the inherent right to be informed about every aspect of horse racing including which horses have been treated with approved medications. The proposed rule is reasonable because it affords the public information that may have an effect

upon the way in which it would wager. Some jurisdictions do not have such requirements, and the public and the media have been critical of such practices. The proposed rule does not cause a burden, but rather lessens the burden on the public in assisting them with information about the horses that are competing.

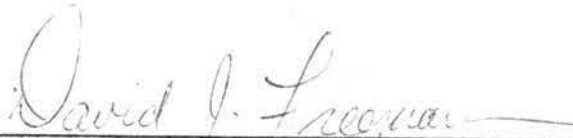
The proposed rule, chapter 7890, is reasonable for a number of reasons. First, medication, and the substances excluded from the definition of medication, must be strictly controlled. The content of the proposed rules have proven to be very effective when were applied as emergency rules during the 1985 racing season in Minnesota. The very structure of the proposed rules have permitted horsepersons and veterinarians to use effective, therapeutic and humane substances while maintaining the honesty and integrity of the sport. The proposed rules have provided strict regulatory control of the prescription, administration, and identification of medications. The proposed rule has proven that medications can be controlled and rules can be enforced concerning their use. The public has been kept informed as to the identities of horses using permitted medications and what those medications are. Veterinarians and horsemen have been allowed to use humane and therapeutic medications without abusing the privelege. No undue burden has been imposed upon the participants. To the contrary, the participants have been allowed to utilize known therapeutic methods, but under controlled circumstances. Injuries to horses has been minimal while racing under the emergency rules. The number of serious breakdowns has been far less than normally occurs at race meetings in other jurisdictions. The proposed rule is reasonable in its regulatory and humane effectiveness. In light of the benefit accrued by the proposed rule, the necessity and reasonableness is extremely justifiable.

SMALL BUSINESS CONSIDERATIONS

The Commission considered the impact on small business. The rules are less restrictive than rules that would provide for no medications. The proposed rules allows small business, i.e. veterinarians, horse owners, and horse trainers to use medications that would permit their horses to compete at their peak levels of performance, thereby enhancing the potential to earn purse monies and accordingly to prosper. Therefore, the proposed rule proves to be more beneficial to small business than a rule that provides for no medication.

EFFECT ON AGRICULTURAL LANDS

The proposed rule has no effect on agricultural lands.

  
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DAVID J. FREEMAN, EXECUTIVE DIRECTOR

Dated: September 13, 1985