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SHAKOPEE, MN 55379  
TELEPHONE: 952-496-7950  
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WWW.MRC.STATE.MN.US



RUNNING ACES HARNESS PARK LOCATION  
15201 ZURICH STREET  
COLUMBUS, MN 55025  
TELEPHONE: 651-925-3951  
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MINNESOTA RACING COMMISSION

January 26, 2009

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St Paul, MN 55155

Re: In the Matter of the Proposed Rules of the Minnesota Racing Commission  
Relating to M.R. Chapters 7890 Horse Racing Medication

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to Horse Racing Medication.

We plan to publish a Dual Notice of Hearing in the February 2, 2009 State Register.

The Commission has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Commission is sending the Library a copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 952-496-7950.

Sincerely,

A handwritten signature in cursive script that reads "Marlene Swanson". The signature is written in dark ink and is positioned above the typed name.

Marlene Swanson  
Rules Coordinator  
Minnesota Racing Commission

## Minnesota Racing Commission

### **DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, And Notice of Hearing If 25 or More Requests For Hearing Are Received**

#### **Proposed Amendment to Rules Governing Horse Racing, *Minnesota Rules*, 7890 Horse Racing Medication**

**Introduction.** The Racing Commission intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on March 4, 2009, the Commission will hold a public hearing in the Paddock Gardens Conference Room, Canterbury Park, 1100 Canterbury Road, Shakopee, Minnesota 55379, starting at 9:00 a.m. on Monday, March 16, 2009. To find out whether the Commission will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after March 4, 2009 and before March 16, 2009.

**Agency Contact Person.** Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: Richard Krueger at Minnesota Racing Commission, P. O. Box 630, Shakopee, MN 55379, phone 952-496-7950, FAX 952-496-7954, and email [richard.krueger@state.mn.us](mailto:richard.krueger@state.mn.us). TTY users may call the Racing Commission at 800-627-3529.

**Subject of Rules and Statutory Authority.** The proposed rules pertain to setting regulatory medication threshold levels for Androgenic-Anabolic Steroids. The Association of Racing Commissioners International (RCI), of which Minnesota is a member, has developed a model rule for all states to adopt. The proposed rule paraphrases that model. The statutory authority to adopt the rules is *Minnesota Statutes*, section 240.24. Further statutory rulemaking authority, relating to the amendments contained herein, include M.S. 240.24, subd. 1, Medication. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed and posted on the Commission's website at [www.mrc.state.mn.us](http://www.mrc.state.mn.us).

**Comments.** You have until 4:30 p.m. on Wednesday, March 4, 2009, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Your comment must be in writing, and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. You must also make any comments about the legality of the proposed rules during this comment period.

**Request for a Hearing.** In addition to submitting comments, you may also request that the Commission hold a hearing on the rules. You must make your request for a public hearing in writing and must be received by the agency contact person by 4:30 p.m. on Wednesday, March 4, 2009. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

**Withdrawal of Requests.** If 25 or more persons submit a valid written request for a hearing, the Commission will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Alternative Format/Accommodation.** Upon request, the Commission can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

**Modifications.** The Commission may modify the proposed rules, either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Commission follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Commission encourages you to participate in the rulemaking process.

**Cancellation of Hearing.** The Commission will cancel the hearing scheduled for March 16, 2009, if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at 952-496-7950 after March 4, 2009 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit valid written requests for a public hearing on the rules, the Commission will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Commission will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge Manuel J. Cervantes is assigned to conduct the hearing. Judge Cervantes can be reached at the Office of Administrative Hearings, 600 North Robert Street, P. O. Box 64620, St. Paul, MN 55164-0620, telephone 651-361-7945, and FAX 651-361-7936.

**Hearing Procedure.** If the Commission holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules. You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period. The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

**Statement of Need and Reasonableness.** The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person or on the Commission's website at [www.mrc.state.mn.us](http://www.mrc.state.mn.us).

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-296-5148 or 1-800-657-3889.

**Adoption Procedure if No Hearing.** If no hearing is required, the agency may adopt the rules after the end of the comment period. The Commission will submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. If you want either to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

**Adoption Procedure After a Hearing.** If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available, and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State by requesting this at the hearing or by writing to the agency contact person stated above.

**Order.** I order that the rulemaking hearing be held at the date, time, and location listed above.

January 7, 2009

Richard G. Krueger,  
Executive Director

# **Minnesota Racing Commission**

## **STATEMENT OF NEED AND REASONABLENESS**

### **Proposed Amendments to Rules Governing Horse Racing, Minnesota Rules, 7890 Horse Medication.**

#### **INTRODUCTION**

The Racing Commission is considering rule amendments that will set regulatory threshold levels for the Androgenic-anabolic steroids (AAS) group of compounds.

#### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape, or digital disc. To make a request, contact Ms. Colleen Hurlbert at the Minnesota Racing Commission, P. O. Box 630, Shakopee, MN 55379; phone 952-496-7950, fax 952-496-7954; or email at [colleen.hurlbert@state.mn.us](mailto:colleen.hurlbert@state.mn.us). TTY users may call the Racing Commission at 800-627-3529.

#### **STATUTORY AUTHORITY**

The Racing Commission's statutory authority to adopt the rules is set forth in Minnesota Statutes section 240.23, which provides: The Commission has the authority, in addition to all other rulemaking authority granted elsewhere in this chapter to promulgate rules governing a) the conduct of horse races held at licensed racetracks in Minnesota, including but not limited to the rules of racing, standards of entry, operation of claiming races, filing and handling of objections, carrying of weights, and declaration of official results, b) wire communications between the premises of a licensed racetrack and any place outside the premises, c) information on horse races which is sold on the premises of a licensed racetrack, d) liability insurance which it may require of all racetrack licensees, e) auditing of the books and records of a licensee by an auditor employed or appointed by the Commission, f) emergency action plans maintained by licensed racetracks and their periodic review, g) safety, security, and sanitation of stabling facilities at licensed racetracks, h) entry fees and other funds received by a licensee in the course of conducting racing which the Commission determines must be placed in an escrow account, i) affirmative action in employment and contracting by licensed racetracks, and j) any other aspect of horse racing or pari-mutuel betting which in its opinion affects the integrity of racing or the public health, welfare, or safety.

Further statutory rulemaking authority relating to the amendments contained herein include M.S. 240.24, subd. 1, Medication as amended by Laws of 2008, Ch. 318, Article 2, Section 1.

Under these statutes and session law, the Racing Commission has the necessary statutory authority to adopt the proposed rule amendments.

#### **REGULATORY ANALYSIS**

**(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule**

Class C licenses for race horse owners and trainers will be affected. A positive test showing any level above the permitted threshold will result in a fine or some other penalty (license suspension) to be determined by the Stewards. The betting public will also benefit.

**(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues**

There is no anticipated change in costs to the Commission or to any other state or local agency due to these proposed amendments. The Commission currently tests for AAS; so there will be no cost increases that will burden the Commission.

**(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule**

The proposed rule amendments do not change any taking of samples by veterinary staff or testing methods that the Commission is currently performing through its testing laboratory.

**(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule**

There are no alternative methods; the Commission currently tests for the presence of an AAS and will continue to do so. These amendments provide stringent threshold levels lower than current test levels and effectively ban AAS from horseracing.

**(5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals**

Costs for sample collection by veterinary staff and costs for laboratory testing are currently part of the Commission's budget which are reimbursed to the Commission by its licensed racetracks. Adoption of these amendments will not affect the total cost of providing these services. No governmental units will be affected. Individual horse owners or trainers will be affected (fines or license suspension) should testing exceed the threshold levels contained in these amendments.

**(6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals**

With the proposed amendments the Commission desires to increase its regulatory oversight of the use of these compounds. Not adopting the rule will cause no change in costs but the consequence will not aid regulatory oversight that protects the integrity of this form of legalized gambling as well as the safety of the equine and jockey or driver.

Not adopting the amendments would continue the abuse of AAS in racehorses regardless of the Commission's current testing efforts.

**(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference**

There are no differences between these proposed rule amendments and current federal requirements.

## **PERFORMANCE-BASED RULES**

The Commission's mission statement states, "The Minnesota Racing Commission was established to regulate horse racing and card playing in Minnesota to ensure that it is conducted in the public interest, and to take all necessary steps in ensuring the integrity of racing and card playing in Minnesota thus promoting the breeding of race horses in order to stimulate agriculture and rural agribusiness." These proposed rule amendments affect horse racing and are being proposed as means to strengthen the Commission's statutory authorized regulatory oversight so as to ensure the continued integrity of this form of legalized gambling. Any actual occurrence or even the perception that the integrity has been compromised would have disastrous affect on not only the racetracks but also those that compete at the racetracks, some of whom rely on this activity for their livelihood. In proposing rule amendments, not only in this case but all others as well, the Commission and its staff, during the conduct of its regulatory duties and responsibilities on a day to day basis and by staying current on issues nationally, constantly strive to be aware of ways by which the integrity of racing and pari-mutuel wagering can be improved and strengthened while at the same time proposed rules that allow flexibility by racing participants and Commission staff in responding to unanticipated situations in a business like fashion.

## **ADDITIONAL NOTICE**

These proposed amendments along with status reports regarding the legislation introduced during the 2008 session permitting the Commission to adopt rules pertaining to regulatory thresholds for certain medications and their metabolites were discussed at regularly scheduled Commission meetings and Commission Work Sessions. All rules discussion was clearly included on all agenda duly prepared and mailed or e-mailed 7 days prior to these meetings. Agendas were also posted on the Commission's website. The meetings were held on February 21, 2008 March 20, 2008, April 1, 2008, April 24, 2008, May 15, 2008, and July 17, 2008. Minutes from these meetings are available on the Commission's website at [www.mrc.state.mn.us](http://www.mrc.state.mn.us).

The Racing Commission began work on the proposed legislation and rules proposals in January, 2008, and has provided updates on the status of the rulemaking proceedings at its monthly meetings. Continued updates will be provided on a monthly basis during the course of the formal rulemaking process.

The Commission's Rulemaking Docket, which is publicly posted in the Commission's office as well as on the Commission's website, will be updated as necessary to reflect the status of these rules.

Our Notice Plan includes:

1. Publishing the Request for Comments in the July 28, 2008 edition of the State Register.
2. Posting the Request for Comments and the language of the proposed rules on the

Commission's website.

3. Mailing or e-mailing the Request for Comments to Class A & B licensees as well as horsemen's organizations that are affected by horse racing in Minnesota, including the Minnesota Thoroughbred Association, the Horsemen's Benevolent and Protective Association, Minnesota Harness Racing, Inc., the Minnesota Quarter Horse Racing Association, the Arabian Racing Association of Minnesota, the Jockey's Guild, and the United States Trotting Association.

4. Mailing or e-mailing the Request for Comments to organizations in Minnesota identified as having an interest in animal health including the Minnesota Board of Animal Health, the Minnesota Humane Society, the Minnesota Veterinary Medical Association, and the University of Minnesota College of Veterinary Medicine.

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Commission's rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. The Proposed Rules and the Notice of Intent to Adopt will also be published in the State Register.

5. The Commission will provide a copy of the rules and Notice of Intent to Adopt Rules to Class A & B licensees, horsemen's organizations, and animal health organizations in Minnesota as noted in #3 and #4.

### **CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Racing Commission has consulted with the Commissioner of Finance. We did this by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Racing Commission publishing the Notice of Intent to Adopt. We sent the copies on September 2, 2008. The documents included: the Governor's Office Proposed Rule and SONAR Form; almost final draft rules; and almost final SONAR. The Department of Finance has determined that the proposed rule revision will have no fiscal impact on local units of government.

### **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

#### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the Racing Commission has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The Racing Commission has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. None of the proposed amendments affect any small business or small city as all of the amendments affect individuals licensed as horse owners or trainers working at a racetrack.

### **LIST OF WITNESSES**

If these rules go to a public hearing, the Racing Commission anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Mr. Richard G. Krueger, Executive Director of the Commission will testify about the development and content of the rules.
2. Ms. Mary Manney, Deputy Executive Director of the Commission will testify about the development and content of the rules.
3. Dr. Lynn Hovda, Chief Veterinarian of the Commission will testify about the development and content of the medication and testing proposals.

### **RULE-BY-RULE ANALYSIS**

Part 7890.0100, subp. 2a. This definition is needed to provide a clear and accurate description of an androgenic anabolic steroid (AAS). It is necessary to define an AAS so no misconceptions occur during enactment of new subpart 8.

Part 7890.0110, new subp. 7a. It is necessary and reasonable to add this subpart for several reasons.

1. There is no scientifically justifiable veterinary reason for the use of an AAS in race or race training of horses. Their use provides an unfair playing field, does not protect the betting public, and is often harmful and detrimental to the horse's safety and well being.

2. The Legislature amended the statutes in 2008 so that the Racing Commission could use threshold levels to regulate the use and thereby abuse of medications. This proposal provides very tight and stringent threshold levels for anabolic steroids which effectively prevents their use during a race or training of a horse.

3. Paragraph A of subpart 7a needs to stipulate that of the four designated AAS regulated by threshold levels, only stanozolol is currently marketed for use in horses and then only for injured and debilitated horses. By providing a threshold level, this product is kept out of the system of a horse during a race and training, yet allowed to be used as intended.

4. Paragraphs B, C, and D of subpart 7a needs to be stipulated as these substances are endogenous to the natural horse and are present to some extent in all horses regardless of gender. This proposal sets very stringent levels for the presence of these compounds based on gender and gender alteration (mares, geldings, and stallions).

5. This proposal, by placing injured or debilitated horses treated with an AAS on the Veterinarian's list, allows the Commission Veterinarian to monitor those horses until they are deemed fit to race and that their levels have returned to what is considered normal for their gender.

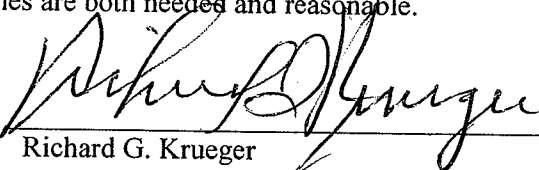
These proposals do not add any additional cost as the Commission's contract laboratory already tests for AAS, just not currently in these tight and stringent concentrations.

#### **LIST OF EXHIBITS (Optional)**

#### **CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

1/14/09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Richard G. Krueger  
Executive Director