

CANTERBURY PARK LOCATION
P.O. Box 630
1100 CANTERBURY ROAD
SHAKOPEE, MN 55379
TELEPHONE: 952-496-7950
FAX: 952-496-7954
WWW.MRC.STATE.MN.US



RUNNING ACES HARNESS PARK LOCATION
15201 ZURICH STREET
COLUMBUS, MN 55025
TELEPHONE: 651-925-3951
FAX: 651-925-3957
WWW.MRC.STATE.MN.US

MINNESOTA RACING COMMISSION

October 28, 2008

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 7878, 7891, 7892, and 7895; Governor's Tracking
Number AR419

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to Class C Licenses, Horse Examinations, Medical Testing, and Breeders' Fund.

We plan to publish a Dual Notice of Hearing in the November 3, 2008 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 "Colleen Hurlbert".

Colleen Hurlbert
Rules Coordinator
Minnesota Racing Commission

Minnesota Racing Commission

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Horse Racing, Minnesota Rules, 7877 Class C Licenses; 7878 Security Officers; 7891 Horse Examinations; 7892 Medical Testing; 7895 Breeders' Fund.

INTRODUCTION

The Racing Commission is considering rule amendments that will align license fees for association employees and increase the fees for the multiple license type of Owner/Trainer/Driver to a level that is more consistent with the fees associated with those individual occupational types. The Commission also proposes to identify specifically that the University of Minnesota, Veterinary Diagnostic Laboratory shall conduct postmortem examinations of horses and that the Class B licensee (racetrack) bear the cost of transportation, redefine that blood and/or urine testing of horses can be ordered by the Stewards at any time while horses are on the grounds of a licensed racetracks, and to identify regulatory guidelines for split sample testing for TCO₂ which is the bicarbonate level of a horse caused by the administration of alkalinizing agents to the horse ("milkshaking" using industry jargon). The Commission also proposes to identify guidelines and set late fees for late registration of standardbred foals.

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. TTY users may call the Racing Commission at 800-627-3529.

STATUTORY AUTHORITY

This rulemaking is an amendment of rules and so Minnesota Statutes, section 14.125, does not apply.

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. 240.08, subd. 1(h), Occupational Licenses, M.S. 240.10, License Fees, M.S. 240.18, subd. 4, Breeders' Fund, and M.S. 240.24, subd. 1, Medication.

Under these statutes, 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 the occupation of pari-mutuel clerk, owner/trainer/driver, and security officer will be affected by an increase in their license fee. This will bring their fee in line with fees currently set for other similarly licensed occupations and will thereby streamline the Commission's licensing process.

The University of Minnesota, Veterinary Diagnostic Laboratory, even though specifically mentioned in the amendments, will not be affected as the laboratory currently performs postmortems for the Commission and the current costs of transportation are borne by the Class B licensee (racetrack).

The taking of samples for testing will affect the licensed horsemen and women competing at licensed racetracks in that their horses will now be subject to testing at any time while on the grounds of a licensed racetrack. Discovering medication violations is the intent in this case which will benefit the wagering public, the jockey or trainer/driver/owner, and the horse.

Split sample testing for TCO₂ will affect all trainers with horses racing at licensed pari-mutuel racetracks in Minnesota. Trainers are already responsible for the costs of split sample testing; this just clarifies the method of obtaining a split sample.

The late fee for the registration of a standardbred foal will affect the breeders of standardbred foals.

(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. State special revenue fund revenues are estimated to increase by approximately \$4,000 due to the occupational licensing amendments. The late registration fee for standardbred foal registration cannot be estimated as it is anticipated that there will be no late registrations. The rule by rule analysis will explain the need and reasonableness for this proposed amendment.

(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 regarding occupational categories and license fees are simply reclassifying some occupational categories set by prior rulemaking (some as far back as 1985) and charging a higher fee. Licensing is the only method to assure adequate enforcement of the statute requiring licensing (M.S. 240.08). Increasing the license fee can be viewed as being

intrusive, but in these cases (pari-mutuel clerk, owner/trainer/driver, and security officer) these occupations will be equitable with other occupational categories.

This section of rules (7891.0110) requires that every horse that expires at a licensed racetrack must undergo a postmortem examination. There were no alternatives considered regarding postmortem examinations as the University of Minnesota is best facility for these examinations and has been performing those examinations since 1985. As the University is a teaching facility, any other facility would be a less desirable institution for these examinations. Another facility could be intrusive on the Commission's regulatory oversight of the equine athlete. All transportation costs currently are borne by the Class B licensee (racetrack).

The taking of samples (7892.0120) at any time will strengthen the Commission's regulatory oversight even though it will be viewed by the horsemen and women as being more intrusive. The cost of testing is reimbursed to the Commission by the racetracks but it is anticipated that the additional testing will be minimal.

The amendment of adding a subp. 5a to 7892.0120 provides the horse trainer the option of requesting that a split sample be drawn in the case of testing for TCO2. This will be viewed as being intrusive. But as indicated previously this will greatly increase the Commission's regulatory oversight of this prohibited practice. This cost of testing will be the responsibility of the trainer.

With the amendments to subp. 2, of 7895.0275, the Commission is proposing a less intrusive and potentially less costly method to accomplish the registration of a standardbred foal. Currently to accomplish a late registration the owner is required to submit a request for a rule variance to the Commission (7899.0100) which requires preparation of appropriate documentation and appearance before the Commission at a hearing which consumes the requesting party's time as well transportation costs.

(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

This section is somewhat redundant with section 3. The proposed amendments are alternative methods that were seriously considered by the Commission and by doing so the Commission has rejected the current rule. They are being proposed for the purposes of strengthening its regulatory oversight of this legislatively authorized activity. Adoption of all amendments will further the integrity of this sport and the safety and welfare of the participants and the wagering public.

(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 will be assessed to those licensees (pari-mutuel clerk, owner/trainer/driver, and security officer) affected by the proposed license fee increases. In total it is estimated to be \$4,000. The testing of samples will be borne by the racetracks and split sample testing will be borne by horse trainers and owners, both are anticipated to be minimal. Payment of the late fees for standardbred foal registration will be borne by the horse owner. No governmental units will be affected.

(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

The proposed license fee changes contained in 7877.0120, subp. 1 and 7878.0120, subps. 2 and 4, will be a cost imposed on those licensees but in the case of pari-mutuel clerks and security officers without the proposed change they will continue to be assessed a fee different from all other association employees (7877.0120, subp. 1 Y and Z) and will cause loss of proposed revenue to the state to defray the costs of regulation.

Should the proposed changes to 7891.0110, subp. 1 not be adopted there would be no change or consequence. The Commission currently uses the University of Minnesota, Veterinary Diagnostic Laboratory as its facility for postmortem examinations and all transportation costs are currently borne by the Class B licensee (racetrack).

By proposing the changes to 7892.0120, subp. 1B the Commission desires to increase its regulatory oversight of the use of medications. Not adopting the rule will cause no change in costs but the consequence will be to pass by an opportunity to strengthen regulatory oversight that protects the integrity of this form of legalized gambling.

Not adopting the addition of subp. 5a to 7892.0120 will eliminate the cost of performing the propose split sample testing for TCO₂ that will be borne by the trainer of the horse tested. But the consequence of not stipulating this split sample procedure will cause the taking of any sample to be vulnerable to being contested by the horse owner and trainer having the effect of compromising the Commission's oversight of the suspected milkshaking event.

Not adopting the late fee amendments contained in 7895.0275, subp.2B and C will eliminate the fee from being assessed to any horse owners that don't comply with the registration procedures. Currently late registrations are appealed to the Commission under 7899 whereby individuals can seek a variance to the Commission's rules. In doing this the appellant incurs costs related to the time consumed and the transportation cost of having to appear at a Commission meeting to present their plea for consideration. A consequence of not adopting the proposed rule will be that the standardbred rule will be inconsistent with the late fee charged for late registration of standardbred stallions, 7895.0275, subp. 1C and late registration fees charged for other breeds that are contained in rule (7895.0125, subps. 1C, 2C, and 3B, 7895.0350, subps. 1C, 2C, 3B, and 4B, and 7895.0450, subps. 1C, 2C, and 3B).

(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 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, 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 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 November 8, 2007, May 6, 2008, May 15, 2008, and June 10, 2008. Minutes from these meetings are available on the Commission's website at www.mrc.state.mn.us.

The Racing Commission began work on these rules proposals in November 2007, 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 representing Class C licensees, and animal health organizations in Minnesota as noted in #3 and #4.
6. The Commission will mail a copy of the rules and Notice of Intent to Adopt Rules to current Class C licensees that would be directly affected by a license fee increase.

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 had no comments to date.

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 either individuals working at a racetrack or an owner desiring to register a standardbred foal.

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 as well as standardbred foal registration.
3. Dr. Lynn Hovda, Chief Veterinarian of the Commission will testify about the development and content of the medication and testing proposals.
4. Ms. Colleen Hurlbert, Pari-mutuel Auditor and Licensing Coordinator of the Commission will testify about occupational licensing.
5. Ms. Pamela Webber, Officer Manager and Breeders' Fund Coordinator of the Commission will testify about standardbred foal registration.

RULE-BY-RULE ANALYSIS

Part 7877.0120, subp. 1P and CC. When the rules were originally promulgated, all but a few association employees were considered seasonal. With the addition of year round activity at the class "A" facilities in the form of simulcast racing and card rooms, the rules relating to the license fees for association employees were amended to reflect either full or part time status. The occupation of pari-mutuel clerk is currently identified separately from other association employees as it carries specific responsibilities. It is necessary and reasonable that, even though the duties and responsibilities of a pari-mutuel clerk are different from other association employees, the rule that applies to the licensing fee for pari-mutuel clerks be amended to model the fees currently in place for other association employees.

The license fee for owner/trainer/driver is currently aligned to the fees that are in place for county fair racing. The license of owner/trainer/driver actually encompasses three occupations performed by one individual. Individually these license fees total \$135.00 which is collectively more than the allowable license fee the commission may charge. With the opening of Running Aces Harness Park, it is necessary and reasonable that the rule be amended to apply the maximum license fee of \$100 in order to align this fee more closely with other occupational license fees for horsemen.

Part 7878.0120, subps. 2 and 4. The explanation provided for amending the license fee for a pari-mutuel clerk also applies to the occupation of security officer. Although the occupation of security officer is identified separately from other association employees as it carries specific responsibilities, it is necessary

and reasonable that the fees should be consistent with the fees currently in place for other association employees.

Part 7891.0110, subp. 1. It is reasonable to amend this rule as the University of Minnesota, Veterinary Diagnostic Laboratory has been performing post mortem examinations on all horses dying or being euthanized at Minnesota pari-mutuel racetracks for the past ten years. They are physically better equipped to do this than the Commission Veterinarian, have board certified pathologists to perform the postmortem, and rapidly provide the Commission's Chief Veterinarian with written, comprehensive results which are then shared with the trainer and his/her veterinarian and their insurance company (if applicable). The speed of their response helps prevent the spread of communicable, infectious diseases on the backside and knowledge gained by a professional post mortem helps to prevent further injuries in other racehorses.

Part 7892.0120, subp. 1B. It is reasonable to amend this rule as the specified laboratory tests are outdated and no longer performed. It is also reasonable as it clarifies the language regarding blood/urine testing by the Stewards and/or Commission Veterinarian. The words "during each racing program" were removed as these horses are already covered in subpart 1A.

Part 7892.0120, new subp. 5a. It is necessary and reasonable to amend this rule as it provides a clear and concise method for trainers to request split sample testing for TCO2 analysis. This change is required as TCO2 is stable in blood samples for only five days and the split sample needs to be requested at the time of the original sample.

Part 7895.0275, subp. 2B and new C. It is necessary and reasonable to amend the rule because the standardbred registration process is the only one that has a drop dead date for foal registrations, meaning the foal will never be eligible for award payments. Current practice under current rule (M.R. ch. 7899, Variances) permits an individual to request a variance to the application of Commission rules. The variance must be approved by the Full Commission at a formal hearing which requires the requester to submit documentation explaining the reason for variance and to be present at the hearing which intrinsically adds costs (administrative, transportation) to the requester. Paying a late fee will eliminate the need for this. Adding a late registration procedure will make it consistent with the late registration process for thoroughbreds, quarter horses and arabians as well as allowing the breeder of a standardbred foal to enjoy the benefits of having a Minnesota-bred foal even if they are registering that foal after the registration deadline.

LIST OF EXHIBITS (Optional)

In support of the need for and reasonableness of the proposed rules, the Racing Commission anticipates that it will enter the following exhibits into the hearing record: [List the exhibits.]

CONCLUSION

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

10/22/05
Date

Richard G. Krueger
Richard G. Krueger
Executive Director