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MINNESOTA RACING COMMISSION

July 29, 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 7869, 7870, 7873, 7876, 7877, 7883, 7884, 7890,
7892, 7897, and 7899; Governor's Tracking Number AR471

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 August 10, 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".

Marlene Swanson
Rules Coordinator
Minnesota Racing Commission

Minnesota Racing Commission

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendments to Rules Governing Horse Racing, Minnesota Rules, 7869 Definitions; 7870 Licensure; 7873 Pari-mutuel Rules; 7876 Stabling; 7877 Class C Licenses; 7883 Horse Races; 7884 Harness Races; 7890 Horse Medication; 7892 Medical Testing; 7897 Prohibited Acts; 7899 Variances

INTRODUCTION

The Racing Commission is considering rule amendments that add the definition of “stable area” to clearly define this area of a racetrack as it is referenced in part 7892.0120, subp. 3.

The Commission proposes to remove some obsolete language and redefine the requirements for emergency medical personnel at the request of one of the Commissions licensee, to cover the needs of the harness racetrack that opened in 2008.

The Commission is proposing a change to the number of horses required in a field to offer a Superfecta wager. This was at the request of both licensees as the number of horses in a race has become smaller over the years.

At the request of an outside organization we have added language to cover other classifications that a racetrack cannot use to base a stall application upon.

The Commission is proposing to add “microchips” to the list of items that must be secured at a licensed racetrack, as microchips have become a secondary means of identifying a horse.

The proposed language addition for trainers to notify the identifier or race secretary when the altering of the sex of a horse has occurred is to prevent errors in the reporting results of androgenic anabolic steroids testing.

The proposed language addition of substances, medication, venom or biological products was needed as they are found elsewhere in the rules and this is a housekeeping update.

USDA has been added to the rule as the USDA regulates the production and use of veterinary biological products.

The proposed language addition is to keep practicing veterinarians out of entered horses’ stall on race day.

The proposed change to the timeline for entering a claim of a horse is to put Minnesota in line with industry standards.

The added language for the Outrider is to make clear the difference between the thoroughbred, quarter horse and Arabian racing and harness racing.

The proposed changes to the claiming rule is a simple change needed to update the rule as the process to obtain criminal background information on a licensee no longer takes 21 days.

The proposed change to racing equipment is needed to adjust the height of the grabs or “cheats” that are fixed to the toe of the horse shoe.

The removal of “veterinarian’s list” is needed as a horse is not denied entry for being on the “vets list” as there is, in most cases, a date that the horse will be taken off the list.

The definition of “Biological products” is needed as it is referred to in other sections of the rules.

The language addition to the recordkeeping for a veterinarian is needed to bring us in compliance with the statutes and rules of the Minnesota Board of Veterinary Medicine.

The proposed language addition is needed to for the Commission’s veterinarian office to know which horses will need furosemide.

A proposed change further restricts the time that a licensed, private veterinarian may be in the stall or handle a horse on race day.

The proposed change to the witnesses to sampling is for the cases when the trainer or trainer’s designee is not present and a sample needs to be taken. The proposed change to split samples is to give due process to the trainer to have a split urine sample tested.

The language addition to removing a horse from the stable area is to ensure that all horses that are entered into a race are treated in a safe, fair and equitable manner. Once a horse is entered into a race it comes under the jurisdiction of the stewards.

The addition of the subpart that outlines possession is needed to keep unapproved drugs; non FDA and USDA approved products off the racetrack.

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

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 delegation relating to the amendments contained herein includes M.S. 240.13 Subd. 3 Pari-Mutuel Betting, M.S. 240.08 Subd. 1 Occupational Licenses, M.S. 240.24 Subd. 1 Medication, and M.S. 240.25 Subp. 3 (b) Prohibited Acts.

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

These proposed amendments affect the racetracks and a variety of individuals (trainers, veterinarians, racetrack employees and officials, Commission staff) that work or participate at the racetracks.

The racetracks are being given more flexibility in providing ambulance/emergency medical services when needed and the ability to offer the superfecta wager with six betting interests which is anticipated to increase wagering and revenue to the racetracks and the horsemen and women.

Wagering patrons will be affected in that wagering in the superfecta pool will be more available and that all of these proposed amendments are directed in improving the integrity of this form of gambling and assuring the safety and welfare of the equine.

Trainers of race horses will benefit in that horses may be indentified with a microchip as well as other means of identifying a horse. They will have the responsibility of notifying the racing secretary of the change of sex of a horse and assuring that all thoroughbred and quarterhorses have the appropriate hoofware. Trainers will be affected in that in certain circumstances their reporting requirements are increased.

Licensed, private practicing veterinarians will be affected by increasing the substances that are in their possession be USDA approved in addition to FDA approval, that they shall have no contact with a horse on raceday except upon certain permission, and that additional reporting is required for administration or possession of certain substances.

The Commission's veterinary staff will be affected by the enforcement of these and current requirements but will not increase costs to the Commission; they will be absorbed into the daily activities that currently take place.

The Commission's senior management and Stewards will be affected in that appeals may be made to a Steward ruling if judgment requires. In this instance there would be costs associated with conducting appeal hearings. The individual(s) subject of the ruling would also be affected.

The rules will affect racetracks and classes of persons participating at the racetracks. The rules will result in better control and reporting of medications and procedures, and the reporting of other practices that are common to racetrack environments. The intent of the Commission is to provide the state with better regulation and that all amendments are clearly understandable to those affected. These amendments will benefit the equine as they seek to protect the health and well-being of horses on the backstretch of licensed racetracks. The Commission and its staff will benefit in that these amendments will improve their regulatory oversight of this form of gambling and assure the integrity of the industry and activities.

(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. All increase in enforcement activities required by these amendments will be absorbed in staff daily duties and responsibilities.

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

These rule proposals cover many areas of responsibilities of the Commission and activities at the racetracks. Costs and methods were discussed with the Commission members during the meetings that these proposals were reviewed and discussed which included industry participation.

(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

These proposed amendments are in and of themselves alternative methods that strengthen the Commission's regulatory oversight of this form of gambling over what is contained in current rule.

(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

There are no probable costs to any governmental units contained in these proposals. Any increased costs to businesses (multiple owners, corporations that own horses) or individuals (individual owners of horses, trainers of horses) should be minimal. For instance the toe grab proposal will require care in shodding horses causing the purchase of different traction devices.

Some of the proposals will benefit businesses. For instance reducing the number of horses entered in a race where superfecta wagering is offered should increase the money wagered in this pool which subsequently increases revenue to the racetracks and purses for the horsemen/women.

(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 and control. Not adopting these proposals will have the consequence of not strengthening the Commission's

oversight that protects the integrity of this form of legalized gambling as well as the safety of the equine and all participants including the betting public.

(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 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 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 October 7, 2008, October 16, 2008, November 5, 2008, November 20, 2008, December 2, 2008, January 6, 2009, February 3, 2009, and March 3, 2009. Minutes from these meetings are available on the Commission's website at www.mrc.state.mn.us.

The Racing Commission began work on the proposed legislation and rules proposals in August, 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 January 12, 2009 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 April 20, 2009. 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.

4. Ms. Colleen Hurlbert, Pari-mutuel Auditor and Licensing Coordinator and Ms. Marlene Swanson, Licensing Assistant will testify about the development of the rules.

RULE-BY-RULE ANALYSIS

Part 7869.0100, Subp. 57b, Definition. The definition of “stable area” is necessary and reasonable to add as it is present in other rules and clearly defines what portion of the grounds is being referred to.

Part 7870.0480, Medical Services. The medical services, including facilities, equipment and personnel, for the licensed racetrack facilities will benefit both the Class A licensees as well as the racing participants. This proposal is needed to bring the stipulations in rule up to current medical requirements in that the current are not licensed by the state to provide ambulance services, they are not licensed to transport an individual off of the racetrack grounds. This proposal is reasonable in that while not being deleterious to human safety and welfare it is anticipated that it will reduce the medical services expenses to the racetracks. This will not affect Class A Licensee, Canterbury Park as they will maintain the current level emergency response team and facilities and equipment. It will allow the Commission’s other Class A Licensee, Running Aces Harness Park the option of providing or not providing an emergency response capability during training hours.

Part 7873.0188, subp. 7, Superfecta Wagering. Reducing the betting interests allowed to hold Superfecta wagering will benefit the Class A licensees and the betting public by increasing the events a Superfecta can be wagered on. It is reasonable as it is anticipated that the horse population at both licensed racetracks will be less than previous years causing there to be fewer horses in a race. In that event it is needed to stimulate wagering opportunities for the betting public which will result in increased revenues to the racetracks and purses for the competing horsemen and women.

Part 7876.0100, subp. 5. On-Track Stabling. It is needed to expand the discriminating restrictions on on-track stabling as this part has not been updated since 1985. The Commission during its early meetings when this part was discussed, desired to include the word “disability and marital status”. During the process of this rulemaking, the Commission was approached by OutFront Minnesota to include the reference to “sexual orientation”. It is clearly not unreasonable to include these proposed amendments to this part. This will benefit the general public as it expands the limitations that could be uses as criteria for not approving stalls.

Part 7876.0110, subp. 2. “Microchip”. The word “microchip” is being added to the list of items that must be secured at a racetrack even though a horse may be stabled off of the racetrack grounds. It needs to be added as many owners and veterinarians are now using microchips as a secondary means of identifying their horses in addition to tattooing and freeze branding. It is reasonable to have this procedure done on licensed racetrack grounds so as to assure that the correct microchip and reader will be used, that correct results will be reported to the Jockey Club, and serious errors eliminated.

Part 7877.0170, subp.2N. Reporting of Alteration of Sex of Horse. This sentence needs to be added to prevent errors in the reporting of results of androgenic anabolic steroids testing. The no effect or threshold levels for androgenic anabolic steroids depend on the correct sex of the horse which must be reported along with the sample. Intact males are allowed different levels than gelded or neutered ones and mares (female horses) have their own specified levels. This occurs because the background or endogenous levels for each androgenic anabolic steroid depends on the sex of the horse. It is reasonable to

do this as it prevents unnecessary holding of purse money to the horse owner due to incorrect sex reporting.

Part 7877.0170, subp. 9C. Veterinarians. Substances, medication, and venom need to be added as they are found elsewhere in the rules and this a housekeeping update for them. Biological products need to be added as they are frequently used by practicing veterinarians. Biological products, which are defined later, include vaccines, toxins, antitoxins, and some of the newer subunit genetically altered products. It is reasonable to add this to the items that a practicing veterinarian can and cannot carry as it clarifies the guidelines. It will also prevent the use of non USDA approved products unless the commission veterinarian in conjunction with the Stewards finds a justifiable use for them. This will keep the risk of adverse reactions to a minimum and provide a safer environment for the horse.

The term "USDA" needs to be added as the USDA regulates the production and use of veterinary biological products. The Food and Drug Administration does not regulate and control them. It is reasonable to do this as it adds this specific regulatory agency to the rule.

Part 7877.0107, subp. 9I., Veterinarians. This rule is needed to prevent licensed private practicing veterinarians from entering a horse's stall on a race day on which it is entered to race. There are no veterinary medical reasons other than the two specified in this rule (administration of furosemide or an emergency) that a practicing DVM needs to be in the stall with an entered horse on race day. It is reasonable to add this rule in that it will prevent accidental administration of medications to the wrong horse on race day. Further it will prevent the deliberate administration of medications to an entered horse on race day and will make the investigator's job much easier when checking the backside for infractions as he or she will know which horses are entered, what stalls they are in, and know that no practicing DVM should be with them.

Part 7877.0175, subp. 7, Claiming Clerk. The change from 10 minutes to 15 minutes on claiming a horse is needed to make out rules for the timing of claims similar to those found at racetracks throughout the United States and to bring this part into synch with current part 7883.0140, subp 2. It is reasonable to allow those horsemen and women wishing to make a claim a sufficient amount of time to do so after observing the horse they desire to claim as it is being saddled in the paddock. It is reasonable as this amendment will also provide an adequate amount of time for more than one person the ability to make a claim. It also avoids confusion for the horsemen and women as they travel from tracks in Minnesota to tracks in other states.

Part 7877.0175, subp. 13, Outriders Responsibility. The outrider's responsibility is being redefined as there are now three breeds that race in Minnesota at the two licensed racetracks. There are different requirements of the outriders at the licensed thoroughbred/quarterhorse track from those at the licensed standardbred track. This will affect the Class A standardbred licensee in that the cost of hiring an outrider during training hours is not required. It is reasonable to eliminate this cost as revenues to the Class A licensee (Running Aces Harness Park) were not adequate during its first year of racing to sustain the level of spending that occurred. This proposal was supported by the horsemen's organization that represents the majority of the horsemen/women that raced at that racetrack.

Part 7883.0140, subp.1D, Who may Claim. The criteria for persons eligible to claim (in affect buy a horse at the racetrack) horses has changed as it no longer takes 21 days to do a background on a new owner as part of the licensing process. This time frame originally provided the days necessary to obtain fingerprints and complete a criminal background check. Online databases have made this time period unnecessary. It is reasonable to update this rule as technology has made the older rule version obsolete.

Further it is reasonable in that it will benefit persons wanting to claim a horse that is racing at a Minnesota racetrack even if a person has purchased a horse at a private sale just prior to making a claim for a horse.

Part 7883.0170. Racing Equipment. The rule is needed to adjust the height of toe grabs that are fixed to the toe of horse shoes. Lower toe grabs have been shown in a well documented study to decrease the incidence of injuries to racehorses. It is reasonable to do this as it affects the safety and well being of both the horse and rider. Toe grabs are currently permitted by Commission rule regarding the use of equipment; inasmuch as they are referred to in this rule, it is necessary to state the maximum height for toe grabs. Toe grabs are used in the racing community to promote traction by the racehorse during racing. The shoe is the interactive boundary between the racing surface and the horse's hoof which influences the force distribution and patterns of movement of the equine limb. Imbalances in these components of equine movement can cause serious injury or lameness in a horse moving at racing speed. Toe grabs elevate the toe (front of the hoof) of a horse which is not the normal hoof configuration. Use of toe grabs is permitted in the racing community, but with current research findings showing that elevation of the hoof can cause injury to the hoof or musculoskeletal injury to the racehorse, the Minnesota Racing Commission as well as other states, is moving to regulate the maximum elevation of the toe to two mm which is less than current use of toe grabs. This rule amendment is needed for that reason. In addition, the Minnesota Racing Commission attempts to follow the suggestions/model rules of the Association Racing Commissioners International (RCI) to keep rules similar from state to state; those model rules currently indicate a height of two mm. The goal of this model rule is to provide safeguards for racehorses and keep things similar for all horsemen at all racetracks. This rule change would accomplish both.

Part 7884.0120, subp. 13, Eligibility and Entering. The words "Veterinarian's List" needs to be removed from this rule as it contradicts another MRC rule regarding starting while on the Veterinarian's List. Currently, horses in Minnesota that are on the Veterinarian's List with a specific off date are allowed to enter in Minnesota. They are not allowed to start until after their specified off date or until removed from the Veterinarian's List (7877.0175, Subp 8). This rule was changed years ago when the track went to 4 day/week racing and longer periods of time from entry to starting. It was done to keep those horses with specified off dates from getting hung up for prolonged periods of time.

Part 7890.0100, subp. 3b, Definitions. A "Biological products" definition is needed as it is referred to in other sections of the rules. It is reasonable to add it as it provides a clear statement of what constitutes a biological product.

Part 7890.0120, subp. 1, Veterinarians must keep records. The rule change for the veterinarian's record keeping is needed to bring us into compliance with the statutes and rules of the Minnesota Board of Veterinary Medicine regarding the confidentiality of medical records. It also allows the stewards to use the records, if they are filed in a timely manner, in hearings regarding medication positives/violations. Licensed Private Practicing veterinarians should be reassured that their records will only be shared in this manner and will not be released to anyone else. Accurate medication records may be used as well to shed some light on medication positives. It is reasonable to link the Commission's rules with the confidentiality requirements of the Minnesota Board of Veterinary Medicine. It is also reasonable to use the medical records in determining if and how a medication positive occurred so as to possibly prevent it from occurring again which would require a penalty for the horsemen/women involved.

Part 7890.0120, subp. 3. Administration of furosemide to be reported. The Commission Veterinarian's office needs to know at the time of entry into a race, which horses will be racing after being treated with furosemide. In prior years there have been problems determining if a horse needs to be treated with furosemide or not simply because the trainer was careless in legibly indicating that on the race entry sheet. This information is entered into the trainer's databank maintained by the state

Veterinarian's office and transferred to a race day furosemide schedule. This schedule is then used to ensure that the appropriate horses are treated with furosemide and those that are not to receive it do not. It is reasonable to add this rule as the trainers are the ones responsible for knowing the medication needs of their horses and clearly indicating that to the state Veterinarian. It will also help prevent furosemide medication errors from occurring.

Part 7890.0160. Responsibility of Veterinarian. This rule is needed as the change is also made in part 7877.0170, subp. 9I. The rule is needed as it prevents a practicing veterinarian from going in the stall of an entered horse on race day other than for the observed administration of furosemide and for medical emergencies. There is no other reason for any practicing veterinarian to be in the stall with an entered horse on race day other than for these reasons. The rule is reasonable as it prevents the accidental medication administration to an entered horse and it also prevents the deliberate and intentional administration of medications to an entered horse. It also makes it easier for Commission veterinarians and investigators to enforce the above as the rule is clear that, by visual observation, no veterinarian shall be in a stall of a horse entered to race.

Part 7892.0120, subp. 3. Witnesses. The rule addition is needed to allow the Commission Veterinarians to obtain a race day test sample on entered horses in an emergency when the trainer is not readily available. This most commonly happens on the race track, especially the turf track, during racing when a horse has been pulled up by a jockey. The injured animal may be as far as ½ mile from the trainer or the trainer may be somewhere else on the grounds. Blood needs to be taken from the horse prior to sedation and it is simply not humane to wait until the trainer has been located and is present to witness that sample collection. In the absence of the trainer, another licensed individual should be able to witness the sample collection. It is reasonable to do this as it allows the Commission veterinarian to obtain a sample and then attend to the horse's problems while not allowing the horse to suffer.

Part 7892.0120, subp. 5. Split Samples. This rule addition is needed to allow split sample testing to occur in the same medium that the original positive medication violation was found. Sometimes medication positives are detected by the testing laboratory in blood, sometimes in urine, and sometimes in both. When an owner elects to send a split sample, the portion of the particular medium (blood or urine) found to contain the prohibited substance is sent to the split sample testing laboratory. The amount of urine passed by a particular horse is sometimes not enough to send for a split sample analysis. In that instance, remaining urine held by the original testing laboratory can be sent to the split sample testing laboratory for confirmation or denial. It is reasonable to do this as it provides a method of testing the exact medium the original prohibited substance was detected in. Since the purpose of split sample testing is to rule out laboratory error this would still occur if the second laboratory tested the original sample.

Part 7897.0100, subp. 15. Prohibited Acts. This rule addition needs to be made to ensure that all entered horses are treated in a safe, fair and equitable manner. Once a horse is entered to race it comes under the jurisdiction of the stewards and should not be removed from the stable area for unauthorized treatment by non Commission licensed veterinarians or for the convenience of the trainers or owners. The stewards are the only people who grant "scratches" or the removal of a horse from the entry card and they alone have the last say in the issue. There are times, such as the need for emergency veterinary care, when a horse may need to be removed from the stable area. The stewards would need to be aware of this to remove the horse from the entries. It is reasonable to add this rule as it guards the safety and well being of the horse and allows the stewards to do their job.

Part 7897.0100, subp. 20. Possession or use of a drug, substance, medication, biological product, or venom. This rule needs to be added as it is found elsewhere in the rules (chapter 7890) and needs to be

expanded to include all people on the backside of the racetrack. It is reasonable to do this as it keeps unapproved drugs, non FDA approved and non USDA approved products off the racetrack grounds.

Part 7897.0150, subp. 4. Review or complaint by director. The rule change needs to be made so it gives the director or the deputy director of the commission the ability to appeal, as opposed to complaining about, a steward's decision that they may feel did not give due process or impose the correct penalty to any licensed individual involved in the decision. It is reasonable to make this change as it will give the opportunity to senior management to have a ruling by the Stewards reviewed by a Commission Appeal Panel to further rule as to the appropriateness of the Stewards' ruling. It is further reasonable in that all parties of the Commission's regulatory responsibilities will be given the opportunity for due process.

Part 7899.0100, subp. 4F. Standards for granting and denying variance requests. This rule change is needed to remove subparts 6 through 9 from being referenced. It is reasonable as subparts 6-9 of chapter 7870.0500 have been repealed and it is for housekeeping purposes.

LIST OF EXHIBITS (Optional)

CONCLUSION

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

Date

7/19/09

Richard G. Krueger
Executive Director

