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MINNESOTA RACING COMMISSION

April 14, 2010

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

Re: In the Matter of the Proposed Amendment to Rules Governing Horse Racing, *Minnesota Rules*, 7876 Stabling; 7877 Class C Licensees; 7879 Stewards; 7883 TB/QH Horse Races; 7884 Harness Races; 7890 Horse Medication; 7891 Horse Examination

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to Stabling, Class C Licenses, Stewards, Races, Horse Medication, and Horse Examinations. We plan to publish a Dual Notice of Hearing in the April 26, 2010 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, 7876 Stabling; 7877 Class C Licensees; 7879 Stewards; 7883 TB/QH Horse Races; 7884 Harness Races; 7890 Horse Medication; 7891 Horse Examination

INTRODUCTION

The Racing Commission is considering rule amendments proposed by staff that will further the integrity of racing and pari-mutuel betting and the safety and welfare of the equine and human participants. These proposals deal with the presentation of equine health certificates at the time horses arrive at the racetracks whether stabled on-track or off-track, requiring the Commission's Veterinarians to notify the Stewards in writing if a horse has been found to be unfit to race and must be scratched from racing and to allow the Commission's Veterinarians to assume the duties and responsibilities of an Association Veterinarian in the absence of an Association Veterinarian, clarifying and correcting language as to Stewards' authority to scratch horses from participating and excusing human participants from participating, clarifying language regarding workout requirements for horses that have not raced in the prior year that the workout must be accomplished no less than 48 hours prior to the race in which it is entered, adding Commission Veterinarians to the requirement that all scratches and declarations must be in writing and signed prior to submission to the Stewards, stipulating specifically who shall unsaddle a horse that has become unable to finish a race and to prohibit euthanasia of the horse on the race course, adding stipulations for qualifying races for standardbreds (harness racing) that medication rules for pari-mutuel racing apply as they do for thoroughbred and quarterhorse workouts, adding a definition for "bicarbonate loading" which will further clarify the Commission's responsibility in the control the abuse of milkshaking which increases a horse's TCO₂ level which blocks the buildup of lactic acid in the horse, clarifies language regarding thresholds for furosemide and the use of topical applications, establishes a definition of "measurement uncertainty" which will further the integrity of the Commission's laboratory testing and reporting program, furthering the definition of "TCO₂" to be more inclusive of further scientific research regarding the bicarbonate level in a horse, clarifying the period of time after which a horse may race after receiving extracorporeal shock wave therapy or radial pulse wave therapy, stipulating that for reporting procedures for the use of nonsteroidal anti-inflammatory drugs a representative of a trainer is authorized to complete the report and that the report from either the trainer or his/her representative must be submitted clearly and legibly, stipulating that the Veterinarian's bleeder list must be kept in the Commission Veterinarian's office, deleting unnecessary language regarding the use of furosemide, stipulating requirements for trainers at the time that a horse under his/her care is to be administered furosemide, deleting obsolete language regarding disclosing the use of approved medications, and stipulating that the body of a horse in the case of a horse expiring on racetrack grounds must be sent to the University of Minnesota Veterinary Diagnostic Laboratory for a postmortem examinations.

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. To make a request, contact Ms. Marlene Swanson at the

Minnesota Racing Commission, P. O. Box 630, Shakopee, MN 55379; phone 952-496-7950, fax 952-496-7954; or email at marlene.swanson@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. 240.08 Subd. 1 Occupational Licenses, M.S. 240.16 Stewards, and M.S. 240.24 Subd. 1 Medication.

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”

Those affected by the proposed rule include horsemen and women that desire to race their horses at the licensed racetracks as well as the equine under their care, e.g. presentation of current health certificates and immediate care in the case of an injury during racing. As well the Commission’s staff (Veterinarians and Stewards) will benefit by the increased regulatory oversight authorized which benefits the equine and the betting public.

Many of these proposed amendments are intended to clarify language currently contained in rule, such as section 7877.0175, subp. 8. D. where we are simply asking that any time one of our veterinarians finds a horse to be unfit to race that the Stewards/Judges must be informed of that in writing and which is further clarified in section 7883.0120, subp. 1. Section 7890.0100, subp. 13 is another example of proposed clarifying language.

“(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 by staff members within their currently assigned 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 licensed racetracks. Costs and methods were discussed with the Commission members during the meetings that these proposals were reviewed, which included industry participation. Some of these proposals, such as the requirement for current health certificates, may be viewed by some as intrusive, but by accepting that as the prevailing argument should be secondary to the regulatory oversight of the Commission’s veterinary staff which furthers the health and welfare of the participating equine, whether racing horses or pony horses.

“(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. Many of these amendments as mentioned before are to clarify current language and to be specific as to what we require in certain instances such as section 7890.0120, new subp. 3 and section 7890.0140, subp. 10. Again, these proposed amendments will accomplish Commission’s staff intentions to strengthen its regulatory oversight especially in this case regarding the health and welfare of the equines populating the backstretches of the two licensed racetracks.

“(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 requirement for current horse health certificates is really enforcing rules of the Minnesota Board of Animal Health which will require the incursion of veterinary costs for the examination and testing. It’s clearly the Commission’s intent to protect all equine populating the racetracks grounds by reducing the occurrence of any communicable diseases.

“(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 and, with the focus of these proposals, protecting the health and welfare of the equine participants. 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 during the Commission Work Sessions on October 6, 2009, the Full Commission meeting on October 22, 2009 during which the Commission authorized the publication of the Request for Comments, and the Commission Work Session on January 5, 2010 during which it reviewed the comments received. 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. Minutes from these meetings are available on the Commission’s website at www.mrc.state.mn.us.

The Racing Commission veterinary staff began work on the proposed rule amendments in August, 2009. Updates on the status of the rulemaking proceedings occur during the Commission’s monthly Work Sessions. 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.

CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department will consult with the Minnesota Management and Budget (MMB)). We will do this by sending the MMB copies of the documents that we send to the Governor's Office for review and approval on the same day we send them to the Governor's office. We will do this before the Department's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

As required by Minnesota Statutes, section 14.128, subdivision 1, the agency has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Commission has determined that they do not because all activity that these amendments affect occur on licensed racetrack grounds, not out in the local community. There are times where we may have to contact local law enforcement or county/city attorney offices, but that is in the normal course of fulfilling our duties and responsibilities when events warrant. It is not anticipated that these amendments will either increase or decrease those contacts.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the 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 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. The Commission has made this determination based on the fact that the occurrence of all activity regulated by the amendments take place on the grounds of licensed racetracks and not in the greater community.

LIST OF WITNESSES

If these rules go to a public hearing, the Department 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. Marlene Swanson, Licensing and Rule Coordinator, will testify about the development and processing of the rules.

RULE-BY-RULE ANALYSIS

Part 7876.0100, Subp. 10, Original health certificate

This rule addresses the requirements for health certificates obtained by trainers for horses that are stabled on the grounds of a racetrack. It is needed to clearly specify the time frame for a health certificate, the procedure for handling health certificates, and what must be contained on each health certificate. It incorporates all information found elsewhere into one central location. It is reasonable to do this as it provides a central location for information regarding health certificates that is easily accessible by all. There is no additional cost to the Minnesota Racing Commission (MRC), trainers, or owners.

Part 7876.0110, Subp. 4, Original health certificate

This rule is needed to clarify the procedure for trainers shipping horses in to and out of racetracks from facilities in Minnesota. Under current rule all horses entering the grounds need a Health Certificate dated within 10 days. The 10 day time frame is used to prevent horses from bringing diseases from other states into Minnesota and ensures that all horses arriving are healthy. Once 10 days has passed, the incidence of new disease decreases dramatically. The cost of obtaining a new Health Certificate every 10 days penalizes those trainers whose horses reside at a training facility or private farm. The use of 30 day Health Certificate

is reasonable as that is the time frame currently accepted by the Minnesota Board of Animal Health for horses shipping into Minnesota. There is no additional cost to the MRC and would save the trainers and owners money.

Part 7876.0120, On- and Off- Track Stabling of Nonracing Horses

This rule is needed to clarify the procedure for trainers, outriders, and others shipping non race horses in and out to racetracks from facilities in Minnesota. It also applies to those individuals bringing horses on the grounds for other uses such as pony rides and pool use. Under current rule all horses entering the grounds need a Health Certificate dated within 10 days. The cost of obtaining a new Health Certificate every 10 days penalizes those trainers, outriders, or others whose horses reside at a training facility or private farm but are used at the racetrack. The use of a 30 day Health Certificate is reasonable as that is the time frame currently accepted by the Minnesota Board of Animal Health for horses shipping into Minnesota. There is no additional cost to the MRC and would save the trainers and owners money.

Part 7877.0175, Subp. 8, Commission veterinarian

The addition of the words “in writing” to this rule is a simple housekeeping update. The Commission Veterinarians currently notify the Stewards in writing but this has never been entered into rule. The rule addition is reasonable and needed to protect the Stewards and Commission Veterinarians from legal issues and keep Minnesota rules in agreement with the Association of Racing Commissioners (ARCI) model rules.

A second addition to this rule is also a housekeeping issue that clarifies who is responsible for duties should there be no association veterinarian. The rule addition is reasonable and needed to ensure that all the duties and responsibilities of an association veterinarian are handled in a professional and reasonable manner.

Neither of these rules results in any additional costs to the MRC, trainers, or owners.

Part 7879.0200, Subp. 1, General authority of stewards

This rule is housekeeping update that using current language to specify the general authority of the Stewards. This rule is needed and reasonable as it provides language that all individuals related to racing clearly understand. There is no additional cost to the MRC, trainers, or owners.

Part 7883.0100, Subp. 16, Workout requirements

This rule is needed to clarify the rules for horses not racing for more than one year. It is reasonable as it prevents unsound horses for being entered without a workout on the track in the presence of a Commission Veterinarian. It ensures that these horses work out in a timely manner but not so close to a race that they are unfit or at increased risk of injury. It protects the horse as well as the betting public. There is no additional cost to the MRC, trainers, or owners.

Part 7883.0120, Subp. 1, Procedure for scratching horses

This is a housekeeping update to add the currently accepted procedure to rule. The rule is needed and reasonable as it clearly specifies the procedure followed by the Commission Veterinarian when

recommending to the Stewards that a horse be scratched from racing. It keeps the MRC rules in alignment with the ARCI rules. There is no additional cost to the MRC, trainers, or owners.

Part 7883.0160, Subp. 14, Horse becomes crippled or disabled

This rule is a housekeeping update regarding the procedure for dealing with a horse that is injured during the running of a race. It is needed and reasonable as methods for handling injured horses have improved considerably over the past 20 years. It is reasonable as it clarifies new procedures, protects injured horses, and keeps public distractions to a minimum. There is no additional cost to the MRC, trainers, or owners.

Part 7884.0190, Subp. 8, Medications

This new rule is specific to harness racing but mirrors a rule already in effect for horses in flat racing (Thoroughbreds, Quarterhorses, and Arabians). In order to participate in racing, young harness horses or those that have been injured or out of training for a substantial period of time need to take part in a “qualifying” race. They must complete the qualifying race in a set amount of time and be sound of body without the use of medications that might mask pain or injuries. This rule is needed and reasonable as it defines what medications can be used, prevents abuse of the system, and allows all trainers to compete under similar circumstances. There is no additional cost to the MRC, trainers, or owners.

Part 7890.0100, Definitions

The changes in this section either add new definitions used in rule or clarify language associated with current rules. The changes are needed and reasonable as they clearly define elements of racing present in MRC rules or clarify a procedure already in place. The definitions are similar to those provided by the ARCI or the Racing Medication Testing Consortium’s best practices act. There is no additional cost to the MRC, trainers, or owners.

Part 7890.0110 Medications and Practiced Prohibited

This is a simple addition to an existing rule that clarifies the original day of treatment. It is needed and reasonable to add this rule so both the trainer and attending DVM clearly understand the time frame of the ten day reporting period. There is no additional cost to the MRC, trainers, or owners.

Part 7890.0120 Reporting Procedures

Subpart 2 – Administration of NSAIDS to be reported

It is legal to race in Minnesota on one of three defined NSAIDS. This rule is needed to clarify who is responsible for declaring that the horse will race with an NSAID in its system. It is reasonable to add to this rule as the trainer is often not the person making an entry.

Subpart 3 – Administration of furosemide to be reported.

Furosemide is a legal medicine in Minnesota but must be declared at the time the horse is entered to race. This is a new rule that mirrors subpart 2 and is needed to clarify who is responsible for providing the information and how it should be provided.

It is reasonable to modify Subpart 2 and add Subpart 3 so the race office, Stewards, and Commission Veterinarians are aware of what legal medications the horse is racing on and who is responsible for the information should any issues arise.

There is no additional cost to the MRC, trainers, or owners.

Part 7890.0140 Bleeders

Subpart 4, Horses placed on the bleeder list.

The rule change is needed as the bleeder list now encompasses over 20 years of information and is over an inch thick. It is reasonable to change this rule as there is no physical means of posting the list. The bleeder “book” is currently kept in the MRC Commission Veterinarians office in a place accessible to all attending veterinarians, trainers, and owners. There is no additional cost to the MRC, trainers, or owners.

Subpart 6, Furosemide may be permitted.

This proposed rule change is a safeguard issue for the horse. The words “or meets the requirements of subpart 3” are no longer in keeping with the basic mechanism of the furosemide program. Trainers can enter their horse into the furosemide program without the horse having bled, but once entered it must stay in the program. If the trainer chooses to remove the horse it must show visible evidence of bleeding prior to reentry. This is a safety feature for the horse’s well being and prevents the on again/off again use of furosemide by the trainer. The proposed rule is necessary to keep trainers from taking a horse off furosemide in Minnesota and then entering it on furosemide in another state to qualify for the Minnesota program. This kind of action is detrimental to the health and well being of the horse.

Subpart 10, Responsibility of the trainer.

This rule is needed to clarify and delineate the responsibility of a trainer when his or her horse has been entered to receive furosemide. The rule is reasonable as it ensures a handler and specified veterinarian chosen by the trainer are in attendance at the time the horse is scheduled to receive furosemide. It provides guidelines on how MRC veterinarians and technicians should proceed if this does not happen. The rule is also reasonable as it alleviates the possibility of error and inadvertent furosemide administrations. There is no additional cost to the MRC, trainers, or owners.

Part 7891.0110, Subp. 1, Horses that must undergo postmortem examination

This rule is needed for several reasons. It allows trainers and owners to retain snippets of mane or tail hair or horse shoes from horses that have suffered catastrophic injuries on the racetrack. It also provides guidelines for submitting a horse’s carcass in accordance with the requirements of the University of Minnesota Veterinary Diagnostic Laboratory. Further, it provides direction on how to proceed should an accident occur during transport. The rule is reasonable as it allows owners or trainers to obtain a portion of a valued or trusted horse as a sentimental keepsake and provides guidance on delivering the carcass. There is no additional cost to the MRC, trainer, or owner.

CONCLUSION

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

April 26, 2010

Richard Krueger
Executive Director