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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*, 7890 Horse Medication

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to Horse Medication. 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, 7890 Horse Medication.**

#### **INTRODUCTION**

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

#### **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. 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 authority relating to the amendments contained herein includes M.S. 240.24, subd. 1, Medication as amended by Laws of 2008, Ch. 318, Article 2, Section 1.

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

#### **REGULATORY ANALYSIS**

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

Class C licenses for race horse owners and trainers will be affected. A positive test showing any level above the permitted threshold will result in a fine or some other penalty (license suspension) to be determined by the Stewards. The betting public and jockeys will also benefit in that horses will not be racing with a prohibited substance in their system.

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PERFORMANCE-BASED RULES**

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

## **ADDITIONAL NOTICE**

These proposed amendments along with status reports regarding the legislation introduced during the 2008 session permitting the Commission to adopt rules pertaining to regulatory thresholds for certain medications and their metabolites were discussed at regularly scheduled Commission meetings and Commission Work Sessions throughout 2008 and 2009. 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. These proposed amendments were presented and thoroughly discussed during the Commission's work session held on October 6, 2009. Minutes are not prepared for Commission work sessions even though the work sessions are recorded. The recording is available by contacting the Commission office at 952-496-7950.

The Racing Commission staff began work on the proposed rules immediately following the conclusion of live racing in 2009 and was presented to the Commission during its October, 2009 work session. Updates on the status of the rulemaking proceedings are presented to the Commission during all 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. The Request for Comments was published in the November 9, 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
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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 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. Marlene Swanson, Rules Coordinator of the Commission will testify about the development and processing of these rules.

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

Part 7890.0100, subp. 10b. Feed Contaminant.

It is necessary and reasonable to add this definition as it clearly specifies how substances found in feeds may have gotten there. The definition is used internationally and provided by the International Federation of Horse Racing Authorities (IFHA).

There is no additional expense as this is simply an addition of a definition.

Part 7890.0110, new subp. 7a. Androgenic-anabolic steroids (AAS).

It is necessary and reasonable to add this subpart for several reasons.

1. There is no scientifically justifiable veterinary reason for the use of an AAS in race or race training of horses. Their use provides an unfair playing field, does not protect the betting public, and is often harmful and detrimental to the horse's safety and well being.
2. The Legislature amended the statutes in 2008 so that the Racing Commission could use threshold levels to regulate the use and thereby abuse of medications. This proposal provides very tight and stringent threshold levels for anabolic steroids which effectively prevents their use during a race or training of a horse. Well established urine thresholds for AAS were added to MRC rule in 2009 but scientifically established serum or plasma levels were not available at that time.
3. Serum or plasma levels have now been established based on sound scientific research performed by credentialed scientists utilizing horses under simulated race training. A single serum or plasma level of 25 pg/ml has been established for all four AAS. Using this level, in conjunction with urine levels, effectively bans the use of AAS in Minnesota.
4. Serum levels are needed for the following reasons:
  - a. Not all horses pass urine in the detention barn. Blood (i.e. either serum or plasma) is obtained from every tested horse and the use of serum levels ensures that all horses are tested for the presence of AAS.
  - b. Blood sampling for out of competition testing, both on and off the racetrack, can be done in the horse's stall with a minimal amount of stress.
  - c. The use of blood as the primary means of drug testing is becoming more common and will likely replace urine at some point in the future.
  - d. There are some problems with urine testing related to the sex of the horse that are not present when blood is used.
5. Paragraphs A, B, C, and D of subpart 7a stipulate the four designated AAS regulated by threshold levels and new serum or plasma thresholds for each substance. Urine thresholds will not

change. The gender and reproductive status are considered in these paragraphs and are based on sound scientific research utilizing Thoroughbreds in simulated race training.

- a. Paragraph A adds serum or plasma levels for stanozolol, the only AAS currently approved for use in ill and debilitated animals. The recommended level is the same regardless of gender or reproductive status. It allows veterinarians to treat ill or debilitated animals and provides a definitive serum or plasma level where they can resume racing.
- b. Paragraph B adds serum or plasma levels for Boldenone. Adding serum or plasma threshold levels removes the restriction on testing male horses other than geldings and ensures that all horses, regardless of gender or reproductive status, are tested equally.
- c. Paragraph C adds serum or plasma levels for nandrolone and makes them more specific for all horses except stallions or other male horses that are not geldings.
- d. Paragraph D adds serum or plasma levels for testosterone yet specifies that these changes are not effective for fillies and mares that are confirmed pregnant and male horses other than geldings. Testosterone is not tested in these horses either by urine or serum or plasma testing.

These proposals do not add any additional cost as the Commission's contract laboratory already tests for AAS in the urine and is able and capable of adding them to the blood testing array.

Part 7890.0110, new subp. 9, Feed Contaminants.

It is necessary and reasonable to add this subpart for several reasons.

1. Testing for medications and other foreign substances has become more highly specialized and the laboratory is reporting violations in ever decreasing amounts. These ultra low levels necessary for detecting medication violations but often find substances that are known to be contaminants in feed and in very low levels have no effect on racing performance.
2. This rule is necessary to prevent trainers from being heavily penalized for the presence of a substance over which they had no control. The levels recommended are based on those found in veterinary literature and provide a threshold associated with feed contamination only.
3. Section A adds a level for atropine in the urine. Atropine can be found in hay contaminated with the plant *Datura stramonium*. This weed grows along ditches and the edges of hay fields and from time to time becomes incorporated in hay as it is cut and baled.
4. Section B adds a very strict level for the presence of benzoylecgonine, the metabolite of cocaine. Cocaine can enter the horse's feed while being handled and processed for storage. Once ingested by a horse it is rapidly metabolized to benzoylecgonine. Using the metabolite as a threshold substance instead of cocaine further ensures that the sample came from feed and had no effect on racing performance.
5. Sections C and E deal with caffeine and theobromine, very common feed contaminants associated with chocolate and chocolate products. It is a common practice for feed meals to buy discarded bakery products as a fat source for equine feed. Chocolate bakery products are often in this source and can contaminate each bag of feed processed by the mill. In addition, a portion of a chocolate covered donut or a few M and M candies inadvertently stored in the horse's feed tub results in a positive sample. These two threshold levels prevent trainers from being penalized should this occur.
6. Section D deals with morphine glucuronides, the metabolites of morphine, and the contamination from poppy seeds. Bakery products also contain lemon poppy seed muffins and bagels, potential sources of feed contamination. In addition, these same products can inadvertently be stored in a horse's feed tub and as little as 1/5 teaspoonful of poppy seeds is enough to result in a positive sample. Using metabolites as the threshold substance instead of morphine further ensures that the sample came from feed and had no effect on racing performance.

These proposals do not add any additional cost as the Commission's contract laboratory already tests for these substances in urine. Adding threshold levels does not add to the cost of testing.

#### **LIST OF EXHIBITS**

1. Anabolic steroid testing – Where we have been and where are we now.

#### **CONCLUSION**

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

April 26, 2010

Date

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Richard G. Krueger  
Executive Director