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MINNESOTA RACING COMMISSION

June 28, 2011

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

Re: In The Matter of the Proposed Rules of Racing Commission Relating to M.R.  
7876 Stabling, 7890 Horse Medication, and 7897 Prohibited Acts, Governor's Tracking  
#AR 1001

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 July 5, 2011 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,

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, 7890 Horse Medication, and 7897 Prohibited Acts**

### **INTRODUCTION**

The Racing Commission is considering rule amendments that require a record of a negative test for Equine Piroplasmiasis, adds or revises definitions to Horse Medication definitions, sets regulatory limits on medications, and prohibits acts with regard to feed and medication.

The requirement for a negative test for Equine Piroplasmiasis is in response to an outbreak of piroplasmiasis at a track in Texas and the positive test of one horse for piroplasmiasis at Canterbury Park in 2010. The one positive test caused the quarantine of an entire barn.

The other part of this rule amendment has been a collaborative effort on the part of the Commission and staff, the horsemen and their representative groups to provide better guidance in the administration of medications to racing horses.

### **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](mailto: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 include M.S. 240.24, subd. 1, Medication as amended by Laws of 2008, Ch. 318, Article 2, Section 1, and M.S. 240.25, 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**

Piroplasmosis is a federally reportable disease contained by disposal of an infected animal and quarantine of the premises. The amendments on Piroplasmosis will benefit all horse owners with horses stabled at one of the two racetracks in Minnesota, all trainers, and racetrack management as infected horses will not be allowed on the grounds.

The amendments to Definitions will benefit horse owners, trainers, and veterinarians as it provides basic information regarding the meaning of words and phrases.

The amendments to Medications and Practices Prohibited provide greater guidance in the use of medications in race horses. Class C licenses for race horse owners and trainers will be affected. A positive test showing any level above the permitted regulatory limit will result in a fine or some other penalty (license suspension) to be determined by the Stewards. Racetrack management would bear the cost of additional testing required by the proposed rule amendment. The betting public, jockeys, and horses will 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 these substances, but there will be an increased cost associated with quantification of the amounts. The racetrack management will bear these additional costs.

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

Requiring testing for Piroplasmosis is the least costly means of controlling the spread of this disease. The other proposed rule amendments do not change any standard operating procedures in the taking of samples by veterinary staff or testing method that the Commission is currently performing through its testing laboratory. The slight increase to total cost of testing to receive quantitative results will be borne by the racetracks and is the only way to give the horsemen the data they are asking for.

### **(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 to stop the spread of Piroplasmosis other than disposal of infected animals and quarantining the facility. Screening the horses entering the racetrack facilities is a much more acceptable method of reducing the spread of the disease.

There are no better alternative methods for the amendments to horse medication and prohibited practices. The Commission currently tests for the presence of these substances and will continue to do so.

These amendments provide regulatory levels that can be used by horsemen and women and veterinarians when treating horses.

**(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**

The cost for testing for Piroplasmosis will be borne by the horse owners. The test is good for a 12 month period and other racetracks, sales venues, and show areas require testing so it will be spread over several jurisdictions, not just Minnesota. No governmental units will be affected.

Costs for sample collection by veterinary staff and laboratory testing costs for medication violations are currently part of the Commission's budget. These costs are reimbursed by its licensed racetracks. Adoption of the medications amendments will add a slight increase to the total cost of providing these services as medications will need to be quantitated. No governmental units will be affected. Individual horse owners or trainers will be affected only if testing exceeds the regulatory levels contained in these amendments (fines or license suspension).

**(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**

Not adopting the rule changes for Piroplasmosis testing will cause no change in cost but the consequence may be an infected horse present on the premises resulting in a federal/state quarantine.

With the proposed amendments to definitions, the Commission desires to provide basic understanding of words and phrases. Not adopting the rule will cause no change in costs but will make it difficult for some racehorse owners and trainers to adequately understand what some particular words and phrases mean.

With the proposed amendments to medications, the Commission desires to provide the horsemen and women with guidance regarding the use of these compounds. Not adopting the rule will result in less cost but the consequence may increase medication violations and confusion regarding medication administration.

**(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**

Piroplasmosis is a federally reportable disease with testing currently only required for horse import. In recent years, however, the disease has become more widespread at racetracks where large groups of horses are comingled and moved around the country with great regularity. There is a need to protect these groups of horses and yet not penalize those horses in Minnesota that are not exposed to the infectious agent nor move around the country.

To the best of our knowledge, with regard to the definition changes, there are no differences between these proposed rule amendments and current federal requirements.

There are no current federal rules regarding the establishment of medication regulatory limits.

**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 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 August 24, September 2, September 7, October 5, October 21, November 1, November 18, December 7, and December 16 of 2010. The threshold rules were also discussed at the meetings on January 4, January 20, February 17, March 1, and March 17 of 2011. Minutes from the full commission meetings are available on the Commission's website at [www.mrc.state.mn.us](http://www.mrc.state.mn.us).

The Racing Commission began work on the rules proposals in August of 2010 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.

In addition to the discussions at the Racing Commission work sessions and full commission meetings, a committee was formed for the development of the threshold rules. The Committee consisted of the following individuals:

- Linda Arnoldi, Director of Pari-Mutuel Operations, Canterbury Park, and former horse owner
- Dr. Lynn Hovda, DVM, Chief Veterinarian for the Minnesota Racing Commission
- Kay King, Executive Director, Minnesota Thoroughbred Association
- Dr. Christy Klatt, DVM, Assistant Commission Veterinarian, Minnesota Racing Commission
- Richard Krueger, Executive Director, Minnesota Racing Commission
- Dr. Sandy Larson, DVM
- Mary Manney, Deputy Director, Minnesota Racing Commission
- Patrice Underwood, Executive Director, Minnesota Horsemen's Benevolent & Protective Association
- Jack Walsh, Vice President, Minnesota Horsemen's Benevolent & Protective Association

The meetings of this committee included phone consultations with Dr. Scott Waterman, Executive Director of Racing Medication Testing Consortium (RMTTC), and Dr. Thomas Tobin, an expert and author of Equine Drug Testing and Therapeutic Medication.

Our Notice Plan includes:

1. Publishing the Request for Comments in the January 24, 2011 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 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.
5. 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.
6. 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 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.

## **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 will testify about the development and processing of these rules.

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

Part 7876.0100, subp. 11. Record of negative test for Equine Piroplasmosis. Part 7876.0110, new subp. 5. Record of negative test for Equine Piroplasmosis. Part 7876.0120 On- and Off- track stabling of Non-Racing Horses.

Any horse entering the grounds of a racetrack is already required to have a health certificate issued not more than ten days prior to arrival. The health certificate must be completed by an accredited veterinarian and must contain complete equine infectious anemia (EIA) test results. The rule proposals listed above add to this requirement an equine piroplasmosis (EP) test taken within 12 months of the date of entry upon the racetrack with a negative result for *Theileria equi* and *Babesia caballi*.

Equine piroplasmosis (EP) is a federally reportable disease not endemic to the United States. The federal government currently only requires EP testing for horse imports; it does require reporting of the disease if found in any horses within the United States. EP is a tick borne disease and the ticks carrying the parasites can be moved via animals, human beings, hay, bedding, feed, and vegetation. In recent years the disease has become more widespread at racetracks where large groups of horses are comingled and moved around the country with great regularity. Once an infected horse is found, the disease is contained by disposal of the infected animal and quarantine of the premises. One case was found at Canterbury Park in 2010 and the barn where the horse was stabled and 32 horses stabled in the same barn were quarantined for further testing. Requiring equine piroplasmosis testing results prior to entry is needed to prevent a future quarantine and for the protection of the equine population at the racetrack.

Part 7890.0100 Definitions.

These rule changes are needed to provide basic information regarding the meaning of words and phrases used in the rules. It is reasonable to add new definitions as new rules are promulgated. It allows all parties involved to clearly understand exactly what is being referred to in rule and recommendations.

Part 7890.0110 Medications and Practices Prohibited.

With the proposed amendments the Commission desires to provide the veterinarians who work at the racetrack and horsemen and women with guidance regarding the use of several therapeutic medications. It will help prevent medication violations for trace amounts of medications that have no effect on racing performance.

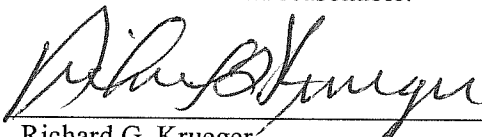
It is reasonable to do this as medication testing has become increasingly more sophisticated and medications are being found in serum and urine in microscopic amounts. Providing medication detection levels substantiated by sound scientific research allows the Commission to guide the veterinarians and trainers at the same time preventing horses from racing with a prohibited substance in their system. 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. They simply provide guidance to veterinarians and horsemen and women for the safe administration of medications.

**LIST OF EXHIBITS (Optional)**

**CONCLUSION**

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

3/21/11  
Date

  
Richard G. Krueger  
Executive Director