

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

In the Matter of the
Proposed Adoption of Rules
of the Minnesota Racing
Commission Amending Existing
Rules.

STATEMENT OF NEED
AND REASONABLENESS

I. GENERAL

In an effort to improve the quality of horse racing in this state, the Minnesota Racing Commission ("Commission") has proposed minor amendments to the Rules of Racing. The proposed amendments are consistent with rules in other racing jurisdictions and are necessary to make Minnesota competitive in the horse racing industry. The Commission believes the proposed amendments are reasonable because they are customary in other racing jurisdictions. Moreover, the burdens imposed on the participants are not undue, and compliance with similar rules has been obtained in other jurisdictions.

II. STATUTORY AUTHORITY

The Commission is empowered by Minnesota Statute, section 240.03 to: (1) regulate horse racing in Minnesota to ensure that it is conducted in the public interest; (2) enforce all laws and rules governing horse racing; (3) supervise the conduct of parimutual betting on horse races; and (4) take all necessary steps to ensure the integrity of racing in Minnesota.

The Commission is also specifically authorized by Minn. Stat. § 240.23 to promulgate rules governing "the conduct of horse

aces 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" and "any other aspect of horse racing or parimutual betting which in its opinion effects the integrity of racing or the public health, welfare or safety." Moreover, the legislature has specifically directed the Commission to promulgate rules governing medication and medical testing for horses running at licensed racetracks. Minn. Stat. § 240.24 (1986 and Supp. 1987).

These broad statutory provisions clearly authorize the Commission to amend the rules governing horse racing at licensed racetracks in Minnesota.

III. RULE-BY-RULE ANALYSIS

7869.0100 DEFINITIONS

This part contains the definitions relevant to Minn. Rule Chapters 7869-7899. The Commission proposes to amend subpart 15 of this part. The remaining subparts are unchanged.

7869.0100, Subp. 15

This subpart contains the definition of "Commission Veterinarian" applicable to all rules promulgated by the Minnesota Racing Commission. The Commission proposes to change this subpart by deleting the reference in the rule to "the medical officer" and inserting the phrase "a licensed veterinarian." This subpart, as currently written, seems to imply that the Commission has the authority to employ only one

Commission veterinarian. Pursuant to Minnesota Statutes, Section 240.04, subd. 4, the Commission has the authority to appoint a Commission veterinarian as well as several assistant Commission veterinarians. Accordingly, the Commission has appointed several assistant Commission veterinarians to whom specific duties and responsibilities are delegated. The proposed rule change amends the definition of Commission veterinarian to clarify that it includes all assistant Commission veterinarians.

The proposed amendment is reasonable because it clarifies the status and authority of the assistant Commission veterinarians, and does not place any additional demands on licensees.

7870.0490 CARE OF HORSES

This part sets forth several pieces of equipment that must be purchased and available at a licensed racetrack for the care of horses. The Commission proposes minor amendments to subparts C and E. The remainder of the part is unchanged.

7870.0490, Subpart C.

The Commission proposes to amend this subpart by deleting the reference to the word "species" and inserting the word "breed." This amendment is necessary and reasonable because it eliminates a grammatical error in the rule. All horses are the same species, however there may be two to three different breeds of horses racing at a licensed racetrack during a race meeting. For the rule to make sense, it must refer to the different breeds of horses.

7870.0490, Subpart E

The Commission proposes to amend this subpart by deleting the reference to the word "destroyed", and inserting the word "euthanized". The proposed amendment is necessary and reasonable because it does not change the substance of the rule but merely refers to an unpleasant act in a more humane manner.

The Commission also proposes to amend this subpart by requiring that, in addition to an ambulance, every licensed racetrack must employ an ambulance driver who is capable of assisting in the safe and expedient removal of injured animals from the racetrack surface. This rule is necessary to insure that the ambulance is tended at all times during the racing or exercising of horses, and that the driver is capable of assisting in the removal of injured horses from the racetrack. The current rule did not require a racetrack to employ a driver nor did it require that injured horses be tended in a capable manner.

The proposed amendment is reasonable because it will preclude an individual from attempting to remove an injured animal from the racetrack, possibly causing greater injury to the animal, if the individual is inexperienced or incapable. Moreover, the amendment clarifies that the racetrack must employ a driver, and ensures that an injured horse will be treated in a safe and humane manner.

7877.0110 PROCEDURE FOR OBTAINING CLASS C LICENSE

The Commission proposes to amend subpart 4, item T of this part by deleting the "s" from the word "stewards". This

technical change is necessary and reasonable because it conforms the rule to Minnesota Statutes, Section 240.16 which specifically limits to one the number of stewards that may be employed by a racetrack facility.

7877.0170 DUTIES AND RESPONSIBILITIES OF CLASS C LICENSEES

This part sets forth the duties and responsibilities of all persons issued Class C Occupational Licenses by the Minnesota Racing Commission. The Commission proposes to amend subpart 2. The rest of the part remains unchanged.

7877.0170, Subpart 2

The Commission proposes to amend this subpart by deleting the references to "sample" in item C(2). This change is necessary to conform this subpart to the definition of "positive test" contained in Minn. Rule 7890.0100, subpart 15. Thus, the amendment eliminates any confusion that may be caused because of the reference in this item to a "positive test sample", rather than to "positive test".

The Commission also proposes to modify the language relative to the standard of proof required of a trainer to avoid responsibility for a positive test. The proposed amendment requires a trainer to "prove", rather than "show", by substantial evidence that he or she was not responsible for the administration of the medication causing the positive test. The rule is necessary and reasonable because it is primarily a grammatical change which does not change the substance of the rule. The proposed change conforms the language of the rule to

typical legal terminology, but does not impose any undue hardship or additional responsibility on the trainers affected by the rule.

The Commission also proposes a technical change in item C(3) by striking the phrase "prohibited by" Chapter 7890. This amendment is necessary to clarify the rule because all medications are 'prohibited' by Chapter 7890, subject to a few narrow exceptions. The proposed amendment is reasonable because it makes it clear that medication may be administered so long as the medication comports with the specific requirements of Chapter 7890.

7877.0175 DUTIES AND RESPONSIBILITIES OF RACING OFFICIALS

This part sets forth the duties and responsibilities of the various racing officials employed by the racetrack and by the Racing Commission. The Commission proposes to amend subpart 8 of this part, and to add a new subpart 8a to this part. The rest of the part remains unchanged.

7877.0175, Subpart 8

The Commission proposes to amend this subpart by consolidating into one rule the information which must be contained on the veterinarian's list. In addition, the proposed amendment gives the association veterinarian the authority to place horses on or remove horses from the veterinarian's list. Currently, the association veterinarian has the responsibility for conducting pre-race soundness examinations. However, the rules do not specifically provide that the association

veterinarian has the authority to place a horse unfit to race on the veterinarian's list. Because the association veterinarian is charged with the responsibility of examining horses, the association veterinarian must be given the responsibility to deem which horses shall be placed on the list, and which horses may be removed from the list once they are in satisfactory condition to race. Therefore, the proposed amendment is necessary and reasonable.

The Commission also proposes to amend this subpart by specifically defining the five-day period during which a horse is ineligible to race because it has been placed on the veterinarian's list. The proposed amendment merely clarifies the rule and specifically indicates to horsemen the exact period of time during which their horses are ineligible to run.

The Commission also proposes to amend this subpart by providing that the veterinarians' list is binding on all racetracks under the jurisdiction of the Commission. With the likelihood of additional racetracks in Minnesota, this amendment is necessary to insure that any horse deemed unfit to race at one racetrack will not be permitted to enter a race at another racetrack. The proposed amendment is necessary and reasonable because it ensures that horses racing at all racetracks under the jurisdiction of the Commission are fit to race and do not pose a safety hazard to themselves or the other horses and jockeys participating in a race.

The Commission also proposes to delete the reference to "or his or her designee" from this subpart. This amendment is necessary and reasonable because the proposed addition of subpart 8a specifically gives the association veterinarian the authority to conduct racing soundness examinations. The association veterinarian was the only "designee" authorized to perform racing soundness exams. Because the association veterinarian has the specific authority to perform soundness exams, the Commission no longer needs to delegate the authority to perform the exams to the association veterinarian.

7877.0175, Subpart 8a

The Commission proposes to add this subpart to define the duties and responsibilities of the association veterinarian. The association veterinarian is employed by the racetrack and is currently listed in the rules as a racing official who may be employed by the racetrack during the course of a race meeting. However, unlike other racing officials, the rules do not specifically contain the duties and responsibility of the association veterinarian. Therefore, the proposed addition of subpart 8a is necessary to specifically define the duties and responsibilities of the association veterinarian. The proposed amendment reflects the current responsibilities of the association veterinarian, and does not impose any additional responsibilities on the veterinarian or on any licensees effected by the duties of the veterinarian.

7883.0160 POST TO FINISH

This part sets forth the rules of racing from the starting gate to the finish line. The Commission proposes to amend subpart 14 of this part. The remainder of the part is unchanged.

7883.0170, Subpart 14

The Commission proposes to amend subpart 14, items A, C and D by eliminating all references to "destroyed" or "destruction" of an injured horse. The proposed amendment is necessary and reasonable because it is simply a grammatical change which refers to the death of a horse in a more humane manner.

The Commission also proposes to amend item B by providing that no horse may be removed from the racetrack surface without the supervision of the Commission veterinarian or the association veterinarian. This rule is necessary to ensure that an injured horse is removed from the racetrack in a safe and humane manner. The proposed amendment also ensures that immediate medical care can be rendered prior to the removal of the horse, and that all efforts can be made to save the life of an injured horse.

The Commission proposes to amend item C by providing that in the event a horse must be euthanized, the euthanasia may be performed by a veterinarian employed by the owner of the horse, provided that the veterinarian is licensed by the Racing Commission. As a general practice, euthanasia of a horse is generally performed well after racing and only after consultation with the veterinarian employed by the owner of the horse. As a result, it is reasonable to allow the veterinarian employed by

the owner to participate in the decision and to perform the euthanasia. As a practical matter, it is the private veterinarian who has examined the horse and who ultimately makes the recommendation for euthanasia. It is unreasonable to require that the Commission veterinarian leave his or her other duties to perform, what is generally considered, a private veterinarian function.

7884.0170 SCRATCHES

This part lists the circumstances under which a horse may be scratched from a race. The Commission proposes to amend subpart 3 of this part. The remainder of the part is unchanged.

7884.0170, Subpart 3

The Commission proposes to delete the reference in the rule heading to the "Commission" veterinarian. This change is necessary and reasonable to conform the rule to the proposed amendments in 7877.0175, subpart 8a governing the association veterinarian. Moreover, the Commission proposes to amend this subpart by allowing the association veterinarian to conduct a pre-race examination of a horse and to recommend to the stewards that the horse be scratched from a race because it is unfit to race. This change is also necessary to conform this subpart to 7877.0175, subpart 8a.

The Commission also proposes to amend this rule by conforming the period of time during which a horse is ineligible to race to that contained in part 7877.0175, subpart 8. This is necessary to eliminate a conflict that exists between this

subpart and 7877.0175, subpart 8. Thus, both subparts provide that a horse is ineligible to race for a period of five days as prescribed by 7877.0175, subpart 8.

7890.0100 DEFINITIONS

This part sets forth the definitions relative to Chapter 7890. The Commission proposes to amend Subpart 21 of this part. The rest of the part remains unchanged.

7890.0100, Subpart 21

The Commission proposes to amend the definition of "veterinarians' list", to conform to the changes made in part 7877.0175, subpart 8. The proposed amendment eliminates the conflict between this subpart and 7877.0175, subpart 8, and ensures that there is no duplication of or inconsistent definition of veterinarians' list in the rules.

7890.0140 BLEEDERS

The Commission proposes to amend Subpart 9 of this part by providing that a horse may be administered Lasix under the visual supervision of a person employed by the Commission, rather than under the visual supervision of the Commission veterinarian. This change is necessary because supervising the administration of Lasix does not require the expertise of a veterinarian, particularly when Lasix is administered by a licensed veterinarian employed by the owner or trainer of the horse. Moreover, the Commission veterinarian is sometimes needed at the post-race detention barn or at the scene of an emergency and may not be available for a scheduled Lasix treatment. Therefore, the

proposed amendment is needed to allow the Commission veterinarian to respond to other responsibilities while not jeopardizing the integrity of the controlled medication program. The change in the rule is reasonable because it does not place any undue or additional burdens on licensees. Moreover, the amendment ensures that the Lasix treatment will not be jeopardized due to the unavailability of the Commission veterinarian.

7891.0100 RACING SOUNDNESS EXAMINATION

The Commission proposes to amend this subpart by specifically indicating that a racing soundness examination may be performed by the Commission veterinarian or the association veterinarian employed by the racetrack. The proposed amendment is necessary to conform this subpart to the provisions of 7877.0175, Subpart 8a, which sets forth the duties and responsibilities of the association veterinarian. Because the proposed amendment merely conforms this subpart to the specific duties of the association veterinarian contained in 7877.0175, subpart 8a, the proposed amendment is reasonable.

7895.0100 GENERAL PROVISIONS

This part sets forth the general provisions governing the administration of the Minnesota Breeders Fund by the Racing Commission. The Commission proposes to adopt a new Subpart 5a, and a new subpart 6a. The rest of the subpart remains unchanged.

7895.0100, Subpart 5a

The Commission proposes to amend this subpart to provide that any person who knowingly makes a false statement in a

document or application required to be submitted for purposes of the Breeders' Fund may be denied participation in the Breeders' Fund for a period not to exceed 5 years. This amendment is necessary because currently the rules prohibit the submission of false statements or documents to the Racing Commission. However, the rules do not contain a specific penalty for the submission of such false documents. Therefore, because the Commission has been faced with the submission of false and/or misleading information in documents or applications for Breeders' Fund eligibility, this rule is necessary to prescribe a penalty for the submission of such false information. The proposed amendment clearly provides that anyone submitting such false information may be denied participation in the Breeders' Fund for a period not to exceed 5 years.

The five year prohibition from participation in the Breeders' Fund is necessary to provide effective deterrence from the submission of false information. The five year period was based on penalties imposed by other racing jurisdictions, and was therefore deemed to be a suitable period of time to prohibit participation in the fund.

7895.0100, Subpart 6a

The Commission proposes to amend this subpart to insure that any individual denied participation in the Breeders' Fund pursuant to Subpart 5a, shall forfeit and return any Breeders' Fund awards and purse supplements received due to the submission of the false information or statement. This rule is necessary to

insure that the Breeders' Fund monies are distributed to those persons legitimately eligible for them, and to preclude an ineligible person from receiving awards based on false or misleading information.

IV. OTHER STATUTORY REQUIREMENTS

Minn. Stat. § 14.115 requires agencies, when proposing a new rule or amending existing rules which may affect small businesses, to consider certain methods for reducing the impact of the rule on small business.

The proposed amendments to the racing rule indirectly impact small businesses. However, the rule does not affect small businesses disproportionately nor does the rule prevent small businesses from participating in horse racing. The Commission considered the impact of the amendments on small business and determined that because of the nature of the industry, the Commission cannot be less rigorous in its regulation of one type of business than another.

Minn. Stat. § 14.11, subd. 2 is inapplicable because the proposed amendments will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subd. 1, 116.07, subd. 6 and 144A.29, subd. 4 are not applicable. Section 16A.128, subd. 1 does not apply because the proposed amendments do not set any fee. Likewise, a fiscal note is not required pursuant to section 3.892 as the rule will not force any local agency or school district to incur costs.

CONCLUSION

Based on the foregoing, the Minnesota Racing Commission's proposed amendments to the existing rules governing horse racing are both necessary and reasonable.

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