

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption  
of the Minnesota Racing Commission Rule  
Relating to the Regulation of  
Medication in Race Horses

STATEMENT OF NEED  
AND REASONABLENESS

GENERAL

Minn. Statute 240.03 empowers the Minnesota Racing Commission to regulate horse racing in the state to ensure it is conducted in the public interest, to take all necessary steps to ensure the integrity of racing, to issue licenses, to supervise pari-mutuel betting on horse racing and to conduct necessary investigations and inquiries and compel the submission of information, documents and records it deems necessary to carry out its duties.

Minn. Statute 240.23 authorizes the Commission to adopt rules governing any aspect of horse racing or pari-mutuel betting which in the opinion of the Commission affects the integrity of racing or the public health, welfare or safety. Minn. Statute 240.24, subd. 1 (1990 and 1991 supp.), requires the Commission to make and enforce rules governing medication and medical testing for race horses. Subdivision 2 of that section requires the Commission to permit by rule the use of furosemide or other pulmonary hemostatic agents if the agents are administered under the visual supervision of the veterinarian or a designee of the veterinarian employed by the Commission.

The repeated statutory references to "integrity" in pari-mutuel betting and horse racing, and to "the public interest", reflect a legislative intent and public sentiment that the Commission act to ensure that horses entered into pari-mutuel events are fairly represented to the public. The Commission is required to regulate the handling and care of horses and the use of any permitted medications in these horses in such a manner as to guarantee that the natural performing ability of these horses is not enhanced or suppressed by artificial means. See Minn. Statute 240.24 (1990 and 1991 supp.).

The Commission believes that the proposed rule changes are necessary to the integrity of pari-mutuel betting and horse racing in Minnesota, to the public interest and to public safety, health and welfare. The Commission submits that the rule changes are necessary to eliminate a regulatory mechanism which appears to create unnecessary stress in horses treated with the permitted medication furosemide and, thus, potentially alters their performance capabilities in a way which is not predictable by the betting public.

The Commission believes that the proposed rule changes are reasonable because they more closely reflect regulations in effect in other racing jurisdictions than do the rules presently being used in Minnesota. The Commission further states that the proposed rules are based on accepted scientific studies carried out over a period of several years. The rules are reasonable

in that they reduce stress on the horses involved and alleviate an awkward and costly situation for the horsemen involved, yet actually enhance the Commission's ability to enforce the integrity and fairness of the permitted medication program.

## FUROSEMIDE MEDICATION

### SUMMARY

Minn. Statute 240.24 mandates that the Commission shall make and enforce rules governing medication and medical testing for horses running at licensed racetracks. Chapter 7890 of the Minn. Rules pertains to medication, while Chapter 7892 pertains to medical testing of horses.

Minn. Statute 240.24 permits the use of the medication furosemide. This medication is necessary to control the onset of a condition called exercise-induced pulmonary hemorrhage, wherein horses under conditions of maximal exercise will rupture small blood vessels in the lungs. The use of furosemide in a horse known to experience this condition results in a less erratic, more predictable racing performance. Yet, furosemide is a medication which has the potential, if used improperly, to dilute horse urine to the point where proper medical testing is not possible. For that reason, the requirements and conditions for the use of furosemide have been stringent, in order to permit the proper use but prohibit the abuse of this medication.

In order to prevent tampering with a furosemide-treated horse, Chapter 7890 has required the detention of these horses in a special facility following treatment. Unfortunately, horses undergoing such detention experience variable degrees of stress, nervousness, and excitability as a result of being in a strange environment and in such close proximity to strange horses. Depending upon temperament, this can have a decidedly adverse effect on their racing performance that day, an effect which is not predictable by the betting public.

Through the use of medical testing and research on the blood and urine samples of several thousands of race horses it has been shown that horses, when properly administered furosemide according to the schedule which ensures full and adequate medical testing, will have plasma and urine parameters within certain established levels (see Exhibit A). Thus, post-race quantitative testing methods can now be substituted for pre-race detention to guarantee that improper use of the drug does not occur.

The proposed rule changes to Chapters 7890 and 7892 require the additional medical testing for post-race furosemide levels and remove the requirement for pre-race detention of treated horses in any area other than their own stalls. The rule changes further require the trainer of any such horse to guard and visually monitor the animal from the time of treatment to the time of the race. In addition, they restrict veterinarian access to any horses scheduled to race to only those situations where legitimate medical care is necessary, and they outline the procedures to be followed should such situations occur.

The net effect of the proposed rule changes is to permit the race horses to remain in a

familiar and safe environment on race day while permitting the Commission to continue their strict regulation of the use of medications.

### RULE-BY-RULE ANALYSIS

7890.0100. This part provides definitions for terms used in Chapter 7890, Horse Medication.

Subpart 13 defines the term "medication" and, as part of that definition, exempts certain substances from being considered prohibited. These substances include food additives, topical applications, Bute (phenylbutazone), and Lasix (furosemide) under certain circumstances. Item B, which pertains to Lasix (furosemide), is being amended in two ways.

First, the word "if" is deleted by the proposed changes. This word was inadvertently placed in this item apparently due to a typographical error at some point previously in the rulemaking process. The change is necessary, as its inclusion in the present rule renders the rule meaningless.

Second, the proposed rule creates quantitative threshold levels for plasma and urine furosemide levels as well as for urine creatinine, a measure of urine dilution. The rule requires that body fluid samples taken for medical testing fall within the stated parameters in order for the finding of furosemide in the samples to be considered permitted. The change is necessary in order for the Commission to continue to prevent misuse of the medication while at the same time be able to discontinue the necessity of pre-race detention of horses. The change is reasonable, in that several other racing jurisdictions already employ quantitative methods for furosemide regulation. Furthermore, the Commission already employs quantitative methods for the regulation of Bute, the only other medication permitted to be in horses at the time of a race.

Subpart 15 defines the term "positive test". The proposed change will cause a test level of Lasix (furosemide) above the allowed level to be treated as a positive test finding, as is presently the case with Bute. This change is needed to permit the rules governing medication violations in general to apply to those situations where violations of the quantitative threshold levels for Lasix have been discovered.

Subpart 17 defines the term "test level" and, as with Subpart 15 above, is changed to include quantitative levels of furosemide within the term.

7890.0130. This part relates to the findings of the racing chemist. The proposed addition of references to Lasix is necessary in order to include an overage of furosemide into the list of substances prohibited in the test samples of horses. The proposed changes are primarily to cause the existing rules on prima facie evidence and on distributed purse money to also be applicable to violations of the proposed Lasix threshold levels, the same as they presently apply to violations of the Bute threshold levels.

7890.0140. This part outlines all regulations covering the treatment of "bleeders", as

defined in 7890.0100, subpart 4, with the therapeutic medication furosemide (Lasix).

Subpart 6 permits the administration of Lasix to certified bleeders. The proposed change to the header of this subpart is necessary for clarification of the contents, as the proposed changes would move part of this subpart to a new location (proposed Subp. 7) in this part. Separating out the requirements for obtaining permission to use the medication from the conditions under which the medication must be administered will allow the trainer to more clearly understand what steps he or she must go through in order to properly take care of business in this regard.

Proposed Subpart 7 outlines the specific conditions under which the medication must be administered. Much of the language here consists of the remainder of Subp. 6, as discussed above. Several changes are apparent in this subpart.

The word "bleeder" is substituted for "horse" in order to clarify which horses may be so treated.

A minimum dose of furosemide has been added. This change is necessary to protect the betting public from fraud in the case where so insignificant a dose is used that the therapeutic effect does not occur. The change is reasonable because the owner does not pay for treatment based on quantity administered.

The final changes in this subpart eliminate the need for the horse to go to the Lasix detention barn for treatment and detention. This change is necessary to prevent the problem of nervousness caused in Lasix-treated horses by the unfamiliar environment at the detention barn. The change is reasonable because the observation of treatments by Commission personnel, the quantitative testing following the race, and the requirement of the trainer to guard the horse while in its own stall will be a more effective system for preventing abuse of the program than is the present system.

Subpart 10 addresses the responsibilities of the trainer of any horse which is to race with Lasix. The additional language requires the trainer to provide information as to the proper location of the horse, the identification of employees permitted to be with the horse, and to ensure that the horse is at that location at the required time for treatment. The rule further requires the trainer or his or her representative to maintain visual supervision of the horse for the next four hours, and to notify the Commission's veterinarian if a medical emergency causes a private veterinary practitioner to have to come in contact with the horse. These changes are needed in order to permit the furosemide treatment at the proper time and to make the trainer responsible for guarding the horse from tampering. The changes also are necessary to permit the Commission to easily identify any situations where the trainer has failed to properly guard the horse. The changes are reasonable because the rules presently require such attendance on the horse; the change in location to the horse's own barn instead of the separate detention barn is actually less burdensome to the horsemen.

7890.0150. The change in this part is needed simply to correct a previous change which had created some confusion on the part of the betting public. Horses approved for race-day use

of either permitted medication are presently so noted in the daily racing program. The change is reasonable because it reflects what is done in actual practice at the track.

7890.0160. This part has been added to make very clear what the responsibilities of veterinarians are concerning medications. The language prohibits a veterinarian from administering drugs to horses scheduled to race within 48 hours. It further prohibits a veterinarian from inserting a stomach tube in a horse scheduled to race within 48 hours, and from being in any contact with a horse due to race within 4 hours, other than in the case of a medical emergency. The language requires the attending veterinarian in the case of such medical emergency to notify the Commission's veterinarian within a certain time frame.

The proposed rule is necessary for the Commission to regulate the activities of the practicing veterinarians in a manner which protects the integrity of racing. Presently, the rules only allow for disciplinary action to be taken against the trainer when prohibited substances are detected in a test sample. The veterinarian may be equally culpable, yet the Commission cannot take action unless the trainer is willing to testify against the veterinarian. Since such testimony is in itself an admission of complicity, this simply does not occur. Another important factor is that veterinarians are the only licensees allowed to be in possession of injectible medications and hypodermic equipment, yet the Commission is unable to take action when a veterinarian violates that trust accorded to him or her as a medical professional. Under the present rules, a veterinarian caught in the act of injecting an unknown substance into a horse before a race might end up with no disciplinary action being taken due to the Commission's inability to prove the identity of the substance.

The proposed rule is reasonable. In the case of the horse scheduled to race, no situation other than an emergency should require the veterinarian to administer substances in contravention of part 7890.0100, subpart 13. The rule provides for such medical emergencies.

7892.0120. Subpart 1 of this rule provides for the taking of samples necessary for medical testing. The proposed change in this subpart is needed to allow for the taking of samples to perform quantitative tests as outlined earlier in the analysis of the proposed changes to the definition of Lasix.

#### OTHER STATUTORY REQUIREMENTS

Minn. Statute 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 businesses. The proposed rules impact upon small businesses represented by trainers; however, the impact is a positive one in that the proposed rules make it easier for trainers to keep their horses calm prior to races. Factors enumerated have been considered and these rule changes represent a favorable impact.

Minn. Statute 14.11, subd. 2, is inapplicable because the proposed amendments will not have any direct impact upon 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. Likewise, a

fiscal note is not required pursuant to 3.892 as the rule will not force any local agency or school district to incur costs.

CONCLUSION

Based upon the foregoing, the Minnesota Racing Commission's proposed rules governing the regulation of medication are both necessary and reasonable.

  
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MINNESOTA RACING COMMISSION