

11-27-2006

MINNESOTA RACING COMMISSION

STATEMENT OF NEED AND REASONABLENESS

Proposed Amendment to Rules Governing Standardbred Breeders' Fund, Minnesota Rules 7895.0250, and Standardbred Registration, Minnesota Rules 7895.0275

INTRODUCTION

The nature of the proposed rule amendments of the Minnesota Racing Commission is to replace obsolete language that will make the rules consistent with breeding practices in the standardbred industry in the United States. The rules were originally written twenty years ago, and have not been amended since that time because there has been very little pari-mutuel standardbred racing conducted in Minnesota. The only pari-mutuel standardbred racing that has been conducted was held in conjunction with the Traverse County Fair in Wheaton, Minnesota. In 2005, the Commission issued Class A and B licenses to North Metro Harness Initiative to own and operate a standardbred race track in Anoka County. With the new track scheduled to open as soon as 2007, it became apparent that the standardbred breeding and registration rules needed to be revised to facilitate the anticipated increase in standardbred registrations for the Breeders' Fund Program.

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 Richard Krueger at the Minnesota Racing Commission, P.O. Box 630, Shakopee, MN 55379; phone 952-496-7950, fax 952-496-7954, richard.krueger@state.mn.us. TTY users may call the Racing Commission at 800-627-3529.

STATUTORY AUTHORITY

The Commission's authority to adopt the rules is set forth in Minnesota Statutes Chapter 240.18, subdivision 4. Under this statute, the Commission has the necessary statutory authority to adopt the proposed rules.

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.

Breeders of standardbred horses will be affected by the proposed rule to allow horses bred by artificial insemination to be eligible to participate in the Minnesota Standardbred Breeders Fund. Breeders will also be affected by the change in definitions

of "breeder", and "Minnesota-Bred", and the deletion of definitions for "Minnesota-Foaled" and "Minnesota Sire". Persons eligible to receive breeders' awards or purse supplements from the breeders' fund will be affected by deleting the language that prohibited purse supplements from being included in determining breeders' or stallions' awards. There are no costs associated with the proposed rule. There will certainly be costs involved for breeders who choose to have their mares artificially inseminated, but this rule simply allows artificial insemination to be done, and does not require it. Classes of persons who will benefit from the proposed rule include all participants in the standardbred breeders' fund program. In addition, persons who use and rely on the Commission's rules will benefit from the deletion of obsolete terms and rules.

(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 are no costs to the Racing Commission or any other agency to implement and enforce this rule. Any and all costs are borne by the participants in the Breeders' Fund program. There is no anticipated effect on state revenues.

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

No determination was made.

(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.

No alternative methods were seriously considered by the Commission.

(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.

It is anticipated that there will be no cost increases incurred by any one to achieve compliance with 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.

The anticipated costs or consequences of not adopting the proposed rule will be decreased participation in the Minnesota Standardbred Breeders' program. Decreased participation means fewer horses running at Minnesota Tracks for Breeders' Award incentives, and lower purse supplements for those races. If the breeding program declines in Minnesota, it will have a domino effect on the standardbred industry in Minnesota, i.e., fewer horses will be bred in Minnesota, fewer horses will run for purses supplements in Minnesota, purse supplements will be lower, and the public interest and support will decline resulting in lower pari-mutuel revenues to the State, as well as to the owners and operators of the racetracks in Minnesota.

Failure to adopt the rule allowing artificial insemination may result in some Minnesota owners and breeders choosing to ship their mares out of state for breeding purposes, and the resulting foals will not be eligible to participate in the Minnesota Breeders' fund.

(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 rule amendments and federal requirements.

PERFORMANCE-BASED RULES

The Commission and its staff, as in the past in developing these rule amendments, have not followed a formal process for the consideration and implementation of performance-based standards for the final promulgation of these proposed amendments. What needs to be emphasized is that the Commission and its staff, during the conduct of its regulatory duties and responsibilities on a day-to-day basis, are constantly aware of ways by which the integrity of racing and pari-mutuel betting can be improved and at the same time create rules that allow for flexibility by racing participants and Commission staff in responding to unanticipated situations in a business like fashion. Within the rule-by-rule analysis there will be an explanation of numerous examples where these amendments are being made to precisely achieve this purpose. At the same time they will continue to safeguard the integrity of racing and pari-mutuel betting.

ADDITIONAL NOTICE

These rules were discussed at regularly scheduled Full Commission meetings and a series of properly noticed Racing Committee meetings. The rules discussion was clearly included in all agendas prepared and duly mailed prior to these meetings.

The Commission will prepare an announcement of its Dual Notice of Intent to Adopt Rules and will mail the rules and Notice of Intent to Adopt to Minnesota Harness Racing, Inc., Canterbury Park Holding Corporation, and North Metro Harness Initiative, Inc. The proposed rules and Notice of Intent to Adopt will be placed on the Commission's website @ www.mnrace.commission.state.mn.us.

The Commission's rulemaking docket, which is publicly posted, will be updated as necessary to reflect the status of these rules.

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 mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.16. We will also give notice of intent by publication in the *State Register*.

LIST OF WITNESSES

If these rules go to a public hearing, the Commission anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Dr. Camille McArdle, DVM, Racing Commission Member and Chair of the Racing Commission. She will testify about the development and content of the rules as well as to breeding and registration issues.
2. Mr. Richard G. Krueger, Executive Director, Racing Commission, will testify about the development and content of the rules.

3. Dr. Lynn Hovda, Racing Commission Veterinarian, will testify about the development and content of the rules, as well as speaking to technical issues regarding artificial insemination.
4. Ms. Sharon Beighley, Racing Commission Staff, will testify about the rulemaking procedures and statutory requirements for rulemaking.
5. The Racing Commission will be represented by Mr. Darren DeJong, Assistant Attorney General.

RULE-BY-RULE ANALYSIS

Part 7895.0250, Standardbred Breeders' Fund, Subpart 1 (Definitions):

The change in item A is necessary to reflect current practice in the industry. When the rules were initially written, it was sufficient to define the breeder as the owner or lessee of the dam at the time of conception in Minnesota. With the changes over the years since the rule was promulgated, it is now necessary to define the breeder as the person whose name is reflected on the official USTA (United States Trotting Association) certificate of registration. This change is reasonable because all standardbred horses participating in the Minnesota breeders' fund must first be registered with the USTA, and will have received a certificate of registration at the time they are registered for the breeders' fund.

The changes in item B, Definition of Minnesota-Bred, are necessary to remove references to horses foaled prior to 1987. Those horses are, for the most part, no longer alive and if alive, would no longer be participating in the breeding program. It is also necessary to delete the requirement that the breeder's name on the certificate be a Minnesota resident. The person does not need to be a Minnesota resident to have a Minnesota-bred horse; the mare must be bred by a Minnesota sired stallion, and the foal must be born in Minnesota for the horse to qualify for participation. Deleting the phrase "or official registering agency" is necessary because the Racing Commission is the agency that registers the horses, and there are no future plans to delegate this authority to any other organization. It is necessary to delete the definitions for "Minnesota foaled" and "Minnesota sire" because those terms are no longer referred to in the rules and are obsolete. These changes are reasonable because they reflect the current practices in standardbred breeding in Minnesota for those who participate in the Breeders' Fund program. The changes are reasonable because they allow for the orderly growth and expansion of the standardbred breeders' fund program in Minnesota with the advent of the new harness racing track.

Part 7895.0250, Standard Breeders' Fund, Subpart 2 (Division of Money): It is necessary to delete the reference to Minnesota-foaled in item B, since the definition for Minnesota-foaled is being deleted, and the term is no longer in current use in regard to the standardbred breeders' fund program. The deletion is reasonable because it insures that the Commission's rules are up-to-date and do not contain terms that are no longer pertinent. The rule change is reasonable because it does not change the meaning or intent of the rule as promulgated.

Part 7895.0250, Standardbred Breeders' Fund, Subpart 3 (Distribution of Money): As with the previous rule, it is necessary to delete the reference to Minnesota-foaled in this item. The term is being deleted from use in the rules and the definitions, and in order for the rules to remain consistent throughout the chapter the deletion is necessary in this subpart. The rule is reasonable because the deletion will

insure consistency in the rules, and remove terms and phrases for which there is no longer a definition in the rules.

Part 7895.0250, Standardbred Breeders' Fund, Subp. 4 (Methods of Payment): It is necessary to delete the last sentence in this subpart. The existing language prohibited including purse supplements earned when calculating breeders' or stallion awards. Deleting the last sentence is necessary to allow the use of purse supplements in calculating breeders' or stallion awards, if desired. It is important to point out that the rule does not require the inclusion of purse supplements in the calculations, but merely removes the prohibition against doing so. The rule is reasonable because it provides for flexibility in calculating payments, and is a good example of an outcome-based rule. The industry advises the Commission on an annual basis on how it wants the payments calculated, and this will provide another option making breeders' fund payments.

Part 7895.0250, Standardbred Breeders' Fund, Subp. 6 (Time of Payment): The change in the rule is minor and technical in nature. The word meeting is being changed to season in the last sentence. This is necessary to bring the rule into conformance with other rules of the Commission governing the same matter for different breeds of horses. The rule change is reasonable because it does not change the meaning or intent of the rule, and is being done to achieve consistency throughout the Commission's rules.

Part 7895.0275, Standardbred Registration, Subp. 2 (Foal Certification): The words "foaled" and "Minnesota-foaled" are being deleted from this subpart. This is necessary to achieve consistency with other parts of the rules proposed for change, i.e., deleting the definition of Minnesota-foaled from M.R. 7895.0250. The deletions are reasonable because the Commission's rules will be easier to read and understand if obsolete terms and phrases are deleted. The rules are also reasonable because they have been agreed on by industry representatives, and there are no objections to the changes.

The proposed change in item 2(A) of this subpart replaces somewhat vague language with specific language that identifies the agency that is responsible for issuing certificates for standardbred foals. This is the United States Trotting Association, and is the blanket parent group for all standardbred race horses in the United States. The change is necessary to remove vagueness in the rules, and insure that licensees are fully informed about the requirements for foal certificates. The rule is reasonable because it is consistent with rules in other racing jurisdictions, and compliance will be easily achieved.

The proposed change in item 2(B) of this subpart is intended to make the rule specific regarding the requirement to have the foal registered with the Racing Commission. The rule change is necessary to provide specificity to the licensees about the requirements. The rule change is reasonable because licensees are already in compliance with this requirement, and there will be no new procedures for them to become familiar with.

Part 7895.0275, Subp. 3. (Artificial Insemination): This subpart is new, and is necessary to allow the Minnesota standardbred breeding industry to compete on a national level. It is necessary to encourage more participants to begin breeding and racing standardbred horses, with the start of pari-mutuel harness racing in the metropolitan area in the near term. The rule is reasonable because it is consistent with breeding practices and programs regulated by Racing Commissions in other States. Further, the rule is

reasonable because the Commission will be able to verify the accuracy of parentage of the horses if necessary, because the USTA requires genetic testing of all foals registered with it. The rule is also reasonable because owners and breeders are not required to use this method when breeding; it simply provides another avenue for them to improve the breed they own and race.

CONCLUSION

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