

11-27-2006

MINNESOTA RACING COMMISSION

STATEMENT OF NEED AND REASONABLENESS

PROPOSED AMENDMENT TO RULES GOVERNING QUARTER HORSE BREEDERS' FUND, M.R. 7895.0300 AND QUARTER HORSE REGISTRATION, M.R. 7895.0350

INTRODUCTION

The nature of the proposed rule amendments of the Minnesota Racing Commission are intended to amend the Quarter Horse breeders' rules to allow for new breeding practices and methods that have been commonplace and accepted in other states where pari-mutuel quarter horse racing is conducted. Specifically, the amended rules will allow quarter horses bred by artificial insemination or embryo transfer to be eligible for awards from the Minnesota Breeders' fund. The amendments also set forth registration requirements for broodmares being bred through artificial insemination or embryo transfer, and for donor mares in the case of embryo transfer. The proposed amendment also sets the process for declaring foals born by artificial insemination or embryo transfer to be Minnesota-bred.

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 G. 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

This rulemaking is an amendment of rules and so Minnesota Statutes, section 14.25, does not apply.

The Commission's Statutory Authority to adopt the rules is set forth in Minnesota Statutes section 240.18, Subdivision 4.

REGULATORY ANALYSIS

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. Owners and breeders of Quarter Horses will be affected by the rule amendments, and will also bear any costs associated with the amendments. The amendments will not require breeders to use

artificial insemination or embryo transfer, so those costs are not a required cost of the rule and are voluntarily borne by the owners and/or breeders. Out-of-state owners of mares donating embryos will be affected by the rule amendments, because the donor mare will be required to be in Minnesota prior to foaling by the recipient mare. There will be costs associated with mare care for the donor mare. Again, those costs should be viewed as a voluntary cost arrangement between the breeder and the owner of the donor mare.

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 in to the Commission or to any other state or local agency, due to the implementation and enforcement of the proposed rule amendments or any anticipated effect on state revenues.

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule. No determination was made.

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 considered by the Commission.

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 anyone to achieve compliance with these amendments.

The probably 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 governmental units, businesses, or individuals. Failure to adopt the proposed rule will result in owners and breeders of Quarter Horses not being allowed to use state-of-the-art science in the breeding of their Quarter Horses. This means that the Minnesota population of Quarter Horses racing for purses and breeders' fund awards will likely not be as competitive as those from other states that do allow the newer breeding practices. Individuals who own boarding & breeding facilities for horses will lose revenue that they could have earned by providing mare care for mare embryo donors. If the rules are not adopted, Quarter Horse owners and breeders will have to rely on the current rules in effect in Minnesota, which are not compatible with or equal to rules in other states for owners and breeders of Quarter horses.

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 Quarter Horse Racing Association, and Canterbury Park Holding Corporation. The proposed rules and Notice of Intent to Adopt will be placed on the Commission's website at 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 list under Minnesota Statutes, section. 1414, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 141.6. 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, Minnesota 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 and embryo transfer.
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

M.R. 7895.0300 Quarter Horse Breeders Fund, Subpart 1(A): Inasmuch as the proposed rule amendments will allow breeders of Quarter Horses to use artificial insemination methods, it is necessary to define the term in rule so that all breeders and participants in the industry are aware of what is meant by the term. The rule is reasonable because it is the understood and used definition in other racing jurisdictions where artificial insemination methods are permitted. The rule is also reasonable because it is understood and agreed to by breeders of registered Quarter Horses in Minnesota.

M.R. 7895.0300 Quarter Horse Breeders Fund, Subpart 1(C): Since the term "embryo" is used in the proposed rule amendments, it is necessary to define the term in rule so that all stakeholders are aware of the definition and how it applies to their breeding operations. The rule is reasonable since it is the scientific definition of an embryo, and is not subject to differing interpretations by other scientific interests.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(D): The definition of "Embryo Transfer" is necessary to explain clearly what is meant by the practice of transferring an embryo from a donor mare to a recipient mare that will carry the foal for the term of the pregnancy. The definition is reasonable because it is a term that is clearly understood and agreed upon by all participants in the horse breeding industry. Because the proposed rule amendments will allow the practice of embryo transfer in the breeding of quarter horses in Minnesota, the definition is necessary in rule.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(E): The proposed definition of "Fertilized Egg" is a standard scientific definition commonly used and accepted throughout the breeding industry. The definition describes the methods by which the eggs are fertilized. Including the definition in the proposed rules is reasonable because it provides a standard definition for all breeders and owners to rely on in the business of breeding quarter horses.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subparts 1(F)(1), (2), and (3): The proposed rule amendments are not new language. They are identical to the language in existing item (E). The language is being relocated within the subpart and renumbered. The change is reasonable, because relocating the language provides a more logical flow to the rule, and helps to insure that readers and users of the rule are easily able to read and understand the rules.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(I): The Commission is proposing to add language to this rule, necessitated by other proposed rule amendments which will allow embryo transfer and artificial insemination to be used as breeding methods for Quarter Horses participating in the Minnesota Breeders' Fund. This language is necessary to accurately reflect the definition of a Minnesota-sired horse under the newly

proposed breeding practices. The rule is reasonable, because it clearly defines the methods by which horses can be classified as Minnesota-sired. The language is easily understood and agreed on by breeders and owners of Quarter Horses participating in the Minnesota Breeders' Fund.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(J): It is necessary to define what is meant by the term "natural cover", since the Commission is proposing rules that allow other means of breeding for Quarter Horses. The definition is reasonable because it is a simple statement, easily understood, that is agreed upon by all participants in the breeding industry in Minnesota.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(K): Since the term "Oocyte" is now being used in the Quarter Horse breeders' fund rules in Minnesota, it is necessary to define the term in rule. The definition is reasonable because it is the generally accepted scientific definition for the term.

M.R. 7895.0300, Quarter Horse Breeders Fund, Subpart 1(L): It is necessary to define the practice of "Oocyte transfer" since this method of breeding will be allowed under the proposed rule amendments. The definition is reasonable because it is a generally accepted scientific definition in use in the Quarter Horse breeding industry at this time.

M.R. 7895.0350 Quarter Horse Registration, Subpart 1 (Broodmare Registration, Minnesota-bred sired and foaled): The Commission finds it necessary to add a new item C to this subpart to govern the procedures to be used when a broodmare is in foal to a Minnesota-sire by means of artificial insemination, or transfer of an embryo, oocyte, or fertilized egg. It is necessary to require that the both the donor mare and the recipient mare be in Minnesota prior to foaling, so that the foal can be immediately blood-typed and its parentage verified to the donor mare. The requirement that the recipient mare be in Minnesota prior to foaling is really not new, since all mares giving birth to foals that are eligible for the Breeders' Fund are required to be in Minnesota prior to foaling. It is necessary to require that the recipient mare be properly identified on the registration form of the donor mare that is submitted to the Commission pursuant to rule by January 31st of the year in which the mare will foal. Again, this requirement is necessary in order to prove parentage of the resulting foal. It is theoretically possible that more than one foal could result from each mare/stallion combination. This could happen if more than one egg is retrieved from a donor mare, and more one than one recipient mare receives an egg from the donor mare fertilized by the same stallion. Because of this possibility, it is necessary to set a limit of only one foal from each mare/stallion combination being registered in the Breeders' Fund in any given breeding year. Allowing more than one foal from each combination could potentially skew the odds in a race should these foals end up competing against each other in a future race. The rule gives the breeder the right to designate which foal participates in the Minnesota-bred program. Allowing the breeder to designate the foal is reasonable, because the breeder is the person with the most skills to make the judgment about which horses will be successful performers on the race track.

This rule is reasonable because it clearly spells out the procedures to be followed when breeding Quarter Horses to Minnesota-bred sires by artificial insemination, or transfer of an embryo, oocyte, or fertilized egg. The rule is reasonable because it provides specific information to be used by the breeder to insure that program eligibility requirements are met. Further, the rule is reasonable because it was discussed with the breeders and members of the Quarter Horse Racing Association during several public meetings, and no objections or issues were raised. All present at those meetings agreed with the final result of the rule drafting exercise.

M.R. 7895.0350, Quarter Horse Registration, Subpart 1a (Broodmare Registration, Minnesota-bred foaled): The language and rationale for this rule is identical to that for the immediately preceding item with one exception. That exception is in the requirement that both the donor mare and recipient mare be in Minnesota prior to foaling. In this case, an exception is being made in the event the donor mare dies before the recipient mare gives birth. A Minnesota-bred foaled horse means that both the donor mare and recipient mare are Minnesota-bred mares. With the preceding item, the donor mare is not required to be Minnesota-bred, but the stallion must be a Minnesota-Sire.

The rule is reasonable because it sets forth clear procedures to be followed, and can be easily understood by all participants in the Quarter Horse Breeding and Racing Industry in Minnesota. The rule is reasonable, because the issue was thoroughly discussed at public meetings during the rule drafting process, and all present agreed with the result of the rule draft.

M.R. 7895.0350, Subpart 3 (Foal Registration and certification, Minnesota-bred sired and foaled and Minnesota-bred foaled); Subpart 4 (Foal Registration and Certification, Minnesota-bred sired): The need for this rule arises from the possibility that more than one foal could result from each mare/stallion combination in any given breeding year. This could happen if more than one egg fertilized by the same stallion is removed from a donor mare, and more than one recipient mare gives birth to a resulting foal. The additional language in this rule gives the breeder the right to designate which one of the foals will participate in the Quarter Horse Breeders' Program in Minnesota. The rule is reasonable because the breeder is the person with the most skills and knowledge to select the foal most likely to be a successful performer at the race track in the future.