

CANTERBURY PARK LOCATION  
P.O. Box 630  
1100 CANTERBURY ROAD  
SHAKOPEE, MN 55379  
TELEPHONE: 952-496-7950  
FAX: 952-496-7954  
WWW.MRC.STATE.MN.US



RUNNING ACES HARNESS PARK LOCATION  
15201 ZURICH STREET  
COLUMBUS, MN 55025  
TELEPHONE: 651-925-3951  
FAX: 651-925-3957  
WWW.MRC.STATE.MN.US

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MINNESOTA RACING COMMISSION

February 19, 2010

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

Re: In the Matter of the Proposed Amendment to Rules Governing Horse Racing,  
*Minnesota Rules, 7869 Definitions; 7870 Licensure;*

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to Class C Licenses, Horse Examinations, Medical Testing, and Breeders' Fund.

We plan to publish a Dual Notice of Hearing in the February 22, 2010 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, 7869 Definitions, 7870.0500 Contract Approval, 7870.0510 Affirmative Action**

## INTRODUCTION

The Racing Commission is considering rule amendments regarding affirmative action and the Americans with Disabilities Act.

## 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 [colleen.hurlbert@state.mn.us](mailto:colleen.hurlbert@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.

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**

Class A, B, and D licensees (racetracks) will be affected although it will be minimal as these proposed amendments are an attempt by the Commission to update its previously adopted affirmative

action provisions allowed by law which are being complied with by the current licensees, Canterbury Park and Running Aces Harness Park.

**(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.

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

The proposed rule amendments do not change any costs to the licensees in complying with the proposed amendments as they have already developed procedures and reporting formats under current rule stipulations.

**(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. The Commission with the proposed amendments is simply attempting to bring its rules in these matters up to current federal and state standards as the rules proposed to be amended were adopted by the Commission in 1985.

**(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**

Adoption of these amendments will not affect the total cost of operating a racetrack as racetrack procedures are already in place so as to comply with current rule. No governmental units will be affected.

**(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 consequence of not adopting the proposed rules will be having Commission rules that are not current with current Federal and State stipulations regarding affirmative action and the disabled. The Commission has a strong desire that its licensee and those they do business with are in compliance with all current requirements regarding affirmative action and the disabled in their hiring practices.

**(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 proposed rule amendments and current federal requirements.

## **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 the business and hiring practices of its licensed racetracks and are being proposed as a means to strengthen the Commission’s statutorily authorized regulatory oversight regarding affirmative action. 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, 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 propose rules that allow flexibility by racing participants and Commission staff in responding to unanticipated situations in a business like fashion.

## **ADDITIONAL NOTICE**

The Commission Chair, with approval from the Full Commission, appointed a three member Ad-hoc Committee for the specific mission to review the Commission’s affirmative action rules and to recommend amendments to bring rules current with Federal and State requirements. These proposed amendments were thoroughly discussed at regularly scheduled Ad-hoc Committee meetings, Commission meetings and Commission Work Sessions and at various meetings included senior staff from the Minnesota Department of Human Rights (MDHR). 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 May 15, 2008, August 5, 2008, September 18, 2008, October 7, 2008, October 16, 2008, November 5, 2008, November 20, 2008, December 2, 2008, January 6, 2009, February 19, 2009, March 3, 2009, June 2, 2009, July 7, 2009, August 4, 2009, August 20, 2009, September 1, 2009, and September 17, 2009. Minutes from the Full Commission meetings on the third Thursday of each month are available on the Commission’s website at [www.mrc.state.mn.us](http://www.mrc.state.mn.us).

The Racing Commission’s Ad-hoc Committee began work on the proposed rules in May, 2008, and has provided updates on the status of the rulemaking proceedings during the Commission’s monthly meetings. Continued updates have been 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.

Our Notice Plan includes:

1. Publishing the Request for Comments in the April 13, 2009 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 Arabian Racing Association of Minnesota, 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.

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.

5. 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.

### **CONSULTATION 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 agency has determined that they do not because these changes are bringing the rules current with existing Federal and State standards.

### **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. None of the proposed amendments affect any small business or small city as of the amendments affect the licensed racetracks and those businesses that by definition under state human rights law as not being a small business.

### **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. Commissioner Jesse Overton will testify about the development and content of the rules.

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

Part 7869.0100, subp. 2a. This proposed amendment to the definition is needed as the federal ADA was amended during 2008. It is reasonable to provide a clear and accurate description of current federal law that is incorporated and referenced in the Commission's proposed rule amendments and to provide for the incorporation of future federal amendments to the ADA.

Part 7870.0500, subp. 1. The proposed amendments to this subpart were recommended by staff of the MDHR. In acquiring a Certificate of Compliance from MDHR, a business/contractor employing more than 40 employees has satisfied the goals and timetables required by Chapter 363A, the Minnesota Human Rights Act (MHRA). Therefore it is reasonable that in those cases the Certificate be provided to the Commission so as to comply with M.S. ch. 240.19 and to disclose review by MDHR. MDHR reviews affirmative action plans for compliance with minimal standards required by law and rule. Any deficiencies are reviewed with the business/contractor prior to issuing a certificate. This review is needed to determine compliance with the MHRA and is appropriately done by MDHR that has the required expertise for a review that the Commission can rely on and is needed to show compliance by those doing business with the Commission's licensees.

Part 7870.0510, subp. 1A and B. Amending these two paragraphs will reflect current regulations and procurement trends using the federal small business size standards identified by the North American Industry Classification System (NAICS) codes for reference. There are over 1000 small business standards identified by NAICS. Licensees/racetracks do not deal with all of the different sectors identified by the NAICS, but the diversity within their procurement span a wide variety of identified criteria including that a certain supplier may be a sole/single source supplier. Current definition of small business is not consistent with the federal government small business standard. The current criteria used to define a small business was proposed in 1984 and needs to be amended. It is reasonable to amend this part as it is becoming increasingly more challenging to comply with in order to meet the minimum percentage goals.

Part 7870.0510, subp. 2. This amendment is needed to simply provide the correct statutory citation for the Minnesota Human Rights Act.

Part 7870.0510, subp. 3A. This amendment is technical as subp. 3B is being proposed for deletion.

Part 7870.0510, subp. 3B. Proposed deletion of this paragraph is reasonable in that the Commission was advised by staff of the MDHR that state law does not require percentage goals for disabled employees. It is reasonable in that there are no statistics available for disabled individuals and that the disabled are not categorized with what jobs they are able or not able to perform making it difficult to define reasonable goals for the disabled individual. Further MDHR staff advised the Commission that a company/supplier in obtaining a certificate of compliance has satisfied specific rules pertaining to the avoidance of discriminating against disabled individuals.

Part 7870.0510, subp. 5A. This amendment is needed as the Commission proposes to simply incorporate the ADA definition by reference. It is reasonable that the Minnesota Racing Commission be consistent with federal requirements and thereby requires compliance by its licensees/racetracks as a condition of their licenses.

Part 7870.0510, Subp. 5B. This amendment is needed and reasonable in that it provides for additional notice to assure job applicants equal opportunity in all recruitment for job openings at and by each racetrack.

Part 7870.0510, Subp. 5C and D. These proposed amendments are needed to reflect current regulations and procurement trends by using the federal government small business size and startup standards identified by the NAICS codes and standards. There are over 1,000 small business standards identified by NAICS. The Commission's licensees/racetracks do not deal with all of the different sectors identified by the NAICS, but the diversity within their procurement and contracting span a wide variety of identified criteria in their course of daily business. By federal government size standards, the licensees deal in business sectors that qualify as small businesses with ranges of employees numbering from 100 up to 1,500 and have annual receipts ranging from \$6.5 million up to \$32.5 million. These amendments are needed and reasonable so as to assure that Commission licensees exercise effort to recruit small businesses that may be owned and operated by socially and economically disadvantaged individuals, again under the guidelines of the NAICS. Testimony to the Commission during the review of these proposals from the MDHR staff indicated that certain state agencies currently use these same standards (MnDOT, Metropolitan Council, Airports Commission). It is reasonable that the Commission, even though a small agency, be consistent with other agencies in recruitment and contracting for a variety of services and products.

Part 7870.0510, subp. 5E. This definition is needed as "sole or single source" has been proposed by the Commission's licensees/racetracks as an exception in parts 7870.0510, subp. 1A and B. In the course of their businesses there may be instances where contracting and supplier sources may be available from only one source. It would be unreasonable not to allow for the procurement from those sources. It is reasonable that the Commission does not want to interfere with the normal operation of their business practices. It also needs to be pointed out that this definition is the same as the definition for single source contained in M.S. ch. 16C.02, subd. 18.

#### **LIST OF EXHIBITS**

#### **CONCLUSION**

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

Date

10/5/09

Richard G. Krueger  
Executive Director