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MINNESOTA RACING COMMISSION

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December 23, 2019

Legislative Reference Library
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St. Paul, Minnesota 55155

**Re: In the Matter of the Proposed Rules of the Minnesota Racing Commission
Governing Minnesota Racing; Licensing; Revisor's ID 4568**

Dear Librarian:

The Minnesota Racing Commission intends to adopt rules relating to horse racing medication. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the December 30, 2019 State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic 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 (652) 925-3952.

Yours very truly,

A handwritten signature in blue ink, appearing to read "E. Joseph Newton". The signature is fluid and cursive.

E. Joseph Newton
General Counsel

Enclosure: Statement of Need and Reasonableness

STATEMENT OF NEED AND REASONABLENESS

Possible Amendment to Rules Governing Horse Racing, Minnesota Rules, Parts 7870.0480 Medical Services; 7877.0110 Procedure for Obtaining Class C License; 7877.0120 Fees; 7877.0125 Criteria for Determining Eligibility; 7877.0130 Standards Required of Applicants for Specific Licenses; 7877.0135 Dual Licensing; 7877.0140 Temporary License; 7877.0145 Emergency License; 7877.0150 Replacement License; 7877.0155 Conditions Precedent to Licensing; 7877.0160 Duration and Extent of Class C Licenses; 7877.0170 Duties and Responsibilities of Class C Licensees; 7877.0175 Duties and Responsibilities of Racing Officials; 7879.0100 Qualifications and Appointment of Stewards; 7879.0200 Authority and Duties of Stewards; 7897.0190 Contested Case Hearings

INTRODUCTION

Horsing is highly regulated in Minnesota and across the country. This is necessary to ensure fairness, animal welfare, and the safety of all participants. As the industry evolves, the Minnesota Racing Commission (MRC) continuously strives to keep its rules current, relevant and consistent with rules in other jurisdictions. Our stakeholders expect and count on this.

This rulemaking initiative will modify, clarify and update various existing MRC rules related to licensing. Pursuant to new statutory authority granted in 2019, annual license fees are established for racing or gaming-related vendors. There are several purely technical amendments. In some cases, the rules will be updated for clarification or for consistency with the industry model rules. Finally, obsolete rule language will be repealed. Following is a brief summary of the changes.

7870.0480 MEDICAL SERVICES.

The commission is proposing to adopt a new industry model rule requiring racetracks to implement a concussion protocol for jockeys and drivers.

7877.0110 PROCEDURE FOR OBTAINING A CLASS C LICENSE

The license application process is updated. Separate requirements are now tailored to apply to individuals versus corporate or other non-individual applicants. We are also joining 24 other racing states in recognizing multi-jurisdictional licensing for horse owners.

7877.0120 FEES

Certain license classes are listed as having no annual license fee. Annual license fees are established for racing or gaming-related vendors as required by law. Obsolete language is deleted.

7877.0125 CRITERIA FOR DETERMINING ELIGIBILITY

Non-substantive amendments clarify that racing applicants and licensees must comply with other state and federal laws.

7877.0130 STANDARDS REQUIRED OF APPLICANTS FOR SPECIFIC LICENSES

Some requirements are clarified and simplified. Vendor licensing is updated and new license categories are created for large and small racing or gaming-related vendors.

7877.0135 DUAL LICENSING

A slight clarification is made to the rule language.

7877.0140 TEMPORARY LICENSE

Temporary licensing requirements are simplified. New language specifies when a temporary license expires and when the corresponding identification badge must be surrendered to the commission.

7877.0145 EMERGENCY LICENSE

Requirements for racing officials are updated. Obsolete language is repealed and some non-substantive clarifications are made. New language provides that purse money may be redistributed if an owner racing on an emergency license does not submit a complete license application within 21 days.

7877.0150 REPLACEMENT LICENSE

This rule part is updated to substitute the word “badge” for license.

7877.0155 CONDITIONS PRECEDENT TO LICENSING

Non-substantive edits are made for clarification and to specify that, in the course of conducting an authorized search, the commission may seize any items reasonably suspected to be prohibited.

7877.0160 DURATION AND EXTENT OF CLASS C LICENSES

Obsolete language is repealed. New amendments will allow three-year licenses for horse owners.

7877.0170 DUTIES AND RESPONSIBILITIES OF CLASS C LICENSEES

Several non-substantive edits are made to correct spelling and grammar. Obsolete language is repealed. New language is added requiring jockeys and drivers to comply with racetrack concussion protocols.

7877.0175 DUTIES AND RESPONSIBILITIES OF RACING OFFICIALS

Several non-substantive technical updates are made.

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS

The qualifications to be a racing steward are greatly simplified.

7879.0200 AUTHORITY AND DUTIES OF STEWARDS

The stewards duties are slightly updated to reflect current practice.

7897.0190 CONTESTED CASE HEARINGS

Rule language is updated to conform to statute changes made in 2019.

ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or audio. To make a request, contact Stephanie Jenson at the Minnesota Racing Commission, 15201 Zurich Street, Suite 212, Columbus, MN 55025; phone 651-925-3955, fax 651-925-3954; or email stephanie.jenson@state.mn.us. TTY users may call the Racing Commission at 800-627-3529.

STATUTORY AUTHORITY

The Racing Commission's authority to adopt the rules is set forth in Minnesota Statutes section 240.23, which provides as follows:

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 and wireless 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) the 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) procedures for the sampling and testing of any horse that is eligible to race in Minnesota for substances or practices that are prohibited by law or rule; and (k) 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.

This provision was enacted in 1983 and only amended once since January 1, 1996. Items (b) and (j) were added effective May 25, 2015. *Laws of Minnesota 2015*, Chapter 77, art. 4 § 20. However, the MRC believes this was a non-substantive amendment because we already had catch-all authority under item (k) to promulgate rules governing any aspect of horse racing or pari-mutuel betting which in its opinion affect the integrity of racing or the public health, welfare or safety. In any case, the MRC did promulgate new rules relating to item j above within 18 months of enactment of this amendment. R-4380, governing horse medication and testing, was adopted on March 18, 2016.

The Minnesota Legislature enacted new rulemaking authority in 2019 requiring the MRC to establish annual license fees of up to \$2500 for racing or gaming-related vendors. *See Laws of Minnesota 2019*, 1st Special Session, Chapter 10, Art. 8, § 5, effective July 1, 2019, now codified at Minnesota Statutes § 240.10 (d).

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.**

All stakeholders will benefit from the updating, simplification and clarification of existing rules, as well the elimination of obsolete rules. This includes racetracks and their employees, horse owners and trainers, veterinarians, and other persons who participate in horse racing or wagering. Jockeys and drivers will benefit from new protections afforded by racetrack concussion protocols. Licensed racetracks will bear some additional costs associated with implementing concussion protocols. Racing and gaming-related vendors, the majority of which are large national companies, will see an increase in their license fees. However, the MRC believes these relatively modest costs are necessary to maintaining high standards of safety and integrity which ultimately serve the best interests of the entire racing industry and its fans.

- (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**

The MRC will incur some increased costs of licensing and monitoring racing or gaming-related vendors. Because those costs will be offset by new license fees, there is no known anticipated effect on state revenues.

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

The commission has not identified any less costly or less intrusive methods for achieving the purposes of the proposed rules.

- (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.**

These proposed rules reflect current practices in the industry. Many were proposed by our stakeholders. Much of the new language is simply clarification of how the MRC has consistently interpreted and enforced the rules. We have not identified alternative methods for achieving the purposes of the proposed rules and none have been brought to our attention.

- (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**

There will be some cost for the two licensed racetracks to develop and implement their concussion protocols. The MRC estimates this will be less than \$15,000 per year, which is a tiny fraction of their racing revenues. Approximately 20 racing or gaming-related vendors will see their license fees increase from \$100 per year to \$1000-\$2500 per year. However, their license fees will still be comparable to or lower than what they pay in other states.

(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

Failure to adopt the proposed rule would mean the MRC would continue to bear the heightened cost of adequately regulating racing and gaming-related vendors. We would not have the necessary resources to effectively screen and oversee these vendors who have the highest potential to affect the integrity of horseracing, pari-mutuel betting and card playing. There would also be undue risk to the health of jockeys and drivers who may not be properly screened and treated for concussions-- or who may return to racing after a concussion before it is safe to do so.

(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 federal regulations regarding these proposed rule changes. Horse racing is regulated by the various individual state racing commissions.

(8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

The proposed rules cover areas that are not addressed by federal law or other Minnesota laws or rules. The rules are designed to complement Minnesota Statutes, Chapter 240 without duplicating requirements therein. Another goal is to make our rules consistent with those in other states for the benefit of horsemen who routinely race in many different states, thus reducing the cumulative effect of our rules. The proposed amendments will eliminate MRC licensing of some professionals who are already licensed in good standing by other state agencies, thereby reducing the regulatory burden on those individuals.

PERFORMANCE-BASED RULES

Consistent with the MRC's mandate, these rules are proposed to support the health and safety of race horses and racing participants, as well as the integrity of racing and card playing. As required by Minnesota Statutes, Section 14.002, they were developed with every effort to emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated parties and the agency in meeting those goals. We consulted with staff, commissioners, the Office of the Attorney General, interested industry members, and regulators from other states. We also reviewed model rules and comparable rules in effect in other states.

ADDITIONAL NOTICE

The Minnesota Racing Commission began work on these rule proposals in August of 2018 after receiving recommendations from racing stewards, judges, racetracks, our licensees and commission staff. A Request for Comments was initially published in *The State Register* on October 8, 2018. A public stakeholder meeting was held at Canterbury Park on October 23, 2018 to gather input for the rules. This meeting was attended by representatives from both racetracks, several horsepersons' organizations, breeders, racing officials and commission staff. The public was encouraged to submit proposals.

Since that time however, the 2019 Minnesota Legislature granted us new rulemaking authority, effective July 1, 2019, requiring us to establish annual license fees for racing or gaming-related vendors.

Therefore, we published a new Request for Comments in *The State Register* on August 12, 2019 so we could address this topic and comply with Minnesota Statutes, section 14.101, which requires us to publish a Request for Comments within 60 days of any new or amendatory law requiring rules to be adopted.

In addition to giving the notice required by law, we have followed our Additional Notice Plan as approved by the Honorable James Mortenson on August 2, 2019. Our Additional Notice Plan includes the following:

1. Posting the Request for Comments on the Commission's website at www.mrc.state.mn.us with a link to the Office of Administrative Hearings rulemaking e-comments website.
2. Posting the Request for Comments on the Office of Administrative Hearings rulemaking e-comments website for at least 60 days.
3. Posting the Request for Comments on the Commission's Facebook page.
4. E-mailing the Request for Comments to everyone registered with the Commission to receive rulemaking notices, as required under Minnesota Statutes, section 14.14, subdivision 1a.
5. E-mailing the Request for Comments to each of the commission's contact persons with the Class A & B licensees, e.g. our licensed racetracks.
6. E-mailing the Request for Comments to everyone, including vendors, who has applied for a Class C license from the Commission in the past two years that has provided us with an e-mail address. This mailing list contains over 5,000 names.
7. E-mailing the Request for Comments separately to each of our contacts at the six horsepersons's organizations that are affected by horse racing in Minnesota, along with a specific request that they post it on their website or otherwise communicate it to their members. These organizations include: the Minnesota Thoroughbred Association, the Minnesota Horsemen's Benevolent and Protective Association, Minnesota Harness Racing, Inc., the Minnesota Quarter Horse Racing Association, the Jockey's Guild, and the United States Trotting Association.
8. E-mailing the Request for Comments to organizations in Minnesota that we identified as having an interest in animal health, including the Minnesota Board of Animal Health, the Minnesota Board of Veterinary Medicine, the Minnesota Humane Society, the Minnesota Veterinary Medical Association, and the University of Minnesota College Of Veterinary Medicine. We requested that these organizations disseminate the Request for Comments to their members and constituents as they saw fit.
9. The start of this rulemaking project was announced at public meetings of the Minnesota Racing Commission on September 20, 2018 and July 24, 2019. Meeting agendas, minutes and recordings are posted to our website.
10. Commission staff held a well-attended public stakeholder meeting to obtain input from interested persons on October 23, 2018.
11. Commission staff has updated the Commission and the public on the progress of rule development at regularly scheduled public meetings of the full Minnesota Racing Commission and will continue to do so until such time as the rule is adopted or withdrawn. Meeting agendas, minutes and recordings are posted to our website.

12. The Commission's Racing Committee held a public meeting on December 2, 2019 to discuss specific draft rule language. Notice of this meeting was announced on our website and was sent to all persons registered to receive notices of commission meetings and rulemaking notices. Meeting agendas, minutes and recordings are posted to our website. Representatives of various stakeholders were present.
13. We have posted the draft rules, SONAR and Notice of Intent to Adopt Rules on the Office of Administrative Hearings Rulemaking e-Comments site with a link from our website.

CONSULT WITH MMB ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Commission has consulted with Minnesota Management and Budget (MMB). We did this by sending MMB copies of the documents we sent to the Governor's Office for review and approval on the same day we sent them to the Governor's office prior to publishing the Notice of Intent to Adopt Rules without a Public Hearing. The documents include the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MRC will provide a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH when we submit the rule to the Office of Administrative Hearings for 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 Commission has determined that they will not, because all activity that these amendments affect occurs on licensed racetrack grounds, not out in the local community. There are occasions when we must contact local law enforcement or county/city attorney offices, but that is in the normal course of fulfilling our duties and responsibilities when events warrant. It is not anticipated that these amendments will either increase or decrease those contacts.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

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 could not exceed \$25,000 for a small business. The Racing Commission has determined that the cost of complying with the proposed rules in the first year after the rules take effect could not exceed \$25,000 for any small city.

LIST OF WITNESSES

If these rules go to a public hearing, the Racing Commission anticipates having the following principal witnesses testify in support of the need for and reasonableness of the rules. Additional witnesses could be called as needed.

1. Thomas DiPasquale, MRC Executive Director or his successor
2. Dr. Lynn Hovda, Chief Commission Veterinarian
3. Dr. Camille McArdle, Chair of the MRC Racing Committee

4. James Lane, MRC Chairman
5. Robert Schiewe, MRC Deputy Director
6. Jeff Johnston, The Jockeys' Guild Regional Manager.

RULE BY RULE ANALYSIS

Pursuant to its authority under Minnesota Statutes, section 240.05, the MRC may issue four classes of licenses:

- (1) class A licenses, for the ownership and operation of a racetrack with horse racing on which pari-mutuel betting is conducted;
- (2) class B licenses, for the sponsorship and management of horse racing on which pari-mutuel betting is conducted;
- (3) class C licenses, for the privilege of engaging in certain occupations related to horse racing; and
- (4) class D licenses, for the conduct of pari-mutuel horse racing by county agricultural societies or associations.

The first proposal discussed below pertains to Minnesota Rules, Chapter 7870, which governs Class A and B licenses. Most of the proposals will amend Chapter 7877 governing Class C licenses. There are minor amendments to Chapter 7879 concerning racing stewards. The final two proposals are purely technical amendments to Chapter 7897 which applies to all license classes.

7870.0480 MEDICAL SERVICES.

The MRC is proposing to adopt a relatively new industry model rule – governing the management of concussions – approved by the Association of Racing Commissioners International (ARCI) in April of 2018. This rule was originally proposed by The Jockeys' Guild, which is the national trade association representing professional jockeys.

By way of background, the ARCI is comprised of racing regulators from throughout the United States and several foreign countries. Recognizing the multi-jurisdictional nature of this highly regulated sport, the ARCI provides a mechanism for collective policy formation, the exchange of information, research, education, integrity advocacy, and the development of reforms designed to assist its members to operate more effectively. One of its primary functions is to maintain a comprehensive set of model rules which member jurisdictions are encouraged to adopt. The MRC's Executive Director is a member of the ARCI's Board of Directors as well as its Model Rules Committee. According to the ARCI website,

The development of Model Rules, standards, and best practices is an ongoing project of ARCI member agencies. Relying upon the collective expertise of regulatory personnel in member jurisdictions in consultation with regulated entities, industry stakeholders, fans and individuals, ARCI committees consider ways to improve and enhance the regulation of racing.

The Model Rules are all encompassing. They affect thoroughbred, standardbred, quarter horse, and greyhound racing. Regulatory entities are encouraged to adopt the Model Rules by reference as a way to enhance uniformity of regulation in a sport that has evolved to be multi-jurisdictional.

Anyone can help the ARCI improve racing regulation by proposing a new or amended model rule. Proposals typically originate from industry stakeholders such as the Racing Medication and Testing Consortium, the national Horsemen's Benevolent and Protective Association, the Organization of Racing Investigators, The Jockeys' Guild, the various breed registries (The Jockey Club, the American Quarter Horse Association and the United States Trotting Association), the North American Association of Racetrack Veterinarians, the American Association of Equine Veterinarians, and the individual states themselves. Model rules that originate within these stakeholder groups are supported by their members and board leadership. A rule recommended for adoption goes to the ARCI Board of Directors for final approval before being incorporated into the official ARCI model rules.

In this case, the model rule was proposed by The Jockeys' Guild, who has been working for several years to educate the racing industry on the dangers associated with concussions. The Jockeys' Guild has pointed out that horse racing in the United States is one of the only sports lacking a protocol for detecting and managing concussions. Their proposal, along with rationale for adopting the rule, is attached hereto as Exhibit A. It should be noted that jockeys and drivers at Minnesota racetracks have suffered concussions while racing.

Subpart 1. Medical facilities, equipment, and personnel.

The MRC is proposing to divide this rule part into two subparts. Subpart 1 contains the existing language requiring certain medical facilities and personnel to be available at licensed racetracks. The term "racetrack facility" is replaced with "licensed racetrack" because that is the term used more consistently throughout the MRC's rules. "Licensed racetrack" is defined under Minnesota Statutes § 240.01, subdivision 10 as, "a racetrack at which horse racing is conducted on the premises and which holds a class A or class D license issued by the commission." New language is incorporated from the model rule requiring the racetrack's medical personnel to be "trained in assessing concussions."

Subp. 2. Concussion protocol.

The new subpart 2 incorporates language from the model rule requiring racetracks to adopt, post and implement a concussion protocol. Racetracks must document that they have made all jockeys and drivers aware of the concussion protocol before they participate in racing. Written documentation will protect the licensed racetracks and will enable the MRC to monitor compliance.

The rule prescribes three elements that must be contained in the concussion protocol. First, each jockey and driver must provide the racetrack with documentation of having completed a valid Sport Concussion Assessment Tool, which is the standard baseline concussion test used by athletes in the United States. We avoided using the name of the currently accepted version ("SCAT-5") in order to allow for newer versions which would also be considered valid. Second, the racetracks must establish and enforce guidelines requiring jockeys and drivers who have suffered a concussion, or suspected concussion, to be cleared by a qualified medical professional before returning to racing. Finally, the racing stewards must be notified in writing when jockeys or drivers are not permitted to race and when they have been cleared to resume racing.

The proposed language is slightly simplified from the model rule, leaving the racetracks with greater discretion to develop and enforce their own concussion protocols. The rule does require a racetrack's concussion protocol to be approved by the MRC. However, the MRC's review would be limited to ensuring that the concussion protocol complies with the basic requirements of this subpart. The racetracks support this rule but they have requested an April 1, 2021 effective date so they have time to study the issue and develop their concussion protocols. The MRC agrees this is a reasonable effective date. It will ensure concussion protocols are in place prior to the 2021 racing season.

7877.0110 PROCEDURE FOR OBTAINING A CLASS C LICENSE

Subp. 2. **Individual application content.**

The MRC is proposing to break the existing subpart into two separate subparts – one pertaining to individuals and the other pertaining to corporate or other non-individual entities. Subpart 2 will now apply only to individuals. Some of the requirements have been updated to make the licensing process more convenient for both applicants and the MRC.

Item B is amended to permit an applicant to provide a “Social Insurance number,” which is the Canadian equivalent of a Social Security number, or another foreign equivalent. U.S. citizenship is not required in order to obtain a racing license. While anyone *employed* at the racetrack must be authorized to work in the United States and thus have a social security number, many horse owners do not fit into this category. The MRC licenses several people from Canada each year. We use these numbers to conduct background checks through the Thompson-Reuters CLEAR product and to assist in verifying the identity of applicants.

Item C will now require applicants to provide an “address where the commission may send official notices related to the application and license” instead of a “home address.” This is necessary because many racing participants come to Minnesota from other states and are only here during our summer racing season. We need applicants to tell us how we can reach them concerning their Minnesota application and license -- and their home address may not always be their preferred way. Similarly, item D is updated to require a telephone number “where the commission may contact the applicant regarding the application or license” instead of “home” telephone number.

Item E is simplified to require only the name and address of the applicant’s current or most recent employer. The existing language, specifying “previous employers,” is vague and does not efficiently accomplish the purpose of the rule. The commission may need to contact an applicant’s current or most recent employer in order to evaluate the basic licensing criteria listed Minn. R. Part 7877.0100, which provides,

In issuing a Class C license, the commission shall first determine that the applicant's age, *experience, reputation, competence*, record of law abidance, and financial responsibility are consistent with the best interests of horse racing, the provisions of Minnesota Statutes, chapter 240, and that licensure will not adversely affect the public health, welfare, and safety within Minnesota.

Minn. R. 7877.0100, subp. 2 (emphasis added). In addition, certain applicants – assistant trainers and veterinary assistants – are required to be employed or supervised by another licensee. *See* Minn. R. 7877.0130, subp. 3, item C, Minn. R. 7877.0170, subparts 2a, 9 and 9a.

Item G will now require applicants to provide fingerprints only once every five years, with the option of allowing the MRC to obtain fingerprints taken by another licensing or law enforcement agency, which has been our practice. This will reduce the regulatory burden and cost for applicants while still allowing us to conduct necessary background checks. We do fingerprint-based background checks because Minnesota Statutes §240.08, subdivision 2 lists certain criminal history that would disqualify an individual from licensure. And Minnesota Statutes § 240.08, subdivision 3 states, “the commission may by rule require that an applicant be fingerprinted or furnish the applicant's fingerprints” in order to investigate their fitness for licensure; it also provides that the applicant shall pay the costs.

A new item H will require applicants to provide the MRC with “any other information the commission reasonably deems necessary to evaluate the licensing criteria listed in Part 7877.0100 subpart 2.” The MRC occasionally requests additional information necessary for a complete and fair licensing review. For example, when we find criminal history that is potentially disqualifying, we ask the applicant to provide documentation that their sentence has been reduced, discharged or expunged. If an applicant has had a license suspended or revoked in another racing jurisdiction, we may ask for verification that their license has been restored to good standing.¹ Subpart 1 of this rule part already requires an applicant to provide “information supplemental to the application” upon written request of the commission. Minn. R. 7877.0110, subp. 1.

Subp. 2a. **Non-individual application content.**

The MRC is proposing to list distinct application content for corporations or other non-individual entities because many of the items required of individual persons – such as date of birth, social security number and fingerprints – do not apply to these entities.

In addition, background checks on non-individual entities are done differently, with a focus on whether they have been formed in order to circumvent other MRC rules which are necessary to maintaining the integrity of racing and card playing. For example, Minn. R. 7883.0100, subpart 2a provides that no horse may race if “it is wholly or partially owned by, or under the care, custody, or control of, a person who for any reason is unlicensed by the commission.” And subpart 6, item D of the same rule part prohibits entry of a horse “if it is wholly or partly owned by, trained by, or under the management of a person whose license has been revoked or denied and has not been reinstated at the time of entry, or a person who acts in concert with or under the control of such a person.”² People whose licenses have been suspended or revoked – or who are otherwise ineligible for licensure – have attempted to form new corporate entities in order to get around these rules and continue racing their horses.

Another example is that Minnesota Rules, part 7884, subpart 7 provides “not more than two horses of the same licensed ownership or interest shall be entered and started in a race,” and “all horses owned wholly or in part by the same person, or his or her spouse, shall be coupled and run as an entry.” Unfortunately, we have seen people forming different legal entities in an attempt to get around this rule as well.³

Therefore, non-individual applicants will be asked to provide details of their corporate organization as well as information allowing the MRC to conduct background checks on their key employees and beneficial owners. This is needed because Minnesota Rules, part 7877.0125 states,

¹ Minnesota Rules, part 7877.0125 states,

If an applicant for a Class C license... has had a license denied, suspended or revoked or been excluded in Minnesota or another racing jurisdiction, or has engaged in conduct that the commission determines would adversely affect the public health, welfare, and safety or the integrity of racing in Minnesota, the commission shall consider such fact as prima facie evidence that the applicant is unfit to be granted a Class C license, and **the burden of proof shall rest upon the applicant to establish his or her fitness.** (Emphasis added.)

² The term “person” is defined in Minnesota Statutes, section 240.01, subdivision 15 as “an individual, firm, association, partnership, corporation, trustee, or legal representative, and any licensee, participant, or patron.”

³ Minnesota Rules, part 7877.0185 generally prohibits transferring a horse or otherwise colluding in order to circumvent the commission’s rules.

If an applicant for a Class C license, *a key employee or beneficial owner of the applicant, or an entity with a key employee or beneficial owner in common with the applicant*, has had a license denied, suspended or revoked or been excluded in Minnesota or another racing jurisdiction, or has engaged in conduct that the commission determines would adversely affect the public health, welfare, and safety or the integrity of racing in Minnesota, the commission shall consider such fact as prima facie evidence that the applicant is unfit to be granted a Class C license, and the burden of proof shall rest upon the applicant to establish his or her fitness. (Emphasis added.)

Minnesota Rules, part 7869.0100 defines “key employee” as “an officer, director, partner, sales representative, sole proprietor, or signatory on an agreement with a licensed racetrack,” and Minnesota Rules, part 7899.0100 defines “beneficial owner” as persons or entities holding at least five percent ownership or voting interest in a vendor, racing or gaming-related vendor, applicant, or license holder.”

This information will enable the MRC to conduct the necessary review of a non-individual applicant and determine whether an ineligible person or entity is attempting to get licensed by forming a new entity. Finally, it will allow us to enforce rules designed to prevent multiple horses owned by the same owner from competing in the same race. Horse racing and card playing have historically been magnets for illegal activity such as race fixing, money laundering, book making and other types of fraud. In keeping with its statutory mandate under Minnesota Statutes, section 240.03 “to take all necessary steps to ensure the integrity of racing in Minnesota,” the MRC works hard to ensure that bad actors are not licensed and doing business at our racetracks. Licensing and background checks on corporate entities are vital to this effort.

Non-individual applicants will also be required to provide basic contact information and identify an individual who will communicate with the MRC concerning the application and license. It should be noted that these applicants have always been, and will continue to be, subject to the license criteria listed in Minnesota Statutes, section 240.08, subdivision 2.⁴ Therefore, so the MRC may complete the requisite background check, they will be required to provide their tax I.D. number and information on previous licensing actions or other criminal, civil and regulatory actions. They will also be required to submit

⁴ The statute provides,

Subd. 2. **Application.**

(a) An application for a class C license must be on a form the commission prescribes and must be accompanied by an affidavit of qualification that the applicant:

- (1) is not in default in the payment of an obligation or debt to the state under Laws 1983, chapter 214;
- (2) does not have a felony conviction of record in a state or federal court and does not have a state or federal felony charge pending;
- (3) is not and never has been connected with or engaged in an illegal business;
- (4) has never been found guilty of fraud or misrepresentation in connection with racing or breeding;
- (5) has never been found guilty of a violation of law or rule relating to horse racing, pari-mutuel betting or any other form of gambling which is a serious violation as defined by the commission's rules;
- (6) has never been found to have knowingly violated an order of the commission or a law or rule of Minnesota or another jurisdiction relating to horse racing, pari-mutuel betting, or any other form of gambling; and
- (7) has never been convicted of or entered a guilty plea, Alford plea, or plea of no contest to an offense under chapter 343 or 346 or a similar law in another jurisdiction pertaining to mistreatment of animals.

copies of their contracts with Minnesota licensed racetracks to aid the MRC in enforcing some of its other rules.⁵ Finally, they will be asked to provide consent to submit to the jurisdiction of Minnesota courts, just like any other applicant for a Class C license.⁶

It should be noted that the proposed application content for non-individual applicants is a simplified version of the requirements already in place for Advanced Deposit Wagering Providers listed in Minnesota Rules, part 7880.0020, subpart 2.

Subp. 3. Application Submission.

The proposed amendment clarifies that a license application shall not be considered filed until the license fee has been paid. It has been the MRC's practice to collect the annual license fee and issue a temporary license and badge at the time of application – as permitted under part 7877.0140 – unless we have reason to believe the individual is not qualified for a license. That way the person can begin working and does not need to return to the licensing office following completion of the background check. This process has worked well for individuals who arrive in Minnesota at the beginning of the racing season and need a badge immediately so they can access the stabling area to care for their horses.

A sentence is also added to state, “Knowingly providing the commission with false or misleading information shall be grounds for denial of the application.” This amendment is mainly for clarification and emphasis, as the law and rules already prohibit people from providing false or misleading information to the commission. Minnesota Statutes, § 240.08, subdivision 5 states that the MRC may *revoke* a Class C license “for an intentional false statement made in a license application.” So it stands to reason that we should also have explicit authority to deny a license on this basis. In addition, Minnesota Statutes § 240.25, subdivision 6 provides, “No person may knowingly make a false statement in a document or application required to be submitted to the commission or in a sworn statement or testimony before the commission.” Minnesota Rules, part 7877.0155, item C provides, “The licensee will fully and truthfully provide information requested by the stewards or the commission in the course of an investigation, inquiry, hearing, or application for a license.” And finally, Minnesota Rule, part 7897.0100, subpart 9 states, “no person shall engage in any fraud or misrepresentation with regard to the sale, breeding, or racing of horses.”

Subpart 3a. Racing Commissioners International Multi-Jurisdictional Licensing Application accepted for owners.

Owners normally leave their horses in the custody of a trainer and sometimes never even travel to the various states where their horses race. Thus the ARCI has developed a multi-jurisdictional license application for the convenience of horse owners who race their horses in several different jurisdictions. A copy of this application is attached at Exhibit B. Applicants can fill out this form once and send separately signed copies to each jurisdiction where their horses will race, along with the required license fees for

⁵ This will help the MRC enforce Minn. R. 7870.0500 which requires us to review and approve contracts between racetracks and their vendors. In addition, as part of this rule package, we propose to create two new classes of racing or gaming-related vendors based on the amount of gross receipts they collect from business conducted with or at a licensed racetrack. Reviewing these contracts will help us identify which category a vendor falls into.

⁶ Minnesota Statutes, section 240.08, subdivision 2 (b) states, “The application must also contain an irrevocable consent statement, to be signed by the applicant, which states that suits and actions relating to the subject matter of the application or acts or omissions arising from it may be commenced against the applicant in any court of competent jurisdiction in this state by the service on the secretary of state of any summons, process, or pleading authorized by the laws of this state.”

each jurisdiction. This is an administrative convenience for owners, several of whom have requested that the MRC begin accepting this form.

Minnesota has not accepted the ARCI Multi-Jurisdictional Licensing application form to date because Minnesota Statutes § 240.08, subd. 2 requires application “on a form the commission prescribes,” and Minn. R. 7877.0110 requires an application “on forms provided by the commission.” With this amendment, the MRC would consider the ARCI Multi-Jurisdictional Licensing application form to be one the commission “prescribes” and would begin accepting it in lieu of its application form. The form contains all of the content required under Minn. R. 7877.0110, subp. 2. The form also requires the applicant to consent to providing each jurisdiction with “all information and documents it may request.”

The proposed rule requires applicants to submit “a supplemental affidavit on a form prescribed by the commission.” This language is necessary because Minnesota Statutes § 240.08, subdivision 2 requires a specific “affidavit of qualification” to accompany each application. The affidavit form we use also includes the Tennessee warning required under Minnesota Statutes, § 13.04, subd. 2. Acceptance of the ARCI Multi-Jurisdictional Licensing application form does not guarantee the MRC will grant an owner’s license; it just means the applicant does not need to use the MRC-provided application form. As licensure criteria do vary from state-to-state, the MRC would still need to review the qualifications of each applicant and make its own licensing decision.

Subpart 3b. National Racing Compact license accepted for single owners.

The National Racing Compact is an independent organization composed of racing regulators from participating states. It was formed to simplify the licensing process and reduce the regulatory burden on people who race in multiple states. This organization has not only developed an application *form* like the ARCI Multijurisdictional Licensing application; it also conducts a complete review and licensure of applicants using its own licensing standards. The National Racing Compact (“the Compact”) is approved by the Federal Bureau of Investigation (FBI) to submit fingerprints and receive criminal history information from its database. Full membership in the Compact entitles states to receive their own copies of this FBI data but requires them to adopt specific enabling legislation required by the FBI. Minnesota has not adopted such enabling legislation. However, non-member states may “participate” in the Compact and accept its licenses on their own terms. The Minnesota Legislature has authorized the MRC to “enter into agreements or compacts with comparable bodies in other racing jurisdictions for the mutual recognition of occupational licenses issued by each body.” Minn. Stat. § 240.12. Detailed information on the National Racing Compact is attached hereto as Exhibit C.

The National Racing Compact’s licensure criteria are more stringent than those under Minnesota law and rules, such that any person it licenses would necessarily be qualified for a license in Minnesota. Therefore, under this proposed rule, the MRC would begin accepting this license for individual owners.⁷ Persons licensed as owners by the National Racing Compact would not need to apply directly with the MRC or submit to its background check; they would be automatically granted an individual owner’s license upon payment of the annual license fee and submission of the required supplemental affidavit. The MRC would not need to conduct an individual review and background check on each such applicant. This would eliminate unnecessary duplicative efforts by applicants as well as the MRC. As explained above, we would still need to require a supplemental affidavit in order to comply with state law.

⁷ The National Racing Compact currently licenses owners, trainers, jockeys and drivers. The MRC is proposing to begin by accepting this license only for owners at this time.

Subp. 4. Racing Officials.

Racing officials have very specific responsibilities, as set forth in Minnesota Rules, part 7877.0175, that are critical to the safety and integrity of racing. Therefore, this subpart currently requires racetracks to submit the names and applications of their racing officials to the commission for approval at least 30 days prior to the opening of each race meet. Our racetracks have always included the personal resumes of their racing officials so the commission can assess their qualifications. The MRC has come to view the personal resume as essential to the application and approval of racing officials. Therefore, we are proposing to codify longstanding practice by adding the words “including a personal resume.”

We are also proposing to revise the language on optical examinations to make it more workable in practice. Most racing officials are recruited to come to Minnesota from other racetracks around the country. They are normally approved by the commission 30-90 days before they arrive here for the race meet. The MRC has typically given conditional approval, and then permitted them to submit documentation of their optical examinations once it is certain they will be working at a licensed racetrack. It is preferable for them to have a more current optical examination after they are approved and submit the documentation to the MRC before they begin working.

7877.0120 FEES

Subpart 1. License fees.

New items DD and HH are added to clarify that MRC employees, contractors and advisory committee members⁸ have no annual license fee. This has been our longstanding practice because the primary purpose of license fees is to cover the commission’s costs, and the commission would bear the cost of any license fees for its own people. There have never been licensing fees for these individuals established in rule.

Items N and O are amended to allow for three-year licenses for owners, as permitted under Minnesota Statutes, section 240.08, subd. 4. Many horse owners have requested not to have to go through the licensing process each year, so this will be a convenience for them as well as the MRC. The annual license fee will still be \$50 per year.

The only new proposed fees are for racing or gaming-related vendors. The 2019 Minnesota Legislature enacted new rulemaking authority, effective July 1, 2019, requiring the MRC “to establish by rule an annual license fee for each type of racing or gaming-related vendor it licenses, not to exceed \$2500.” Laws of Minnesota 2019, 1st Special Session, Chapter 10, Art. 8, § 5, now codified at Minnesota Statutes § 240.10 (d).⁹

While vendors are currently licensed by the MRC, the rules do not adequately differentiate between different types of vendors. The MRC has identified a need to more closely regulate certain vendors that have the most potential to impact the integrity of horse racing and card playing – for example, vendors who provide electronic gaming or wagering equipment, card playing supplies, animal feed and medications. Unlike the vast majority of Class C licensees, these vendors are often large national companies. The MRC necessarily expends more resources to conduct their initial background checks and licensing. Ongoing auditing, complaint investigations, disciplinary actions and appeals are also much

⁸ Under Minnesota Statutes § 240.18, subd. 4, the MRC has the authority to establish, and has established, advisory committees to advise it on the distribution of breeders’ fund money.

⁹ Minnesota Statutes, section 16A.1283 requires approval by the legislature before we may increase license fees.

more costly due to their size, complexity and importance. Because the MRC's licensing activities are supported by the fees we collect, we must charge a larger fee to these vendors.¹⁰

Minnesota Statutes § 240.01, subdivision 18a defines a racing or gaming-related vendor as, "any person or entity that manufactures, sells, provides, distributes, repairs or maintains equipment or supplies used at a class A facility, or provides services to a class A facility or class B license holder that are directly related to the running of a horse race, simulcasting, pari-mutuel betting, or card playing." Attached as Exhibit D is a list of currently licensed vendors that would fall into this category.

We are proposing to create two classes of racing or gaming-related vendors. "Large racing or gaming-related vendors," as discussed under Part 7877.0130, subpart 16 below, would be those who collect more than \$50,000 in annual gross receipts from operating at Minnesota's two licensed racetracks. The proposed \$2500 annual license fee would enable the MRC to devote more adequate resources to overseeing them. It is the same annual license fee required of advanced deposit wagering providers under Minnesota Statutes § 240.10, but still much lower than the fees many of these vendors pay in other states. For example, gaming-related vendors in Ohio pay a \$10,000 application fee and a \$15,000 license fee for a 3-year license;¹¹ and their key employees also pay an application fee of \$2,000 and a license fee of \$500 for a 3-year license.¹²

A \$1000 annual license fee is proposed for smaller racing or gaming-related vendors who transact less than \$50,000 in business annually at Minnesota's licensed racetracks. Due to their smaller size and scope of activity, these vendors are less costly to regulate than large racing or gaming-related vendors; but they still require substantially more MRC resources than a non-racing or gaming-related vendor. Finally, a \$100 fee is proposed for tip sheet providers who are typically one-person operations doing less than \$10,000 in business at licensed racetracks in any given year.

Subp. 2. Fingerprinting and licensing reciprocity.

The MRC is proposing to repeal this entire subpart because it is obsolete. In fact, we have never implemented this rule because it has no practical effect whatsoever. In essence, this subpart provides that the MRC shall license persons who hold "valid permanent licenses issued by other racing jurisdictions," *provided that* those persons submit a Minnesota license application and fee and meet "the licensing qualifications in Minnesota Statutes, Chapter 240, and rules of the commission." In other words, people licensed in other jurisdictions are not automatically licensed; they still need to apply and be reviewed just like any other applicant.

7877.0125 CRITERIA FOR DETERMINING ELIGIBILITY

Subp. 3. Compliance with laws.

Non-substantive amendments clarify that racing applicants must certify that they are *and will remain* in compliance with other state and federal laws. Immigration and discrimination laws are specifically highlighted because the MRC has received complaints in these areas.

¹⁰ Minnesota Statutes, section 16A.1285 provides that license fees "must be set at a level that neither significantly over recovers nor under recovers costs, including overhead costs."

¹¹ Ohio Administrative Code 3772-6-03.

¹² Ohio Administrative Code 3772-5-03.

7877.0130 STANDARDS REQUIRED OF APPLICANTS FOR SPECIFIC LICENSES

Subpart 1. Single owners.

The MRC is proposing to use the term “single owner” instead of “individual owner” for individuals who are licensed as owners. New language also clarifies that parents of applicants under age 18 must meet the requirements for licensure. We believe this was always the intent of the rule, as parents have always been required to submit all the same information as applicants. This is necessary to ensure that people who are ineligible for licensure do not simply transfer their horses into their children’s names, as some have attempted to do.

Subpart 2. Multiple owners.

This subpart applies to non-individuals and groups who share ownership of horses. There are a few additional application requirements for these “multiple owners,” essentially so it is clear who has an ownership stake in a horse and who will assume responsibility to represent the group in racing matters. Minor non-substantive edits are made to item A for clarity. Items E, F and G are consolidated for simplicity.

The language in item E is amended to apply to all “multiple owner” groups, requiring them to provide the MRC with a notarized statement by one or more individuals agreeing to represent the ownership and be responsible for its horses. This has been our longstanding practice regardless of whether the multiple owner group includes a corporation, partnership, trust, or individuals. Items E, F and G will no longer require corporations and partnerships to provide articles of incorporation or partnership agreements because that information is now included in the requirements for all “non-individual” applicants listed in the new part 7877.0110 subpart 2a discussed above.

Subpart 3. Trainers and assistant trainers.

Item B is amended to simplify the application requirements for trainers and assistant trainers. Those who have been licensed as a trainer or assistant trainer in another racing jurisdiction will no longer be required to take examinations administered by the stewards. The stewards recommended this change because there is little value in examining experienced trainers and assistant trainers.

Item D will no longer require applicants to “provide proof of having complied” with workers’ compensation laws. MRC staff do not have the necessary expertise to evaluate any such proof, and they cannot determine whether someone has complied with workers’ compensation laws. Most trainers do employ people in Minnesota and are therefore subject to our workers’ compensation statute. However, the MRC does not enforce this statute and would prefer to avoid any suggestion that we do. It is sufficient for our purposes to simply call applicants’ attention Minnesota Chapter 176. In addition, as discussed above, Minn. R. 7877.0125, subp. 3 requires all applicants to certify that they are and will remain in compliance with workers’ compensation laws.

Item D also requires trainers to name the MRC as a “certificate holder” on their workers’ compensation policies. A certificate holder is simply someone who is notified of policy changes or cancellation. The amendment would require us to be notified at the same time as the policy holder or “at the earliest date permitted under the policy and applicable law” rather than “within a reasonable time, not to exceed 30 days.” Unfortunately, there was an incident several years ago where an unscrupulous trainer cancelled his workers’ compensation insurance and, before the MRC received notice, one of the trainer’s employees was killed while saddling a horse. Our stewards have advised us that other states require their racing regulators to receive immediate notice of policy changes.

Subpart 7. **Exercise rider.**

The amendment will specify that a person licensed as an exercise rider is *per se* eligible to be licensed as a pony rider. As discussed above, the commission must assess a person's competence prior to issuing a class C license.¹³ In addition, under Part 7877.0135, the MRC must determine whether holding more than one license would present a conflict of interest. The commission and stewards have consistently found that individuals licensed as exercise riders may also be licensed as pony riders under these rules. Therefore, considering the significant number of individuals this applies to in any given year, it is reasonable to add this language for clarity and efficiency. It should be noted that a person qualified to be a pony rider would not necessarily be qualified to be an exercise rider.

Subpart 16. **Concessionaire or vendor.**

Certain vendors will now be specifically exempt from licensing altogether. Part 7877.0110 provides that "any person whose work, in whole or in part, is conducted at a licensed racetrack shall first obtain a Class C license from the commission." However, the MRC has found that licensing some types of vendors does nothing to advance our mission of ensuring that racing and card playing are conducted in the public interest.¹⁴

It is burdensome and duplicative for us to license professionals who are already licensed by other state agencies. Similarly, there is nothing to be gained by licensing state or local government agencies and the Minnesota Lottery – or their employees – just because they conduct business at a licensed racetrack. Therefore, these will now be specifically exempt from licensure.

Professional entertainers and their promoters occasionally appear at licensed racetracks. Non-profit organizations provide volunteers to sell concessions in exchange for donations. All of these people are at the racetracks for a very short time, and for limited purposes unrelated to racing or card playing. Other non-profit organizations provide bingo and pull-tabs, but they are regulated by the Minnesota Gambling Control Board. Therefore, these all of these vendors will be specifically exempt from licensure.

There has always been an exemption for vendors who provide products and services outside the time of a live race meeting for fewer than four consecutive days or less than 11 days in a calendar year, provided they are not racing-related and do not operate in restricted areas.¹⁵ This exemption is maintained and moved into a separate item F for clarity.

A new subpart 17 specifically addresses racing or gaming-related vendors, which are defined in Minnesota Statutes, section 240.01, subdivision 18a as follows:

"Racing or gaming-related vendor" means any person or entity that manufactures, sells, provides, distributes, repairs or maintains equipment or supplies used at a class A facility, or provides services to a class A facility or class B license holder that are directly related to the running of a horse race, simulcasting, pari-mutuel betting, or card playing.

¹³ Minn. R. 7877.0100, subp. 2.

¹⁴ See Minnesota Statutes, §§ 240.03 and 240.07.

¹⁵ The existing rule language actually contains a crucial typographical error. It erroneously exempts vendors whose products or services *are* distributed in a restricted area. The intent was always to exempt vendors whose products or services *are not* distributed in a restricted area, i.e. the stables and other areas not open to the public.

Item A provides a list of specific vendors the MRC has determined clearly meet the statutory definition of a racing or gaming-related vendor. This list was developed in consultation with our licensed racetracks and regulators from other racing jurisdictions. Subitem 14 defines how the MRC will determine whether additional vendors fall into this category.

Items B and C provide definitions of “large” and “small” racing or gaming-related vendors for purposes of setting annual license fees. While we estimate that all racing or gaming-related vendors cost at least \$2500 per year to regulate on average, our rulemaking authority limits us to a maximum annual license fee of \$2500. However, it would be unreasonably burdensome to charge this fee to smaller vendors who transact \$50,000 or less in annual business in Minnesota. Hence we are proposing a \$1000 annual license fee for these “small” racing or gaming-related vendors as explained on pages 15-16 above. We are also carving out tip sheet providers from this category because they are one-person operations that sell tip sheets for \$1 apiece. The majority of racing or gaming-related vendors are large national companies who transact well in excess of \$50,000 in business in Minnesota each year. Those will be defined as “large racing or gaming-related vendors” subject to the \$2500 annual license fee. Please refer to Exhibit D for a list of our currently-licensed vendors that will be categorized as racing or gaming-related vendors, including an estimate of their annual gross receipts from business transacted in Minnesota.

Item D will require racing or gaming-related vendors to provide the commission with reports detailing their monthly gross receipts for the most recent 18-month period. The MRC needs this information so it can correctly categorize these vendors as explained above. An 18-month period will help us to better assess the amount of business they have transacted, and likely will transact, in any given calendar year in which they are licensed.

7877.0135 DUAL LICENSING

A slight grammatical edit is made for clarification.

7877.0140 TEMPORARY LICENSE

Subpart 1. Issuance.

New language is added to clarify that the commission may issue a badge to someone with a temporary license, which has been our practice. Many horsepersons need a badge for access to the stabling area to care for their horses while they await a final decision on their license application. This was the original purpose of this rule part.¹⁶ Item B is repealed because it is unnecessary, vague and unenforceable in practice.

Subpart 2. Termination.

Non-substantive amendments will clarify that a temporary license terminates if the applicant voluntarily withdraws their license application. In addition, holders of a temporary license must surrender their badge if they withdraw their application or their license is denied. Temporary licenses will now expire after 60 days instead of 120 days. A 120-day temporary license is not reasonable given that the entire racing season typically only lasts about 120 days. The MRC is committed to timely completing background checks and licensing everyone in well under 60 days.

¹⁶ Minn. R. 7876.0100 provides that the stabling area must be kept secure and only authorized persons permitted to enter.

7877.0145 EMERGENCY LICENSE

Subpart 1. Racing officials.

A personal resume will be required of applicants for an emergency license. As explained on page 15 above, this will now be required for all racing officials.

Subp. 2. Owners.

A notarized affidavit “specifying the reasons” for an emergency license will no longer be required. This is unnecessary and unduly burdensome. The rule already makes it clear that an emergency license is only available for two distinct reasons: absence or illness. As with other Class C licenses, application requirements are being updated to allow for Social Insurance numbers or tax identification numbers in addition to Social Security numbers. New language clearly states what the existing language merely implies: that an emergency owner’s license is only valid for 21 days. Simplified language still requires an emergency licensee to submit a complete application for a regular Class C license within 21 days.¹⁷ Failure to do so will now be grounds for forfeiture of any purse money won while racing under the emergency license. This amendment is necessary to prevent owners from simply racing their horses under emergency licenses and never having to meet the full licensing standards applicable to everyone else. Several people attempt to do this each year. Since the new language makes it clear that an emergency owner’s license expires after 21 days, the rule will no longer provide for “suspension” after 21 days if the licensee fails to submit a properly completed application.

7877.0150 REPLACEMENT LICENSE

The title of this rule part is updated to substitute the word “badge” for license. Purely technical amendments to the rule itself will also replace the word “license” with the word “badge.”

7877.0155 CONDITIONS PRECEDENT TO LICENSING

The term “provisional license” is replaced with “temporary or emergency license.” Our rules do not provide for “provisional” licenses and we do not issue them. We believe this term was always meant to refer to temporary or emergency licenses, which are specifically authorized under Chapter 7877.

Non-substantive edits are made for clarification and to specify that, in the course of conducting an authorized search, the commission may also seize any items reasonably suspected to be prohibited. This has always been our practice. For example, MRC investigators have seized illegal electronic devices used for shocking horses.¹⁸ And they sometimes find unauthorized syringes and unlabeled medications in the stabling area.¹⁹ These must be taken for testing to determine if they are illegal for use in race horses.²⁰ A reference to “cheating” is added to Item D. Cheating is defined and prohibited under the criminal code, Minnesota Statutes § 609.76. Our licensees should clearly understand that any suspected cheating, even in the commonly understood sense of the word, must be immediately reported to the MRC for investigation.

¹⁷ Pursuant to Minn. R. 7877.0140, the MRC grants a temporary license once it receives a completed license application, unless it has reason to believe that the applicant is ineligible.

¹⁸ Minn. R. 7897.0100, subp. 18 prohibits possession of such devices, and Minn. Stat. §§ 240.25-240.26 make it a felony.

¹⁹ See Minn. R. 7897.0100, subparts 17 and 20.

7877.0160 DURATION AND EXTENT OF CLASS C LICENSES

The title of this rule part is amended to delete the words “and extent.” Subpart 1 is updated to allow for three-year licenses for owners, as permitted under Minnesota Statutes § 240.08, subd. 4. Many horse owners have requested three-year licenses. Granting them will be an administrative convenience for owners as well as the MRC. Unnecessary language regarding the expiration of ADW licenses is deleted. As required by law, just like other Class C licenses, they are issued for a calendar year and they expire on December 31 of the calendar year for which they are issued.

Subpart 2 is repealed because it is obsolete. The MRC issues annual licenses without regard to which “race meeting” someone intends to participate in. Subpart 3 is also obsolete because it conflicts with a similar requirement in Minn. R. 7877.0170, subp. 2, item F. Subpart 4 is obsolete and vague. The MRC does not “renew” licenses and never has.

7877.0170 DUTIES AND RESPONSIBILITIES OF CLASS C LICENSEES

Subpart 1. Owners.

Several purely technical edits are made to this subpart.

Subp. 2. Trainers.

Several purely technical edits are made. In addition, item N is amended to require trainers to notify the racing secretary when a horse is pregnant. This is reasonable and necessary because the racing secretary takes the entries, and pregnant horses are subject to special entry requirements under Minn. R. 7883.0140, subp. 12 and Minn. R. 7897.0100, subp. 21. This duty logically falls to trainers because they are primarily responsible for entering and caring for their horses.

Subp. 3. Jockeys and apprentice jockeys.

Item L is amended to correct a spelling error. Item V is repealed because it is obsolete. Foreign jockeys are licensed just like everyone else and declaration sheets have not been used in many years. Items W and X are renumbered. A new Item X is added to require compliance with a racetrack’s concussion protocol.

Subp. 4. Drivers.

New language is added to require compliance with a racetrack’s concussion protocol.

Subp. 10. Pony Riders.

Item C is amended to correct a spelling error.

7877.0175 DUTIES AND RESPONSIBILITIES OF RACING OFFICIALS

Subp. 2. Clerk of scales.

Item H is repealed because the stewards, pursuant to their plenary authority under Chapter 7879, have taken over the duty of notifying the mutuels manager of all scratches. It was never practical for the clerk of scales to perform this critical function given all of their other race-day responsibilities. Obsolete language is deleted from item I. Foreign jockey declaration sheets are no longer used in racing.

Subp. 3. Starter.

Item D, subitem 5 is amended to specify that the starter must keep his or her daily records for at least 90 days after the last day of the race meet and must provide them to the commission as well as the stewards upon request. This rule has always required the starter to keep daily records but it never said how long they must be kept. MRC stewards and investigators occasionally need to review the starter's records in the course of an investigation. So it is important that these records are maintained for a sufficient time and not discarded prematurely, as has unfortunately happened. Keeping starter's records for at least 90 days after the race meet will allow sufficient time for the commission and stewards to review them if necessary as they wrap up any investigations. The Revisor's office is also making grammatical edits to subitem 1.

Subp. 4a. Paddock judge responsibilities for harness races.

Item B will now require the paddock judge to inspect horses for non-recognized racing equipment, which is prohibited unless approved in advance by the stewards.²¹ Non-recognized racing equipment is defined as "any article, appliance, or device that the commission veterinarian determines may cause or mask pain in a horse including but not limited to kinesiology tape, rubber bands, nose rings, iron halters, and copper tail or ankle wires." Minn. R. 7869.0100, subp. 40a.

Item D is updated to permit identification of a horse by means of a microchip or digital tattoo.

Subp. 12. Clocker.

For consistency with several other MRC rules, the word "timed" is substituted for "clocked."²²

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS

Subpart 1. Qualifications for Stewards.

The qualifications to be a racing steward are greatly simplified. The MRC has determined that the specific experience requirements listed in this rule are unnecessary and overly limiting. Recognized accrediting organizations provide comprehensive training and testing, and evaluate a candidate's experience, before awarding full accreditation. The highly respected Racing Officials Accreditation Program is currently the only such organization in the United States. This amendment will likely result in a broader pool of candidates for our steward positions. It will also simplify the screening process. Of course, the MRC will continue to hire the most qualified stewards we can find.

7879.0200 AUTHORITY AND DUTIES OF STEWARDS

Subp. 2. Specific duties and responsibilities of stewards.

Item G will now require the stewards to promptly notify the mutuels manager of any horse scratched from a race. This was previously listed under the clerk of scales' duties, as discussed above on page 21. However, as stated in this item, it is the stewards who receive notice of all scratches. Therefore, it makes more sense for them to notify the mutuels manager, as has been their longstanding practice.

²¹ Minn. R. 7897.0100, subp. 22.

²² See, Minn. R. 7869.0100, subp. 41a, Minn. R. 7877.0170, subp. 2, item C, Minn. 7877.0175, subp. 8, item F, Minn. R. 7883.0100, subp. 16, Minn. R. 7884.0190, subp. 3, and Minn. R. 7884.0195.

7897.0190 CONTESTED CASE HEARINGS

Subpart 1. **Right to a contested case hearing.**

Item C is updated to comply with Minnesota Statutes § 240.08, subdivision 5 (d), which provides, “If the commission revokes or suspends a class C license for more than one year, the licensee has the right to appeal by requesting a contested case hearing under chapter 14.”

Item D is updated to comply with Minnesota Statutes § 240.22 (b) which states, “If the commission issues a fine in excess of \$10,000, the license holder has the right to request a contested case hearing under chapter 14, to be held as set forth in Minnesota Rules, chapter 1400.”

Subpart 2. **Contested case procedure.**

A non-substantive edit is made to correct a spelling error.

EXHIBITS

- Exhibit A Proposed model rule on concussions from the Jockeys’ Guild along with supporting documentation.
- Exhibit B ARCI Multi-Jurisdiction Licensing application form.
- Exhibit C Information on the National Racing Compact.
- Exhibit D List of Currently Licensed MRC Vendors – Racing or Gaming-Related

CONCLUSION

Based on the foregoing, the proposed rules are both reasonable and necessary to protect the integrity of racing in Minnesota.



Thomas DiPasquale
Executive Director
Minnesota Racing Commission

DATE: December 11, 2019
This document is available for public
review on this date