

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 1003

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1-19-84
DATE FOR REVIEW 1-30-84
DATE DUE 2-8-84

Adopted w/a hearing ✓
Adopted w/o hearing
Temporary rule

Approved ✓ 1/30/84 Disapproved Returned to Agency 1/30/84

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 1/30/84 Revisor approved ✓ disapproved

---

✓ Rule as Adopted arg c 3

✓ Rule as Proposed – see Ex 17 (SR) + Ex 19

✓ Order Adopting 1/17/84 Date combined w/ F of F

✓ Notice of Intent to Solicit Outside Opinion 8 SR 482 (9/12/83) Ex #1 w/ comments - Comments are Ex #s 22 + 23

✓ Order for rulemaking Ex #6 Order dtd 11/1/83 (Order to Adopt Rules w/o Public Hrg - Ex # 2 dtd 11/1
12/15 & 16/84 date of Hearing

✓ Certificate of Board's Authorizing Resolution dtd 10/26/83 - Ex 7

✓ Notice of rulemaking Ex 5 dtd 11/1/83 (Certif re adopt w/o hrg - Ex #3 dtd 10/26/83) (Notice re adopt w/o hrg - Ex #4 dtd 11/1/83)
ok Sufficiency w/ orig signature Ex 21 w/ orig sig - Ex 20

✓ Affidavit of Mailing Notice or rulemaking - Ex # 11 - (Ex # 12 - AR of Mailg to addl'l folks)
✓ mailed 11/10/83 - 34 days At least 30 days prior to hearing/adoption

✓ Mailing list Certificate Ex # 9 & 10

✓ Publication in State Register Ex 17 8 SR 1162 11/14/83
✓ 34 days At least (30)/20 days prior to hearing/adoption

✓ Hearing Examiner's Report 12/30/83 – agency adopted 1/17/84 so waited the requisite 5 days. even w/ chief HE rpt dated 1/4/84

✓ Chief Hearing Examiner's Report(s)
✓ Approving H.E.'s Report w/ changes 1/4/84
✓ Approving agency action 1/19/84

✓ Agency's Findings of Fact 1/17/84 combined w/ Order of Adoption

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules 1/17/84

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness Ex 13 - w/ typos Ex 14 - w/o typos Also is Supplementary St/N+R Ex 24 10/20/83 (last date submission)

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures Undated

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

Ex 8 - 10 ltrs requesting a hrg
Ex 15 - Comments from ACA
Ex 16 - Names of agency folks to represent agency at hrg
Ex 18 - Est. # of people to attend, etc

Ex A-C - Public comments

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
400 SUMMIT BANK BUILDING
310 SOUTH FOURTH AVENUE
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

January 5, 1984

James Weiler
Suite 400
United Labor Center
312 Central Avenue
Minneapolis, MN 55414

RE: In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission - 4 MCAR §§ 15.001-15.050 - OAH Docket No. RACE-84-001-GB

Enclosed and served upon you by mail, please find the Report of The Chief Hearing Examiner in the above-entitled matter. Also enclosed is the official record in this matter.

Sincerely,

GEORGE A. BECK
State Hearing Examiner

Telephone: 612/341-7601

GAB:jab
CC: Kris Sanda
Robert C. Hentges, Esq.
Commissioner John H. Daniels, Jr.
Robert Nardi, Esq.

AN EQUAL OPPORTUNITY EMPLOYER

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
204 ADMINISTRATION BLDG.
ST. PAUL, MN 55155
TELEPHONE: (612) 296-1288

December 22, 1983

Mr. George Beck
Office of Administrative Hearings
Fourth Floor Summit Bank Building
310 Fourth Avenue South
Minneapolis, MN 55415

RECEIVED
DEC 27 1983
ADMINISTRATIVE
HEARINGS

Dear Mr. Beck:

Please find enclosed the copies of the Notices of Rulemaking by the Minnesota Racing Commission and the copy of the statement of the number of persons expected to attend the rules hearing, all filed with your office on November 1, 1983, and the copies of the amended Notices of Rulemaking filed with your office on November 3, 1983.

These documents are being sent to you in accordance with our telephone conversation yesterday.

Very truly yours,

Judith V. Wehrwein

JUDITH V. WEHRWEIN
Legal Assistant

JVW:dw

Encs.

FAEGRE & BENSON

2300 MULTIFOODS TOWER

33 SOUTH SIXTH STREET

MINNEAPOLIS, MINNESOTA 55402-3694

612/371-5300

TELEX 425131

GEORGE D. McCLINTOCK
RODGER L. NORDBYE
GEORGE E. HARDING
JOHN S. HOLTEN
G. ALAN CUNNINGHAM
ROBERT W. OELKE
JAMES A. HALLS
GERALD T. FLOM
CHARLES L. HORN
JACK D. GAGE
PETER W. ANSON
JAMES FITZMAURICE
GORDON G. BUSDICKER
JOHN D. FRENCH
RONALD B. HEMSTAD
NORMAN R. CARPENTER
LAWRENCE C. BROWN
MARTIN N. BURKE
JOHN E. HARRIS
PAUL T. BIRKELAND
DAVID M. BEADIE
DAVID R. BRENNAN
RICHARD C. SCHMOKER
THOMAS M. CROSBY, JR.
LUDWIG B. GARTNER, JR.
JAMES B. LOKEN
ARTHUR L. DOTEN
DUANE W. KROHNKE
GEORGE W. FLYNN
JAMES A. DUEHOLM
HUBERT V. FORCIER
JAMES M. SAMPLES
DALE E. BEIHOFFER
GALE R. MELLUM
JERRY W. SNIDER
HENDRIK De JONG
STEPHEN ROSHOLT

FRANK B. BUTLER
GORDON B. CONN, JR.
BRUCE A. ACKERMAN
MICHAEL H. HARPER, JR.
THOMAS L. KIMER
JOSEPH M. PRICE
W. SMITH SHARPE, JR.
PHILIP S. GARON
JOHN F. BEUKEMA
WALTER J. DUFFY, JR.
JAMES P. STEPHENSON
REID CARRON
A. DAVID KELLY
JOHN K. STEFFEN
JOHN B. GORDON
THOMAS M. MAYERLE
THOMAS G. MORGAN
EDWARD G. HEILMAN
JOHN H. HINDERAKER
ROBERT L. SCHNELL, JR.
RICHARD A. NELSON
BRIAN B. O'NEILL
THOMAS J. MOORE*
MICHAEL E. MURPHY
JOHN D. SHIVELY
WILLIAM R. BUSCH, JR.
BONNIE M. FLEMING
HENRY F. FRISCH
RANDY M. LEBEDOFF
WINTHROP A. ROCKWELL
JACK M. FRIBLEY
JOHN S. JAGIELA
STEVEN C. SCHROER
JOHN P. BORGER
HEIDI M. HOARD
JAMES G. RAY
RICHARD A. HELDE

EVERETT A. DRAKE
WRIGHT W. BROOKS
JOHN B. FAEGRE, JR.
COUNSEL

MARGARET S. ANGLE
ROBERT C. HENTGES
STEVEN R. ANDERSON
JAY D. CHRISTIANSEN
CHARLES S. FERRELL
DAVID B. MILLER
JAMES E. NICHOLSON
REBECCA L. ROM
MARK F. ENGEBRETSON*
JAMES A. O'NEAL
ELIZABETH L. TAYLOR
STEPHEN D. BELL
SALLY A. JOHNSON
ROBERT L. COLLINS
BRUCE M. ENGLER
SUSAN L. JACOBSON
WALTER A. PICKHARDT
DONALD C. SHEPARD
WENDY J. WILDUNG
SCOTT W. JOHNSON
JAMES D. O'CONNOR
MARY TRIPPLER
JAMES L. VOLLING
ELLEN P. SPANGLER*
DIANE O. STOCKMAN
MICHAEL S. FROST
RICHARD K. BAUMAN
NANCY S. BENDER-KELNER
THOMAS H. BENNIN
SHELLEY A. FITZMAURICE
SUSAN K. FUNK
GERARD M. NOLTING
MICHAEL R. STEWART
DAVID M. VANDER HAAR
TIMOTHY J. WILLIAMS
PETER J. WITHOFF

MARIANNE T. REMEDIOS
KRISTIN A. SIEGESMUND
HOWARD J. BERGMAN
LISA DRULINER DeBUSE
ROBERT W. FULTON
SUSAN GOODNATURE
JEANNINE L. LEE
TIMOTHY R. SCHUPP
CHARLES E. UNDERBRINK
DANIEL G. WILCZEK
AMY B. BROMBERG
DANIEL J. AMEN
KARI L. ANDERSON
ANTHONY R. BATTLES
JEFF H. ECKLAND
DOUGLAS J. HEFFERNAN
MEGHAN H. KINTZINGER
JENNIFER R. MEWALDT
DAVID A. MUNN
THOMAS P. SCHNETTLER
MARY H. TERZINO
MARY K. BACHMAN
LYLE G. WARD

*RESIDENT IN DENVER

2530 GREAT-WEST LIFE TOWER
1675 BROADWAY
DENVER, COLORADO 80202-4625
303/629-5674

December 2, 1983

RECEIVED
DEC 2 1983
ADMINISTRATIVE HEARINGS

Mr. George A. Beck
Hearing Examiner
Fourth Floor
Summit Bank Building
310 4th Avenue South
Minneapolis, Minnesota 55415

Dear Examiner Beck:

Enclosed for filing are an affidavit of mailing of discretionary notice, a copy of notices and proposed rules as published in the State Register and a Statement of Need and Reasonableness with typographical errors corrected. I also enclose a copy of the corrections, none of which is substantive.

Thank you.

Sincerely,

Robert C. Hentges

RCH:kar

Enclosure

GEORGE D. McCLINTOCK
RODGER L. NORDBYE
GEORGE E. HARDING
JOHN S. HOLTEN
G. ALAN CUNNINGHAM
ROBERT W. DELKE
JAMES A. HALLS
GERALD T. FLOM
CHARLES L. HORN
JACK D. GAGE
PETER W. ANSON
JAMES FITZMAURICE
GORDON G. BUSDICKER
JOHN D. FRENCH
RONALD B. HEMSTAD
NORMAN R. CARPENTER
LAWRENCE C. BROWN
MARTIN N. BURKE
JOHN E. HARRIS
PAUL T. BIRKELAND
DAVID M. BEADIE
DAVID R. BRENNAN
RICHARD C. SCHMOKER
THOMAS M. CROSBY, JR.
LUDWIG B. GARTNER, JR.
JAMES B. LOKEN
ARTHUR L. DOTEN
DUANE W. KROHNKE
GEORGE W. FLYNN
JAMES A. DUEHOLM
HUBERT V. FORCIER
JAMES M. SAMPLES
DALE E. BEIHOFFER
GALE R. MELLUM
JERRY W. SNIDER
HENDRIK De JONG
STEPHEN ROSHOLT

FRANK B. BUTLER
GORDON B. CONN, JR.
BRUCE A. ACKERMAN
MICHAEL H. HARPER, JR.
THOMAS L. KIMER
JOSEPH M. PRICE
W. SMITH SHARPE, JR.
PHILIP S. GARON
JOHN F. BEUKEMA
WALTER J. DUFFY, JR.
JAMES P. STEPHENSON
REID CARRON
A. DAVID KELLY
JOHN K. STEFFEN
JOHN B. GORDON
THOMAS M. MAYERLE
THOMAS G. MORGAN
EDWARD G. HEILMAN
JOHN H. HINDERAKER
ROBERT L. SCHNELL, JR.
RICHARD A. NELSON
BRIAN B. O'NEILL
THOMAS J. MOORE*
MICHAEL E. MURPHY
JOHN D. SHIVELY
WILLIAM R. BUSCH, JR.
BONNIE M. FLEMING
HENRY F. FRISCH
RANDY M. LEBEDOFF
WINTHROP A. ROCKWELL
JACK M. FRIBLEY
JOHN S. JAGIELA
STEVEN C. SCHROER
JOHN P. BORGER
HEIDI M. HOARD
JAMES G. RAY
RICHARD A. HELDE

FAEGRE & BENSON

2300 MULTIFOODS TOWER
33 SOUTH SIXTH STREET
MINNEAPOLIS, MINNESOTA 55402-3694
612/371-5300
TELEX 425131

EVERETT A. DRAKE
WRIGHT W. BROOKS
JOHN B. FAEGRE, JR.
COUNSEL

MARGARET S. ANGLE
ROBERT C. HENTGES
STEVEN R. ANDERSON
JAY D. CHRISTIANSEN
CHARLES S. FERRELL
DAVID B. MILLER
JAMES E. NICHOLSON
REBECCA L. ROM
MARK F. ENGEBRETSON*
JAMES A. O'NEAL
ELIZABETH L. TAYLOR
STEPHEN D. BELL
SALLY A. JOHNSON
ROBERT L. COLLINS
BRUCE M. ENGLER
SUSAN L. JACOBSON
WALTER A. PICKHARDT
DONALD C. SHEPARD
WENDY J. WILDUNG
SCOTT W. JOHNSON
JAMES D. O'CONNOR
MARY TRIPPLER
JAMES L. VOLLING
ELLEN P. SPANGLER*
DIANE O. STOCKMAN
MICHAEL S. FROST
RICHARD K. BAUMAN
NANCY S. BENDER-KELNER
THOMAS H. BENNIN
SHELLEY A. FITZMAURICE
SUSAN K. FUNK
GERARD M. NOLTING
MICHAEL R. STEWART
DAVID M. VANDER HAAR
TIMOTHY J. WILLIAMS
PETER J. WITHOFF

MARIANNE T. REMEDIOS
KRISTIN A. SIEGESMUND
HOWARD J. BERGMAN
LISA DRULINER De BUSE
ROBERT W. FULTON
SUSAN GOODNATURE
JEANNINE L. LEE
TIMOTHY R. SCHUPP
CHARLES E. UNDERBRINK
DANIEL G. WILCZEK
AMY B. BROMBERG
DANIEL J. AMEN
KARI L. ANDERSON
ANTHONY R. BATTLES
JEFF H. ECKLAND
DOUGLAS J. HEFFERNAN
MEGHAN H. KINTZINGER
JENNIFER R. MEWALDT
DAVID A. MUNN
THOMAS P. SCHNETTLER
MARY H. TERZINO
MARY K. BACHMAN
LYLE G. WARD

*RESIDENT IN DENVER
2530 GREAT-WEST LIFE TOWER
1675 BROADWAY
DENVER, COLORADO 80202-4625
303/629-5674

November 29, 1983

RECEIVED
NOV 30 1983
ADMINISTRATIVE HEARINGS

Mr. George A. Beck
Hearing Examiner
Fourth Floor
Summit Bank Building
310 4th Avenue South
Minneapolis, Minnesota 55415

Dear Examiner Beck:

Enclosed for filing is the Statement of Need and Reasonableness re: Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Thank you.

Sincerely,

Robert C. Hentges

RCH:kar

Enclosure

MINNESOTA RACING COMMISSION

Exh. No. 16
File No.
Date

312 Central Avenue, Suite #400
Minneapolis, Minnesota 55414

(612) 341-7555

RECEIVED
NOV 30 1983
ADMINISTRATIVE
HEARINGS

November 21, 1983

NAMES OF AGENCY PERSONNEL WHO WILL REPRESENT THE AGENCY AT THE HEARING TOGETHER WITH THE NAMES OF ANY OTHER WITNESS SOLICITED BY THE AGENCY TO APPEAR IN ITS BEHALF:

Ray Eliot, Chairman
Commissioner C. Elmer Anderson
Commissioner Carol Connolly
Commissioner Lawrence M. Coss
Commissioner John H. Daniels, Jr.
Commissioner Joyce B. Farrell
Commissioner Rosemary T. Freuhling
Commissioner Dan Gustafson
Commissioner Krista Sanda
Project Administrator, James D. Weiler

Robert Hentges, Faegre & Benson

Robert Hentges will give the presentation on behalf of the Commission, but the other members may testify if required.

The Commission's financial analyst consultant may be called upon to give supporting testimony if required.

SF-00006-02

File

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Health

Office Memorandum

TO : Ray Eliot
Chairman, Minnesota Racing Commission
Attention: Robert R. Nardi

DATE: Jan. 31, 1984

FROM : Richard A. Wexler
Assistant Attorney General

PHONE: 341-7272

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts. 4 MCAR §§ 15.001-15.050

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register. This must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

RAW:cm

Enclosures

cc: Ms. Kathy Burek
Mr. Duane Harves

AG. copy

Minnesota Racing Commission

In the Matter of the Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Rules as Adopted

4 MCAR S 15.001 Identification of applicant for Class A license.

An application for a Class A license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR S 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer ~~or~~ of a major financial participant ~~as~~ in the applicant setting forth:

A. that application is made for a Class A license to own and operate a horse racing facility at which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission members, staff and

agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated or information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. the affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR S 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade

names currently used by the applicant;

2. the jurisdiction and date of incorporation;

3. the date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. the classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the

number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with the Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. the jurisdiction of organization of the applicant;

3. the date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. the names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. the names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the

application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant makes its best effort to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and benefical holders of ownership or other voting interests in applicant are so identified. The term "best effort," as used in this and subsequent sections of these rules, means an active and serious attempt which is made in good faith, and goes beyond due diligence, to provide the information required to be disclosed. When an applicant is unable, despite its best effort, to provide the information required, it shall explain fully and document its inability to do so;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or ~~control of the sponsorship or management of horse racing~~ operation of applicant's horse racing facility, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or

control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR S 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort, as defined in 4 MCAR S 15.003 E., to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR SS 15.003 or 15.010 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the

applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR S 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

A. the address of the facility, its size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the

grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas, and a description of the equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pick-up and drop-off points.

4 MCAR S 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

A. the total cost of construction of the facility, distinguishing between fixed costs and projections;

B. separate identification of the following costs, distinguishing between fixed costs and projections:

1. facility design;

2. land acquisition;

3. site preparation;

4. improvements and equipment, separately identifying the costs of 4 MCAR S 15.005 D.-O. and other categories of improvements and equipment;

5. interim financing;

6. permanent financing;

7. organization, administrative, accounting, and legal;

C. documentation of fixed costs;

D. the schedule for construction of the facility, including estimated completion date;

E. schematic drawings;

F. copies of any contracts with and performance bonds from the:

1. architect or other design professional;

2. project engineer;

3. construction engineer;

4. contractors and subcontractors;

5. equipment procurement personnel;

6. G. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions

the applicant must take in order to use the site.

4 MCAR S 15.007 Disclosure of financial resources.

An applicant for a Class A license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to develop, own, and operate the horse racing facility:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation, and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

4 MCAR S 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in

deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:

a. average daily attendance;

b. average daily per capita handle and average bet;

c. retainage;

d. admissions to track, including ticket prices and free admissions;

e. parking volume, fees, and revenues;

f. concessions, gift shop, and program sales;

g. cost of purses;

h. pari-mutuel expense;

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

o. repairs and maintenance;

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service;

<u>v. federal taxes;</u>

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift, and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

(17) federal and state income taxes;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of method used;

(3) equipment depreciation and identification of method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of the development period and each of the five racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR S 15.009 Disclosure of governmental actions.

An applicant for a Class A license must disclose with regard to actions of government agencies:

A. the street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion, and estimated date;

B. the sewer, water, and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date;

C. if applicant has obtained any required government approvals for its development, ownership, and operation of its horse racing facility:

1. a description of the approval, unit of government, date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

D. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

E. whether an environmental assessment of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any assessment;

F. whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its

status and the governmental unit with jurisdiction, and provide a copy of any statement;

G. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the development, ownership, and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR S 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

A. a description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions, and qualifications for each management position, and a copy of the organization chart;

B. management personnel to the extent known and with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. real estate development;

c. construction;

d. marketing, promotion, and advertising;

e. finance and accounting;

f. horse racing;

g. pari-mutuel betting;

h. security;

i. human and animal health and safety;

4. description of the terms and conditions of employment and a copy of the agreement;

C. consultants and other contractors who have provided or will provide management-related services to applicant to extent known and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement.

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting, security staff levels, and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4. description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. description of the applicant's plans for human and animal health and safety, including emergencies;

G. description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will, to the extent known;

I. a description of training of the applicant's personnel;

J. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the

applicant dated and signed by chief executive officer; and a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR S 15.011 Disclosure of public service.

An applicant for a Class A license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR S 15.012 Disclosure of impact of facility.

An applicant for a Class A license must disclose the impact of its horse racing facility, including:

A. economic impact, including:

1. employment created and specifics as to number of jobs, whether permanent or temporary, type of work, compensation, employer, and how created;

2. purchases of goods and services and specifics as to money amounts and types of purchases;

3. public and private investment;

4. tax revenues generated;

B. ecological impact;

C. impact on energy conservation and development of alternative energy sources;

D. social impact.

4 MCAR S 15.013 Disclosure of public support and opposition.

An applicant for a Class A license must disclose public support and opposition, whether by a governmental official or agency or private individual or group and must supply documentation.

4 MCAR S 15.014 Effects on competition.

An applicant for a Class A license must disclose the effects of its ownership and operation of its horse racing facility on competitors within the horse racing industry.

4 MCAR S 15.015 Disclosure of assistance in preparation of

application.

An applicant for a Class A license must disclose the names, addresses, and telephone numbers of individuals who assisted applicant in preparation of its application.

4 MCAR S 15.016 Personal information and authorization for release.

In an application for a Class A license the applicant must make its best effort, as defined in 4 MCAR S 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR S 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.010 B. or C.;

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department, Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class A license;

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR S 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that: the applicant is

financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~, but not limited to~~:

1. criminal record;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

8. any other indices related to integrity which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment in applicant's facility, including~~, but not limited to~~:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

14. any other indices related to quality which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

D. imminence of completion of facility;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including~~,-but not-limited-to~~:

1. ownership and control structure;

2. amounts and reliability of development costs;

3. certainty of site acquisition or lease;

4. current financial condition;

5. sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;

6. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;

7. feasibility of financial plan;

8. any other indices related to financial ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

F. status of governmental actions required by the applicant's facility, including~~,-but-not-limited-to~~:

1. necessary road improvements;

2. necessary public utility improvements;

3. required governmental approvals for development, ownership, and operation of the facility;

4. acceptance of any required environmental assessment and preparation of any required environmental impact statement;

5. any other indices related to status of governmental

actions which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

G. management ability of the applicant, including, ~~but not limited to~~:

1. qualifications of managers, consultants, and other contractors to develop, own, and operate a pari-mutuel horse racing facility;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. concessions plan;

6. plan for training personnel;

7. equal employment and affirmative action plans;

8. any other indices related to management ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

H. compliance with applicable statutes, charters, ordinances, or regulations;

I. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

J. impact of facility, including, ~~but not limited to~~:

1. economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;

2. ecological impact;

3. impact on energy conservation and development of alternative energy sources;

4. social impact;

5. costs of public improvements;

6. any other indices related to impact which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

K. extent of public support and opposition;

L. effects on competition, including, ~~but not limited to~~:

1. number, nature, and relative location of other Class A licenses;

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices of the impact of competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR S 15.018 Identification of applicant for Class B license.

An application for a Class B license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant, and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR S 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer of or a major financial participant ~~as~~ in the applicant setting forth:

A. that application is made for a Class B license to sponsor and manage horse racing on which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission, members, staff and agents into the financial, character, and other qualifications

of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated on information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR S 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other entity;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, and aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. jurisdiction and date of incorporation;

3. date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. jurisdiction of organization of the applicant;

3. date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. names, in alphabetical order, and addresses of any partners and officers of applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of application or other voting interest, whether absolute or

contingent, in applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. if a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the applicant must make its best effort, as defined in 4 MCAR S 15.003 E., to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and benefical holders of ownership or other voting interests in the applicant are so identified;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership or control of the~~ applicant's sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and

termination.

4 MCAR S 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort, as defined in 4 MCAR S 15.003 E., to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR S 15.020 or 15.027 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation, or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the applicant must disclose the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an

administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR S 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

A. the address of the facility at which the applicant will sponsor and manage horse racing, size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn, and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water

and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas; and a description of equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the~~, distinguishing between public and other; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation; specifics of types of transportation and schedules; and a road map of area indicating pick-up and

drop-off points.

4 MCAR S 15.023 Disclosure of authorization to use horse racing facility.

An applicant for a Class B license must disclose the terms and conditions of the lease or other agreement authorizing the applicant to sponsor and manage pari-mutuel horse racing at a licensed facility and provide a copy of the agreement.

4 MCAR S 15.024 Disclosure of financial resources.

An applicant for a Class B license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to sponsor and manage horse racing:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other cause.

4 MCAR S 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:

a. average daily attendance;

b. average daily per capita handle and average bet;

c. retainage;

d. admissions to track, including ticket prices and free admissions;

e. parking volume, fees, and revenues;

f. concessions, gift shop, and program sales;

g. cost of purses;

h. pari-mutuel expense;

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

o. repairs and maintenance

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service~~.~~;

v. federal taxes;

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

(17) federal and state income taxes;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of the method used;

(3) equipment depreciation and identification of the method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements,

equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of any development period and three racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR S 15.026 Disclosure of governmental actions.

An applicant for a Class B license must disclose with regard to actions of government agencies:

A. if the applicant has obtained any required government approvals for its management and sponsorship of horse racing:

1. a description of the approval, unit of government and date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

B. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

C. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the sponsorship and management of horse racing. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR S 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

A. a description of the applicant's management plan, with

budget and identification of management personnel by function; job descriptions and qualifications for each management position; and a copy of the organization chart.

B. management personnel and to extent known with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. marketing, promotion, and advertising;

c. finance and accounting;

d. horse racing;

e. pari-mutuel betting;

f. security;

g. human and animal health and safety;

4. a description of the terms and conditions of employment, and a copy of the agreement;

C. consultants and other contractors to extent known who have provided or will provide management-related services to applicant and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement;

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. a description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting; security staff levels; and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses, and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of a felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

4. a description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. a description of applicant's plans for human and animal health and safety, including emergencies;

G. a description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for the conduct of horse racing, including types of racing, number of days, weeks, specific dates, number of races per day, time of day, and special events;

I. a description of the applicant's plan for purses, including total purses, formula, minimum, stakes races, and purse-handling procedures;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures, including its proposed system of internal audit and supervisory controls;

K. a description of the applicant's plan for concessions, including whether licensee will operate concessions and, if not, who will to the extent known;

L. a description of training of the applicant's personnel;

M. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the

applicant dated and signed by chief executive officer; a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR S 15.028 Disclosure of public service.

An applicant for a Class B license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR S 15.029 Disclosure of economic impact.

An applicant for a Class B license must disclose the economic impact of its sponsorship and management of horse racing, including:

A. employment created, including specifics as to number of jobs, permanent or temporary, type of work, compensation, employer, and how created;

B. purchases of goods and services, including specifics as to money amounts and types of purchases;

C. tax revenues generated.

4 MCAR S 15.030 Disclosure of public support and opposition.

An applicant for a Class B license must disclose public support and opposition, whether by a governmental official, agency, private individual, or group, and provide documentation.

4 MCAR S 15.031 Effects on competition.

An applicant for a Class B license must disclose the effects of its sponsorship and management of horse racing on competitors within the horse racing industry.

4 MCAR S 15.032 Disclosure of assistance in preparation of application.

An applicant for a Class B license must disclose the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application.

4 MCAR S 15.033 Personal information and authorization for

release.

In an application for a Class B license the applicant must make its best effort, as defined in 4 MCAR S 15.003 E., to include the following with respect to each individual identified pursuant to 4 MCAR S 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.027 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class B license;

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR S 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that: the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required

determinations, the commission must consider the following factors and indices:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including~~,-but-not-limited-to~~:

1. criminal records;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

8. any other indices related to integrity which the commission deems crucial to decison making as long as the same indices are considered with regard to all applicants;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment applicant will use, including~~,-but-not-limited-to~~:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters and equipment;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

14. any other indices related to quality which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including~~,-but-not-limited-to~~:

1. ownership and control structure;

2. terms and conditions of the applicant's authorization to use facility;

3. current financial condition;

4. sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

5. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity;

6. feasibility of the financial plan;

7. any other indices related to financial ability which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

E. status of necessary government approvals and compliance with applicable statutes, charters, ordinances, and regulations;

F. management ability of the applicant, including~~,-but-not-limited-to~~:

1. qualifications of managers, consultants, and other contractors to manage pari-mutuel horse racing;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. plan for conducting horse racing;

6. plan for purses;

7. plan for pari-mutuel betting;

8. concessions plan;

9. plan for personnel training;

10. equal employment and affirmative action plans;

11. any other indices related to management which the commission deems crucial to its decision making as long as the

same indices are considered with regard to all applicants;

G. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

H. economic impact, including employment, purchases, and taxes;

I. extent of public support and opposition;

J. effects on competition, including~~,-but-not-limited-to~~:

1. number, nature, and relative location of other Class B licenses;

2. minimum and optimum number of racing days sought by the applicant;

3. any other indices related to effects on competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

The commission also must consider any other information which the applicant discloses and is relevant and helpful to a proper determination by the commission.

4 MCAR S 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

A. provide disclosures in printed or typewritten form on 8-1/2 by 11 inch paper. Immediately preceding each response, an applicant must restate what disclosure is sought. Any attachments or exhibits must be lettered or numbered separately. An applicant must provide photographs of any three-dimensional exhibits;

B. make its best effort, as defined in 4 MCAR S 15.003 E., to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission;

D. upon request of the commission or its agents, provide copies of any documents used in the preparation of its application.

4 MCAR S 15.036 Class A and B license application submission.

An applicant for a Class A or B license must submit to an individual designated by the commission:

A. all documents which are part of its application as a single assemblage;

B. a letter of transmittal to the commission and, in sealed envelopes, an original and 20 copies of the application.

4 MCAR S 15.037 Investigation fee for Class A and B licenses.

An applicant for a Class A or B license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10,000 to cover the costs of the investigation mandated by Minnesota Statutes, section 240.06, subdivision 3, or section 240.07, subdivision 2. Upon completion of the investigation, the commission must refund promptly to the applicant any amount by which the $10,000 exceeds the actual costs of investigation. If costs of the investigation exceed $10,000, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. An individual or other entity applying for Class A and B licenses simultaneously must submit only one $10,000 investigation fee.

4 MCAR S 15.038 Clarification of Class A and B license application requirements.

The commission must designate an individual who will clarify Class A and B license application requirements upon the oral or written request of a potential applicant. The designee must respond to clarification requests in writing within five days. No interpretation of application requirements by any other person will be binding upon the commission.

4 MCAR S 15.039 Changes in Class A and B license applications.

The commission must not consider a substantive amendment to a Class A or B license application after its submission.

4 MCAR S 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on ~~January 15~~ March 1, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

B. applications for Class A licenses to own and operate racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;

C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

4 MCAR S 15.041 Oral presentation by applicant for a Class A or B license.

The commission must provide an applicant for a Class A or B license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. This rule does not require that the commission afford an applicant more than one opportunity to make an oral presentation before the commission makes its decision.

4 MCAR S 15.042 Payment of Class A and B license fees.

A Class A or B license does not become effective until the commission receives a certified check or bank draft to the order

of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

A. a nonrefundable fee of $10,000 for a Class A license;

B. a fee for a Class B license equal to $100 times the optimum number of racing days sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds $100 times the number of actual days of racing sponsored and managed by the licensee.

4 MCAR S 15.043 Class A and B license application information.

False or misleading information in a Class A or B license application, omission of required information, or substantial deviation from representations in the application is cause for denial, revocation, or suspension of a license or imposition of a fine.

4 MCAR S 15.044 Delay in completion of racetrack facility.

Failure of a Class A licensee to complete substantially the construction of its racetrack facility and installation of equipment within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after the completion date stated in its license application is cause for revocation or suspension of the license, and the commission may impose a penalty of $1,000 on the licensee for each day of delay. The penalty does not apply if and to the extent the licensee proves that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors and subcontractors. Such causes may include, but are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the

licensee proves the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the above penalty may not be imposed for the delay unless the supplies or services to be furnished by contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

4 MCAR S 15.045 Construction, expansion, extension, alteration, or remodeling of facilities.

No Class A or B licensee may construct, expand, extend, alter, or remodel a racetrack facility at a cost in excess of $10,000 without the approval of the commission. Failure to obtain approval is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR S 15.046 Security.

Class A and B licensees must maintain security which is adequate to ensure the health, safety, and comfort of all humans and horses at the racetrack facility and protection of all property.

4 MCAR S 15.047 Security modifications.

The commission may order Class A and B licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to the integrity of racing or public safety, health, or welfare. Failure to make modifications mandated by the commission promptly is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR S 15.048 Medical services.

A racetrack facility must provide the following medical facilities, equipment, and personnel:

A. a fully equipped first aid room with at least two beds;

B. a licensed physician and registered nurse on duty in the first aid room on all days during which horse racing is conducted;

C. a registered nurse on duty on all days during which the

racetrack facility is open for exercising horses;

D. an ambulance for humans with necessary equipment and staff whenever the facility is open for racing or exercising horses.

4 MCAR S 15.049 Care of horses.

A racetrack facility must provide the following facilities, equipment, and personnel for horses:

A. an individual box stall for each horse;

B. a fence surrounding the stabling facilities;

C. stabling and training facilities available at least three weeks before the start of the first race meeting for a species of horse in any year;

D. a licensed outrider mounted and on duty whenever a facility is open for exercising horses;

E. a horse ambulance available for the safe and expedient removal of crippled animals. The ambulance must be equipped with a screen for use when an animal must be destroyed in view of the public, a winch to lift dead or injured animals onto the ambulance, and a removable floor or any other devices which enable a dead or injured horse to be loaded.

4 MCAR S 15.050 Contract approval.

Contracts entered into by Class A, B, and D licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts and subcontracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, and D licensees must submit copies of any written contracts and subcontracts to the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

APPROVED AS TO FORM AND LEGALITY

January 31, 19 84

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY [signature]
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 3 1 1984
Joan Anderson Growe
Secretary of State

9:20
A.M.

Exh. No. 19
File No.
Date

filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. the jurisdiction of organization of the applicant;

3. the date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. the names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. the names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are so identified;

F. whether the applicant is directly or indirectly

the applicant must make its best effort to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The

Sharon, note my grammatical change on p. 16

controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership or control of the sponsorship or management of horse racing,~~ ownership or operation of applicant's horseracing facility, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR S 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR SS 15.003 or 15.010 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

between those between public and other;

Number of parking spaces available ~~for the public~~; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pick-up and drop-off points.

4 MCAR S 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

A. the total cost of construction of the facility, distinguishing between fixed costs and projections;

B. separate identification of the following costs, distinguishing between fixed costs and projections:

1. facility design;

2. land acquisition;

3. site preparation;

4. improvements and equipment, separately identifying the costs of 4 MCAR S 15.005 D.-O. and other categories of improvements and equipment;

5. interim financing;

6. permanent financing;

7. organization, administrative, accounting, and legal;

C. documentation of fixed costs;

D. the schedule for construction of the facility, including estimated completion date;

E. schematic drawings;

F. copies of any contracts with and performance bonds from the:

1. architect or other design professional;

2. project engineer;

3. construction engineer;

4. contractors and subcontractors;

5. equipment procurement personnel;

G. ~~F.~~ whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR S 15.007 Disclosure of financial resources.

An applicant for a Class A license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to develop, own, and operate the horse racing facility:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation, and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional

APPROVED BY REVISOR'S OFFICE

o. repairs and maintenance;

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service;

v. federal taxes;

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift, and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

(17) federal and state income taxes;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of method used;

D. social impact.

4 MCAR S 15.013 Disclosure of public support and opposition.

An applicant for a Class A license must disclose public support and opposition, whether by a governmental official or agency or private individual or group and must supply documentation.

4 MCAR S 15.014 Effects on competition.

An applicant for a Class A license must disclose the effects of its ownership and operation of its horse racing facility on competitors within the horse racing industry.

4 MCAR S 15.015 Disclosure of assistance in preparation of application.

An applicant for a Class A license must disclose the names, addresses, and telephone numbers of individuals who assisted applicant in preparation of its application.

4 MCAR S 15.016 Personal information and authorization for release.

In an the applicant must make its best effort to application for a Class A license ~~must~~ include the following with respect to each individual identified pursuant to 4 MCAR S 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.010 B. or C.;

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department, Bureau of Criminal Apprehension of all records concerning the individual, whether

the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class A license;

3. releases authorized providers and users of the information from any liability under state or federal data privacy law.

4 MCAR S 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal record;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment in applicant's facility, including, but not limited to:

corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. jurisdiction of organization of the applicant;

3. date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. names, in alphabetical order, and addresses of any partners and officers of applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of application or other voting interest, whether absolute or contingent, in applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. if a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., ~~the~~ disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ~~ownership~~ applicant's sponsorship

the applicant must make its best effort to disclose the information required by these clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more. The

APPROVED AS TO FORM
REVISOR OF STATUTES
OFFICE

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas; and a description of equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available ~~for the public~~, distinguishing between public and others, a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

o. repairs and maintenance

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service;

v. federal taxes.

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

APPROVED BY THE REVISOR OF STATUTES OFFICE

(16) legal and audit;
(17) federal and state income taxes;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of the method used;

(3) equipment depreciation and identification of the method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of any development period and three racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR S 15.026 Disclosure of governmental actions.

An applicant for a Class B license must disclose with regard to actions of government agencies:

A. if the applicant has obtained any required government approvals for its management and sponsorship of horse racing:

1. a description of the approval, unit of government and date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

B. whether any required governmental approvals remain to be

An applicant for a Class B license must disclose the effects of its sponsorship and management of horse racing on competitors within the horse racing industry.

4 MCAR S 15.032 Disclosure of assistance in preparation of application.

An applicant for a Class B license must disclose the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application.

4 MCAR S 15.033 Personal information and authorization for release.

In an ~~An~~ application for a Class B license ~~must~~ the applicant must make its best effort to include the following with respect to each individual identified pursuant to 4 MCAR S 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.027 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class B license;

3. releases authorized providers and users of the information from any liability under state or federal data privacy law,

4 MCAR S 15.034 Class B license criteria.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY

Exh. No. 1
File N
Date

programs. The temporary rule will be promulgated into a permanent rule. In the process the rule may be changed to reflect diagnosis related groups. All interested or affected persons or groups are requested to participate through statements and comments which may be made orally or in writing. Written statements may be addressed to:

Thomas JoliCoeur
Minnesota Department of Public Welfare
Income Maintenance Bureau
Health Care Programs
2nd Floor Space Center
444 Lafayette Road
St. Paul, MN 55101

Oral statements of information and comment will be received during the regular business hours over the telephone at (612) 296-8822. All statements of information will be open until further notice.

Any written material received by the department shall become part of the hearing record.

Minnesota Racing Commission

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Parimutuel Horse Racing in Minnesota

Notice is hereby given that the Minnesota Racing Commission is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing all aspects of parimutuel horse racing in Minnesota, including the development of criteria for setting the number of racing days, the issuance of Class A, B, C and D licenses and the promulgation of procedural rules to govern the commission. The commission is authorized to promulgate rules under Laws 1983, chapter 214.

The Minnesota Racing Commission requests information and comments concerning the subject matter of these rules. Interested or affected persons may submit statements of information or comment in writing to: Minnesota Racing Commission, Suite 400, 312 Central Avenue, Minneapolis, Minnesota 55414.

All statements of information and comments will be accepted with respect to each set of rules until such set has progressed to the point at which public comment is terminated pursuant to the Minnesota Administrative Procedure Act. Any written material received by the Minnesota Racing Commission shall become part of the record in the event that the rules are promulgated.

Notice of Public Meetings to Hear Statements of Information and Comment Prior to Drafting of Rules

Notice is hereby given that the Minnesota Racing Commission will hold the following meetings at United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414:

Thursday, September 15, 1983 at 10 a.m., to hear Statements of Information and Comment from Potential Investors in Racetrack Construction.

Wednesday, September 21, 1983 at 4 p.m., to hear Statements of Information and Comment from Interested and Affected Persons and Groups other than Potential Investors in Racetrack Construction.

Ray Eliot, Chairman
Minnesota Racing Commission

Department of Transportation

Petition of the City of St. Louis Park for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Louis Park made a written request to the Commissioner of Transportation for a variance from minimum street width standards for a reconstruction project on Municipal State Aid Street 276 (Louisiana Avenue) from CSAH 16 (Cedar Lake Road) to Trunk Highway 12.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute,

AMOS S. DEINARD
SIDNEY LORBER
SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
THOMAS D. FEINBERG
MORRIS M. SHERMAN
GEORGE REILLY
DAVID N. COX
STEPHEN R. PFLAUM
CHARLES A. MAYS
NANCY C. DREHER
LOWELL J. NOTEBOOM
GEORGE F. McGUNNIGLE, JR.
FREDRIC T. ROSENBLATT
BYRON E. STARNS
STEVEN D. DeRUYTER
ALAN J. WILENSKY
STEPHEN J. DAVIDSON
STEPHEN R. LITMAN
DAVID C. ZALK
EDWARD M. MOERSFELDER
ROBERT LEWIS BARROWS
HUGH M. MAYNARD
KENNETH H. PROCHNOW
MICHAEL A. NEKICH
MARTHA C. BRAND
PROFESSIONAL CORPORATIONS

LAW OFFICES

LEONARD, STREET AND DEINARD
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
1200 NATIONAL CITY BANK BUILDING
510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402

TELEPHONE AND TELECOPIER
(612) 339-1200

M. PATRICIA SCHAFFER
JAMES V. ROTH
ROBERT L. DeMAY
ANGELA M. BOHMANN
ROBERT D. ARKIN
ROBERT P. THAVIS
JAMES G. BULLARD
JOSEPH M. FINLEY
LAWRENCE J. FIELD
JONI MARIE KELLY
RICHARD RAPSON
ROBERT D. GILBERT
GEORGE B. WYETH
NANCY A. WELSH
MARSHA A. FREEMAN

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)

IRENE SCOTT
OF COUNSEL

October 17, 1983

Ms. Joyce Farrell, Chairperson
Rules Committee
Minnesota Racing Commission
102 Hamel Road
Hamel, Minnesota 55340

Dear Commissioner Farrell:

As you know, I represent Minnesota Jockey Club, Inc., a potential applicant for Class A and B licenses from the Commission. In response to the Commission's solicitation of comments on rule making and the Commission's letter of October 6, 1983 soliciting drafts of rules, I enclose a draft of rules setting forth criteria for the issuance of Class B licenses and rules setting forth license application questions for a Class B license. These documents are identical in many respects to those for Class A licenses submitted with my letter of October 6. Changes from the Class A documents and new material are noted to assist your review.

By copy of this letter I am forwarding copies of these two documents to Commissioner Daniels and Commissioner Sanda, Special Assistant Attorney General Bob Nardi, Assistant Attorney General Mike Miles, rules consultant Robert Hentges, and Jim Wyler.

I hope the information is of some assistance to your committee in its effort to develop rules for the application process.

Very truly yours,

LEONARD, STREET AND DEINARD

By
Byron E. Starns

BES/jm
Enclosures

cc: John H. Daniels, Jr., Esq.
Ms. Krista Sanda
Robert Nardi, Esq.
Michael Miles, Esq.
Robert Hentges, Esq.
Mr. James Wyler

Criteria for Issuance of Class B Licenses

In determining whether to issue Class B licenses the Commission shall consider all information submitted by an applicant in response to the Commission's application form, the comments received at the public hearings pursuant to Minn. Stat. § 240.07, subd. 2, the reports of the Bureau of Criminal Apprehension received pursuant to Minn. Stat. § 240.07, subd. 2, all information received by the Commission and its members and any Commission staff and consultant reports.

The Commission shall consider the following factors in evaluating whether an applicant satisfies the four statutory criteria for licensure as set out in Minn. Stat. § 240.07, subd. 3.

1. To determine whether the applicant will conduct horse racing in accordance with all applicable laws and rules the Commission shall consider the following factors concerning the applicant and any principal.*

(a) The relevant reports from the Bureau of Criminal Apprehension.

(b) Character and fitness.

(c) Criminal convictions (felonies or misdemeanors).

(d) Liability as a result of any civil judgment for unfair or anti-competitive business practices, securities law violations, racing law or gambling law violations.

(e) Revocation, suspension, or denial of renewal of any business license issued.

(f) Criminal conviction of, civil judgment of, or final or uncontested administrative determination of a violation of any statute or rule pertaining to any form of horse racing or gambling.

(g) Involvement in litigation with any authority regulating any form of horse racing or gambling.

(h) Applicant's security plan and personnel.

---

* Principal means any officer or director of the applicant, and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls 1% or more of the voting stock or any equivalent voting interest of a partnership or joint venture of an applicant.

[This is identical to criteria #1 of Class A Criteria.]

2. To determine whether the granting of a license to the applicant will adversely affect the public health, welfare and safety the Commission shall consider the following factors:

(a) Character and fitness of the applicant, its principals, and management personnel.

(b) Provisions for life safety and emergency medical facilities and personnel.

(c) Equal employment opportunity and affirmative action plans.

(d) Applicant's security plan and personnel.

(e) Proven business expenses and performance.

(f) Proven experience and performance in race track and parimutuel betting operation.

(g) Pro forma financial projections.

(h) Advice or report from the Commission's consulting accounting firm.

3. To determine whether the granting of a license to an applicant will create a competitive situation that will adversely affect racing and the public interest the Commission shall consider the following factors:

(a) The experience of the applicant and its management personnel in the horse racing industry.

(b) The applicant's marketing and public information plan and personnel.

(c) The type of horse racing to be conducted.

(d) The minimum number of racing days the applicant projects are needed to break even.

(e) The number of racing days sought by the applicant.

(f) The number of races per day proposed by the applicant.

(g) The number of outstanding Class A and Class B licenses issued by the Commission.

(h) The number of racing days awarded to other licensees by the Commission.

(i) The types of betting proposed by the applicant.

(j) Applicant's marketing plan for the public.

(k) Applicant's marketing plan for horse owners.

(Criteria continued)

4. To determine whether an applicant is fit to sponsor and manage racing the Commission shall consider the following factors:

(a) Applicant's business plan.

(b) Financial resources committed to applicant.

(c) Financial resources potentially available to applicant.

(d) Financial feasibility of applicant's proposal.

(e) Ownership structure.

(f) Proven business experience and performance.

(g) Proven experience and performance in race track operation.

(h) Proven experience and performance in betting and parimutuel operations.

(i) Proven experience and performance in financial and accounting controls.

(j) Pro forma financial projections.

(k) Advice or report from the Commission's consulting accounting firm.

(l) Applicant's sources of additional funds if financial projections are inaccurate.

(m) Applicant's sources and amounts of equity and debt financing.

(n) Applicant's marketing plan for the public.

(o) Applicant's marketing plan for horse owners.

TABLE OF CONTENTS FOR CLASS B LICENSE APPLICATION FORM

I. Applicant Identification and Ownership Information
Same as Class A question with modification to question 6, and new question 7.

II. Character Information
No change from Class A questions.

III. Management Plan, Personnel and Experience
Same as Class A questions with modification of questions 1, 3 and 4.

IV. Marketing Plan, Personnel and Experience
Same as Class A questions with modification of question 1.

V. Horse Racing and Parimutuel Betting Plans, Personnel and Experience
Same as Class A questions with modification of questions 1, 3 and 4 and new question 5.

VI. Public Health, Welfare and Safety
Retains questions 10-13 from Class A questions (with minor modifications).

VII. Facility Development
Omit entirely Class A questions, new questions pertaining to equipment.

[VIII. Facility Design
Omit entirely Class A questions.]

VIII. Financial Resources and Commitments
Same as Class A, Section IX, questions with modification of questions 2, 4, and 7.

IX. Financial Projections
Same as Class A, Section X, questions with modification of question 5.

I. Applicant Identification and Ownership Information

[new] 1. (a) Where the application is submitted by an individual, state applicant's legal name and aliases and business names used by applicant together with applicant's current business address and telephone number.

Daniels #1 #2 (b) Where the application is submitted by a corporation, association, or partnership state applicant's full corporate or business name, and list any trade names utilized by applicant, as well as the legal name, current business address and telephone number of each principal,* director and officer.

[new] 2. Identify all beneficial owners of interest in applicant. Beneficial owners include, but are not limited to, individuals, corporations, partnerships, joint ventures and unincorporated associations.

Daniels #3 3. If applicant is a corporation, attach a copy of your Articles of Incorporation, current corporate By-Laws and corporate state and federal tax returns for the previous five (5) years and recite:

(a) State of incorporation;

(b) Date of incorporation;

(c) Date applicant commenced doing business in Minnesota; if applicant is incorporated in a state other than Minnesota, attach a copy of applicant's Certificate of Authority to do business in Minnesota as a foreign corporation;

(d) The general nature of applicant's business;

(e) The names, in alphabetical order, addresses and social security numbers of your current Board of Directors; further, as to each director, state the number of shares of each class of stock or ownership interest (including stock options, stock

---

* Principal means any officer or director of the applicant, and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls 1% or more of the voting stock or any equivalent voting interest of a partnership or joint venture of an applicant.

Daniels #3 (cont.)

subscriptions and partnership options) applicant corporation held of record;

(f) The number of shares and the classes of the corporation's securities;

(g) The terms, position, rights and privileges of the different classes of securities of applicant corporation now outstanding;

(h) The names and addresses of persons or entities holding an option to conditional interest in applicant;

(i) The names, in alphabetical order, addresses and number of shares held of record of each shareholder of applicant corporation; as to each corporate shareholder of your stock, state the names, in alpahbetical order, and addresses of shareholders, of such holding corporation;

[new]

( ) Does applicant have any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency? If so, state (i) the nature thereof; (ii) face or par value; (iii) number of units authorized; (iv) number of units issued and outstanding; (v) conditions under which they may be voted.

Daniels #3 (cont.)

(j) Whether the requirements of the Securities Act of 1933, as amended, the Securities Exchange Act of 1943, as amended, and the Securities and Exchange Commission regulations promulgated under said acts have been met in connection with the issuance of the corporation's securities; attach copy of most recent registration statement filed with the Securities and Exchange Commission and the most recent Annual Report on Form 10-K or other annual report filed with the Securities and Exchange Commission, please so state;

(k) Whether the securities registration and filing requirements of the corporation's state of incorporation have been met; attach copy of the most recent registration statement with the securities regulation authority of the state of incorporation; and

Daniels #3 (cont.)

(l) Whether the securities registration and filing requirements of the State of Minnesota have been met; attach copies of all filings with the Securities Division of the Department of Commerce of the State of Minnesota made since January 1, 1978, and if such requirements have not been met, explain why they do not apply to the corporation.

[new]

( ) Is applicant corporation directly or indirectly controlled by another corporation or legal entity?

Daniels #4

4. If applicant is a partnership or other form of business organization other than a corporation, attach a copy of your Partnership Agreement or similar document and copies of applicant's tax returns for the previous five (5) years and state:

(a) State of registry or filing of partnership or business trade name documents (e.g., Minn. Stat. § 333.01 certificate);

(b) Date applicant commenced doing business in Minnesota;

(c) The general nature of applicant's business;

(d) The names, in alphabetical order, addresses and social security numbers (if any) of those partners, individuals, or entities owning an interest in applicant and, further, the extent of such interest;

(e) Identify any person or entity, by name and address, having an option or conditional interest in applicant.

Daniels #5

5. If applicant, any officer, director or beneficial owner of more than ten percent (10%) interest in applicant has held or holds a license issued by a governmental authority for the conduct of any aspect of horse racing:

(a) Identify the license holder;

(b) Describe the nature of such license;

(c) Identify the authority issuing the license and state the date of issuance and termination of such license.

Daniels #6 6. State whether you will sponsor and manage thoroughbred, harness, quarter horse or other type of racing. If applicant retains a membership in a corresponding racing organization, identify the organization (e.g., Thoroughbred Racing Associations of North America, Inc. [TRA]).

[new] 7. Identify the facility at which you propose to sponsor and manage horse racing.

II. Character Information

[new] 1. Has the applicant (including parent corporation if applicable) or any principal* ever been convicted in a criminal proceeding (felonies or misdemeanors) in which any of the following offenses were charged?

(a) Fraud.

(b) Embezzlement.

(c) Tax evasion.

(d) Bribery.

(e) Extortion.

(f) Jury tampering.

(g) Obstruction of justice (or other misconduct affecting public or judicial officers' performance of their official duties).

(h) False/misleading advertising.

(i) Perjury.

(j) Anti-trust violations (state/federal).

(k) Violations of FCC regulations.

(l) Conspiracy to commit any of the foregoing offenses.

(m) Any other felony.

[new] 2. If "yes" provide specifics such as date, court, sentence or fine, etc.

---

* For purposes of this form, "principal" means any officer or director of applicant, and any person, firm, corporation, partnership, joint venture or other entity, who or which owns or controls 1% or more of the voting stock or any equivalent voting interest of a partnership or joint venture of an applicant.

[new] 3. Has the applicant or any principal ever been a party to a civil proceeding in which it was held liable for any of the following or is not a party to the proceeding?

(a) Unfair or anticompetitive business practices.

(b) Violations of securities laws (state/federal).

(c) False/misleading advertising.

(d) Violations of FCC regulations.

[new] 4. If "yes", provide specifics.

[new] 5. Has applicant or any principal ever had a business license (defined to include race track, gambling licenses, alcoholic beverage and restaurant licenses, etc.) revoked, suspended or the renewal thereof denied or is a party to a proceeding that may result in same?

[new] 6. If "yes", provide specifics.

[new] 7. Has applicant or any principal ever, as a result of an adjudicated proceeding, been found in violation -- other than routine service complaints -- of any franchise agreement, contract, or regulation governing facilities owned or operated by them?

[new] 8. If "yes", provide specifics.

[new] 9. Has applicant or any principal ever initiated litigation against a franchising authority or had a franchising authority initiate litigation against it?

[new] 10. If "yes", provide specifics.

III. Management Plan, Personnel and Experience

Daniels #7 1. Describe the proposed management of your facility and identify management personnel by function.

Daniels #8 2. Set forth the basic job descriptions and qualifications for each management position described in your answer to Question 1 above.

Daniels #9 3. List the officers and management personnel responsible for your proposed operation and state with respect to each:

(a) Full name, including any alias or previous name;

(b) Current residence and business address and telephone number;

(c) Qualifications and experience in the following areas:

(1) General business experience;

(2) Real estate development;

(3) Construction;

(4) Marketing;

(5) Financial and accounting controls;

(6) Horse racing industry; and

(d) Attach a copy of any written contract or describe the terms of any oral agreement between applicant and the employee.

Starns #I, 2 4. List all consultants you have under contract, or intend to contract with, to provide management related services for the development and operation of horse racing you propose to sponsor and provide the following information with regard to each consultant identified:

(a) full name;

(b) current address and telephone number;

Starns
#I, 2
(cont.)

(c) nature of services to be provided by the consultant;

(d) qualifications and experience of the consultant;

(e) a copy of your contract, if any, with the consultant.

IV. Marketing Plan, Personnel and Experience

Daniels #16 1. Describe in detail how you propose to market your proposed racing events. Include the elements, proposed budget, and anticipated results of said plan.

Starns #II, 2 2. Identify key marketing personnel you currently have under contract to implement your marketing plan and with respect to each provide the following information:

(a) full name;

(b) current address and telephone number;

(c) current employer and current position with said employer;

(d) qualifications and experience;

(e) a copy of any written contract or the terms of any oral agreement between said person and you or your organization.

Starns #II, 3 3. Have you determined the duties and qualifications of marketing personnel you would employ if your license application is granted? If so, please set forth the job description and qualifications for each position.

Starns #II, 4 4. Do you have a public information plan which you will implement if your license application is granted? If so, please describe the elements, proposed budget and anticipated results of said plan, including its effect on track attendance and betting.

Starns #II, 5 5. Do you have an advertising plan you will implement if your license application is granted? If so, please describe the types of advertising you propose to utilize, proposed budgets for advertising, and the anticipated results of said plan including its effect on track attendance and betting.

V. Horse Racing and Parimutuel Betting Plans, Personnel and Experience

[new] 1. State the types of horse racing which you intend to sponsor.

[new] 2. State the types of parimutuel betting pools you propose to be conducted for each type of horse racing to be sponsored.

[new] 3. Identify the personnel responsible for the administration, management, operation, and sponsoring of the actual races to be held for each type of horse racing you intend to sponsor and provide with respect to each person.

(a) Full name, including any alias or previous name;

(b) Current residence and business address and telephone number;

(c) Qualifications and experience in the following areas:

(1) horse racing industry;

(2) organizing, managing and operating horse races;

(3) sponsoring horse races.

[new] 4. Identify the personnel responsible for the administration, management, take outs, and distributions of winnings of the parimutuel betting pools to be

[new] conducted and provide with respect to each person:

(a) Full name, including any alias or previous names;

(b) Current residence and business address and telephone number;

(c) Qualifications and experience in the following areas:

(1) horse racing industry;

(2) parimutuel betting;

(3) financial and accounting controls;

(4) other forms of gambling or betting.

5. State the following with regard to the racing meetings you proposed to sponsor:

(a) The inclusive dates allocated for the race meeting.

(b) The number of weeks of racing and the number of days or nights to be raced; and the days and nights within that period that the association will not conduct races (dark days).

(c) The number of races to be programmed on each racing day, and the breed of horse to be included in each race.

(d) The stakes program, minimum purse and approximate amount of total purses to be offered at the race meeting.

(e) The dates upon which the association shall operate for charity.

(f) The types of wagering to be offered and a declaration as to the minimum wager for each type or wagering.

(g) The names and addresses of all persons to whom concessions are to be granted for the meeting.

(h) The schedule of charges the association proposes to make, and the kind of passes and the number thereof the association proposes to issue.

(i) The names of all racing officials engaged or nominated for the meeting, and the salaries and other benefits to be paid to each racing official.

(j) A statement whether all labor agreements, concession contracts, horsemen's agreements or lease arrangements which are necessary to conduct the entire race meeting have been finalized.

(k) The name of the parimutuel audit firm engaged for the meeting.

VI. Public Health, Welfare and Safety

[new] 1. What provisions are made in your proposed operation for human life safety, emergency medical facilities and procedures, and medical personnel?

[new] 2. Does your operation comply with applicable access standards for the handicapped? What other provisions have you made for the handicapped?

[new] 3. Set forth your affirmative action plan including goals and timetables as required by Minn. Stat. § 240.06, subd. 1(f).

[new] 4. Describe your security plans and personnel for:

[see also Daniels #10(1)]

(a) Cash receipts and payment of winnings.

(b) Testing of horses.

(c) Stables.

VII. Facility Development

[new] 1. Describe the equipment you intend to purchase or lease in connection with your proposed sponsorship and management of horse racing including the following:

(a) The type of parimutuel or totalisator equipment to be used and the name of the person supplying such equipment.

(b) The type of photographic device to be used for photographing the finish of all races or the name of the person supplying such service.

(c) The type of photo-patrol or video equipment to be used to record all races, their number and locations, and the name of the person supplying such service.

(d) The type of timing device to be used for the timing of all races.

2. Identify and attach copies of contracts by and between applicant and the following:

(a) Equipment suppliers.

(b) Engineering design firms, if any.

(c) Contractors, if any.

(d) Computer equipment suppliers.

(e) Computer software suppliers.

(f) Computer consultants or operations personnel.

3. Attach copies of performance bonds obtained in connection with the potential supply of equipment or services if your license application is granted.

[VIII. Facility Design
Entire section from Class A Questions Omitted.]

VIII. Financial Resources and Commitments

Daniels #12

1. Provide a concise and, if possible, audited financial statement reflecting applicant's current assets, including investments in affiliated companies, loans and advances receivable and fixed assets, and current liabilities, including loans and advances payable, long-term debt and shareholders' equity.

Starns #IV, 4

2. What will be your sources of funds for your proposed operation?

Starns #IV, 5

3. Set forth the identity (name, address, telephone number) of each source of equity contribution, the amount of each equity contribution, the form thereof, the method of payment and the nature of the commitment currently in hand or status of negotiations for commitments for equity contributions.

Starns #IV, 6

4. Set forth the identity of each source of debt contribution which you plan to utilize to finance your sponsorship of horse racing. With respect to each source provide the following information:

[See also Daniels #10(p)]

(a) the form of commitments currently in hand and attach copies;

(b) the terms of any such commitment, i.e., "best efforts", "firm underwritings", etc.

(c) the terms of debt contribution including the term of the loan, interest rate(s) applies amortization schedule, collateral involved and identity of guarantors.

(d) the status of negotiations for debt contributions needed for which there is no current commitment in hand.

Starns #IV, 7

5. If your operation is less successful than your financial projections indicate and more capital is required to continue operations, do you now have a source for such additional funds? If so, describe.

[new]

6. Are there related agreements made in connection with financing of this project? If so, describe and attach copies.

[new] 7. Supply correspondence that assures applicant's financial viability, such as letters of commitment from financial institutions, which will demonstrate the availability of sufficient funds to complete the construction of the facility.

IX. Financial Projections

Daniels #13 1. Provide financial projections reflecting the development period and the first five succeeding racing years; in so doing, please prepare separate schedules based upon the number of racing days and types of bets (e.g., straight pool, multiple pool, or exotic betting) needed to break even and the optimum number of facing days applicant seeks to operate in the initial and succeeding years of operation.

Daniels #14 2. In connection with your response to question 1 above, projections should include reference to, and support for, assumptions utilized in the following criteria:

(a) Average daily attendance;

(b) Average daily per capita handle and average bet;

(c) Numer of racing days;

(d) Retainage;

(e) Admissions to the track including ticket prices and free admission;

(f) Parking volume and revenue;

(g) Concessions, gift shop and program sales;

(h) Cost of purses;

(i) Totalizer expense;

(j) State taxes, including sales taxes;

(k) Real estate taxes;

(l) Breeder fund expense;

(m) Payroll;

(n) Operating supplies and services;

(o) Utilities;

(p) Repairs and maintenance;

(q) Insurance;

(r) Travel expense;

(s) Membership expense (e.g., TRA and TRPB);

(t) Security expense (if separate from payroll);

(8) Legal and audit expense; and

(s) Debt service.

Daniels #15 3. In connection with your responses to question 1 above, profit and loss projections should include the following elements:

(a) Total revenue including an assessment of projected revenue from:

(1) Track retainage and breakage;

(2) Admissions;

(3) Parking; and

(4) Concessions, gift and program operations;

(b) Total operating expenses including an assessment of anticipated expenses for:

(1) Purses;

(2) Totalizer;

(3) Sales tax;

(4) Breakage to state;

(5) Real estate tax;

(6) Admissions tax;

(7) Breeder fund;

(8) Special assessments;

(9) Cost of goods (concessions, gift program);

(10) Advertising and promotion;

(11) Payroll;

(12) Operating supplies and service;

(13) Maintenance and repairs;

(14) Insurance;

(15) Security (if separate from payroll); and

(16) Legal and audit;

(c) Nonoperating expenses, including an assessment of anticipated expenses for:

(1) Debt service;

(2) Facility depreciation (identify method used); and

(3) Equipment depreciation (identify method used); and

Daniels #15 4. In connection with your response to question 1 above, prepare statements of projected cash flow, including an assessment of the following elements:

(a) Income (including equity contributions, debt contributions, interest income, operating revenue); and

(b) Disbursements (including land, facilities, equipment, underwriting costs, operating expense, organizational expense).

Starns #III, 5 5. Prepare projected balance sheets as of the date you intend to begin sponsoring races and the end of each of the first five succeeding racing years setting forth:

(a) statement of assets (current, fixed and other noncurrent);

(b) statement of liabilities (current and long-term);

(c) statement of capital accounts.

Starns #III, 2 6. Attach your accountant's review report of the financial projections you provide in response to your answers to this section of the application.

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
4344 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE AND TELECOPIER
612-333-4800

WAYNE G. POPHAM
RAYMOND A. HAIK
ROGER W. SCHNOBRICH
DENVER KAUFMAN
DAVID S. DOTY
ROBERT A. MINISH
ROLFE A. WORDEN
G. MARC WHITEHEAD
BRUCE D. WILLIS
FREDERICK S. RICHARDS
G. ROBERT JOHNSON
GARY R. MACOMBER
ROBERT S. BURK
HUGH V. PLUNKETT, III
FREDERICK C. BROWN
THOMAS K. BERG
BRUCE D. MALKERSON
JAMES R. STEILEN
JAMES B. LOCKHART
ALLEN W. HINDERAKER
CLIFFORD M. GREENE
D. WILLIAM KAUFMAN
DESYL L. PETERSON
MICHAEL O. FREEMAN
THOMAS C. D'AQUILA
LARRY D. ESPEL
JANIE S. MAYERON
DAVID A. JONES
LEE E. SHEEHY
LESLIE GILLETTE
MICHAEL T. NILAN
ROBERT C. MOILANEN
DAVID J. EDQUIST
STEVEN G. HEIKENS
THOMAS F. NELSON
THOMAS J. RADIO
KATHLEEN M. MARTIN
JOHN C. CHILDS
DOUGLAS P. SEATON
BRUCE B. McPHEETERS
GARY D. BLACKFORD
SCOTT E. RICHTER
GREGORY L. WILMES
ELIZABETH A. THOMPSON

2660 PETRO-LEWIS TOWER
717 SEVENTEENTH STREET
DENVER, COLORADO 80202
TELEPHONE AND TELECOPIER
303·292-2660

SUITE 802-2000 L STREET N. W.
WASHINGTON, D. C. 20036
TELEPHONE AND TELECOPIER
202·887-5154

October 12, 1983

Hand Delivered

Mr. Ray Eliot, Chairperson
14 University Avenue NE
Minneapolis, MN 55413

Mr. C. Elmer Anderson
624 North 3rd Street
Brainerd, MN 56401

Ms. Carol Connolly
111 E. Kellogg Blvd.
#3007
St. Paul, MN 55101

Mr. Lawrence M. Coss
Route 1, Box 20
Cannon Falls, MN 55009

Mr. John H. Daniels
Willeke & Daniels
925 Soo Line Building
Minneapolis, MN 55402

Ms. Joyce B. Farrell
Route 1, Box 132
Waverly, MN 55341

Ms. Rosemary T. Fruehling
4335 Chimo East
Wayzata, MN 55391

Mr. Dan Gustafson
2932 Jersey Avenue North
Crystal, MN 55427

Ms. Krista Sanda
Rural Ventures, Inc.
Suite #333
2001 Killebrew Drive
Bloomington, MN 55420

Re: First Round of Rulemaking

Dear Chairperson Eliot and Racing Commissioners:

This office represents the applicants for the Shakopee Racetrack site. We just today received the letter dated

October 6, 1983 concerning your request for our comments to be submitted on October 12, 1983, on certain potential rules.

Therefore, we have not had an opportunity to review your list of potential first round rules with our clients. However, subject to their additional comments, we believe that the potential rules you outlined in your letter for the first round of rulemaking appear to be relevant and once adopted will be sufficient to allow any potential applicant to commence the application process.

Thank you for this opportunity to comment on this issue. We will soon provide additional suggestions concerning the rules.

Very truly yours,

Wayne G. Popham

Wayne G. Popham

WGP/jf
cc: Mr. Jim Weiler
Mr. Robert Nardi
3209j

AMOS S. DEINARD
SIDNEY LORBER
SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
THOMAS D. FEINBERG
MORRIS M. SHERMAN
GEORGE REILLY
DAVID N. COX
STEPHEN R. PFLAUM
CHARLES A. MAYS
NANCY C. DREHER
LOWELL J. NOTEBOOM
GEORGE F. McGUNNIGLE, JR.
FREDRIC T. ROSENBLATT
BYRON E. STARNS
STEVEN D. DeRUYTER
ALAN J. WILENSKY
STEPHEN J. DAVIDSON
STEPHEN R. LITMAN
DAVID C. ZALK
EDWARD M. MOERSFELDER
ROBERT LEWIS BARROWS
HUGH M. MAYNARD
KENNETH H. PROCHNOW
MICHAEL A. NEKICH
MARTHA C. BRAND
PROFESSIONAL CORPORATIONS

LAW OFFICES

LEONARD, STREET AND DEINARD
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
1200 NATIONAL CITY BANK BUILDING
510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE AND TELECOPIER
(612) 339-1200

M. PATRICIA SCHAFFER
JAMES V. ROTH
ROBERT L. DeMAY
ANGELA M. BOHMANN
ROBERT D. ARKIN
ROBERT P. THAVIS
JAMES G. BULLARD
JOSEPH M. FINLEY
LAWRENCE J. FIELD
JONI MARIE KELLY
RICHARD RAPSON
ROBERT D. GILBERT
GEORGE B. WYETH
NANCY A. WELSH
MARSHA A. FREEMAN

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)

IRENE SCOTT
OF COUNSEL

October 12, 1983

Honorable Ray Eliot, Chairman
Minnesota Racing Commission
312 Central Avenue
Suite 400
Minneapolis, Minnesota 55414

Re: Class A and B Racing License Applications

Dear Chairman Eliot:

This is in response to your letter of October 6 requesting comments on the Commission's rulemaking efforts and seeking the identification of a representative for each potential applicant for Class A or B licenses from the Racing Commission.

I represent Minnesota Jockey Club, Inc., a potential applicant for Class A and B licenses. Minnesota Jockey Club, Inc. designates Mr. Stephen R. Pflaum, Leonard, Street and Deinard, 1200 National City Bank Building, 510 Marquette Avenue, Minneapolis, Minnesota, 55402; telephone, area code (612) 339-1200, as its representative to be contacted with information requests. Mr. Pflaum is the President of the potential applicant, Monnesota Jockey Club, Inc. In Mr. Pflaum's absence, the undersigned, Byron E. Starns, may be contacted at the same address and telephone number.

In your letter of October 6 you also ask for comments regarding the rules which we feel must be in place before a license application can be submitted. Of the 13 subject areas identified for possible inclusion in the Commission's first round of rulemaking, we feel that only two elements are needed

before a license application can be submitted. Those elements are the application procedure and application contents (sub-paragraphs (a) and (b) in your letter of October 6). We have the following comments with regard to the remaining areas of rulemaking identified in your letter:

(c) Criteria for granting Class "A" and "B" licenses.

We feel that a sound legal argument can be made that because the criteria for license issuance are set forth clearly in the Racing Commission statute no regulations on the subject are needed. See Section 6, subdivision 4 (codified as Section 240.06, subd. 4) for Class A licenses and Section 7, subdivision 3 (240.07, subd. 3) for Class B licenses. These statutory provisions set forth specific criteria for the issuance of licenses.

The need for criteria is also legally questionable because of the broad discretion the Legislature granted the Racing Commission with regard to the issuance of licenses. Both provisions also provide that the Commission "may issue" licenses to applicants satisfying the statutory license criteria. Moreover, the Legislature expressly provided in Section 5, subdivision 3 (codified 240.05, subd. 3) that its granting of authority to the Commission to issue licenses "not be construed as requiring the Commission to issue any license." (Emphasis added). Thus, as a legal matter, the Racing Commission has been granted an extraordinary degree of discretion to make its licensing decisions in accordance with its general powers to regulate horse racing in the public interest. The statutory criteria are essentially merely minimum findings the Commission must make, if in its discretion, it decides to issue a license. See, Section 3(1) (codified as Section 240.03(1)).

However, if the Commission or its counsel disagree either for legal or policy reasons, we see no harm in the promulgation of general criteria for the granting of Class A and B licenses. Said criteria should not restrict the broad statutory discretion granted the Commission (e.g., by requiring the Commission to quantify or score the applications by components or weight the criteria) or have the effect of adding new licensing criteria to the statutory criteria set forth.

(d) Form of Class "A" and "B" licenses.

We assume that this category of rulemaking merely refers to the size and language of the document to be given the recipient of a favorable licensing decision. An affirmative decision of the Commission is sufficient for a successful Class A applicant to begin construction. There will be ample time to promulgate a rule and decide upon the format for a license after developing the necessary application procedure and contents.

(e) Racing days (criteria for setting only)

An applicant will not need information in the form of new regulations regarding the manner in which the Commission will decide to award racing days in the future. A potential applicant should submit pro forma financial projections based upon the minimum number of racing days needed to break even and the optimum number of racing days to be sought by the applicant. Section 14 of the Racing Commission statute (240.14) properly gives the Commission the discretion to award racing days on a season-by-season basis and to revoke racing days in appropriate circumstances after public hearing. It is most important to preserve the Commission's discretion in awarding racing days until more is known about the structure of Minnesota's horse racing industry. There are many factors that might form a basis for the award of racing days. For example, there may only be a single licensee the first year the assignment of racing days becomes an issue or only Class D license holders may be in a position to sponsor racing. In subsequent years there may be several Class A licensed facilities competing with each other and Class D licensees for available racing days. It seems impractical to expect the Commission to be able to formulate criteria at this early date with regard to those decisions. Moreover, there is ample time after the development of licensing regulations and before the commencement of the first racing season to develop such criteria if they are needed.

(f) Betting pools.

There is also no need for the Commission to make a decision at this early date on the types of betting pools it will permit to be conducted in Minnesota. For purposes of

application content and review, the Commission can require the pro forma financial projections to be made based upon assumptions of various types of possible betting pools. This pro forma information is sufficient for the Commission to determine whether the applicants have the financial ability to operate a licensed racetrack.

(g) Stabling.
(h) Security.

There is no need for rulemaking on these two subjects prior to the receipt of applications. Both of these items are essentially design criteria which are regulated in large part by local and state ordinance. In addition, there may be standards on these subjects established by organizations such as the Thoroughbred Racing Associations of North America, Inc. which are required for the approval of races by those organizations. Presumably, an applicant's designs and specifications which are required to be submitted with its applications pursuant to Section 6, subdivision 1 (Section 240.06, subd. 1) will be certified by licensed design professionals to be in compliance with all applicable ordinances, regulations and statutes pertaining to human and animal safety. And, any applicant desiring to sponsor racing at its facilities would, of necessity, have to comply with industry and trade association standards for sanctioning if it desired to attract a viable field of horses.

Thus, the Commission's concerns in these areas are addressed during the application period by the statutory requirement for submission of plans and specifications and by inclusion in the application questionnaire of requests for information relating to specific physical items to be included in the design that will impact upon the stabling and security subjects. Security requirements other than physical aspects of the facility, i.e., personnel, can be adequately covered by requiring the applicants to describe their security plans and personnel. Moreover, the Commission can develop any desired regulations on the security matters during the period of construction of the track since the security regulations would only apply during the operations, not construction, phase and successful licensees will have to comply with all rules and regulations relating to racing in any event.

(i) Liability insurance.

We presume that the liability insurance issue relates to the amount of liability insurance that must be carried by the operator of the racetrack during the operation period, rather than during construction. Thus, there would be ample time to develop a rule on this subject after the receipt of applications. We do not expect that a decision on the amount of liability insurance would have any major effect, financial or otherwise, upon the viability of a successful applicant's operation.

(j) Investigation fee.

While this item may require rulemaking as a legal matter, Minnesota Jockey Club, Inc. will not contest the investigation fee set by the Commission to recover its investigation costs as required by Section 240.06, subdivision 3.

(k) Change of ownership notice requirements.

Rules are not necessary with regard to this requirement because the statute is clear. The applicable licensing statutes (Sections 240.06, subd. 6 and 240.07, subd. 5) set forth with sufficient clarity the circumstances in which notice must be given to the Commission.

(l) License revocation procedure and criteria.

Development of rules on these subjects is not required prior to the submission and review of applications. There should be ample time to develop revocation procedures after the license rules are developed and in the process of being approved. It seems highly unlikely that the Commission would be interested in revoking a license until many months after its initial licensing decision at the earliest.

(m) Contract review (see Minn. Stat. 240.19).

During the license application period contract review can be conducted by including in the application form questions requiring all contracts relating to construction of the track be attached and requiring applicants to answer questions regarding affirmative action plans. Thus regulations on this subject could await completion of the licensing application rules.

We appreciate the opportunity to provide our comments on the Commission's rulemaking efforts. We would be happy to respond to questions at any time.

Very truly yours,

LEONARD, STREET AND DEINARD

By Byron E. Starns
Byron E. Starns

BES/jm

Exh. No. 2
File No.
Date

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 1 day of November, 1983, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Racing Commission for that purpose and be published in the State Register.

STATE OF MINNESOTA

Ray Elliot

RAY ELIOT, Chairman

Exh. No. 6
File No.
Date

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

In the Matter of the proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

ORDER FOR HEARING

IT IS ORDERED this 1 day of November, 1983, that a public hearing on the proposed rules captioned above be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, 55155, on December 15 and 16, 1983, commencing each day at 9:00 a.m., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons who have registered their names with the Minnesota Racing Commission for that purpose and be published in the State Register.

STATE OF MINNESOTA

Ray Eliot

RAY ELIOT, Chairman

Exh. No. 18
File No.
Date

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Susepnsion of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

It is expected that 150 persons will attend the hearings on the above entitled matter scheduled for December 15 and 16, 1983.

The Commission estimates its presentation of the Rules and supporting evidence will take four hours.

Exh. No. 7
File No.
Date

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

CERTIFICATE OF COMMISSION'S

AUTHORIZING RESOLUTION

I, RAY ELIOT, do hereby certify that I am a member and the Chairman of the Minnesota Racing Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Racing Commission duly and properly called and held on the 26th day of October, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that RAY ELIOT, Chairman of the Minnesota Racing Commission, be and he hereby is granted the authority and directed to call a hearing for the purpose of promulgating rules of the Commission governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Application Procedure, as well as perform any and all acts incidental thereto, including, but without being limited to, signing an Order for Hearing and Notice of Hearing as well as acting as the Commission's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of October, 1983.

Ray Eliot
CHAIRMAN OF THE COMMISSION

Joyce E. Farrell
Attest by one other Commission Member

Exh. No. 21
File No.
Date

RECEIVED
NOV 3 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Seven Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Hearing.

A public hearing concerning the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, on December 15 and 16, 1983, commencing each day at 9:00 a. m. PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN SEVEN PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or

materials may be submitted to George A. Beck, Office of Administrative Hearings, Fourth Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the above-entitled matter, you are urged to participate in the rule hearing process.

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice. Additional copies of the proposed rules are now available and

at least one free copy may be obtained by writing to James Weiler, Project Administrator, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555. Additonal copies will be available at the hearing. If you have any questions on the content of the rules, contact James Weiler.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11., as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: November 1, 1983

RAY ELIOT
Chairman
Minnesota Racing Commission

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

RECEIVED
NOV 3 1983
ADMINISTRATIVE HEARINGS

Proposed Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Seven or More Persons Request a Hearing.

Notice is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rules without a public hearing unless seven or more persons submit written requests for a public hearing. The Commission has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 - 14.28.

PLEASE NOTE, HOWEVER, THAT IF SEVEN OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINN. STAT. §§ 14.13 - 14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Weiler, Project Administrator
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, MN 55414
Telephone: (612) 341-7555

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from James Weiler upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Weiler.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice.

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting James Weiler.

Dated: November 1, 1983

RAY ELIOT
Chairman
Minnesota Racing Commission

Exh. No. 20
File No.
Date

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

Proposed Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Seven or More Persons Request a Hearing.

Notice is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rules without a public hearing unless seven or more persons submit written requests for a public hearing. The Commission has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 - 14.28.

PLEASE NOTE, HOWEVER, THAT IF SEVEN OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINN. STAT. §§ 14.13 - 14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Weiler, Project Administrator
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, MN 55414
Telephone: (612) 341-7555

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from James Weiler upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Weiler.

A copy of the proposed rules is attached to this Notice.

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting James Weiler.

Dated: November 1, 1983

Ray Eliot

RAY ELIOT
Chairman
Minnesota Racing Commission

RECEIVED
NOV 1 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Seven Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Hearing.

A public hearing concerning the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, on December 15 and 16, 1983, commencing each day at 9:00 a. m. PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN SEVEN PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or

materials may be submitted to George A. Beck, Office of Administrative Hearings, Fourth Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the above-entitled matter, you are urged to participate in the rule hearing process.

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

A copy of the proposed rules is attached to this Notice. Additional copies of the proposed rules are now available and

at least one free copy may be obtained by writing to James Weiler, Project Administrator, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555. Additonal copies will be available at the hearing. If you have any questions on the content of the rules, contact James Weiler.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11., as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Dated: November 1, 1983

Ray Eliot

RAY ELIOT
Chairman
Minnesota Racing Commission

Exh. No. 4
File No.
Date

RECEIVED
NOV 30 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

Proposed Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Seven or More Persons Request a Hearing.

Notice is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rules without a public hearing unless seven or more persons submit written requests for a public hearing. The Commission has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21 - 14.28.

PLEASE NOTE, HOWEVER, THAT IF SEVEN OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINN. STAT. §§ 14.13 - 14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Weiler, Project Administrator
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, MN 55414
Telephone: (612) 341-7555

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from James Weiler upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Weiler.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on

agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice.

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting James Weiler.

Dated: November 1, 1983

/s/ Ray Eliot
RAY ELIOT
Chairman
Minnesota Racing Commission

Rules as Proposed (all new material)

4 MCAR S 15.001 Identification of applicant for Class A license.

An application for a Class A license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR S 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class A license to own and operate a horse racing facility at which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated or information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. the affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR S 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. the jurisdiction and date of incorporation;

3. the date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. the classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with the Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. the jurisdiction of organization of the applicant;

3. the date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. the names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. the names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. If a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and benefical holders of ownership or other voting interests in applicant are identified;

F. whether the applicant is directly or indirectly

controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR S 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR SS 15.003 or 15.010 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR S 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

A. the address of the facility, its size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed,

APPROVED
REVISOR OF STATUTES
OFFICE BY:

whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas, and a description of the equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways.

APPROVED BY THE [illegible] OFFICE BY:

Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pick-up and drop-off points.

4 MCAR S 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

A. the total cost of construction of the facility, distinguishing between fixed costs and projections;

B. separate identification of the following costs, distinguishing between fixed costs and projections:

1. facility design;

2. land acquisition;

3. site preparation;

4. improvements and equipment, separately identifying the costs of 4 MCAR S 15.005 D.-O. and other categories of improvements and equipment;

5. interim financing;

6. permanent financing;

APPROVED BY THE REVISOR OF STATUTES

7. organization, administrative, accounting, and legal;

C. documentation of fixed costs;

D. the schedule for construction of the facility, including estimated completion date;

E. schematic drawings;

F. copies of any contracts with and performance bonds from the:

1. architect or other design professional;

2. project engineer;

3. construction engineer;

4. contractors and subcontractors;

5. equipment procurement personnel;

6. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR S 15.007 Disclosure of financial resources.

An applicant for a Class A license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to develop, own, and operate the horse racing facility:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation, and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

4 MCAR S 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:

a. average daily attendance;

b. average daily per capita handle and average bet;

c. retainage;

d. admissions to track, including ticket prices and free admissions;

e. parking volume, fees, and revenues;

f. concessions, gift shop, and program sales;

g. cost of purses;

h. pari-mutuel expense;

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

APPROVED BY THE REVISOR OF STATUTES OFFICE

o. repairs and maintenance;

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service;

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift, and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of method used;

(3) equipment depreciation and identification of method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of the development period and each of the five racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR S 15.009 Disclosure of governmental actions.

An applicant for a Class A license must disclose with regard to actions of government agencies:

A. the street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion, and estimated date;

B. the sewer, water, and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date;

C. if applicant has obtained any required government approvals for its development, ownership, and operation of its horse racing facility:

1. a description of the approval, unit of government, date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

D. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

E. whether an environmental assessment of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any assessment;

F. whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement;

G. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the development, ownership, and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR S 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

A. a description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions, and qualifications for each management position, and a copy of the organization chart;

B. management personnel to the extent known and with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. real estate development;

c. construction;

d. marketing, promotion, and advertising;

e. finance and accounting;

f. horse racing;

g. pari-mutuel betting;

h. security;

i. human and animal health and safety;

4. description of the terms and conditions of employment and a copy of the agreement;

C. consultants and other contractors who have provided or will provide management-related services to applicant to extent known and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement.

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting, security staff levels, and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4. description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. description of the applicant's plans for human and animal

health and safety, including emergencies;

G. description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will, to the extent known;

I. a description of training of the applicant's personnel;

J. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; and a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR S 15.011 Disclosure of public service.

An applicant for a Class A license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR S 15.012 Disclosure of impact of facility.

An applicant for a Class A license must disclose the impact of its horse racing facility, including:

A. economic impact, including:

1. employment created and specifics as to number of jobs, whether permanent or temporary, type of work, compensation, employer, and how created;

2. purchases of goods and services and specifics as to money amounts and types of purchases;

3. public and private investment;

4. tax revenues generated;

B. ecological impact;

C. impact on energy conservation and development of alternative energy sources;

APPROVED BY THE REVISOR OF STATUTES OFFICE

D. social impact.

4 MCAR S 15.013 Disclosure of public support and opposition.

An applicant for a Class A license must disclose public support and opposition, whether by a governmental official or agency or private individual or group and must supply documentation.

4 MCAR S 15.014 Effects on competition.

An applicant for a Class A license must disclose the effects of its ownership and operation of its horse racing facility on competitors within the horse racing industry.

4 MCAR S 15.015 Disclosure of assistance in preparation of application.

An applicant for a Class A license must disclose the names, addresses, and telephone numbers of individuals who assisted applicant in preparation of its application.

4 MCAR S 15.016 Personal information and authorization for release.

An application for a Class A license must include the following with respect to each individual identified pursuant to 4 MCAR S 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.010 B. or C.;

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department, Bureau of Criminal Apprehension of all records concerning the individual, whether

the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class A license;

3. releases authorized providers and users of the information from any liability.

4 MCAR S 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal record;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment in applicant's facility, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

D. imminence of completion of facility;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including, but not limited to:

1. ownership and control structure;

2. amounts and reliability of development costs;

3. certainty of site acquisition or lease;

4. current financial condition;

5. sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;

6. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;

7. feasibility of financial plan;

F. status of governmental actions required by the applicant's facility, including, but not limited to:

1. necessary road improvements;

2. necessary public utility improvements;

3. required governmental approvals for development, ownership, and operation of the facility;

4. acceptance of any required environmental assessment and preparation of any required environmental impact statement;

APPROVED IN THE REVISOR OF STATUTES

G. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to develop, own, and operate a pari-mutuel horse racing facility;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. concessions plan;

6. plan for training personnel;

7. equal employment and affirmative action plans;

H. compliance with applicable statutes, charters, ordinances, or regulations;

I. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

J. impact of facility, including, but not limited to:

1. economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;

2. ecological impact;

3. impact on energy conservation and development of alternative energy sources;

4. social impact;

5. costs of public improvements;

K. extent of public support and opposition;

L. effects on competition, including, but not limited to:

1. number, nature, and relative location of other Class A licenses;

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR S 15.018 Identification of applicant for Class B license. An application for a Class B license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant, and the name, position, address, telephone number, and authorized signature of an

individual to whom the commission may make inquiry.

4 MCAR S 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class B license to sponsor and manage horse racing on which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission, members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated on information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR S 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other entity;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, and aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. jurisdiction and date of incorporation;

3. date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and

privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a

APPROVED BY THE REVISOR OF STATUTES

corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. jurisdiction of organization of the applicant;

3. date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. names, in alphabetical order, and addresses of any partners and officers of applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of application or other voting interest, whether absolute or contingent, in applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. if a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and benefical holders of ownership or other voting interests in the applicant are identified;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR S 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR S 15.020 or 15.027 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation, or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the applicant must disclose the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR S 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

A. the address of the facility at which the applicant will sponsor and manage horse racing, size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn, and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas; and a description of equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is

topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation; specifics of types of transportation and schedules; and a road map of area indicating pick-up and drop-off points.

4 MCAR S 15.023 Disclosure of authorization to use horse racing facility.

An applicant for a Class B license must disclose the terms and conditions of the lease or other agreement authorizing the applicant to sponsor and manage pari-mutuel horse racing at a licensed facility and provide a copy of the agreement.

4 MCAR S 15.024 Disclosure of financial resources.

An applicant for a Class B license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to sponsor and manage horse racing:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain

commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other cause.

4 MCAR S 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:

a. average daily attendance;

b. average daily per capita handle and average bet;

c. retainage;

d. admissions to track, including ticket prices and free admissions;

e. parking volume, fees, and revenues;

f. concessions, gift shop, and program sales;

g. cost of purses;

h. pari-mutuel expense;

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

o. repairs and maintenance

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service.

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY.

(16) legal and audit;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of the method used;

(3) equipment depreciation and identification of the method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of any development period and three racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR S 15.026 Disclosure of governmental actions.

An applicant for a Class B license must disclose with regard to actions of government agencies:

A. if the applicant has obtained any required government approvals for its management and sponsorship of horse racing:

1. a description of the approval, unit of government and date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

B. whether any required governmental approvals remain to be

obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

C. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the sponsorship and management of horse racing. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR S 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

A. a description of the applicant's management plan, with budget and identification of management personnel by function; job descriptions and qualifications for each management position; and a copy of the organization chart.

B. management personnel and to extent known with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. marketing, promotion, and advertising;

c. finance and accounting;

d. horse racing;

e. pari-mutuel betting;

f. security;

g. human and animal health and safety;

4. a description of the terms and conditions of employment, and a copy of the agreement;

C. consultants and other contractors to extent known who have provided or will provide management-related services to applicant and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement;

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. a description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting; security staff levels; and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses, and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota;

4. a description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. a description of applicant's plans for human and animal health and safety, including emergencies;

G. a description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for the conduct of horse racing, including types of racing, number of days, weeks, specific dates, number of races per day, time of day, and special events;

I. a description of the applicant's plan for purses, including total purses, formula, minimum, stakes races, and purse-handling procedures;

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting

OFFICE

procedures;

K. a description of the applicant's plan for concessions, including whether licensee will operate concessions and, if not, who will to the extent known;

L. a description of training of the applicant's personnel;

M. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR S 15.028 Disclosure of public service.

An applicant for a Class B license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR S 15.029 Disclosure of economic impact.

An applicant for a Class B license must disclose the economic impact of its sponsorship and management of horse racing, including:

A. employment created, including specifics as to number of jobs, permanent or temporary, type of work, compensation, employer, and how created;

B. purchases of goods and services, including specifics as to money amounts and types of purchases;

C. tax revenues generated.

4 MCAR S 15.030 Disclosure of public support and opposition.

An applicant for a Class B license must disclose public support and opposition, whether by a governmental official, agency, private individual, or group, and provide documentation.

4 MCAR S 15.031 Effects on competition.

An applicant for a Class B license must disclose the effects of its sponsorship and management of horse racing on competitors within the horse racing industry.

4 MCAR S 15.032 Disclosure of assistance in preparation of application.

An applicant for a Class B license must disclose the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application.

4 MCAR S 15.033 Personal information and authorization for release.

An application for a Class B license must include the following with respect to each individual identified pursuant to 4 MCAR S 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR S 15.027 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class B license;

3. releases authorized providers and users of the information from any liability.

4 MCAR S 15.034 Class B license criteria.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

The commission may issue a Class B license if it determines on the basis of all the facts before it that the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal records;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment applicant will use, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters and equipment;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including, but not limited to:

1. ownership and control structure;

2. terms and conditions of the applicant's authorization to use facility;

3. current financial condition;

4. sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

5. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity;

6. feasibility of the financial plan;

E. status of necessary government approvals and compliance with applicable statutes, charters, ordinances, and regulations;

F. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to manage pari-mutuel horse racing;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. plan for conducting horse racing;

6. plan for purses;

7. plan for pari-mutuel betting;

8. concessions plan;

9. plan for personnel training;

10. equal employment and affirmative action plans;

G. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

H. economic impact, including employment, purchases, and taxes;

I. extent of public support and opposition;

J. effects on competition, including, but not limited to:

1. number, nature, and relative location of other Class B licenses;

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR S 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

A. provide disclosures in printed or typewritten form on 8-1/2 by 11 inch paper. Immediately preceding each response, an applicant must restate what disclosure is sought. Any attachments or exhibits must be lettered or numbered separately. An applicant must provide photographs of any three-dimensional exhibits;

B. make its best effort to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission.

4 MCAR S 15.036 Class A and B license application submission.

An applicant for a Class A or B license must submit to an individual designated by the commission:

A. all documents which are part of its application as a single assemblage;

B. a letter of transmittal to the commission and, in sealed envelopes, an original and 20 copies of the application.

4 MCAR S 15.037 Investigation fee for Class A and B licenses.

An applicant for a Class A or B license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10,000 to cover the costs of the investigation mandated by Minnesota Statutes, section 240.06, subdivision 3, or section 240.07, subdivision 2. Upon completion of the

OFFICE

investigation, the commission must refund promptly to the applicant any amount by which the $10,000 exceeds the actual costs of investigation. If costs of the investigation exceed $10,000, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. An individual or other entity applying for Class A and B licenses simultaneously must submit only one $10,000 investigation fee.

4 MCAR S 15.038 Clarification of Class A and B license application requirements.

The commission must designate an individual who will clarify Class A and B license application requirements upon the oral or written request of a potential applicant. The designee must respond to clarification requests in writing within five days. No interpretation of application requirements by any other person will be binding upon the commission.

4 MCAR S 15.039 Changes in Class A and B license applications.

The commission must not consider a substantive amendment to a Class A or B license application after its submission.

4 MCAR S 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on January 15, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

B. applications for Class A licenses to own and operate

racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;

C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

4 MCAR S 15.041 Oral presentation by applicant for a Class A or B license.

The commission must provide an applicant for a Class A or B license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. This rule does not require that the commission afford an applicant more than one opportunity to make an oral presentation before the commission makes its decision.

4 MCAR S 15.042 Payment of Class A and B license fees.

A Class A or B license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

A. a nonrefundable fee of $10,000 for a Class A license;

B. a fee for a Class B license equal to $100 times the optimum number of racing days sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds $100 times the number of actual days of racing sponsored and managed by the licensee.

4 MCAR S 15.043 Class A and B license application information.

False or misleading information in a Class A or B license application, omission of required information, or substantial deviation from representations in the application is cause for

denial, revocation, or suspension of a license or imposition of a fine.

4 MCAR S 15.044 Delay in completion of racetrack facility.

Failure of a Class A licensee to complete substantially the construction of its racetrack facility and installation of equipment within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after the completion date stated in its license application is cause for revocation or suspension of the license, and the commission may impose a penalty of $1,000 on the licensee for each day of delay. The penalty does not apply if and to the extent the licensee proves that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors and subcontractors. Such causes may include, but are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the licensee proves the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the above penalty may not be imposed for the delay unless the supplies or services to be furnished by contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

4 MCAR S 15.045 Construction, expansion, extension, alteration, or remodeling of facilities.

No Class A or B licensee may construct, expand, extend, alter, or remodel a racetrack facility at a cost in excess of $10,000 without the approval of the commission. Failure to obtain approval is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR S 15.046 Security.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY

Class A and B licensees must maintain security which is adequate to ensure the health, safety, and comfort of all humans and horses at the racetrack facility and protection of all property.

4 MCAR S 15.047 Security modifications.

The commission may order Class A and B licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to the integrity of racing or public safety, health, or welfare. Failure to make modifications mandated by the commission promptly is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR S 15.048 Medical services.

A racetrack facility must provide the following medical facilities, equipment, and personnel:

A. a fully equipped first aid room with at least two beds;

B. a licensed physician and registered nurse on duty in the first aid room on all days during which horse racing is conducted;

C. a registered nurse on duty on all days during which the racetrack facility is open for exercising horses;

D. an ambulance for humans with necessary equipment and staff whenever the facility is open for racing or exercising horses.

4 MCAR S 15.049 Care of horses.

A racetrack facility must provide the following facilities, equipment, and personnel for horses:

A. an individual box stall for each horse;

B. a fence surrounding the stabling facilities;

C. stabling and training facilities available at least three weeks before the start of the first race meeting for a species of horse in any year;

D. a licensed outrider mounted and on duty whenever a facility is open for exercising horses;

E. a horse ambulance available for the safe and expedient

removal of crippled animals. The ambulance must be equipped with a screen for use when an animal must be destroyed in view of the public, a winch to lift dead or injured animals onto the ambulance, and a removable floor or any other devices which enable a dead or injured horse to be loaded.

4 MCAR S 15.050 Contract approval.

Contracts entered into by Class A, B, and D licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts and subcontracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, and D licensees must submit copies of any written contracts and subcontracts to the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD452

Agency: Minnesota Racing Commission

Division:

Agency Contact: Bob Hentges

Rule Numbers: 4 MCAR SS 15.001-15.050

Title: Proposed Rules Governing Class A and Class B Licenses

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: November 7, 1983

Exh. No. 10
File No.
Date

AFFIDAVIT

In the matter of the proposed adoption of
rules of the State Racing Commission
governing Horse Racingin the State of Minnesota

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Statutes §15.0412, Subd. 4, that their names be placed on file with and maintained by the State Racing Commission for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Racing Commission is accurate and complete as of 5:00 P.M. on November 10, 1983.

Some persons, associations or other interested groups were added after November 10, 1983 to this list, but to the best of our knowledge and belief, the mailing went to all persons who were on the list of November 10, 1983.

James D. Miles

Subscribed and sworn to before me this 14th day of December, 1983.

Sharon A. Beighley
Notary Public

SHARON A. BEIGHLEY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1989

C. Elmer Anderson
624 No. 3rd Street
Brainerd, Minn 56401

Clark Anderson
3144 42nd Avenue South
Minneapolis, Minnesota 55406

Ford Anderson
4900 Highway #63
Rochester, Minnesota 55904

Associated Press
Business & Tech. Center
511 11th Avenue So., #404
Minneapolis, Minnesota 55415

John Axtell
4359 Caribou Lake Road
Duluth, Minnesota 55810

Charleen Bacigalupo
1940 Penn Avenue South
Minneapolis, Minnesota 55405

John Backlund
Route 5, Box 7
Brainerd, Minnesota 56401

Conrad Balfour
4290 Queen Avenue South
Minneapolis, Minnesota 55410

Ron Banks
Route 2, Box 73
Cannon Falls, Minnesota
55009

Curtis Beckmann
WCCO Radio
625 2nd Avenue South
Minneapolis, Minn 55402

Chuck Bellingham
2616 County Road 90
Maple Plain, Minn 55359

Ellwood Benson
Route 2, Box 76
Cannon Falls, Minn 55009

George Beran
St. Paul Dispatch/Press
55 East 4th Street
St. Paul, Minn 55101

Stanley F. Bergstein
Executive V.P., Harness
Tracks of America
35 Airport Road
Morristown, NJ 07960

Richard Bethke
Primarketing Corporation
P.O. Box 84
Hopkins, Minn 55343

Rep. Kathleen Blatz
349 State Office Building
St. Paul, Minn 55155

George Boosey
United Press International
B28, State Capitol
St. Paul, Minn 55155

Senator Rudy Boschwitz
704 Marquette Bank Building
Rochester, Minn 55904

Kenneth Briggs
9150 Central Avenue N.E.
Blaine, Minn 55434

Jack Budahn
Norwood, Minn 55368

Joseph L. Bullyan
3065 Miller Trunk Highway
Duluth, Minnesota 55811

Ms. Lou Brum Burdick
Brum & Anderson
10 South 5th Street, #425
Minneapolis, Minn 55402

David Bursey
c/o Ramada Inn
600 30th Avenue South
Moorhead, Minn 56560

Senator Jerome V. Blatz
7701 Harriet Avenue So.
Minneapolis, Minn 55420

Carol Connolly
111 E. Kellogg Blvd.
#3007
St. Paul, Minn 55101

Lawrence M. Coss
Route #1, Box 20
Cannon Falls, Minn 55009

John H. Daniels, Jr.
1201 Marquette Avenue
Suite 330
Minneapolis, Minn 55405

Dennis DeWitt
Luckett & Farley
215 W. Breckinridge Street
Louisville, Kentucky 40203

Senator Niel Dieterich
235 State Capitol
St. Paul, Minn 55155

Dick Dunsmore
Route 1, Box 23
Stacy, Minn 55079

Ms. Zona DeWitt
Legislative Library
111 State Capitol
St. Paul, Minn 55155

Gary Eastlund
5244 Valley Industrial Blvd.
Shakopee, Minn 55379

Joseph Egan
5341 Grand Avenue South
Minneapolis, Minn 55409

Ray Eliot
14 University Avenue N.E.
Minneapolis, Minn 55413

James Erickson
Larkin, Hoffman, Daly and
Lindgren Inc.
1700 First Bank Place West
Minneapolis, Minn 55402

John D. Erskine
Dept. of Public Safety
1246 University Avenue
St. Paul, Minn 55104

Angie Fairbanks
968 S.E. 8th Avenue
Forest Lake, Minn 55025

Joyce B. Farrell
815 Tower Drive
Hamel, Minn 55340

David Field
Rembrandt Enterprises
3434 Heritage Drive
Edina, Minn 55435

Wayne Field
Rembrandt Enterprises
3434 Heritage Drive
Edina, Minn 55435

Frank Florio
4326 Metcalf Drive
Eagan, Minn 55122

Kevin Foley
1768 Ashland Avenue
St. Paul, Minn 55104

Ray Formanek
8141 12th Avenue South
Bloomington, Minn 55420

Senator Donald Frank
G-28, State Capitol
St. Paul, Minn 55155

Ralph Freeman
Box 220, Route #6
Little Falls, Minn 56345

Rosemary T. Freuhling
541 Capitol Square Building
550 Cedar Street
St. Paul, Minn 55101

Jim Gambone
Gambone Productions
2524 Hennepin Avenue, #6
Minneapolis, Minn 55405

Dale Gimball
Long Prairie, Minn 56347

Debbie Grant
1700 First Bank Place West
Minneapolis, Minn 55402

Rep. Lee Greenfield
238 State Office Building
St. Paul, Minn 55155

Greylock Associates
P.O. Box 2290
Springfield, Mass 01101

Anthony Grimaldi
G.T. Associates
312 Cook Avenue
Scotch Plains, NJ 07076

Dan Gustafson
175 Aurora Street
St. Paul, Minn 55103

Rep. Gil Gutknecht
399A State Office Building
St. Paul, Minn 55155

Dave Haeg
WCCO-FM
215 South 11th Street
Minneapolis, Minn 55403

Dr. Warren Hartman
1620 Southbrook Drive
Wadena, Minn 56482

J. Brooks Hauser
4900 No. County Road 18
New Hope, Minn 55442

Bruce Hayhoe
515 Holly
Brainerd, Minn 56401

Helen Helseth
Route #1, Box 147
Clearwater, Minn 55320

Bill Henning & Co.
8050 East Highway 101
Shakopee, Minn 55379

Bob Hentges
Faegre & Benson
2300 Multifoods Tower
Minneapolis, Minn 55402

Roger Hilan
Route 1
Goodhue, Minn 55027

Dr. Byron Hoffman
210 Shorewood Drive
International Falls, Mn 56649

Teresa A. Hudoba
House of Reps., Info.Office
State Capitol, Room #9
St. Paul, Minn 55155

Vickie Inget
1520 Charlton
West St. Paul, Minn 55118

Gerald Isaacs, Chairman
Metropoltian Council
300 Metro Square Building
St. Paul, Minn 55101

Senator Doran L. Isackson
145 State Office Building
St. Paul, Minn 55155

Jerry Janezich
P.O. Box 68, Court House
Hibbing, Minn 55746

Mike Janicek
WCCO Television
11th on the Mall
Minneapolis, Minn 55403

Keith S. Jans
524 E. Skillman Avenue
#6
Maplewood, Minn 55117

Keith S. Jans
Washington County HRA
7024 Stillwater Boulevard
Oakdale, Minnesota 55119

Mike Jarmusek
Route 1, Box 145
Clearwater, Minn 55320

Rep. Bob Jensen
167 State Office Building
St. Paul, Minn 55155

David Johnson
2019 21st Avenue South
Minneapolis, Minn 55404

Kathrine D. Johnson
2777 North Division
No. St. Paul, Minn 55109

KSTP Television
News Editor
3415 University Avenue
St. Paul, Minn 55114

KMSP Television
News Editor
6975 York Avenue South
Minneapolis, Minn 55435

Treva Kahl
Dept. of Transportation
413 Transportation Building
St. Paul, Minn 55155

Aron Kahn
St. Paul Dispatch/Press
B28, State Capitol
St. Paul, Minn 55155

Steve Kaufman, Editor
Skyway-Freeway News
P.O. Box 1170
Minneapolis, Minn 55440

Tom Kelm
Northstate Advisors
511 11th Avenue So., #402
Minneapolis, Minn 55415

T.A. Kelm
858 Oriole Lane
Chaska, Minn 55318

Robert J. Klukas
348 Stonebridge
St. Paul, Minn 55105

Rep. Richard Kostohryz
336 State Office Building
St. Paul, Minn 55155

Richard Kostohryz
3M Center Bldg., 230-E
St. Paul, Minn 55144

Grace Krowza
11881 20th Street West
Lakeville, Minn 55044

Dick Krueger
Dept. of Finance
210 Transportation Building
St. Paul, Minn 55155

Mike Kuehn
337 State Office Building
St. Paul, Minn 55155

Gene LaHammer
State Capitol Press Room
B28, State Capitol
St. Paul, Minn 55155

Susan Lake
7349 Mariner Drive
Maple Grove, Minn 55369

George Lansing
1465 W. 4th Street
Hastings, Minn 55033

Irv Lipove
St. Paul Dispatch
55 East 4th Street
St. Paul, Minn 55101

Barbara Lyman
4561 No. Cedar Lake Road
St. Louis Park, Minn 55416

Bruce D. Malkerson
4344 IDS Center
Minneapolis, Minn 55402

Les Malkerson
P.O. Box 98
Shakopee, Minn 55379

Jim Martin
Metropolitan Council
300 Metro Square Building
St. Paul, Minn 55101

Tom Matthews
7301 Courtly Road
Woodbury, Minn 55125

DeWayne P. Mattson
Route #3
Rochester, Minn 55901

Dale McDonnell
Senate Counsel
480 State Office Building
St. Paul, Minn 55155

Royce B. McKinley
One Wilshire Blvd., Suite 2303
Los Angeles, Calif. 90017

Darrell R. McMahon
Box 231
Milbank, South Dakota
57252

Tom Metzen
918 Marie
So.St.Paul, Minn 55075

Mike Miles
State of Minnesota
204 Administration Bldg.
St. Paul, Minn 55155

City Editor
Minneapolis Star & Tribune
425 Portland Avenue
Minneapolis, Minn 55488

Minnesota Public Radio
News Director
45 East 8th Street
St. Paul, Minn 55101

Dan Mjolsness
Route 2
Red Wing, Minn 55066

Steve Morawetz
WTCN Television
441 Boone Avenue North
Minneapolis, Minn 55427

Bob Nardi
State of Minnesota
204 Administration Building
St. Paul, Minn 55155

Mary C. Nielson
2000 First Bank Place West
Minneapolis, Minn 55402

C. Michael Niemeyer
H6A 1201 Harmon Place
Minneapolis, Minn 55403

Dr. Joseph C. O'Dea
Roscommon Stud
Geneseo, New York 14454

Office of House Research
State Capitol
St. Paul, Minn 55155

Office of Senate Research
State Office Building
St. Paul, Minn 55155

Robert Ogdahl
Architecture One, P.A.
8 First Federal Center
Brainerd, Minn 56401

Fred Olson, Jr.
623 North Jackson
Pierre, S.D. 57501

Dan O'Neill
Public Financial Systems
63 South 9th Street
Minneapolis, Minn 55402

Joseph T. O'Neill
O'Neill, Burke & O'Neill, Ltd
800 N.W. Bank Building
St. Paul, Minn 55101

Richard A. Palmer
Box 1076
Moorhead, Minn 56560

Mary Louise Parker
5291 Dakota Street
Shakopee, Minn 55379

Tim Pellizer
4224 Colfax Avenue South
Minneapolis, Minn 55409

Stephen R. Pflaum
1200 National City Bank Bldg.
510 Marquette Avenue
Minneapolis, Minn 55402

Dwight W. Picha
2100 Radio Drive
Woodbury, Minn 55125

Tim Pinske
Plato, Minn 55370

P. C. Piper
P.O. Box 868
Minneapolis, Minn 55440

Rep. Pat Piper
346 State Office Building
St. Paul, Minn 55155

Wayne G. Popham
4344 IDS Center
Minneapolis, Minn 55402

Colleen Powell
11774 205th Street West
Lakeville, Minn 55044

Senator Clarence Purfeerst
Route 1
Faribault, Minn 55021

Maynard C. Rasmussen
3930 Upton Avenue South
Minneapolis, Minn 55410

Barbra Ray
529 North Jackson
St. Paul, Minn 55101

Rep. Elton Redalen
381 State Office Bldg.
St. Paul, Minn 55155

Nancy Lee Roberts
Evenson-Dodge, Inc.
3608 IDS Tower
Minneapolis, Minn 55402

David Rolbiecki
3311 Roll Lane
Eagan, Minn 55121

Krista Sanda
2001 Killebrew Drive, #333
Bloomington, Minn 55420

Mary Sandok
Associated Press
B28, State Capitol
St. Paul, Minn 55155

Nicholas M. Schneider
1344 Arona Street
St. Paul, Minn 55108

Jim Schoenrock
Racing Chairman
Traverse County Racing Comm.
Traverse Co.Agric.Assn.
Wheaton, Minn 56296

Secretary of the Senate
231 State Capitol
St. Paul, Minn 55155
Attn: Travelle

Senate Office
Room 231, State Capitol
St. Paul, Minn 55155

Al Shaffer
Hastings Gazette
745 Spiral Boulevard
Hastings, Minn 55033

Patrick Shannon
Dept. of Public Safety
1246 University Avenue
St. Paul, Minn 55104

Senator Ron Sieloff
122A State Office Building
St. Paul, Minn 55155

Paul Siemens
R.V.A. Omnisports
Don Mills
160 Duncan Mill Road
Toronto, Ontario M3B 1Z5

Ron Signorelli
1686 Ridgewood Lane
St. Paul, Minn 55113

Troy Simons
7741 46th Avenue North
Minneapolis, Minn 55428

Joe Sizer
Intergov't Division
State Planning Agency
101 Capitol Square

Joe Sizer
Intergovernment Division
State Planning Agency
101 Capitol Square
St. Paul, Minn 55101

Dennis P. Slayton
Slayton & Associates
Box 128
Merrifield, Minn 56465

Mr. & Mrs. Aloys Socker
Delano, Minn 55328

Victoria Sprague
Perigee Productions, Inc.
986cC Butler Square Building
Minneapolis, Minnesota 55403

Max Spriggs
Route 1, Box 173
Moorhead, Minn

Senator Allan H. Spear
G-27 State Capitol
St. Paul, Minn 55155

Francis A. Spurrell
P.O. Box 80137
St. Paul, Minn 55108

Joy D. Spurrell
P.O. Box 80137
St. Paul, Minn 55108

Robert Stegmaier
18556 Pilot Knob Road
Farmington, Minn 55024

Lou Stoeffel, Mayor
City of Hastings
100 Sibley
Hastings, Minn 55033

Robert P. Strub
285 W. Huntington Drive
Arcadia, Calif. 91006

Rep. Steve Sviggum
379 State Office Building
St. Paul, Minn 55155

Ray Swanson
Box F
Lake Elmo, Minn 55042

Gary Tankenhoff
Hillcrest Development
250 Metro Square Building
St. Paul, Minn 55101

Earl Thompson
Box 453
Hutchinson, Minn 55350

Barry Tilley
433 State Office Building
St. Paul, Minn 55123

Judy Titcomb
228 Oakview Drive
St. Paul, Minn 55118

James D. Torbert
308 1st Street S.E.
Little Falls, Minn 56345

Tom Triplett, Director
State Planning Agency
100 Capitol Square
St. Paul, Minn 55101

Commissioner Paul Tschida
State of Minnesota
211 Transportation Building
St. Paul, Minnesota 55155

United Press International
Bureau Chief
301 4th Avenue So., #285
Minneapolis, Minn 55415

Thomas Vandervoort
Brum & Anderson
425 Lumber Exchange Building
Minneapolis, Minn 55402

Thomas Van Lith
Route #1
Clearwater, Minn 55320

Ralph Vogelite
3611 Hampshire North
Crystal, Minn 55427

Charles R. Weaver
Holmes & Graven
470 Pillsbury Center
Minneapolis, Minn 55420

Bob Whearatt
Minneapolis Star & Tribune
425 Portland Avenue South
Minneapolis, Minn 55488

John Williams
11 State Capitol
St. Paul, Minnesota 55155

Jerry Witt
c/o Jerry's Supper Club
Route #6
Little Falls, Minn 56345

Barbara Woodward
1200 National City Bank Bldg.
510 Marquette Avenue
Minneapolis, Minn 55402

Dr. Leo Zehrer
Brooten, Minn 56316

Cheryl Zitzlsperger
3434 Heritage Drive
Edina, Minnesota 55435

Joanne Gallaher
J.A.M.B. Architects
43 South Lake Street
Forest Lake, Minn 55025

Hugh W. Bristor
1545 St. Paul Avenue
Apt. #2
St. Paul, Minn 55116

Jim Spadaccini
14680 12th Avenue North
Plymouth, Minn 55441

Exh. No. 12
File No.
Date

In the Matter of the Proposed Adoption
of Rules of the Minnesota Racing Commission
Governing Horse Racing in the State of Minnesota

AFFIDAVIT
MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

RECEIVED
DEC 2 1983
ADMINISTRATIVE
HEARINGS

James D. Weiler, being first duly sworn, deposes and says:

That on the 10th Day of November, 1983 at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached notice of [Hearing/Intent to Adopt Rules Without Public Hearing] by depositing in the State of Minnesota Central Mailing System for United States mailing, at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid on all persons, groups, and associations on a mailing list compiled by the Minnesota Racing Commission of individuals, groups and associations who have attended Minnesota Racing Commission meetings, contacted the Minnesota Racing Commission by telephone or in persons, or in other way indicated interest in matters within the jurisdiction of the Minnesota Racing Commission. This mailing is in addition to the mailing required in accordance with Minnesota Statutes §14.14, Subd. 1.

James D. Weiler

Subscribed and Sworn to before me this 10th day of November, 1983.

Sharon A. Beighley
Notary Public

SHARON A. BEIGHLEY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1989

Exh. No. 11
File No.
Date

In the Matter of the Proposed Adoption
of Rules of the State Racing Commission
Governing Horse Racing in the State of Minnesota

AFFIDAVIT OF
MAILING

RECEIVED
NOV 30 1983
ADMINISTRATIVE
HEARINGS

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

James D. Weiler, being first duly sworn deposes and says:

That on the 10th day of November, 1983 at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of [Hearing/Intent to Adopt Rules Without Public Hearing] by depositing in the State of Minnesota Central Mail System for United States mailing, at said City of St. Paul, a copy thereof, properly eneveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Racing Commission for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Racing Commission.

James D. Weiler

Subscribed and sworn to before me this 21st day of November, 1983

Sharon A. Beighley
Notary Public

SHARON A. BEIGHLEY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1989

Minnesota Racing Commission
312 Central Ave. #400
Minneapolis, MN 55414

Exh. No. 9
File No.
Date

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
NOV 30 1983
ADMINISTRATIVE HEARINGS

CERTIFICATE

In the Matter of the Proposed Adoption of
Rules of the State Racing Commission
Governing Horse Racing in the State of Minnesota

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Racing Commission for the purpose of receiving notice of the proposed adoption of rules by this Minnesota Racing Commission is accurate and complete as of 5:00 P.M., this 10th day of November, 1983.

Jane D. Seiler

File No. Exh. No. 17 RECEIVED
Date DEC 2 1983
ADMINISTRATIVE HEARINGS

C. County and regional limits. To implement Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivisions 6 and 7, the commissioner shall determine the average medical assistance payment rates for day training and habilitation in each county and in each of the regional development commission districts designated in Minnesota Statutes, sections 462.381 to 462.396. To be eligible for the special limit applicable only to new developmental achievement centers under Laws of Minnesota 1983, chapter 312, article 9, section 7, subdivision 6, the developmental achievement center must not subcontract services, except for transportation, to a provider that is not a developmental achievement center.

D. Commissioner's approval. If the recommendation submitted by the county board complies with A.-C., the commissioner shall approve the rates for the new provider within 60 days of receipt of the county board recommendation. The commissioner shall deny approval, or approve different rates if necessary to ensure compliance with A.-C.

Minnesota Racing Commission

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Notice of Hearing and Notice of Intent to Cancel Hearing if Fewer than Seven Persons Request a Hearing in Response to Notice of Intent to Adopt Rules Without a Hearing

A public hearing concerning the above-entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota, on December 15 and 16, 1983, commencing each day at 9:00 a.m. PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN SEVEN PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED THE SAME DATE AS THIS NOTICE.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to George A. Beck, Office of Administrative Hearings, Fourth Floor, Summit Bank Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7601, either before the hearing or within five working days after the public hearing ends. The Hearing Examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 14.01-14.56, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the Hearing Examiner.

The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the above-entitled matter, you are urged to participate in the rule hearing process.

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. The Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule or rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice. Additional copies of the proposed rules are now available and at least one free copy may be obtained by writing to James Weiler, Project Administrator, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555. Additional copies will be available at the hearing. If you have any questions on the content of the rules, contact James Weiler.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency.

If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11., as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Ray Eliot, Chairman
Minnesota Racing Commission

Proposed Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts

Notice of Intent to Adopt Rules Without a Public Hearing and Notice of Intent to Adopt Rules with a Public Hearing if Seven or More Persons Request a Hearing

Notice is hereby given that the Minnesota Racing Commission proposes to adopt the above-entitled rules without a public hearing unless seven or more persons submit written requests for a public hearing. The Commission has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28.

PLEASE NOTE, HOWEVER, THAT IF SEVEN OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A HEARING WILL BE HELD PURSUANT TO MINN. STAT. §§ 14.13-14.20 AND IN ACCORDANCE WITH THE NOTICE OF PUBLIC HEARING ON THESE SAME RULES PUBLISHED IN THE STATE REGISTER OF EVEN DATE AND MAILED ON THIS DATE.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

James Weiler, Project Administrator
Suite 400, United Labor Centre
312 Central Avenue
Minneapolis, MN 55414
Telephone: (612) 341-7555

Authority for the adoption of these rules is contained in Laws 1983, Ch. 214. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from James Weiler upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to James Weiler.

Although the Commission does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land as set forth in Minn. Stat. § 17.81, please note that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A racetracks.

A copy of the proposed rules is attached to this Notice.

Additional copies of this Notice and the proposed rules are available and may be obtained by contacting James Weiler.

Ray Eliot, Chairman
Minnesota Racing Commission

Rules as Proposed (all new material)

4 MCAR § 15.001 Identification of applicant for Class A license.

An application for a Class A license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR § 15.002 Applicant's affidavit.

An application for a Class A license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class A license to own and operate a horse racing facility at which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated or information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. the affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR § 15.003 Disclosure of ownership and control.

An applicant for a Class A license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, any aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. the jurisdiction and date of incorporation;

3. the date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. the classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with the Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. the jurisdiction of organization of the applicant;

3. the date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. the names, in alphabetical order, and addresses of any partners and officers of the applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. the names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of the application or other voting interest, whether absolute or contingent, in the applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. If a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in applicant are identified;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR § 15.004 Disclosure of character information.

An applicant for a Class A license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR §§ 15.003 or 15.010 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR § 15.005 Disclosure of improvements and equipment.

An application for a Class A license must disclose with respect to the pari-mutuel horse racing facility it will own and operate:

A. the address of the facility, its size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls,

placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock;

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas, and a description of the equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, includign the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pick-up and drop-off points.

4 MCAR § 15.006 Disclosure of development process.

An applicant for a Class A license must disclose with regard to development of its horse racing facility:

A. the total cost of construction of the facility, distinguishing between fixed costs and projections;

B. separate identification of the following costs, distinguishing between fixed costs and projections:

1. facility design;

2. land acquisition;

3. site preparation;

4. improvements and equipment, separately identifying the costs of 4 MCAR § 15.005 D.-O. and other categories of improvements and equipment;

5. interim financing;

6. permanent financing;

7. organization, administrative, accounting, and legal;

C. documentation of fixed costs;

D. the schedule for construction of the facility, including estimated completion date;

E. schematic drawings;

F. copies of any contracts with and performance bonds from the:

1. architect or other design professional;

2. project engineer;

3. construction engineer;

4. contractors and subcontractors;

5. equipment procurement personnel;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

6. whether the site has been acquired or leased by applicant. If so, the applicant must provide the documentation. If not, the applicant must disclose what actions the applicant must take in order to use the site.

4 MCAR § 15.007 Disclosure of financial resources.

An applicant for a Class A license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to develop, own, and operate the horse racing facility:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation, and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other cause.

4 MCAR § 15.008 Disclosure of financial plan.

An applicant for a Class A license must disclose with regard to its financial plan:

A. the financial projections for the development period and each of the first five racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class A licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel pools. The disclosure must include:

1. the following assumptions and support for them:
   a. average daily attendance;
   b. average daily per capita handle and average bet;
   c. retainage;
   d. admissions to track, including ticket prices and free admissions;
   e. parking volume, fees, and revenues;
   f. concessions, gift shop, and program sales;
   g. cost of purses;
   h. pari-mutuel expense;
   i. state taxes;
   j. real estate taxes;
   k. breeder fund;
   l. payroll;
   m. operating supplies and services;
   n. utilities;
   o. repairs and maintenance;
   p. insurance;
   q. travel expense;
   r. membership expense;
   s. security expense;
   t. legal and audit expense;
   u. debt service;
2. the following profit and loss elements:
   a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift, and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of method used;

(3) equipment depreciation and identification of method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of the development period and each of the five racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR § 15.009 Disclosure of governmental actions.

An applicant for a Class A license must disclose with regard to actions of government agencies:

A. the street and highway improvements necessary to ensure adequate access to applicant's horse racing facility, and the cost of improvements, status, likelihood of completion, and estimated date;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. the sewer, water, and other public utility improvements necessary to serve applicant's facility, and the cost of improvements, status, likelihood of completion, and estimated date;

C. if applicant has obtained any required government approvals for its development, ownership, and operation of its horse racing facility:

1. a description of the approval, unit of government, date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

D. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

E. whether an environmental assessment of the facility has been or will be prepared. If so, the applicant must disclose its status and the governmental unit with jurisdication, and provide a copy of any assessment;

F. whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement;

G. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the development, ownership, and operation of its horse racing facility. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR § 15.010 Disclosure of management.

An applicant for a Class A license must disclose with regard to the development, ownership, and operation of its pari-mutuel horse racing facility:

A. a description of the applicant's management plan, with budget and identification of management personnel by function, job descriptions, and qualifications for each management position, and a copy of the organization chart;

B. management personnel to the extent known and with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. real estate development;

c. construction;

d. marketing, promotion, and advertising;

e. finance and accounting;

f. horse racing;

g. pari-mutuel betting;

h. security;

i. human and animal health and safety;

4. description of the terms and conditions of employment and a copy of the agreement;

C. consultants and other contractors who have provided or will provide management-related services to applicant to extent known and with respect to each:

1. full name;

2. current address and telephone number;

3. nature of services;

4. qualifications and experience;

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement.

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting, security staff levels, and deployment at other times;

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses and cash room;

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction or are a threat to the integrity of racing in Minnesota;

4. description of video monitoring equipment and its use;

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization;

6. coordination of security with law enforcement agencies;

F. description of the applicant's plans for human and animal health and safety, including emergencies;

G. description of the applicant's marketing, promotion, and advertising plans;

H. a description of the applicant's plan for concessions, including whether the licensee will operate concessions and, if not, who will, to the extent known;

I. a description of training of the applicant's personnel;

J. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; and a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR § 15.011 Disclosure of public service.

An applicant for a Class A license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR § 15.012 Disclosure of impact of facility.

An applicant for a Class A license must disclose the impact of its horse racing facility, including:

A. economic impact, including:

1. employment created and specifics as to number of jobs, whether permanent or temporary, type of work, compensation, employer, and how created;

2. purchases of goods and services and specifics as to money amounts and types of purchases;

3. public and private investment;

4. tax revenues generated;

B. ecological impact;

C. impact on energy conservation and development of alternative energy sources;

D. social impact.

4 MCAR § 15.013 Disclosure of public support and opposition.

An applicant for a Class A license must disclose public support and opposition, whether by a governmental official or agency or private individual or group and must supply documentation.

4 MCAR § 15.014 Effects on competition.

An applicant for a Class A license must disclose the effects of its ownership and operation of its horse racing facility on competitors within the horse racing industry.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

4 MCAR § 15.015 Disclosure of assistance in preparation of application.

An applicant for a Class A license must disclose the names, addresses, and telephone numbers of individuals who assisted applicant in preparation of its application.

4 MCAR § 15.016 Personal information and authorization for release.

An application for a Class A license must include the following with respect to each individual identified pursuant to 4 MCAR § 15.003 as an applicant, partner, director, officer, other policymaker, or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.010 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department, Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class A license;

3. releases authorized providers and users of the information from any liability.

4 MCAR § 15.017 Class A license criteria.

The commission may issue a Class A license if it determines on the basis of all the facts before it that the applicant is financially able to operate a racetrack; issuance of a license will not create a competitive situation that will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and the issuance of the license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal record;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment in applicant's facility, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

5. paddock;

6. jockeys' and drivers' quarters;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

D. imminence of completion of facility;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including, but not limited to:

1. ownership and control structure;

2. amounts and reliability of development costs;

3. certainty of site acquisition or lease;

4. current financial condition;

5. sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;

6. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;

7. feasibility of financial plan;

F. status of governmental actions required by the applicant's facility, including, but not limited to:

1. necessary road improvements;

2. necessary public utility improvements;

3. required governmental approvals for development, ownership, and operation of the facility;

4. acceptance of any required environmental assessment and preparation of any required environmental impact statement;

G. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to develop, own, and operate a pari-mutuel horse racing facility;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. concessions plan;

6. plan for training personnel;

7. equal employment and affirmative action plans;

H. compliance with applicable statutes, charters, ordinances, or regulations;

I. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

J. impact of facility, including, but not limited to:

1. economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;

2. ecological impact;

3. impact on energy conservation and development of alternative energy sources;

4. social impact;

5. costs of public improvements;

K. extent of public support and opposition;

L. effects on competition, including, but not limited to:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. number, nature, and relative location of other Class A licenses;

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR § 15.018 Identification of applicant for Class B license.

An application for a Class B license must include, on a form prepared by the commission, the name, address, and telephone number of the applicant, and the name, position, address, telephone number, and authorized signature of an individual to whom the commission may make inquiry.

4 MCAR § 15.019 Applicant's affidavit.

An application for a Class B license must include, on a form prepared by the commission, an affidavit of the chief executive officer or a major financial participant as applicant setting forth:

A. that application is made for a Class B license to sponsor and manage horse racing on which pari-mutuel betting is conducted;

B. that affiant is the agent of the applicant, its owners, partners, members, directors, officers, and personnel and is duly authorized to make the representations in the application on their behalf. Documentation of the authority must be attached;

C. that the applicant seeks a grant of a privilege from the state of Minnesota, and the burden of proving the applicant's qualifications rests at all times with the applicant;

D. that the applicant consents to inquiries by the state of Minnesota, its employees, the commission, members, staff and agents into the financial, character, and other qualifications of the applicant by contacting individuals and organizations;

E. that the applicant, its owners, partners, members, directors, officers, and personnel accept any risk of adverse public notice, embarrassment, criticism, or other circumstance, including financial loss, which may result from action with respect to the application and expressly waive any claim which otherwise could be made against the state of Minnesota, its employees, the commission, staff or agents;

F. that affiant has read the applicant's identification and disclosures and knows the contents; the contents are true to affiant's own knowledge, except matters therein stated on information and belief; as to those matters, affiant believes them to be true;

G. that the applicant recognizes all representations in the application are binding on it, and false or misleading information in the application, omission of required information, or substantial deviation from representations in the application may result in denial, revocation, or suspension of a license or imposition of a fine;

H. that the applicant will comply with Minnesota Statutes, chapter 240 and all rules of the commission;

I. affiant's signature, name, organization, position, address, and telephone number;

J. the date.

4 MCAR § 15.020 Disclosure of ownership and control.

An applicant for a Class B license must disclose:

A. the type of organizational structure of the applicant, whether individual, business corporation, nonprofit corporation, partnership, joint venture, trust, association, or other entity;

B. if the applicant is an individual, the applicant's legal name, whether the applicant is a United States citizen, and aliases and business names currently used by the applicant, and copies of state and federal tax returns for the past five years;

C. if the applicant is a corporation:

1. the applicant's full corporate name and any trade names currently used by the applicant;

2. jurisdiction and date of incorporation;

3. date the applicant commenced doing business in Minnesota and, if the applicant is incorporated outside Minnesota, a copy of the applicant's certificate of authority to do business in Minnesota;

4. copies of the applicant's articles of incorporation, bylaws, and state and federal corporate tax returns for the past five years;

5. the general nature of the applicant's business;

6. whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission;

7. classes of stock of the applicant. As to each class, the number of shares authorized, number issued, number

outstanding, par value per share, issue price, current market price, number of shareholders, terms, position, rights, and privileges must be disclosed;

8. if the applicant has any other obligations or securities authorized or outstanding which bear voting rights either absolutely or upon any contingency, the nature thereof, face or par value, number of units authorized, number outstanding, and conditions under which they may be voted;

9. the names, in alphabetical order, and addresses of the directors and, in a separate listing, officers of the applicant. As to each director and officer, the number of shares held of record as of the application date or beneficially of each class of stock, including stock options and subscriptions, and units held of record or beneficially of other obligations or securities which bear voting rights must be disclosed;

10. the names, in alphabetical order, and addresses of each record holder as of the date of application or beneficial owner of shares, including stock options and subscriptions, of the applicant or units of other obligations or securities which bear voting rights. As to each holder of shares or units, the number and class or type of shares or units must be disclosed;

11. whether the requirements of the Securities Act of 1933 and Securities and Exchange Act of 1934, as amended, and Securities and Exchange Commission rules and regulations have been met in connection with issuance of applicant's securities, and copies of most recent registration statement and annual report filed with Securities and Exchange Commission;

12. whether the securities registration and filing requirements of the applicant's jurisdiction of incorporation have been met, and a copy of most recent registration statement filed with the securities regulator in that jurisdiction;

13. whether the securities registration and filing requirements of the state of Minnesota have been met. If they have not, the applicant must disclose the reasons why. The applicant must provide copies of all securities filings with the Minnesota Department of Commerce during the past five years;

D. If the applicant is an organization other than a corporation:

1. the applicant's full name and any trade names currently used by the applicant;

2. jurisdiction of organization of the applicant;

3. date the applicant commenced doing business in Minnesota;

4. copies of any agreements creating or governing the applicant's organization and the applicant's state and federal tax returns for the past five years;

5. the general nature of the applicant's business;

6. names, in alphabetical order, and addresses of any partners and officers of applicant and other persons who have or share policymaking authority. As to each, the applicant must disclose the nature and extent of any ownership interest, including options, or other voting interest, whether absolute or contingent, in the applicant;

7. names, in alphabetical order, and addresses of any individual or other entity holding a record or beneficial ownership interest, including options, as of the date of application or other voting interest, whether absolute or contingent, in applicant. As to each, the applicant must disclose the nature and extent of the interest;

E. if a nonindividual record or beneficial holder of an ownership or other voting interest in the applicant is identified pursuant to C.9. or 10. or D.6. or 7., the disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are identified;

F. whether the applicant is directly or indirectly controlled to any extent or in any manner by another individual or entity. If so, the applicant must disclose the identity of the controlling entity and a description of the nature and extent of control;

G. any agreements or understandings which the applicant or any individual or entity identified pursuant to this rule has entered into regarding ownership or control of the sponsorship or management of horse racing, and copies of any written agreements;

H. any agreements or understandings which the applicant has entered into for the payment of fees, rents, salaries, or other compensation by the applicant, and copies of any written agreements;

I. whether the applicant, any partner, director, officer, other policymaker, or holder of a direct or indirect record or

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

beneficial ownership interest or other voting interest or control of five percent or more in the applicant has held or holds a license or permit issued by a governmental authority to own and operate a horse racing facility or conduct any aspect of horse racing or gambling. If so, the applicant must disclose the identity of the license or permit holder, nature of the license or permit, issuing authority, and dates of issuance and termination.

4 MCAR § 15.021 Disclosure of character information.

An applicant for a Class B license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to 4 MCAR § 15.020 or 15.027 B. or C. has:

A. been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, embezzlement, tax evasion, robbery, burglary, bribery, extortion, jury tampering, obstruction of justice, perjury, an antitrust violation, or conspiracy to commit any of the foregoing. If so, the applicant must disclose the date charged, court, whether convicted, date convicted, crime convicted of, and sentence;

B. been a party in a civil proceeding and alleged to have engaged in an unfair or anticompetitive business practice, a securities violation, or false or misleading advertising. If so, the applicant must disclose the date of commencement, court, circumstances, date of decision, and result;

C. had a horse racing, gambling, or other business license or permit revoked or suspended or renewal denied or been a party in a proceeding to do so. If so, the applicant must disclose the date of commencement, circumstances, date of decision, and result;

D. been accused in an administrative or judicial proceeding of violation of a statute or rule relating to unfair labor practices, discrimination, horse racing, or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

E. commenced an administrative or judicial action against a governmental regulator of horse racing or gambling. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

F. been the subject of voluntary or involuntary bankruptcy proceedings. If so, the applicant must disclose the date of commencement, forum, circumstances, date of decision, and result;

G. failed to satisfy any judgment, decree, or order of an administrative or judicial tribunal. If so, the applicant must disclose the date and circumstances;

H. been delinquent in filing a tax report required or remitting a tax imposed by any government. If so, the applicant must disclose the date and circumstances.

4 MCAR § 15.022 Disclosure of improvements and equipment.

An application for a Class B license must disclose with respect to the facility at which it will sponsor and manage pari-mutuel horse racing:

A. the address of the facility at which the applicant will sponsor and manage horse racing, size and geographical location, including reference to county and municipal boundaries;

B. a site map which reflects current and proposed highways and streets adjacent to the facility;

C. the types of racing for which the facility is designed, whether thoroughbred, harness, quarterhorse, or other;

D. racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, distance from judges' stand to first turn, and type of surface. If the facility has more than one racetrack, the applicant must provide a description of each;

E. a description of horse stalls at the facility, giving the dimensions of stalls, separation, location, and total number of stalls;

F. a description of the grandstand, giving total seating capacity, total reserved seating capacity, indoor and outdoor seating capacity, configuration of grandstand seating and pari-mutuel and concession facilities within the grandstand; the number and location of men's and women's restrooms, drinking fountains, and medical facilities available to patrons; and a description of public pedestrian traffic patterns throughout the grandstand;

G. a description of the detention barn, giving distance from detention barn to track and paddock, number of sampling stalls, placement of viewing ports on each stall, location of post-mortem floor, number of wash stalls with hot and cold water and drains and availability of video monitors; and a description of the walking ring;

H. a description of the paddock, number of stalls in the paddock, height from the floor to lowest point of the stall ceiling and entrance, and paddock public address and telephone services;

I. a description of the jockeys' and drivers' quarters, giving changing areas, a listing of equipment to be installed in each, and the location of the jockeys' quarters in relation to the paddock.

J. a description of the pari-mutuel tote, giving approximate location of bettors' windows and cash security areas; and a description of equipment, including the provider if known;

K. a description of the parking, giving detailed attention to access to parking from surrounding streets and highways. Number of parking spaces available for the public; a description of the road surface on parking areas and the distance between parking and the grandstand; and a road map of the area showing the relationship of parking to surrounding streets and highways;

L. a description of the height, type of construction, and materials of perimeter fence; whether the perimeter fence is topped by a barbed wire apron at least two feet wide and directed outward at a 45-degree angle; and whether there is a clear zone at least four feet wide around the outside of the entire perimeter fence;

M. a description of improvements and equipment at the racetrack for security purposes in addition to perimeter fence, including the provider of equipment if known;

N. a description of starting, timing, photo finish, and photo-patrol or video equipment, including the provider if known;

O. a description of work areas for the commission members, officers, employees, and agents;

P. a description of access of the facility to public transportation; specifics of types of transportation and schedules; and a road map of area indicating pick-up and drop-off points.

4 MCAR § 15.023 Disclosure of authorization to use horse racing facility.

An applicant for a Class B license must disclose the terms and conditions of the lease or other agreement authorizing the applicant to sponsor and manage pari-mutuel horse racing at a licensed facility and provide a copy of the agreement.

4 MCAR § 15.024 Disclosure of financial resources.

An applicant for a Class B license must disclose the following with regard to financial resources:

A. an audited financial statement reflecting the applicant's current assets, including investments in affiliated entities, loans and advances receivable and fixed assets and current liabilities, including loans and advances payable, long-term debt and equity;

B. equity and debt sources of funds to sponsor and manage horse racing:

1. with respect to each source of equity contribution, identification of the source, amount, form, method of payment, nature and amount of present commitment, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

2. with respect to each source of debt contribution, identification of the source, amount, terms of debt, collateral, identity of guarantors, nature and amount of commitments, documentation and actions which the applicant will take to obtain more certain commitments and commitments for additional amounts;

C. identification and description of sources of additional funds if needed due to cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other cause.

4 MCAR § 15.025 Disclosure of financial plan.

An applicant for a Class B license must disclose with regard to its financial plan:

A. financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B licenses. Neither acceptance of a license application nor issuance of a license shall bind the commission as to matters within its discretion, including, but not limited to, assignment of racing days and designation of types of permissible pari-mutuel betting pools. The disclosure must include:

1. the following assumptions and support for them:
   a. average daily attendance;
   b. average daily per capita handle and average bet;
   c. retainage;
   d. admissions to track, including ticket prices and free admissions;
   e. parking volume, fees, and revenues;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

f. concessions, gift shop, and program sales;

g. cost of purses;

h. pari-mutuel expense;

i. state taxes;

j. real estate taxes;

k. breeder fund;

l. payroll;

m. operating supplies and services;

n. utilities;

o. repairs and maintenance

p. insurance;

q. travel expense;

r. membership expense;

s. security expense;

t. legal and audit expense;

u. debt service.

2. the following profit and loss elements:

a. total revenue, including projected revenues from:

(1) retainage and breakage;

(2) admissions;

(3) parking;

(4) concessions, gift and program operations;

b. total operating expenses, including anticipated expenses for:

(1) purses;

(2) pari-mutuel;

(3) sales tax;

(4) breakage to state;

(5) real estate tax;

(6) admissions tax;

(7) breeder fund;

(8) special assessments;

(9) cost of concession goods, gifts, and programs;

(10) advertising and promotion;

(11) payroll;

(12) operating supplies and service;

(13) maintenance and repairs;

(14) insurance;

(15) security;

(16) legal and audit;

c. nonoperating expenses, including anticipated expenses for:

(1) debt service;

(2) facility depreciation and identification of the method used;

(3) equipment depreciation and identification of the method used;

3. projected cash flow, including assessment of:

a. income, including equity contributions, debt contributions, interest income, operating revenue;

b. disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense;

4. projected balance sheets as of the end of any development period and three racing years setting forth:

a. current, fixed, and other noncurrent assets;

b. current and long-term liabilities;

c. capital accounts;

B. an accountant's review report of the financial projections.

4 MCAR § 15.026 Disclosure of governmental actions.

An applicant for a Class B license must disclose with regard to actions of government agencies:

A. if the applicant has obtained any required government approvals for its management and sponsorship of horse racing:

1. a description of the approval, unit of government and date, and documentation;

2. whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held;

3. whether the unit of government attached any conditions to approval. If so, the applicant must disclose these conditions, including documentation;

B. whether any required governmental approvals remain to be obtained, as well as a description of the approval, unit of government, status, likelihood of approval, and estimated date;

C. whether the applicant is in compliance with all statutes, charter provisions, ordinances, and regulations pertaining to the sponsorship and management of horse racing. If the applicant is not in compliance, the applicant must disclose the reasons why the applicant is not in compliance.

4 MCAR § 15.027 Disclosure of management.

An applicant for a Class B license must disclose with regard to its management of pari-mutuel horse racing:

A. a description of the applicant's management plan, with budget and identification of management personnel by function; job descriptions and qualifications for each management position; and a copy of the organization chart.

B. management personnel and to extent known with respect to each:

1. legal name, aliases, and previous names;

2. current residence and business addresses and telephone numbers;

3. qualifications and experience in the following areas:

a. general business;

b. marketing, promotion, and advertising;

c. finance and accounting;

d. horse racing;

e. pari-mutuel betting;

f. security;

g. human and animal health and safety;

4. a description of the terms and conditions of employment, and a copy of the agreement;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

C. consultants and other contractors to extent known who have provided or will provide management-related services to applicant and with respect to each:

1. full name:

2. current address and telephone number:

3. nature of services:

4. qualifications and experience:

5. description of terms and conditions of any contractor's agreement, and a copy of the agreement:

D. memberships of the applicant, management personnel, and consultants in horse racing organizations;

E. a description of the applicant's security plan, including:

1. number and deployment of security personnel used by applicant during a race meeting; security staff levels; and deployment at other times:

2. specific security plans for perimeter, stabling facilities, pari-mutuel betting facilities, purses, and cash room:

3. specific plans to discover persons at the horse racing facility who have been convicted of felony, had a license suspended, revoked, or denied by the commission or by the horse racing authority of another jurisdiction, or are a threat to the integrity of racing in Minnesota:

4. a description of video monitoring equipment and its use:

5. whether the applicant will be a member of the Thoroughbred Racing Protective Bureau or other security organization:

6. coordination of security with law enforcement agencies:

F. a description of applicant's plans for human and animal health and safety, including emergencies:

G. a description of the applicant's marketing, promotion, and advertising plans:

H. a description of the applicant's plan for the conduct of horse racing, including types of racing, number of days, weeks, specific dates, number of races per day, time of day, and special events:

I. a description of the applicant's plan for purses, including total purses, formula, minimum, stakes races, and purse-handling procedures:

J. a description of the applicant's plan for pari-mutuel betting, including number of line divisions, windows, selling machines, and clerks; use or duties of each; and accounting procedures:

K. a description of the applicant's plan for concessions, including whether licensee will operate concessions and, if not, who will to the extent known:

L. a description of training of the applicant's personnel:

M. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

4 MCAR § 15.028 Disclosure of public service.

An applicant for a Class B license must disclose its plans for promotion of the orderly growth of horse racing in Minnesota and education of the public with respect to horse racing and pari-mutuel betting.

4 MCAR § 15.029 Disclosure of economic impact.

An applicant for a Class B license must disclose the economic impact of its sponsorship and management of horse racing, including:

A. employment created, including specifics as to number of jobs, permanent or temporary, type of work, compensation, employer, and how created:

B. purchases of goods and services, including specifics as to money amounts and types of purchases:

C. tax revenues generated.

4 MCAR § 15.030 Disclosure of public support and opposition.

An applicant for a Class B license must disclose public support and opposition, whether by a governmental official, agency, private individual, or group, and provide documentation.

4 MCAR § 15.031 Effects on competition.

An applicant for a Class B license must disclose the effects of its sponsorship and management of horse racing on competitors within the horse racing industry.

4 MCAR § 15.032 Disclosure of assistance in preparation of application.

An applicant for a Class B license must disclose the names, addresses, and telephone numbers of individuals who assisted the applicant in preparation of its application.

4 MCAR § 15.033 Personal information and authorization for release.

An application for a Class B license must include the following with respect to each individual identified pursuant to 4 MCAR § 15.020 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to 4 MCAR § 15.027 B. or C.:

A. full name, business and residence addresses and telephone numbers, last five residence addresses, date of birth, place of birth, Social Security number, if the individual is willing to provide it, and two references;

B. an authorization for release of personal information, on a form prepared by the commission, signed by the individual and providing that he or she:

1. authorizes a review by and full disclosure to an agent of the Minnesota Public Safety Department Bureau of Criminal Apprehension of all records concerning the individual, whether the records are public, nonpublic, private, or confidential;

2. recognizes the information reviewed or disclosed may be used by the state of Minnesota, its employers, the commission, members, staff and agents to determine the signer's qualifications for a Class B license;

3. releases authorized providers and users of the information from any liability.

4 MCAR § 15.034 Class B license criteria.

The commission may issue a Class B license if it determines on the basis of all the facts before it that the applicant is fit to sponsor and manage horse racing; issuance of a license will not create a competitive situation which will adversely affect racing and the public interest; the racetrack will be operated in accordance with all applicable laws and rules; and issuance of a license will not adversely affect the public health, safety, and welfare. In making the required determinations, the commission must consider the following factors:

A. the integrity of the applicant, its partners, directors, officers, policymakers, managers, and holders of ownership or other voting interests or control, including, but not limited to:

1. criminal records;

2. involvement in litigation over business practices;

3. involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;

4. involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;

5. involvement in bankruptcy proceedings;

6. failure to satisfy judgments, orders, or decrees;

7. delinquency in filing of tax reports or remitting taxes;

B. the types and variety of pari-mutuel horse racing which applicant will offer;

C. the quality of physical improvements and equipment applicant will use, including, but not limited to:

1. racetrack or tracks;

2. stabling;

3. grandstand;

4. detention barn;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

5. paddock;

6. jockeys' and drivers' quarters and equipment;

7. pari-mutuel tote;

8. parking;

9. access by road and public transportation;

10. perimeter fence;

11. other security improvements and equipment;

12. starting, timing, photo finish, and photo-patrol or video equipment;

13. commission work areas;

D. financial ability to sponsor and manage pari-mutuel horse racing successfully, including, but not limited to:

1. ownership and control structure;

2. terms and conditions of the applicant's authorization to use facility;

3. current financial condition;

4. sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

5. provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity;

6. feasibility of the financial plan;

E. status of necessary government approvals and compliance with applicable statutes, charters, ordinances, and regulations;

F. management ability of the applicant, including, but not limited to:

1. qualifications of managers, consultants, and other contractors to manage pari-mutuel horse racing;

2. security plan;

3. plans for human and animal health and safety;

4. marketing, promotion, and advertising plans;

5. plan for conducting horse racing;

6. plan for purses;

7. plan for pari-mutuel betting;

8. concessions plan;

9. plan for personnel training;

10. equal employment and affirmative action plans;

G. efforts to promote orderly growth of horse racing in Minnesota and educate public with respect to horse racing and pari-mutuel betting;

H. economic impact, including employment, purchases, and taxes;

I. extent of public support and opposition;

J. effects on competition, including, but not limited to:

1. number, nature, and relative location of other Class B licenses;

2. minimum and optimum number of racing days sought by the applicant.

4 MCAR § 15.035 Class A and B license application disclosures.

An applicant for a Class A or B license in its disclosures must:

A. provide disclosures in printed or typewritten form on 8½ by 11 inch paper. Immediately preceding each response, an applicant must restate what disclosure is sought. Any attachments or exhibits must be lettered or numbered separately. An applicant must provide photographs of any three-dimensional exhibits;

B. make its best effort to provide all information required to be disclosed;

C. provide only information relevant to disclosures requested by the commission.

4 MCAR § 15.036 Class A and B license application submission.

An applicant for a Class A or B license must submit to an individual designated by the commission:

A. all documents which are part of its application as a single assemblage;

B. a letter of transmittal to the commission and, in sealed envelopes, an original and 20 copies of the application.

4 MCAR § 15.037 Investigation fee for Class A and B licenses.

An applicant for a Class A or B license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10.000 to cover the costs of the investigation mandated by Minnesota Statutes, section 240.06, subdivision 3, or section 240.07, subdivision 2. Upon completion of the investigation, the commission must refund promptly to the applicant any amount by which the $10.000 exceeds the actual costs of investigation. If costs of the investigation exceed $10.000, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. An individual or other entity applying for Class A and B licenses simultaneously must submit only one $10.000 investigation fee.

4 MCAR § 15.038 Clarification of Class A and B license application requirements.

The commission must designate an individual who will clarify Class A and B license application requirements upon the oral or written request of a potential applicant. The designee must respond to clarification requests in writing within five days. No interpretation of application requirements by any other person will be binding upon the commission.

4 MCAR § 15.039 Changes in Class A and B license applications.

The commission must not consider a substantive amendment to a Class A or B license application after its submission.

4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.

Deadlines for submission of a Class A or B license application are as follows:

A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on January 15, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;

B. applications for Class A licenses to own and operate racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;

C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

4 MCAR § 15.041 Oral presentation by applicant for a Class A or B license.

The commission must provide an applicant for a Class A or B license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. This rule does not require that the commission afford an applicant more than one opportunity to make an oral presentation before the commission makes its decision.

4 MCAR § 15.042 Payment of Class A and B license fees.

A Class A or B license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

A. a nonrefundable fee of $10.000 for a Class A license;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. a fee for a Class B license equal to $100 times the optimum number of racing days sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds $100 times the number of actual days of racing sponsored and managed by the licensee.

4 MCAR § 15.043 Class A and B license application information.

False or misleading information in a Class A or B license application, omission of required information, or substantial deviation from representations in the application is cause for denial, revocation, or suspension of a license or imposition of a fine.

4 MCAR § 15.044 Delay in completion of racetrack facility.

Failure of a Class A licensee to complete substantially the construction of its racetrack facility and installation of equipment within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after the completion data stated in its license application is cause for revocation or suspension of the license, and the commission may impose a penalty of $1,000 on the licensee for each day of delay. The penalty does not apply if and to the extent the licensee proves that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors and subcontractors. Such causes may include, but are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the licensee proves the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the above penalty may not be imposed for the delay unless the supplies or services to be furnished by contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

4 MCAR § 15.045 Construction, expansion, extension, alteration, or remodeling of facilities.

No Class A or B licensee may construct, expand, extend, alter, or remodel a racetrack facility at a cost in excess of $10,000 without the approval of the commission. Failure to obtain approval is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR § 15.046 Security.

Class A and B licensees must maintain security which is adequate to ensure the health, safety, and comfort of all humans and horses at the racetrack facility and protection of all property.

4 MCAR § 15.047 Security modifications.

The commission may order Class A and B licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to the integrity of racing or public safety, health, or welfare. Failure to make modifications mandated by the commission promptly is cause for revocation or suspension of a license or imposition of a fine.

4 MCAR § 15.048 Medical services.

A racetrack facility must provide the following medical facilities, equipment, and personnel:

A. a fully equipped first aid room with at least two beds;

B. a licensed physician and registered nurse on duty in the first aid room on all days during which horse racing is conducted;

C. a registered nurse on duty on all days during which the racetrack facility is open for exercising horses;

D. an ambulance for humans with necessary equipment and staff whenever the facility is open for racing or exercising horses.

4 MCAR § 15.049 Care of horses.

A racetrack facility must provide the following facilities, equipment, and personnel for horses:

A. an individual box stall for each horse;

B. a fence surrounding the stabling facilities;

C. stabling and training facilities available at least three weeks before the start of the first race meeting for a species of horse in any year;

D. a licensed outrider mounted and on duty whenever a facility is open for exercising horses;

E. a horse ambulance available for the safe and expedient removal of crippled animals. The ambulance must be equipped with a screen for use when an animal must be destroyed in view of the public, a winch to lift dead or injured animals onto the ambulance, and a removable floor or any other devices which enable a dead or injured horse to be loaded.

4 MCAR § 15.050 Contract approval.

Contracts entered into by Class A, B, and C licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts and subcontracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, and C licensees must submit copies of any written contracts and subcontracts to the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

Department of Agriculture
Dairy Industry Division

Proposed Adoption of a Rule Governing Dairy Inspection Fees

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21-14.28 (1982).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the department and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the department will proceed according to the provisions of Minnesota Statutes, Sections 14.11-14.20 (1982). If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Authority to adopt these rules is contained in Minnesota Statutes, Section 32.394 and Laws of Minnesota 1983, chapter 300, section 20. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Mr. Heil.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as adopted, should submit a written statement of such request to Mr. Heil.

The Commissioner is authorized by Laws of Minnesota 1983, chapter 300 section 20 and Minnesota Statutes section 32.394 to adjust and set fees for the inspection of Grade A dairy plants and farms, and for farm certification for other than Grade A farms. This proposed rule serves two functions. First of all, by adjusting Grade A dairy plant and farm inspection fees the department will be able to meet expenses for the inspection and certification of these facilities. Secondly, by setting a certification fee for farms other than grade A, the department will be able to implement an informational and inspection program consistent with the purpose of Laws of Minnesota 1983, chapter 232, section 2, and the rules adopted for that program.

Fees for Grade A dairy plants and farms have not been adjusted since 1978. The new fee schedule will permit the department to continue the above listed services at current levels; if the proposed rules are not adopted, the department would be forced to reduce levels of service.

Grade A dairy processors and producers benefit from the services enabled by the fees because the inspection and certification activities are required for Minnesota Grade A dairy products to move uninterrupted into interstate commerce.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

AFFIDAVIT BY PERSONAL SERVICE

Joan Bailey, being first duly sworn, hereby deposes and says:

That at the City of Saint Paul, county and state aforementioned, on the 5th day of January, 1984, she did serve the REPORT OF THE CHIEF HEARING EXAMINER -- OAH DOCKET NO. RACE-84-001-GB AND OFFICIAL RECORD OF MATTER

upon James Weiler, Suite 400, United Labor Center, 312 Central Ave Minneapolis, MN 55414
by personally handing to ROBERT HENTGES,

said REPORT AND RECORD ABOVE.

Joan Bailey
(Signature)

Subscribed and sworn to before me
this 5th day of January, 1984.

Sandra A. Haven
(Notary)

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES AUGUST 21, 1990

HG-00058-50

RACE-84-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Comission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A & B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts 4 MCAR §§ 15.001-15.050.

REPORT OF THE CHIEF HEARING EXAMINER

The above-entitled matter came on for review by the Chief Hearing Examiner pursuant to the provisions of Minn. Stat. § 14.15, subds. 3 and 4 (1982), as amended by Minn. Laws 1983, Ch. 210, §§ 6 and 7, which provide:

> Subd. 3. Finding of substantial change. If the [hearing examiner's] report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 to 14.18 it shall be submitted to the chief hearing examiner for approval. If the chief hearing examiner approves the finding of the hearing examiner, the chief hearing examiner shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief hearing examiner determines that the defects have been corrected.
>
> Subd. 4. Need or reasonableness not established. If the chief hearing examiner determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief hearing examiner to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission's receipt of the agency's submission. Advice of the commission shall not be binding on the agency.

Based upon a review of the record in this proceeding, the Chief Hearing Examiner hereby approves the Report of the Hearing Examiner in all respects except as follows:

In findings 19a through 19d, the Examiner discusses the use of the phrase "best effort". Those findings are approved. The Examiner's proposal for curing the defect is good but, placing the definition of "best effort", as proposed, in § 15.035(B) could be interpreted as applying only to that section. Also, the phrase "mere diligence" appears to be a combination of "mere compentence" and "due diligence", terms referred to in finding 19b. In order to cure this defect in the rules, a definition of "best effort" must be included but should be placed in the first rule where used, which appears to be § 15.003(E), and should read as follows:

The term "best effort", as used in this and subsequent sections of these rules, means an active and serious attempt which is made in good faith, and goes beyond due diligence, to supply the information required to be disclosed. When an applicant is unable, despite its best efforts, to provide the information required, it shall explain fully and document its inability to do so.

Also, in order that the general section, § 15.035 will be clear, § 15.035(B) should be amended by adding ", as defined in § 15.003(E)," after the words "best effort".

Findings 20a through 20c discuss the use of the phrase "including, but not limited to" in several parts of the rules. In its review of the legality of rules the Attorney General's office has been very consistent in its rejection of rules which use this language. The basis for the rejection is that such phrasing permits the agency to impose additional requirements that are not articulated in the rule. Just as consistent has been the resolution: the phrase must be deleted and any additional requirements contemplated must be clearly articulated in the rule. I have and presently do agree with these rulings. The Examiner has attempted to devise language which establishes a standard by which the Commission will exercise its discretion. The language of that standard must be sufficiently specific to allow a reviewing body to determine whether the exercise of the discretion was proper, was arbitrary or capricious, or otherwise an abuse of the discretion. I am not satisfied that the language proposed by the Examiner at finding 20c meets the foregoing criteria.

In order to cure the defects discussed in findings 20a through 20c, the agency must delete the phrase "including, but not limited to" wherever it appears. In order to carry out the expressed intent of the Commission to allow and encourage applicants "to summon all possible ingenuity and creativity in preparation of horseracing proposals" and to insure uniformity of application of standards and criteria, in each section of the rules in question the Commission should add the following to the listed items:

1. Any other information related to (integrity, financial ability, management ability, etc.) which the Commission deems crucial to its decisionmaking as long as the same information is required of all applicants.

2. Any other information related to (integrity, financial ability, management ability, etc.) which the applicant ~~believes would be~~ discloses and is relevant and helpful to a proper determination by the Commission.

None of the changes recommended herein will constitute substantial changes in the rules.

In order to correct the defects enumerated herein, the agency shall either take the action recommended by the Chief Hearing Examiner or reconvene the rule hearing if appropriate. If the agency chooses to reconvene the rule hearing, it shall do so as if it is initiating a new rule hearing, complying with all substantive and procedural requirements imposed on the agency by law or rule.

If the agency chooses to take the action recommended by the Hearing Examiner and the Chief Hearing Examiner, it shall, prior to submitting the rules to the Attorney General for review, submit to the Chief Hearing Examiner

a copy of the rules as initially published in the State Register, a copy of the rules as proposed for final adoption in the form required by the State Register for final publication, and a copy of the agency's Findings of Fact and Order Adopting Rules. The Chief Hearing Examiner will then make a determination as to whether the defects have been corrected and whether the modifications in the rules are substantial changes.

Should the agency make changes in the rules other than those recommended by the Hearing Examiner and the Chief Hearing Examiner, it shall also, prior to submitting the rule to the Attorney General, submit the complete record to the Chief Hearing Examiner for a review in regard to substantial changes.

Dated: January 4th, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

RACE-84-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption
of Rules of the Minnesota Racing Commission
Governing Class A License Application,
Class A License Criteria, Class B License
Application, Class B License Criteria
Class A & B License Procedures, Revocation
and Suspension of Licenses, Assessment of
Penalties, Facilities and Security
Modifications, Medical Services, Care of
Horses, Approval of Contracts
4 MCAR § § 15.001-15.050

REPORT OF
THE HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck on Thursday, December 15, 1983 at 9:00 a.m. in Room 83 of the State Office Building, 435 Park Street in the City of St. Paul, Minnesota.

This report is a part of a controversial rule hearing proceeding held pursuant to Minn. Stat. § § 14.13-14.20 to determine whether the agency has fulfilled all relevant, substantive and procedural requirements, whether the proposed rules are needed and reasonable and whether or not the rules, if modified, are substantially different from those originally proposed.

Members of the agency panel appearing included: Commissioner Krista Sanda; Commissioner John H. Daniels, Jr.; Robert C. Hentges, Esq., Consultant to the Commission; Robert Nardi, Special Assistant Attorney General and Judith Wehrwein, Legal Assistant, Office of the Attorney General.

The Minnesota Racing Commission must wait at least five working days before taking any final action on the rules; during that period, this Report must be made available to all interested persons upon request.

Pursuant to the provisions of Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, this Report has been submitted to the Chief Hearing Examiner for his approval. If the Chief Hearing Examiner approves the findings of this Report, he will advise the Minnesota Racing Commission of actions which will correct the defects and the Minnesota Racing Commission may not adopt the rule until the Chief Hearing Examiner determines that the defects have been corrected. However, in those instances where the Chief Hearing Examiner identifies defects which relate to the issues of need or reasonableness, the Minnesota Racing Commission may either adopt the Chief Hearing Examiner's recommendations to cure the defects or, in the alternative, if the Minnesota Racing Commission does not elect to adopt the recommendations, it may submit the proposed rule to the Legislative Commission to Review Administrative Rules for the Commission's advice and comment. Provisions relating to this submission to the Commission may be found in Minn. Stat. § 14.15, subd. 4 (1982), as amended by Minn. Laws 1983, Ch. 210, § 7.

If the Minnesota Racing Commission elects to adopt the recommendations of the Chief Hearing Examiner and makes no other changes and the Chief Hearing Examiner determines that the defects have been corrected, then the Minnesota Racing Commission shall submit the rule to the Attorney General for review of

legality. If the Minnesota Racing Commission makes changes in the rule other than those recommended by the Chief Hearing Examiner, then it shall submit the rule, with the complete record, to the Chief Hearing Examiner for a review of the changes before adopting it and submitting it to the Attorney General. Procedures relating to this subsequent review by the Chief Hearing Examiner are set forth in Minn. Stat. § 14.16 (1982).

When the Minnesota Racing Commission submits the rule to the Attorney General, it shall give notice on the day of submission to all persons who requested that they be informed of the submission to the Attorney General.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 1, 1983, the Racing Commission filed the following documents with the Chief Hearing Examiner:

(a) An order for hearing. (Exhibit 6)

(b) An order for notice of intent to adopt rules without public hearing. (Exhibit 2).

(c) A certificate of the Commission's resolution authorizing its chairman to initiate a rule-making proceeding with a hearing. (Exhibit 7).

(d) A statement of the number of persons expected to attend the hearing and the estimated length of the Commission's presentation. (Exhibit 18).

(e) A proposed notice of intent to adopt rules without a public hearing. (Exhibit 20).

(f) A proposed notice of hearing. (Exhibit 20).

2. On November 3, 1983, the Commission filed a revised notice of intent to adopt rules without a public hearing and a revised notice of hearing. (Exhibit 21).

3. On November 14, 1983, the notice of hearing and the rules as proposed were published in the State Register at 8 S.R. 1162. (Exhibit 17).

4. On November 10, 1983, the Commission mailed the notice of hearing to all persons and associations who had requested that their names be placed on file with the Commission for the purpose of receiving notice of proposed adoption of rules. (Exhibit 11).

5. On November 30, 1983, the Commission filed the following documents with the hearing examiner:

(a) The notice of hearing as mailed. (Exhibit 5).

(b) The notice of intent to adopt rules without a public hearing,published and mailed on the same date. (Exhibit 6).

(c) A copy of the proposed rules. (Exhibit 5).

(d) The Commission's certification that its mailing list was accurate and complete. (Exhibit 9).

(e) The affidavit of mailing the notice of hearing to all persons on the Commission's mailing list. (Exhibit 11).

(f) A list of the names of agency personnel and solicited witnesses who would appear at the hearing. (Exhibit 16).

(g) A statement of need and reasonableness. (Exhibit 13).

6. On December 2, 1983, the Commission filed the following documents with the Hearing Examiner:

(a) A statement of need and reasonableness with typographical errors corrected. (Exhibit 14).

(b) A photocopy of that portion of the November 24, 1983, State Register containing the proposed rules. (Exhibit 17).

(c) An affidavit of additional notice. (Exhibit 12).

7. The documents cited in Findings Number 1 through 6 were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing. The filings listed at Findings No. 5 and 6 and the documents listed at Finding No. 8(c) were not filed at least 25 days prior to the hearing as required by 9 MCAR § 2.105. The only request for a document received by the Hearing Examiner was a request for a copy of the statement of need and reasonableness which was made and delivered on December 14, 1983. Since the late filing by the Commission did not prevent anyone from adequately participating in the rulemaking proceeding, it is concluded that it was not prejudicial to any person and does not constitute a defect in this proceeding. City of Minneapolis v. Wurtele, 291 N.W. 2d 386, 391 (Minn. 1980); Auerbach, Administrative Rulemaking in Minnesota 63 Minn. L. Rev. 151, 215 (1979); Anderson, Leech and Morse, Inc. v. Washington State Liquor Control Board, 575 P. 2d 221 (Wash. 1978).

8. The following documents were filed by the Commission on the date of the hearing, namely, December 15, 1983:

(a) A certificate of the Commission's authorizing resolution, authorizing its chairman to initiate a non-controversial rule proceeding. (Exhibit 3).

(b) An affidavit of mailing and a copy of the mailing list. (Exhibit 10).

(c) A copy of the notice of intent to solicit outside opinion regarding the proposed rules published in the State Register on September 12, 1983 at 8 S.R. 482, together with the written comments received pursuant to that notice. (Exhibit 1).

(d) Copies of 11 written requests for a hearing on the proposed rules. (Exhibit 8).

(e) Proposed modifications of the proposed rules approved by the Commission. (Exhibit 19).

9. The record remained open five working days after the hearing through 4:30 p.m. on December 22, 1983, for the receipt of written comments and statements from the public. Pursuant to Minn. Laws 1983, Ch. 210, § 5, the Commission had until 4:30 p.m. on December 28, 1983, to submit a statement of agreement with amendments proposed by the public. No statement of agreement was filed. The record therefore closed on December 28, 1983.

10. Minn. Stat. § 14.11 subd. 2 provides that if the agency proposing adoption of a rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency must comply with the requirements of Minn. Stat. § § 17.80 to 17.84. Minn. Stat. § 17.83 provides that if an agency proposes to adopt a rule which it determines may

have a direct and substantial adverse effect on agricultural land, it shall include notice of the effect in the notice of rule hearing and shall inform the Commissioner of Agriculture in writing. The Commission stated in its notice of hearing that it does not believe that the proposed rules will have a direct and substantial adverse impact on agricultural land within the meaning of Minn. Stat. § 17.81, but also noted that it is possible that the Commission's granting of Class A licenses could result in the utilization of agricultural land for the sites of Class A race tracks. No public comment was received during the rule hearing procedure which addressed this issue. The Commission has complied with the above-cited statutes.

11. Minn. Laws 1983, Ch. 188 provided an addition to Chapter 14 concerning small business considerations in rulemaking. It provides, among other things, that when an agency proposes a new rule which may affect small businesses as defined by that section, the agency shall consider certain methods for reducing the impact of the rule on small businesses. In its statement of need and reasonableness (Exhibit 14, p. 28), the Commission notes that some Class B license applicants may possibly be small businesses as defined in the section to be codified as Minn. Stat. § 14.115, subd. 1. The Commission states, however, that § 14.115 does not apply to Class B applicants and licensees because subdivision 7(c) exempts service businesses regulated by governmental bodies for standards and costs. The Commission believes that that is its role in regulating the sponsors and managers of horse racing. The Commission also notes that the establishment of less stringent rules for small business would be contrary to the general mandate of Chapter 240, that the Commission protect the public interest, the integrity of horse racing and public safety. The Commission therefore believes that it is exempted by Minn. Stat. § 14.115, subd. 3. The Commission notes that it has given direct notification of the rulemaking to all potential Class B license applicants, large or small as required by § 14.115, subd. 4(c). The Commission has complied with Minn. Laws 1983, Ch. 188.

Nature of the Proposed Rules

12. The proposed rules cover five topical areas. 4 MCAR § 15.001-017, regulates applications for a Class A license to own and operate a race track. Rules § 15.018-034 cover applications for a Class B license to sponsor and manage horse races on which parimutuel betting is conducted. Rules § 15.035-043 set up general procedures for applications and Rules § 15.044-050 are rules for the operation of race tracks.

Statutory Authority

13. Minn. Laws 1983, Ch. 214 is the enabling legislation for the Minnesota Racing Commission. The section to be codified as Minn. Stat. § 240.23 gives the Commission rulemaking authority to promulgate rules governing, among other things, the conduct of horse races held at licensed race tracks in Minnesota and any other aspect of horse racing or parimutuel betting, which in the Commission's opinion affects the integrity of racing or the public health,

welfare or safety. The Commission has stated that there is a legislative intent that the Commission act to insure the financial strength and good character of Class A licensees who construct, own and operate horse racing facilities and Class B licensees who sponsor and manage races, as well as to insure the high quality of facilities, personnel and systems. The Commission states that its proposed rules are necessary to insure the integrity of horse racing in Minnesota and to insure the public safety, health and welfare by insuring that licensees are financially strong; possess good character; and will construct, own, operate, sponsor and manage facilities, equipment, personnel and systems adequate to a safe and honest betting and horse racing system. The Commission has established its statutory authority to adopt the proposed rules.

Public Input

14. The record demonstrates that the Racing Commission through its Rules Subcommittee, chaired by Commissioner Joyce Farrell with Commissioners Daniels and Sanda, has conducted an exemplary rule-drafting process. The Commission published a notice of intent to solicit outside opinion regarding its proposed rules and received extensive public comment. (Exhibit 1). The Commission's rule-drafting subcommittee drafted the proposed rules over a four-month period and met two to three times per week. The input of members of the public including those to be regulated was sought and utilized. Several potential applicants praised the Commission's open and participatory rule-drafting procedure.

Modifications of the Proposed Rules

15. At the hearing the Racing Commission submitted several proposed modifications of the rules as published in the State Register. (Exhibit 19). Several of the changes reflect requests and public comments received after publication of the proposed rules. (Exhibit 15). None of the proposed modifications result in a rule which is substantially different from that which was published in the State Register when measured against the factors set out in 9 MCAR § 2.111. Two of the modifications lessen the burden on applicants in regard to disclosure of ownership and personal information. As such they cannot be said to be changes which would cause any hardship to those regulated by the proposed rules without adequate notice.

Reasonableness of the Proposed Rules

16. The Racing Commission has prepared an extensive statement of need and reasonableness in support of the proposed rules. (Exhibit 14). It supplemented this with an oral presentation at the public hearing. Except as otherwise specifically noted below, the statement of need and reasonableness provides a sufficient affirmative presentation of facts in support of the proposed rules. The proposed modifications were adequately supported by the oral comments made by the Commission at the public hearing and later written

comments. (Exhibit C pp. 4-6). All of the potential applicants providing comments believed the rules to be needed and reasonable with the exception of one rule.

17a. The only rule attracting extensive comment in this rule proceeding was 4 MCAR § 15.040 which sets the deadlines for submission of Class A and Class B license applications. Subdivision A of the proposed rules sets a deadline for Class A license applications in the metropolitan area of January 15, 1984 or the 14th day after the proposed rules are effective, whichever is later. The rule hearing was requested because one or more of the potential applicants believed that this deadline did not provide it with sufficient time. (Exhibit 8). The Northstar Race Track Association, which expects to promote a race track license to be located in the City of Blaine, states that it has been diligently pursuing the entire process for over one year and has successfully assembled a team in support of its application, but that it will not be able to have the application ready for submission until March 1, 1984. (Exhibit A). A spokesman for possible applications for race track sites at Savage, Hastings, Woodbury and Lino Lakes noted that the Commission and the state would benefit from having a number of qualified sites to choose from and stated that March 15 or April 1 would be a fair deadline. A spokesman for the Monticello race track site stated at the hearing that a deadline of March 15, 1984 would be reasonable. In earlier written comments Jamb Architects of Forest Lake, Minnesota supported a May 1, 1984 deadline. The mayor of Hastings requested the application deadline be set at April 30, 1984. The Woodbury Center stated that a date earlier than March 1, 1984 would not allow adequate time to properly complete their proposal and might, therefore, place its proposal in jeopardy. (Exhibit 15). Two applicants supported the proposed deadline of January 15, 1984, both orally at the hearing and in written comments. The Minnesota Jockey Club, Inc., a potential applicant for a facility to be located in Eagan, Minnesota, stated that the January deadline was fair since the Racing Commission gave notice in October, 1983 that it desired an early deadline. It noted that the governor's intention to begin horse racing in 1985, which would require the process to move along quickly, has been well-publicized. The Minnesota Jockey Club additionally suggested that the 14-day period set out in Rule 40 be changed to five working days or less. (Exhibit B). Minnesota Race Track, Inc., an expected applicant for a race track in the City of Shakopee, supported the January 15, 1984 deadline or the nearest possible deadline date to January 15. (Exhibit C).

17b. In support of its proposed rule the Commission states that it is important that the employment, public revenues, support and entertainment provided by horse racing, which was strongly supported by the voters in 1982, commence operation in 1985. The Commission states that construction will consume at least fourteen months and that a one-month shakedown of the facility is necessary. This means that if two weeks are devoted to Commission review and if a fourteen-day period is preserved between the rules becoming effective and the submission date, then the rules would need to become effective on March 1, 1984. The Commission points out that the rule-drafting begin in August of 1983 and the proposed rules were available on November 5 and published on November 14, 1983. Because of the substantial change rule,

applicants have known the basic content of the proposed rules since early November. (Exhibit 14, p.22).

17c. Because a rule hearing was requested in this matter, the January 15, 1984 application deadline has become moot since the procedural steps involved in rulemaking with a public hearing preclude the rules becoming effective during January of 1984. The Commission must wait five days after the issuance of this report before finally adopting the rules. The Attorney General must then examine the proposed rules for legality. If the Attorney General requires any changes, the Chief Hearing Examiner may have to review the rules again. The final rules must be published in the State Register, which normally requires that the rules be submitted two weeks prior to publication. Taking into consideration the procedural steps which remain, it appears that if this report and that of the Chief Hearing Examiner are issued on or before January 4, 1984, then it would be possible for these rules to go into effect on February 6, 1984. The application deadline would then be February 20, 1984, according to the provisions of § 15.040. Such a result would be unreasonable in its effect on several potential applicants since they are unable to submit completed applications by that time. A rule is unreasonable if it is arbitrary. Hurley v. Chaffee 43 N.W. 2d 281, 284 (Minn. 1950). In re Application of Byron M. Hansen 275 N.W. 2d 790 (Minn. 1978). An arbitrary action is one taken in disregard of the facts and circumstances of the situation. Greenhill v. Bailey 519 F. 2d 5, 10 (8th Cir. 1975). In this case the proposed rule does not consider the circumstance that several applicants will be effectively disqualified or unnecessarily handicapped by an application deadline of February 20, 1984.

17d. This defect can be corrected by changing the January 15, 1984 deadline contained in the proposed rule to March 1, 1984. Two of the applicants testifying at the hearing indicated that a March 15th date was acceptable and Northstar Race Track Association and the Woodbury Center indicated that March 1st was a reasonable deadline. The Commission has a legitimate interest in moving the process along to permit an early opening of a race track. It appears, however, that if applications are received on March 1, 1984, the Commission will be able to award a license on approximately April 1, 1984. According to the Statement of Need and Reasonableness this would likely permit a 1985 racing season. (Exhibit 14, p. 22). A March 1, 1984 application deadline would also increase the number of applicants and avoid their arbitrary exclusion.

18. Two other suggestions were advanced by those making public comments. The Minnesota Jockey Club suggested that a 14-day period for submission of applications after the effective date of the rules be shortened to five working days or less. (Exhibit B). The Commission has not filed any written indication that it desires to adopt this suggestion. It is, of course, free to consider a modification of the 14-day time period. Such a change would later have to be evaluated, however, to determine if it resulted in a substantially different rule. It might also advance the application deadline into February and therefore necessitate a re-evaluation of the reasonableness of proposed Rule 40. Another comment was made by a proponent of the Savage site for a race track to the effect that the $1,000.00-per-day penalty imposed

in § 15.044 for each day of delay in completion of the race track was insufficient to effectively penalize the licensee. The Commission has stated that the penalty is similar to that in other state contracts. The Commission may consider the comment, however, the penalty is needed and reasonable as proposed.

Compliance with Substantive Provisions of Law

19a. 4 MCAR § 15.035 requires each applicant for a Class A or a Class B license to make its "best effort" to provide all information required to be disclosed. This standard is also made expressly applicable to the disclosures required at §§ 15.003(E), 15.004, 15.016, 15.020(E), 15.021, and 15.033. In each case the applicant is directed to make its best effort to disclose information as to the record or beneficial holders of an ownership in the applicant or as to personal information. The question of compliance with substantive law which must be resolved is whether such a standard would permit arbitrary or discriminatory judgments by the Commission in its consideration of applications. Since an applicant is not absolutely required to submit certain information, but only to make its best effort to do so, the Commission must then make a judgment as to whether or not a best effort was made. This opens up the possibility of an inconsistent judgment being made by the Commission as between competing applicants. It has been held that equal protection of the law may be denied where standards governing the exercise of discretion permit or encourage arbitrary and discriminatory enforcement of the law. Papachristou v. City of Jacksonville, 405 U.S. 156 (1972). Additionally, due process of law requires that selections among applicants be made in accordance with "ascertainable standards". Holmes v. New York City Housing Authority, 398 F. 2d, 262, 265 (2d Cir. 1968).

19b. In its statement of need and reasonableness, the Commission notes that an applicant may be unable realistically to gather and provide some information which is requested, such as whether or not any of its thousands of shareholders have filed for bankruptcy. It suggests that the rules cannot require the impossible. The Commission suggests that a best effort standard is a higher standard than that of reasonable, competent or diligent effort The Commission states that "best effort" is defined in the common law as more than mere competence or due diligence, In Re Heard 6 BR 876, 884 (Bankruptcy, W.D. Ken. 1980). It is also defined as active effort in good faith. Western Geophysical Company v. Bolt Associates, 584 F. 2d 1164, 1171 (2d Cir. 1978). "Best effort" takes its meaning from the circumstances with consideration of the capabilities, abilities and oppotunities of the maker. Bloor vs. Falstaff Brewing Company, 454 F. Supp. 258, 266 (S.D. N.Y. 1978). The "best efforts" standard was specifically supported by two applicants. (Exhibit B, C). One applicant noted that some information may prove to be impossible to obtain if other parties refuse to, or fail to respond to requests. It was also stated that this is not a vague standard since there are court cases interpreting the meaning of "best efforts". (Exhibit C).

19c. The Commission's point that the "best efforts" standard is an appropriate one since the rules cannot require applicants to perform the

impossible, is well taken. The rules themselves, however, do not define "best efforts". The Commission is not compelled to look to the common law meaning of the phrase. As the rules stand, then, the Commission would be free to hold one applicant to a stricter standard of disclosure than another since a common meaning of "best effort" is simply that the applicant "tried" to comply. Accordingly, the rule as proposed places an unfettered discretion in the Commission, fails to set an ascertainable standard, and may encourage arbitrary or discriminatory enforcement of the rule.

19d. In order to correct this defect, the Commission could add a definition of "best efforts" to § 15.035(b). Such a definition might read as follows:

> "A best effort is an active and serious attempt which is made in good faith, and goes beyond mere diligence, to supply the information required to be disclosed. When an applicant is unable, despite its best efforts, to provide the information required it shall explain fully and document its inability to do so."

Such a definition will guide the Commission in exercising its discretion as to when a best effort was made. It will also specifically require an applicant to explain its inability to provide information so that the Commission will have sufficient information to make a judgment.

20a. A second matter of compliance with substantive law which must be discussed in connection with the proposed rules is the use in the rules of the phrase "including, but not limited to". The phrase is used seven times in Rule 15.017 which set up the Class A license criteria and five times in Rule 15.034 which set up Class B license criteria. The phrase is employed prior to a listing of indicia that the Commission will consider in connection with a particular criteria. For instance, in regard to the criteria of the integrity of the applicant, the rule provides that the Commissioner will consider "including, but not limited to" the applicant's criminal record, involvement in litigation, involvement in disciplinary actions, etc. The Commission makes the point that by listing several indicia or examples of the criteria under consideration, it is in fact limiting its discretion, since it is required to consider the factors specified which are not set out in the statute. (Exhibit 24). It argues, however that it needs the flexibility of the phrase in question since no one can forsee all of the myriad facts which may evidence integrity, financial ability or other criteria. The Commission also suggests that it cannot refuse facts evidencing financial abiltity even if it wished to do so, since the statute requires it to make a determination of, for example, financial ability. One applicant urged that the attempt by the Racing Commission to further define legally acceptable criteria through the articulation of examples, should not be found to be an attempt to expand its discretion, since it promotes the sound public policy of informing applicants of the standards against which they will be judged. (Exhibit B, p. 5). Another applicant pointed out that exclusion of information from applicants would discourage creativity in their responses and would not help to insure the best choice possible by the Commision. (Exhibit C, p. 7).

20b. The announcement of criteria which an agency will consider in granting a license should be encouraged. It must also be kept in mind that the nature

of the decision to be made under these rules differs from the revocation of a license where the presence of unstated criteria for revocation is a more serious matter of due process. Nonetheless, as the Holmes case, supra indicates, due process does require that selections among applicants be made in accordance with ascertainable standards. As drafted, the proposed rules laudably set out examples to be considered in regard to specific critera, but also as written the rules indicate that any other evidence may be considered by the Commission. Such unstated indicia may or may not relate to the criteria under consideration as the rule is written. It would permit the Commission to employ different indicia for different applicants, might encourage an arbitrary decision, and would permit an unguided discretion in the Commission.

20c. Keeping in mind the Commission's legitimate need for flexibility in this area, the defect could be corrected by deletion of the "but not limited to" language in each subsection and the inclusion in its place of a separate indicia, or example, which would read as follows:

> "Any other information directly related to integrity (or financial ability, or management ability, etc.)"

Such a change will somewhat limit the Commission's discretion, but will still provide enough flexibility to permit the Commission to accomplish its statutory goal. This is consistent with our Supreme Court's pronouncement that it is the nature of the decision and not just the promulgation of criteria that determines the permissible ambit of a governing body's decision-making authority. City of New Brighton v. Metropolitan Council, 237 N.W. 2d, 620, 625 (Minn. 1975).

21. An examination of the use of "may" in proposed rules § § 15.017, 15.034 and 15.044 compels the conclusion that its use is permitted by Minn. Stat. § 240.05 subd. 3 or that its use is in a non-quasi judicial situation where discretion on the part of the Commission is clearly appropriate.

Suggestions

22. A review of the proposed rules prompts the following suggestions. In Rule § 15.010(E)3, line 27, the word "a" could be inserted before the word "felony". A similar comment would apply to § 15.027(E)3. In Rule § 15.017 at line 10 on page 17 a colon after the word "that" would clarify the meaning of the section. A similar comment would apply to § 15.034.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. That the Minnesota Racing Commission gave proper notice of the hearing in this matter.

2. That the Minnesota Racing Commission has fulfilled the procedural requirements of Minn. Stat. § 14.14, subds. 1, 1a and 2 (1982), as amended by

Minn. Laws Ch. 210, § 4 and Ch. 301, § 64, and all other procedural requirements of law or rule, except as noted at Finding No. 7 .

3. That the Minnesota Racing Commission has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1, 14.15, subd. 3, as amended by Minn. Laws 1983, Ch. 210, § 6, and 14.50 (i) and (ii) (1982), except as noted at Findings Nos. 19 and 20.

4. That the Minnesota Racing Commission has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.14, subd. 2 and 14.50 (iii) (1982), except as noted at Finding No. 17.

5. That the amendments and additions to the proposed rules which were suggested by the Minnesota Racing Commission after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6, and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That the Hearing Examiner has suggested action to correct the defects cited in Conclusions No. 3 and 4 as noted at Findings No. 17d, 19d, and 20c.

7. That due to Conclusions No. 3 and 4, this Report has been submitted to the Chief Hearing Examiner for his approval pursuant to Minn. Stat. § 14.15, subd. 3 (1982), as amended by Minn. Laws 1983, Ch. 210, § 6.

8. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

9. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude and should not discourage the Minnesota Racing Commission from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted except where specifically otherwise noted above.

GEORGE A. BECK
State Hearing Examiner

December 30, 1983
Taped, No Transcript

RACE-84-001-GB

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts.
4 MCAR §§ 15.001-15.050

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on Thursday, December 15, 1983, at 9:00 a.m. before George A. Beck, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with the rule-making provisions of Minn. Stat. Ch. 14 (1982); and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 14.50, was issued to the Minnesota Racing Commission and;

WHEREAS, the Minnesota Racing Commission has now determined to adopt rules; and

WHEREAS, the Minnesota Racing Commission has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 14.16, 14.51, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Minnesota Racing Commission has cured the defects in the rules as required, except that the following should be noted for consideration by the Commission prior to proceeding further:

1. In the Commission's Finding of Fact Number 1, the citation to the rules should be 4 MCAR § 15.027 J instead of 4 MCAR § 15.035 J.

2. The additional language added to 4 MCAR § 15.035, as discussed at the Commission's Finding of Fact Number 2, could be construed as being contrary to the law relating to privileged documents. This rule, as stated, cannot require production of documents which are privileged. However, in order to clarify that fact, the Commission may, if it chooses, add language clarifying that fact. Adding clarifying language would not constitute a substantial change.

3. In the Chief Hearing Examiner's Order of January 4, 1984, two sections were proposed to be added to cure the defect found by use of the phrase "including, but not limited to,". In the Commission's Findings of Fact it is stated that the Chief Hearing Examiner's Findings of Fact are adopted. However, it is not clear that the discretion in the applicant to submit additional information relates to all sections, but appears to apply only to the subsections relating to competition. Again, to clarify this situation, the Commission may consider adding the new language as a separate subsection, numbering it as § 15.017 M and § 15.034 K. The clarification would not constitute a substantial change.

NOW THEREFORE, upon receipt of this Order, the Minnesota Racing Commission has the responsibility of submitting the complete hearing record and the rules as adopted by the Commission to the Attorney General and to publish in the State Register if approved by the Attorney General.

Dated: January 19th, 1984.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts
4MCAR§§15.001-15.050

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER ADOPTING RULES

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 9:00 a.m. Thursday, December 15, 1984, in Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota, after proper notice required by Minn. Stat. §§14.14 and 14.25 was served upon all persons, associations and other interested groups registered with the Minnesota Racing Commission.

This is a controversial rulemaking proceeding conducted pursuant to Minn. Stat. §§14.13-14.20 to determine whether the Commission has fulfilled all relevant substantive and procedural requirements, whether the proposed rules are needed and reasonable and whether the rules as modified are substantially different from those originally proposed.

Members of the agency panel at the hearing included Commissioner Krista Sanda; Commissioner John H. Daniels, Jr.; Robert Nardi, Special Assistant Attorney General; Judith Wehrwein, Legal Assistant, Office of Attorney General; and Robert C. Hentges,

Consultant. Approximately 15 persons attended the hearing, and 7 signed the hearing register. The hearing continued through the morning until all persons present had an opportunity to be heard. Within the five-day comment period authorized by the Hearing Examiner, three timely public comments and one comment from the agency were filed with the Office of Administrative Hearings.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard and considered all of the testimony and evidence adduced in and upon the records, files and proceedings herein and applicable statutory standards or criteria and having confirmed the need for and reasonableness of the above-captioned rules, the Commission makes the following:

FINDINGS OF FACT

The Findings of Fact of the Hearing Examiner, as supplemented by the Chief Hearing Examiner, are hereby adopted by the Commission as its own, and the Commission makes the following additional findings:

1. Addition of the language "including its proposed system of internal audit and supervisory controls" to proposed 4 MCAR§15.0~~25~~27J. will make it clear that accounting procedures for pari-mutuel betting include internal audit controls as is customary.

2. Addition of the language "D. upon request of the Commission or its agents, provide copies of any documents used in the preparation of its application" to proposed 4 MCAR§15.035 will make clear that the proposed rules require applicants to make full disclosure of information.

Based upon the foregoing Findings of Fact, the Commission makes the following:

CONCLUSIONS

1. That the Commission gave proper notice of the hearing in this matter.

2. That the Commission has fulfilled the procedural requirements of Minn. Stat. §§14.14 subds. 1, 1a and 2 and all other procedural requirements of law or rule, except as noted in the Hearing Examiner's Finding No. 7.

3. That the Commission has demonstrated its statutory authority to adopt its proposed rules and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§14.05 subd. 1, 14.15 subd. 3 and 14.50 (i) and (ii).

4. That the Commission has documented the need for and reasonableness of its proposed rules with an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§14.14 subd. 2 and 14.50 (iii).

5. That the amendments and additions to the proposed rules incorporated by the Commission do not result in rules sub-

stantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. §14.15 and 9MCAR §§2.110A. and 2.111.

6. That the rules be amended in accordance with the Findings made above.

7. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

Based upon the foregoing Findings of Fact and Conclusions, the Commission issues the following:

ORDER

IT IS HEREBY ORDERED:

That the rules identified as 4MCAR §§15.001 to 15.050 are adopted this 17th day of January, 1984, pursuant to authority vested in the Commission by law.

Dated: January 17, 1984

Ray Elliot

Chairman
Minnesota Racing Commission

CERTIFICATE OF COMMISSION'S
RESOLUTION ADOPTING RULES

I, RAY ELIOT, do hereby certify that I am a member and the Chairman of the Minnesota Racing Commission, a commission duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Racing Commission, duly and properly called and held on the 17th day of January, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "Resolved, that the rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts, 4 MCAR §§ 15.001-15.050, be and they hereby are approved and adopted, pursuant to authority vested in us by Laws 1983, Ch. 214, and that Ray Eliot, the Chairman of the Minnesota Racing Commission, be and hereby is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of January, 1984.

Ray Eliot
Chairman, Minnesota Racing Commission

Dan Gustafson
Attest by one other commission member

Exh. No. ____
File No. ____
Date ____

RECEIVED
DEC 22 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts
4MCAR§§15.001-15.050

SUPPLEMENTARY STATEMENT OF NEED AND REASONABLENESS

Proposed Rules 4MCAR§§ 15.017 and 15.034

The Minnesota Racing Commission has submitted to the hearing examiner both written and oral support for the need and reasonableness of proposed 4MCAR§§ 15.017 and 15.034. The rules set forth factors which the Commission must consider as it makes statutorily mandated determinations before issuance of a Class A or Class B license. That written support is contained in the Statement of Need and Reasonableness generally and most specifically at pages 16 and 17; oral support was submitted through the testimony of Robert C. Hentges, rulemaking consultant to the Commission at the public hearing December 15, 1984, on the above-captioned rules.

The public interest, integrity of racing, public safety, health and welfare will be best served by allowing and encouraging Class A and B license applicants to summon all possible ingenuity and creativity in preparation of horseracing proposals for Commission consideration. Such an atmosphere will maximize the liklihood that racing in Minnesota will offer the highest quality facilities, equipment, management, personnel and systems for the enjoyment of citizens. Licensee integrity and successful performance in a timely manner will be ensured. Proposed 4MCAR§§ 15.001-15.050 enable establishment of such an atmosphere.

It is necessary, however, to limit the discretion of the Commission in its decisions whether to issue Class A and B licenses. Unbridled discretion could deny due process by failure to inform license applicants of the basis of Commission decisions, deny equal protection by allowance of arbitrary decisions and violate the mandate of Minn. Stat. ch. 14 that the Commission promulgate statements of general application and future effect as rules.

Proposed rules 4MCAR§§ 15.017 and 15.034 limit the discretion of the Commission.

Minn. Stat. §§240.06 subd. 4 and 240.07 subd. 3 restrict the discretion of the Commission in license issuance only to the extent of requiring the Commission to make four determinations: That the applicant (1) will obey applicable laws and rules; (2) will not create a competitive situation which will adversely affect racing and the public interest; (3) will not adversely affect public health, welfare and safety; and (4) is financially able to operate a racetrack or, in the case of a Class B applicant, is fit to sponsor and manage racing.

Rules 15.017 and 15.034 place additional restrictions on the discretion inherent in a governmental licensing process and allowed by the statute. The rules require that the Commission consider 12, or in the case of Class B applications 10, specific factors when making the four statutorily mandated determinations. Certainly, it could not be argued that proposed 15.017 and 15.034, if they stopped at this point, would grant the Commission discretion; they restrict discretion.

Having done so, proposed 15.017 and 15.034 go on to provide applicants with an idea of the types of facts which evidence the factors specified. This serves as an aid to applicants. The listings do not grant discretion to the Commission. The Commission's discretion is limited by the mandate that it consider specified factors. The suggestion of facts which may evidence those factors does not add to, subtract from or alter in any way the factors.

No person can forsee all of the myriad facts which may evidence integrity, financial ability or the other factors the rules mandate that the Commission consider.

Morever, the Commission lacks statutory authority to limit the facts the Commission will allow as evidence of the factors. Chapter 240, for example, requires the Commission to determine whether an applicant for a Class A license is financially able to operate a racetrack. The Commission could not refuse facts evidencing financial ability even if it wished to do so. Such an action not only would lack statutory authority, but it also would violate a statutory mandate.

If the "but not limited to" language in rules 15.017 and 15.034 with reference to facts evidencing the factors the Commission must consider is found inappropriate, the Commission has two choices.

First, the Commission might delete the language and add an "other facts relating to..." item to the listing of possible

evidence for each factor. This would eliminate any offending language.

Second, the Commission might simply delete the listings. This would leave only specific determination factors in the rule. Nobody could argue that such a rule grants discretion. However, the rule would be less useful to applicants.

Proposed Rules 4MCAR §§15.035 B., 15.003E., 15.020E., 15.004 and 15.021

Proposed 4MCAR §15.035B. requires a Class A or Class B license applicant to make its "best effort" to provide all information required to be disclosed. The standard is made expressly applicable to the disclosures required by 4MCAR §§15.003E., 15.020E., 15.004 and 15.021 for purposes of clarity.

Specific written support for the "best effort" standard was submitted by the Commission at pages 19 and 20 of the Statement of Need and Reasonableness. Oral support was included in the Hentges testimony at the public hearing.

Information with regard to Class A and B license applicants and their proposals is essential if the decisions of the Commission with regard to issuance of licenses are to protect the public interest, integrity of horse racing, public safety, health and welfare. Only with sufficient information can the Commission ensure integrity, financial strength and high quality facilities, equipment, management, personnel and systems. Information is the raw material of the Commission's effort to carry out its responsibilities.

The "best effort" standard is necessary to maximize the information the Commission receives. A "reasonable," "competent" or even "diligent" effort would bring less information to the Commission. A "best effort" standard not only will provide the Commission with sufficient information, but also will result in applicants informing the Commission why they are unable to provide information required and documenting their efforts to do so.

The standard is objective and defined in the cases cited at pages 19 and 20 of the Statement of Need and Reasonableness and elsewhere in common law. The standard is at least as objective and adequately defined in common law as "reasonable," "diligent" and other standards which might be used.

Arithmetic precision is not possible, nor wise, in the human process which 4MCAR§§ 15.001-15.050 propose to regulate.

Absent an express standard, the proposed rules might well require an applicant to provide all required information if "possible" and mandate denial, revocation or suspension of a Class A or B license or imposition of a fine if an applicant fails to meet that standard. See, 4MCAR §15.043.

A "best effort" standard, thus, is more reasonable than a higher "possible" standard.

Proposed 4MCAR §§15.017, 15.034, 15.043, 15.044, 15.047

Proposed 4MCAR §§15.017 and 15.034 provide that the Commission "may" issue a Class A or Class B license after making specified determinations in consideration of listed factors. Minn. Stat. §240.05 subd. 3 provides that the Commission is not required to issue any license.

Proposed 4MCAR§15.043 provides that false or misleading information in a Class A or B license application, omission of required information or substantial deviation from representations in an application is "cause" for denial, revocation or suspension of a license or imposition of a fine. Proposed 4MCAR§15.044 provides that the Commission "may" impose a $1,000 a day penalty for delay in completion of a horseracing facility. Proposed 4MCAR §15.047 provides that the Commission "may" order Class A and B licensees to make necessary security modifications.

Minnesota and other states recognize the validity of prosecutorial discretion. These rules require it.

Exh. No. 13
File No.
Date

RECEIVED
NOV 30 1983
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts
4MCAR§§15.001-15.050

STATEMENT OF NEED AND REASONABLENESS

GENERAL

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

Minn. Stat. §§240.01-240.29 mandate or authorize the Commission to promulgate a wide variety of rules. Section 240.23 specifically authorizes the Commission to adopt rules governing any aspect of horse racing or pari-mutuel betting which in the opinion of the Commission affects the integrity of racing or the public health, welfare or safety.

Minn. Stat. §240.27 subd. 1 authorizes the Commission to exclude from racetracks persons who have been convicted of felonies, been disciplined or denied a license by a racing authority or who are threats to the integrity of horse racing. Minn. Stat. §240.27 subd. 5 authorizes a racetrack to eject or exclude any person who is a threat to racing integrity or public safety.

Minn. Stat. §240.28 subd. 2 authorizes the Commission to restrict betting by licensees to protect the integrity of racing.

The repeated statutory references to "integrity" in pari-mutuel betting and horse racing, the "public interest" and "public health, welfare or safety" reflect a legislative intent

and public sentiment that the Commission act to ensure the financial strength and good character of Class A licensees who construct, own and operate horseracing facilities and Class B licensees who sponsor and manage races as well as the high quality of facilities, personnel and systems for humans and animals.

The Commission intends to meet its responsibility.

The Commission believes proposed rules 15.001-15.050 are necessary to the integrity of pari-mutuel betting and horse racing in Minnesota, to the public interest and to public safety, health and welfare. The Commission submits that the rules are necessary to ensure that Class A and B licensees are financially strong, possess good character and will construct, own, operate, sponsor and manage facilities, equipment, personnel and systems adequate to safe, healthful, enjoyable, comfortable and honest pari-mutuel betting and horse racing which is successful financially and as a matter of sport and recreation. The Commission further submits that the proposed rules must be promulgated in order that an applicant for a Class A or B license may know the nature of the business it seeks to enter, the application procedure and criteria for issuance of licenses. The rules are necessary, therefore, to intelligent application for Class A and B licenses.

The Commission believes the proposed rules are reasonable, because they are customary in pari-mutuel betting, horse racing and other industries. The burdens are not undue. Compliance has been obtained in other jurisdictions, while successful entrance into and participation in the industries has not been deterred. A Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Pari-mutuel Horse Racing in Minnesota was published in the State Register on September 12, 1983. 8S.R.482. The Commission also noticed at that time two Public Meetings to Hear Statements of Information and Comment Prior to Drafting of Rules. 8S.R.48 The Commission retained a rulemaking consultant on September 28, 1983. The consultant in writing directly solicited rules recommendations and obtained copies of pari-mutuel betting and horseracing statutes, rules, uniform rules, standards, policies, forms and procedures from governmental regulators throughout the United States and Canada as well as individuals and organizations participating in the horse and racing industries in Minnesota and the nation. The Commission and its Rules Committee have invited potential Class A and B license applicants and other interested individuals to participate in ruledrafting work sessions and to make comments at any time.

Many regulators, private individuals and organizations have made significant contributions to the substance and form of the rules now proposed.

CLASS A AND B LICENSES

Minn. Stat. §240.05 subd. 3 clearly expresses a legislative intent that the Commission is not required to issue any license. Minn. Stat. §§240.06 subd. 4 and 240.07 subd. 3 provide that the Commission may issue Class A or B license if it determines that the applicant will act in accordance with all applicable laws and rules and will not adversely affect public health, welfare and safety and that the license will not create a competitive situation which will adversely affect racing and the public interest. Section 240.06 subd. 4 requires the Commission to determine that a Class A applicant is financially able to operate a racetrack, and section 240.07 subd. 3 requires a determination that a Class B applicant is fit to sponsor and manage racing.

Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 provide further evidence that the Legislature intends the Commission to require complete disclosure of participants in applications for Class A and B licenses, ensure the financial strength and good character of the applicants and require pari-mutuel and horseracing facilities, equipment, management, personnel and systems of high quality.

First, the subdivisions require disclosure of an applicant and all its officers, directors and shareholders as well as those of any holding companies. Moreover, the subdivisions permit the Commission to require disclosure of persons holding direct, indirect or beneficial interests of any kind in the applicant or a holding company, whether the interest is financial, administrative, policymaking or supervisory.

Second, the subdivisions mandate statements of the assets and liabilities of applicants. Section 240.07 subd. 1 further requires a $500,000 bond from Class B applicants conditioned on payment of fees, taxes, purses, pari-mutuel payouts and other money due.

Third, the subdivisions require applicants for Class A and B licenses to submit affidavits setting forth that no officer, director or other person with a present or future direct or indirect financial or management interest in the applicant is in financial default to the state, has been convicted of or is charged with a felony, is connected with an illegal business, has been found guilty of fraud or misrepresentation in connection with racing or breeding, has been found guilty of a serious violation of a horseracing, pari-mutuel betting or other gambling

law or rule or has knowingly violated a Minnesota racing law or rule.

Fourth, section 240.06 subd. 1 requires Class A applicants to submit detailed plans and specifications of an applicant's track, buildings, fences and other improvements.

Two other provisions offer especially strong evidence of legislative intent that the Commission focus on the financial strength and character of Class A and B license applicants. Minn. Stat. §§240.06 subd. 3 and 240.07 subd. 2 mandate a comprehensive background and financial investigation of applicants for Class A and B licenses and sources of financing. The investigation must be conducted by the Commission or the Minnesota Department of Public Safety Bureau of Criminal Apprehension. Access is afforded the Commission to all criminal history information which the Bureau of Criminal Apprehension compiles on applicants and licensees.

Minn. Stat. §§240.06 subd. 6 and 240.07 subd. 5 further evidence the concern of the Legislature over full disclosure of participants in Class A and B applicants and licensees as well as the financial strength and character of the participants. The subdivisions mandate disclosure of changes in directors, officers or other persons with a direct or indirect financial or management interest and changes in ownership of more than 5 percent of shares. The subdivisions also require submission of the Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 affidavit regarding finances and character.

Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 7 provide for revocation or suspension for one year of Class A and B licenses for violation of a law, order or rule which the Commission believes adversely affects the integrity of horse racing in Minnesota and indefinite suspension of a license if the Commission believes an officer, director, shareholder or other person with a direct, indirect or beneficial interest is inimical to horse racing or if the person's financial strength or character cannot be certified in the affidavit required by Minn. Stat. §240.06 subd. 1 or 240.07 subd. 1.

Minn. Stat. §240.27 provides that the Commission and representatives may inspect a licensee's premises, books and records at any time to ensure financial strength, integrity and high quality of facilities, equipment, management, personnel and systems.

The Commission submits that these statutes render the proposed rules 15.001-15.050 necessary.

CLASS A LICENSE APPLICATIONS

4MCAR§15.001 requires identification of an applicant for a Class A license. It is necessary that the Commission know who is applying for a license. The name, address and telephone number of the applicant is basic and minimum identification data as is the name, position, address, telephone number and authorized signature of an individual to whom the Commission may make inquiry. Therefore, the proposed rule is reasonable.

Subsection A. identifies the license sought.

Subsection B. ensures that the affiant is authorized to speak for the applicant.

Subsection C. is necessary to make clear that a Class A license is a privilege, not a right, and that the burden of proving qualifications for a license is on the applicant. The subsection obtains the applicant's recognition of and agreement with those legal principles.

Subsections D. and E. are necessary to protect the state of Minnesota, its employees, Commission members, staff and agents from attempts to prevent inquiry into the finances, character or other qualifications of applicants or impose liability on the state, officials, employees and agents for embarrassment or other harm which may result from application for a license. Subsection E. requires applicants to accept the risk of harm and expressly waive any claim.

Subsection F. requires affiants to represent the truth of the contents of applications. It is necessary to make the applicant accountable for the contents of the application.

Subsection G. is necessary to obtain applicants' recognition of and agreement with possible sanctions pursuant to Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 7 and proposed 4MCAR§15.043.

Subsection H. is necessary to provide a basis in contract law to compel applicants' compliance with Minn. Stat. ch. 240 and existing and future rules of the Commission.

Subsections I. and J. are necessary to identify the affiant and date the affidavit.

4MCAR§15.002 requires an affidavit of the applicant. The proposed rule reflects the mandate of Minn. Stat. §§240.06 subd. 1 and 240.07 subd. 1 that application for Class A and B licenses be made on forms the Commission prescribes.

The requirement that the chief executive officer or a major financial participant in an applicant for a Class A license serve as affiant is necessary for at least four reasons. First, an individual significant in the ownership or operation of the applicant can most appropriately bind it. Second, such an individual is most knowledgable regarding the applicant and the truth of the contents of the application. Third, he or she will be most harmed by denial, revocation or suspension of a license or imposition of a fine and, as a result, has the greatest incentive toward submission of a complete and accurate application and compliance with its representations. Fourth, the chief executive officer or a major financial participant possesses ability to obtain completeness, accuracy and compliance.

The proposed rule places no undue burden on applicants. It is customary in pari-mutuel betting and horse racing and has been used successfully in other jurisdictions. Therefore, it is reasonable.

4MCAR§§15.003 requires disclosure of the ownership and control of Class A license applicants.

Subsection A. provides for identification of the type of organizational structure of an applicant. The Commission needs this information in order to determine what ownership and control data is required.

Subsections B., C. and D. set forth information required in applications by individuals, corporations and other organizations, respectively, with regard to ownership and control. Subsection E. provides that all individuals with ownership or voting interests in an applicant be disclosed. Subsection F. requires disclosure of control of the applicant other than through ownership or voting interests. Subsection G. requires disclosure of any agreements or understandings an applicant has entered into regarding ownership or control, subsection H. requires disclosure of persons receiving compensation from the applicant and subsection I. requires disclosure of an applicant, director, officer, other policymaker or owner or controller of 5 percent or more of an applicant who holds or has held a license or permit to own and operate a horseracing facility or conduct racing or gambling.

Many provisions of Minn. Stat. ch. 240 identified and explained above necessitate complete disclosure of who owns or controls Class A license applicants.

The Commission cannot assess the financial strength or character of applicants without knowledge of all persons who own or control the applicants. Financial strength and good character

are essential to the integrity of horseracing and protection of the public interest. They are necessary to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

Chapter 240 requires financial statements and affidavits setting forth that holders of financial and management interests are of good character and mandates an investigation to ensure financial strength and good character. The statute also requires a determination that an applicant is financially able to operate a racetrack. Revocation or suspension of a license is statutorily authorized for violations which affect the integrity of horse racing as well as suspension of persons with an interest in an applicant who are inimical to horse racing or are not financially strong and of good character.

Chapter 240 requires disclosure of persons with any interest in an applicant. Changes in interest also must be disclosed.

This proposed rule, therefore, provides for necessary disclosure of ownership and control.

Securities documents and tax returns are especially important to an understanding of the ownership and control of applicants.

The proposed rule is reasonable for at least two reasons. First, applicants already compile much of the required information for other purposes; indeed, a great deal of it is public. Second, the required ownership and control disclosures are customary and obtained in pari-mutuel betting, horse racing, cable television and other industries in Minnesota and elsewhere. The disclosure requirements have not impeded entrance into and participation in industry.

No undue burden is imposed.

4MCAR§15.004 requires disclosure of character information relating to persons with ownership or control interests in applicants or with management responsibility.

Subsection A. requires disclosure of charges of crimes involving fraud, money, other property or interference with justice. Subsection B. requires disclose of involvement in civil proceedings relating to business practices; subsection C. involvement in disputes over business licenses; subsection D. proceedings over horseracing, gambling, alleged unfair labor practices or discrimination; subsection E. actions against a regulator of horse racing or gambling; subsection F. bankruptcy; subsection G. failure to satisfy a judgment, decree or order; and

subsection H. delinquency in filing a tax report or remitting a tax.

Good character of applicants is necessary to the integrity of horse racing and protection of the public interest. It is essential to public safety, health and welfare and to ensure that applicants will comply with laws and rules.

The statute specifically requires affidavits setting forth that holders of financial and management interests are of good character of mandates an investigation to ensure good character. Revocation or suspension is statutorily authorized for violations which affect the integrity of racing as well as suspension of persons with an interest in an applicant who are iminical to horse racing or are not of good character.

Minn. Stat. §§240.06 subd. 1 and 140.07 subd. 1 mandate that applicants submit affirmative action plans. These provisions evidence legislative concern over human rights in pari-mutual betting and horse racing. The concern is reflected in the requirement of subsection D. for disclosure of accusations of discrimination.

The proposed rule provides for disclosure of information necessary to determine character.

It is reasonable for at least three reasons. First, the rule is narrowly focused on character evidence relevant to pari-mutuel betting and horse racing. It requires disclose of incidents involving fraud, dishonesty, financial actions, handling of money and other property, business and labor practices, discrimination, bankruptcy, horse racing, taxes, gambling and compliance with laws and rules. These are all relevant to operation of a racetrack.

Second, the proposed rule expressly requires only the best effort of an applicant to disclose. It recognizes that in the case of a large publicly held corporation, for example, an applicant may not be able to provide all the requested information.

Third, the rule is customary in horse racing, pari-mutuel betting, cable television and other industries. The information is obtained successfully, and entrance into and participation in industries has not been impeded.

It imposes no undue burden.

4MCAR§15.005 requires disclosure of improvements and equipment at horseracing facilities. The Commission must know what an applicant proposes in order to determine whether the

integrity of horse racing, public interest and safety, health and welfare will be well served.

The requested information is necessary so that the Commission can determine whether pari-mutuel betting and horse racing at the facility will be safe, healthful, comfortable, enjoyable, honest and successful financially and as a matter of sport and recreation.

The statute specifically requires submission of detailed plans and specifications of the track, buildings, fences and other improvements.

Subsection A. requires a description of the location of the facility; subsection B. a site map showing nearby roads; subsection C. identification of types of racing proposed; D. description of the racetrack; E. stabling; F. grandstand; G. detention barn and walking ring; H. paddock; I. jockey and driver quarters; J. pari-mutuel tote; K. parking; L. perimeter fence; M. other security improvements and equipment; N. starting, timing, photo finish and photo-patrol or video equipment; O. Commission work areas; and P. public transportation.

Minn. Stat. §240.06 subd. 8 requires a horseracing facility to include work areas for Commission members, officers, employees and agents. Subsection O. reflects that requirement.

The proposed rule is reasonable. It requests information concerning only racetrack improvements and equipment which an applicant will typically provide. The disclosures are customary in pari-mutuel betting and horse racing and are obtained successfully in other jurisdictions without impediment to applicants. It imposes no undue burden.

The rule recognizes equipment providers may not be known at the time of application and requires their identification only "if known" in subsections J., M. and N.

4MCAR§16.006 requires disclosure of an applicant's development plan.

The information is necessary to a Commission finding whether an applicant and application are financially sound. Will the applicant be able to do what it says it will on the timetable the applicant proposes?

The information also is necessary to a finding with regard to the quality of the proposed facility. Is it feasible for the applicant to provide the quality of facilities and equipment it proposes on the schedule it sets forth?

The information is necessary to findings in relation to the scope and scale of the project, its dollar value and resulting effects on the community.

These findings are necessary, in turn, to the statutorily required Commission determinations with regard to the integrity of horse racing, public interest, safety, health, welfare and the financial ability of the applicant.

Subsection A. requires disclosure of the total cost of the facility, distinguishing between fixed and estimated costs. Subsection B. requires a breakdown of fixed and estimated costs, subsection C. documentation of fixed costs, D. a development timetable, E. schematic drawings, F. copies of any contracts and performance bonds relating to design and construction professionals and G. information on the status of site acquisition.

Timely completion of a pari-mutuel and horseracing facility in the Twin Cities area is essential to the public interest, integrity of horse racing and public health, safety and welfare for several reasons. Among them are first that, in view of the strong support of pari-mutuel betting and horse racing in the 1982 state election, it is important that the employment, public revenues, sport and entertainment provided by the facility become available as soon as possible. Second, a long license application and issuance process will be fertile ground for improper attempts to influence the Commission.

Third, at present several strong potential applicants are interested in the Twin Cities license. The strong potential applicants and competition maximize the liklihood of a successful facility. Predicted interest rate increases, loss of investor, lender and other commitments or other causes may eliminate strong potential applicants and weaken competition.

The Governor and Commission hope a Twin Cities facility will commence operation in 1985.

The disclosure required by subsection D. of a facility completion date will provide the Commission with information it needs to determine whether an applicant's facility will be completed in a timely fashion.

The rule is reasonable for several reasons. It places no undue burden on applicants, because applicants will prepare the requested information for prospective lenders and others in any event. The rule specifically recognizes applicants may not have design and construction professionals under contract at the time of application nor performance bonds in place; the rule requests copies of "any" contracts or bonds.

The rule requests schematic drawings. Chapter 240 mandates that detailed plans and specifications of the track, buildings, fences and other improvements accompany an application for a Class A license. Schematic drawings and text will cost an applicant approximately 15 percent of total design fees and will convey the scale and relationship of components of the facility, size of rooms, placement of doors and so forth. The drawings will not provide elevations, information on construction materials, description of mechanical systems and other data. A requirement of drawings sufficient to commence construction would cost applicants approximately 75 percent of design fees for what could be a $35 to $40 million project. The requirement of schematic drawings is reasonable.

4MCAR§15.007 requires disclosure of financial resources.

Subsection A. requires an audited financial statement, subsection B. disclosure of the sources and certainty of equity and debt financing and subsection C. a description of sources of additional funds if needed.

The statute expresses the clear legislative intent that the Commission act to protect the integrity of horse racing, public interest, safety, health and welfare. The statute specifically requires the Commission determine that an applicant will comply with all applicable laws and rules. It mandates that the Commission determine whether an applicant is financially able to own and operate a racetrack and requires a statement of the applicant's assets and liabilities. It requires a comprehensive financial investigation of applicants and sources of financing.

These statutory requirements render the proposed rule necessary.

An audited financial statement is necessary to ensure the reliability of the statement.

Financial strength is important not only at the time of application, but beyond. The Commission is greatly concerned over the financial "staying power" of applicants. Will an applicant be able to survive adversity if it occurs? The disclosure of sources of possible additional funds as mandated by subsection C. is necessary to the Commission's conclusion with regard to "staying power."

The rule is reasonable. It places no undue burden on applicants, because they must prepare the information for prospective lenders and others in any event. The rule is customary and successful in pari-mutuel betting, horse racing, cable television and similar industries.

4MCAR§15.008 requires disclosure of an applicant's financial plan.

Subsection A. requires disclosure of financial projections for the development period and first five years of racing. An applicant must base projections separately on the number of racing days and types of pari-mutuel betting the applicant requires to break even and an optinum number of days and betting. The Commission does not commit itself to assignment of racing days or designation of permissible types of betting. The subsection requires disclosure of the assumptions on which projections are based and support for the assumptions, profit and loss projections, cash projections and projected balance sheets. Subsection B. requires an accountant's review report of the financial projections.

The proposed rule relating to financial strength is necessary for the same reasons 4MCAR§15.007 is necessary. The accountant's review report is necessary to ensure the accuracy of projections.

The development period and first five years of racing is the period over which the financial viability of the applicant most likely will be determined.

The rule is reasonable. It imposes no undue burden, because a financial plan is required of applicants by prospective lenders and others. The elements of the plan are typical. The rule is customary in pari-mutuel, horse raging, cable television and other industries. It has been applied successfully.

4MCAR§15.009 requires disclosure of compliance with law and the status of governmental actions required or caused by applicants' proposed facilities.

Subsection A. requires disclosure of the status of government actions to make road improvements a facility will necessitate, and subsection B. disclosure of the status of public utility improvements. Subsections C. and D. request information regarding the status of required governmental approvals of the facility. Subsections E. and F. seek the status of environmental review. Subsection G. requires disclosure of compliance with laws governing the facility.

The integrity of racing, public interest, health, safety and welfare render the rule necessary. Laws which provide for road and utility improvements, require governmental approvals or otherwise apply to a racetrack serve to protect the integrity of horse racing, public interest, health, safety and welfare. Compliance with those laws, necessary approvals and other government actions ensure that protection.

The rule is necessary to provide the Commission with information it requires to conclude that an applicant will be able to develop and operate a facility successfully in the manner and when it proposes to do so.

Further, chapter 240 mandates that the Commission determine whether an applicant will comply with applicable laws. The rule is necessary to provide the Commission with information it needs to make that determination.

The proposed rule is reasonable. It imposes no undue burden. It requires only disclosure of the status of compliance, approvals and actions otherwise required.

4MCAR§15.010 requires disclosure of the management of applicants' facilities.

Subsection A. requires disclosure of an applicant's management plan, subsection B. disclosure of managers and their qualifications, subsection C. contractors who provide management services and their qualifications and D. memberships in horseracing organizations. Subsections E. through J. require disclosure of the applicant's plans for security; human and animal health and safety; marketing, promotion and advertising; concessions; training of personnel; and discrimination, equal employment and affirmative action.

The integrity of horse racing, public interest, health, safety and welfare are dependent upon the financial, sports and recreational success of an applicant. The proposed rule will provide the Commission with information it needs to determine whether an applicant will be successful. Nothing is more important than competent and honest management to the success of a horseracing facility.

Chapter 240 specifically authorizes the Commission to exclude from racetracks persons who have been convicted of felonies, been disciplined or denied a license by a racing authority or are threats to the integrity of racing. The statute also authorizes a Class B licensee to eject or exclude from its premises any person who is a threat to the integrity of racing or public safety. The proposed rule requires disclosure pursuant to subsection E.3. of security measures which enable the Commission and the racetrack to detect such persons.

Several problems have arisen in pari-mutuel betting and horse racing with regard to concessions. The disclosure required by subsection H. is necessary to enable the Commission to determine the quality of the concessions, financial arrangements and the character of the operators.

The statute requires submission of affirmative action plans by applicants. Subsection J. implements the statutory provisions.

The proposed rule is reasonable. It requires disclosure only of management plans, personnel and systems relevant to pari-mutuel betting and horse racing. The rule imposes no undue burden, because the requested disclosures are of information applicants will obtain and prepare in any event to plan operation of its racetrack, determine and support economic feasibility, hire personnel and for other purposes. The disclosures are customary in pari-mutuel betting and horse racing and required successfully elsewhere.

The rule recognizes through use of the phrase "to the extent known" in C. and H. that an applicant may not have entered into agreements with management consultants or concessionaries at the time of application. Use of "any" in reference to management consultant contracts in C.5. recognizes the same reality. The use of "to the extent known" and "any" is further evidence of the reasonableness of the rule.

4MCAR§§15011-15.014 require disclosure of effects of applicants' horseracing facilities on the community. Rule 15.011 requests an applicant's plans to promote horse racing and to educate the public with regard to racing and pari-mutuel betting. Rule 15.012 requests information with regard to economic impact, including employment, purchases, public and private investment and tax revenues; ecological impact; energy conservation and alternative energy sources; and social impact. Rule 15.013 requires disclosure of support and opposition, and rule 15.014 effects on competitors in the horseracing industry.

The disclosures required by the proposed rules are necessary to the Commission is mandated determinations with regard to the public interest, integrity of horse racing, public health, safety and welfare.

The Legislature further indicated its intention that the Commission consider these public impact issues when legislators required in Minn. Stat. §240.06 subd. 2 that the Commission, prior to issuance of a Class A license, conduct a public hearing and request comments from the affected local government and regional commission. Minn. Stat. §240.06 subd. 5 prohibits issuance of a Class A license to operate a racetrack where barred by local zoning ordinance.

The Commission believes it is very important to the public interest that commissioners consider what an applicant will do for or to the community as the Commission decides whether to issue a license which will benefit the applicant.

Effects on the community are especially important in the case of the Twin Cities area horseracing facility, because subdivision 5 of section 240.06 allows only a single Twin Cities racetrack. The statute creates a situation of economic advantage for Class A and B licensees in the Twin Cities.

Economic benefits from pari-mutuel betting and horse racing in the forms of employment, purchases, investment and taxes were focuses of the public debate over racing which preceded its legalization in Minnesota.

Proposed rule 15.014 reflects the requirement of the statute that the Commission determine issuance of a Class A or B license will not create a competitive situation which will adversely affect racing and the public interest.

Proposed rules 15.011-15.014 are reasonable. The rules do not require any substantive action by an applicant; they simply require reporting of actions taken for other reasons and the impacts of the actions. The rules require disclosures of information which an applicant will compile in any event for its own planning, promotion and defense of its horseracing proposal, responses to inquiries, compliance with environmental review laws and other purposes.

The rules impose no undue burden.

4MCAR§15.015 requires disclosure of persons who assist with preparation of applications. The rule is necessary so that the Commission can judge the reliability of the application and make inquiry. It is reasonable because it imposes no undue burden.

4MCAR§15.016 requires identification of and authorization and waiver of claims for release and use of data on applicants; partners, directors, officers or other policymakers of an applicant; holders of 5 percent ownership or control interests in applicant; and management personnel or consultants.

The identification requested includes full name, business and residence addresses and telephone numbers, last five residences, birthdate, place of birth, Social Security number if an individual is willing to provide it and two references.

The authorization and waiver asks an individual to approve release of information, recognize the potential use of the date and release suppliers and users of the data from liability.

The statute mandates that the Commission conduct, or request the Bureau of Criminal Apprehension to conduct, a compre-

hensive background and financial investigation of the applicant and sources of financing. The Commission has access to criminal histories compiled by the Crime Bureau.

The Crime Bureau in its expertise and experience has informed the Commission that a full name, current addresses, telephone numbers, last five residence addresses, date and place of birth, Social Security number and two references are important to the success of a comprehensive personal and financial investigation. Federal law allows requests, but prohibits demands, for Social Security numbers.

Chapter 240 requires applications be on forms prescribed by the Commission. The rule's requirement to that effect reflects the statute.

The rule is reasonable because it embodies the customary content and procedure of Crime Bureau authorizations and waivers. Those authorizations and waivers have been used successfully for many years in Minnesota investigations.

The rule does not require identification of and authorization and waiver by all individuals disclosed as having ownership, control or management interests pursuant to proposed rules 15.003 and 15.010 B. and C. and concerning whom character information is requested pursuant to 15.004. Proposed rule 15.016 does not apply to a disclosed individual who is not a policymaker or manager unless the person owns or controls at least 5 percent of the applicant.

It would be impractical to obtain detailed identifications, authorizations and waivers from perhaps thousands of individuals with some ownership or control interest in an applicant. An exhaustive investigation of thousands by the Commission or Crime Bureau likewise would be impractical. The rule does not require it and, as a result, is reasonable.

Minnesota law protects the non-public nature of certain proprietary and security data.

The rule does not impose an undue burden.

4MCAR§15.017 sets forth factors the Commission must consider as it makes the statutorily mandated determinations regarding the issuance of a Class A license.

Consideration of the factors in the rule is necessary to the statutory determinations for the reasons specified above in this Statement.

Criteria also are necessary so that the Commission's decision whether to issue Class A license will not deny due

process by failing to inform applicants of the bases of decision, deny equal protection by allowing arbitrary decisions or violate the mandate of Minn. Stat. ch. 14 that the Commission promulgate statements of statewide application and future effect as rules.

The proposed rule is reasonable because the criteria are relevant to determinations which the statute mandates the Commission to make. The rule imposes no new burden on applicants; it simply utilizes the information disclosed pursuant to proposed rules 15.001-15.016. It ignores none of the data requested.

4MCAR§§15.018-15.034 provide for the contents of applications for Class B licenses to sponsor and manage horse racing as well as criteria for the Commission's decisions whether to issue Class B licenses.

The provisions of the proposed rules are similar to rules 15.001-15.017 with five exceptions.

First, the proposed Class B rules do not include a rule similar to 15.006 providing for disclosure of applicants' development plans. Class B applicants will not construct pari-mutuel and horseracing facilities; they will conduct races.

Second, rule 15.023 requires disclosure by a Class B applicant of the terms and conditions of the agreement authorizing the applicant to use a pari-mutuel and horseracing facility. Does the applicant have a facility at which it can conduct races?

The rule is conceptually similar to rule 15.006 G. requiring disclosure by a Class A applicant of the status of acquisition or lease of a site for its racetrack. Does the applicant have a place to construct and own a facility?

Third, rule 15.026 requires disclosure of compliance with laws and the status of necessary government approvals. The rule does not include the provisions of comparable Class A rule 15.009 requesting disclosure of the status of governmental actions with regard to road and public utility improvements and the status of environmental review. Those provisions apply only to construction of a facility as a practical matter.

Fourth, proposed rule 15.027 requires disclosure of Class B applicants' management plans. The rule does not include the request of comparable Class A rule 15.010 for disclosure of the real estate and construction experience of managers, because managers of Class B licensees do not deal with those issues.

Rule 15.027 H. does require disclosure of applicants' plans for the conduct of racing, I. requires disclosure of plans for purses and J. plans for pari-mutuel betting; Class A rule 15.010 does not require these disclosures. Class B licensees are, while Class A licensees are not, responsible for these activities.

Fifth, rule 15.029 requires disclosure of the impact of Class B applicants' proposed activities on the community. It does not include the requests of comparable Class A rule 15.012 for disclosure of investment caused by an applicant, energy conservation or alternative energy sources, ecological impact or social effects.

Developers and owners of racetracks may cause those impacts on the community; conductors of horse races will not.

The commission's hopes and concerns with regard to Class A and B licensees are similar. Chapter 240 sets forth the same requirements and restrictions for Class A as it does for Class B license applications with three minor exceptions.

First, the statute requires the Commission to determine a Class A applicant is financially able to operate a racetrack, while the statute requires a Class B applicant to be fit to conduct horse races. The Commission construes fitness to include at least financial strength, good character and high quality facilities equipment, management, personnel and systems. These are important factors in Class A licensing as well.

Second, chapter 240 indicates a legislative concern over the effects of pari-mutuel betting and horse racing on the community by requiring public hearings, consultation with local and regional governments and compliance with zoning ordinances before Class A licenses are issued. The statute requires public hearings before issuance of Class B licenses.

Third, the statute requires Class A licensees to provide work areas for the Commission in the racetrack facilities. It does not require Class B licensees to do so.

The support specified above for the need and reasonableness of Class A rules supports the Class B rules as well. The support for Class A development plan rule 15.006 supports Class B facility use authorization rule 15.023.

It is necessary for rule 15.022 to require disclosure of racetrack facilities and equipment by Class B applicants even though Class A applicants do so. Minn. Stat. §240.06 subd. 4 provides that a Class A license remains in effect until revoked, suspended or relinquished. Minn. Stat. §240.07 subd. 7 provides a Class B license is valid for one year. Further, a Class B

license may be sought initially for a horseracing facility some time after a Class A license is sought. The result is that if the Commission is to update its knowledge of the facilities and equipment at a racetrack after issuance of a Class A license, it must look to the Class B licensee for that information.

It is customary for pari-mutuel and horseracing regulators to require disclosure of facilities and equipment by conductors of races annually.

A variety of difference relationships are possible between Class A and B licensees at a track. Indeed, Minn. Stat. §240.07 subd. 7 recognizes an entity may hold both a Class A and a Class B license. Thus, it is reasonable that the rules ask Class A and B applicants for the same information relating to facilities and equipment, management and financial plans and other issues. Each will respond as applicable depending upon whether the Class A or B licensee is responsible for a particular improvement or activity. For example, a Class A or B licensee may be responsible for or operate concessions. The financial plan of a Class A applicant may include rent received pursuant to lease, while a Class B applicant's financial plan may include paid.

4MCAR§§15.035-15.043 provide procedures for application and issuance of Class A and B licenses.

Proposed rule 15.035 A. requires Class A and B applicants to submit disclosures in printed or typewritten form on 8½ by 11 inch paper and photographs of three-dimensional exhibits. The requirement is necessary so that Commission members and representatives as well as the public can review an application easily. It also aids comparison of applications and discourages submission of irrelevant information. It imposes no undue burden.

Subsection A. also requires identifying headings in disclosures and numbered or lettered attachments and exhibits. This is necessary so that commissioners and representatives can understand applications. The subsection imposes no undue burden.

Rule 15.035B. requires an applicant to make its best effort to provide all information requested by applicable questions.

"Best effort" is active effort in good faith. Western Geophysical Co. v. Bolt Associates, 584 F. 2d 1164, 1171 (2d Cir. 1978). It is more than mere competence or due diligence. InreHeard, 6 B.R. 876,884 (Bkrtcy. W.D.Ky. 1980). "Best effort" takes its meaning from circumstances, with consideration of the

capabilities, abilities and opportunities of the maker. Bloor v. Falstaff Brewing Co., 454 F. Supp. 258, 266 (S.D.N.Y. 1978).

The Commission must protect the public interest, integrity of racing, public health, safety and welfare. Financial strength, good character and high quality of facilities, equipment, management, personnel and systems are especially important. Information with regard to applicants and proposals is essential to the Commission in carrying out its responsibility. In view of that, the Commission must set a high standard for efforts of applicants to provide requested information.

The requirement of best effort is reasonable, because it imposes no substantive requirement; it mandates no additional facility, equipment, management, personnel or system at a racetrack. Further, subsection B. recognizes an applicant may be unable realistically to gather and provide some information which is requested. A publicly held applicant, for example, may not be able to determine to a certainty without great difficulty whether any of its thousands of shareholders have filed for bankruptcy. The subsection does not demand the impossible.

Rule 15.035 C. requires an applicant to submit only relevant information. This is necessary to keep the workload of the Commission and its representatives to review applications manageable. It also encourages focus by the Commission and representatives on determinations the Commission must make and factors it must consider. The subsection aids comparison of applications.

Subsection C. imposes no burden.

Rule 15.036 requires that all application materials be assembled as a single package. This is necessary to prevent a Commission member or representative from overlooking an element of an application.

The rule also requires an original and 20 copies of applications. This is necessary so that the Commission, its representatives and the public, all of whom must or have a right to inspect and review applications, have access to the documents.

The rule does not impose an undue burden.

Rule 15.037 requires a Class A or B license applicant to submit $10,000 at the time of application to cover the costs of investigation.

Chapter 240 requires a comprehensive personal and financial investigation by the Commission or Crime Bureau of applicants and sources of financing. Access to criminal

histories is provided. The statute authorizes the Commission to charge applicants fees to cover investigation costs.

The Crime Bureau estimates a typical investigation will cost approximately $10,000. Neither the Commission nor the Crime Bureau can absorb the costs of investigation through existing appropriations.

Pre-investigation submission of the fee is necessary to ensure payment.

The rule is reasonable. Provision is made for prompt refund of any portion of the $10,000 which is not used to cover the cost of an investigation. Payment by certified check or bank draft, common forms of payment readily obtainable, is permitted. Provision for a billing investigation costs in excess of $10,000 shows that $10,000 is not a figure selected to cover the most costly investigations. Only a single fee is required of entities applying for Class A and B licenses at the same time.

An applicant unable to submit $10,000 is not likely to possess the financial strength to operate a racetrack or conduct horse races successfully.

Rule 15.038 requires the Commission to designate an individual to clarify Class A and B license application requirements upon request of potential applicants. The rule is necessary to provide for clarifications in a timely manner and to ensure consistent construction of requirements.

The rule imposes no burden outside the Commission.

Rule 15.039 prohibits Commission consideration of substantive amendments to applications after submission.

This is necessary to prevent a "bidding war" among competing applicants after submission of applications. Applicants would be tempted in such struggles to promise more than feasible in order to win a license. "Bidding wars" could lead to issuance of a license to an applicant who was unable to operate a horse-racing facility or conduct races successfully. That would not well serve the public interest, integrity of racing, public safety, health or welfare.

The application process also needs finality at some point.

Any provision for error correction could lead to attempts to place substantive amendments before the Commission under claim of error in application. The uncertainty, expense and delay of litigation most certainly would follow. Thus, the rule is reasonable.

A ban on substantive amendments to applications after submission has been imposed successfully in the cable television industry. Provision has been made unsuccessfully for error correction.

Rule 15.040 establishes application deadlines. Subsection A. requires submission of applications for the single Class A license in the Twin Cities area within 14 days after the rules become effective.

Opening of the Twin Cities pari-mutual and horseracing facility in 1985 is necessary for the reasons specified above in support of the need for rule 15.006. If a racetrack is to be open in 1985, it must be open by July 1 to allow at least a minimum of racing for the year. Practice and testing of the facility require completion by June 1. Construction will consume at least 14 months, which means issuance of a license and commencement of construction no later than April 1, 1984. Good fortune will be needed for these rules to become effective as early as March 1. That leaves two weeks for submission of applications if two weeks are to remain for Commission review and decision.

The 14 days for applications is reasonable.

Minnesota voters approved pari-mutuel betting and horseracing more than a year ago in early November 1982, and chapter 240 was enacted last spring. Work of the Commission on these rules began in August. Draft rules and reports on the progress of rulemaking have been sent to all known potential applicants for a Class A license in the Twin Cities area throughout the course of drafting proposed rules. Several potential applicants have participated in work sessions of the Commission Rules Committee and meetings of the full Commission regarding rules since at least early October. The Commission proposed these rules on November 5, and they were published in the State Register November 14. The Minnesota Administrative Procedures Act prohibits substantial change in the proposed rules without additional proceedings, so significant change is highly unlikely.

The content of additional rules which the Commission will propose in coming months to implement chapter 240 with regard to details of facilities, equipment, management, personnel and systems regulation as well as the actual conduct of races are predictable. Rules of New Jersey, Michigan, Illinois, Florida, California, Kentucky and other states are commonly looked to for guidance on these issues. States with pari-mutuel betting and horse racing already have rules in place, and the rules vary little from state to state. The National Association of Racing Commissioners has promulgated uniform rules which are followed.

Thoroughbred, standardbred and other organizations have established standards for various aspects of horse racing. Races will not be recognized and supported unless the standards are met.

As a result, potential applicants as a practical matter have known since early November at the latest all the "rules of the game" for Class A license applications and the nature of the business potential applicants may seek to enter. Indeed, some potential applicants are well along in preparation of applications.

Proposed Rule 15.038A. also establishes January 15, 1984, as the earliest deadline possible for submission of applications for the Twin Cities Class A license. This ensures a minimum time for preparation of a license application and supports the reasonableness of the subsection.

Subsection A. also requires sealed applications. Support of the need for this provision has been specified above with regard to prohibition of substantive amendments in rule 15.039. A "bidding war" must be prevented. The requirement of sealed applications imposes no burden.

Rule 15.040 B. provides that a deadline will be set for submission of applications for Class A licenses outside the Twin Cities area only if two or more proposed racetracks proposed would complete significantly with each other.

The statute does not limit the number of Class A licenses issued for the rest of the state as it does in the seven-county Twin Cities area. However, if the racetracks of two or more applicants outside the Twin Cities area would compete significantly for bettors, spectators, employees, horses and in otherways, a "bidding war" must be prevented for the reasons specified in support of the need for rule 15.039. This rule imposes no undue burden.

Rule 15.040 C. requires submission of Class B license applications at least 160 days before commencement of horse races.

A deadline is necessary to give the Commission time to conduct statutorily mandated personal and financial investigations. The Crime Bureau has informed the Commission that 160 days is sufficient. Most persons employed at a racetrack must obtain Class C occupational licenses pursuant to Minn. Stat. §240.08 before commencement of racing. Sufficient time must remain after issuance of a Class B license for that licensing to occur as well.

Minn. Stat. §240.14 subd. 1 provides generally that the Commission must assign racing days to licensees for up to three years before July of the year before the first assignment year.

Racing days will be assigned after that date to entities whose licenses are issued after that date. Subdivision 2 of section 240.08 requires a public hearing before assignment of racing days. The Commission needs time, as a result, to assign racing days to a Class B licensee before commencement of racing.

The rule is reasonable. Customarily states set deadlines, several earlier than subsection C. provides. The deadlines are imposed successfully.

Further, Class B applicants must make preparations for racing several months in advance of commencement in any event in order to attract horses and for other purposes. The applicants must know some time in advance of racing whether a license will be issued and what racing days will be assigned.

No undue burden is imposed.

4MCAR§15.041 requires the Commission to provide an applicant for Class A or B license an opportunity to make an oral presentation to the Commission before it decides whether to issue a license.

The rule is necessary as a matter of fairness to an applicant who may be seeking authorization for a project involving tens of millions of dollars and who may have spent many hours and a great deal of money to prepare an application.

The rule also makes clear that if the statutory mandated public hearing provides applicants an opportunity to make the presentation required by the rule, a second opportunity to make a presentation is not necessary.

The rule imposes no burden outside the Commission.

4MCAR§15.042 provides that the Class A and B license fees mandated by Minn. Stat. §240.10 must be paid before a license is effective and that a license is void if the fee is not paid within 10 days.

The rule is necessary to ensure the license fees are received in a timely manner. Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 8 provide for revocation of Class A and B licenses for willful failure to make payments required by the statute. However, it is more difficult to revoke a license once issued than to deny it, willfulness is a very high standard and a revocation proceeding, even if successful, cannot ensure payment of fees in a timely fashion.

Revocation will be a remedy for non-payment of the Class A fee of $10,000 a year in the second and subsequent years of a Class A license.

The rule is reasonable. It provides for a refund to a Class B licensee in the event the number of racing days requested exceeds the number of days on which races are actually conducted.

License fees are customarily paid in advance. A licensee who does not possess the financial strength to pay a licensee fee in advance will have difficulty operating a racetrack or conducting horse races successfully. The fee is a small element of total costs a licensee faces.

4MCAR§15.043 provides for denial, revocation or suspension of a Class A or B license or imposition of penalties for false or misleading information in an application, omission of required information or substantial deviation from representations in an application.

The public interest, integrity of horse racing, public health, safety and welfare require that the Commission make every effort to ensure the financial strength and good character of Class A and B licensees and the high quality of facilities, equipment, management, personnel and systems. Complete and accurate information in applications and compliance with representations in applications are essential to success in that endeavor.

Minn. Stat. §§240.06 subd. 7 and 240.07 subd. 6 provide for revocation of a Class A or B license for intentional false statement in an application. Those subdivisions also authorize revocation or suspension for rules violations which the Commission believes adversely affect the integrity of racing. Minn. Stat. §240.22 authorizes the Commission to establish by rule a schedule of fines for violation of the Commission's rules. The Commission intends to do so. The statute also empowers the Commission to promulgate any rule it believes necessary to protect the integrity of horse racing or the public health, safety or welfare.

Regulators of pari-mutuel betting and horse racing in other states inform the Commission that civil fines are the most effective enforcement tool in the industry.

The rule is reasonable. It is in use successfully in other states.

4 MCAR§15.043 imposes sanctions for delay in completion of a horseracing facility. It authorizes revocation, suspension and imposition of a penalty of $1,000 a day against a Class A licensee if the facility is not substantially completed within 30 days of the date stated in the license application.

The rule is necessary for the reasons specified in support of requirement of a completion date in rule 15.006. The Commission must make every effort to prevent delay in completion.

The rule is reasonable. Sanctions for delay in completion are customary in state contracts in Minnesota, and the penalty in the rule is not unusual. Class A licensees probably will provide for delay in completion of the facility in agreements with its contractors. The rule allows a 30-day delay in completion without sanction. A typical force majeure exception is provided.

4MCAR§§15.045-15.050 are rules which may place significant burdens upon Class A and B licensees after a horse racing facility is completed and in operation and racing is under way. The Commission believes they should be proposed at this time to alert potential applicants to the burdens as soon as possible.

Rule 15.045 requires Commission approval of modifications of a horseracing facility and provides sanctions against Class A or B licensees for failure to obtain approval.

The rule is necessary to prevent destruction of the effectiveness of the Commission's review and determinations with regard to facilities and equipment at the time of license issuance.

The rule is reasonable because approval of facility modification is required successfully in other states. Further, the rule establishes a threshold of $10,000 to avoid approval of insignificant modifications.

Rule 15.046 requires Class A and B licensees to maintain adequate security.

The rule is necessary because of security is vitally important to the ongoing success of a horseracing facility. It protects the financial strength of pari-mutuel betting and horse racing and ensures the good character, health, safety and welfare of spectators, bettors, jockeys and divers, horses and all other participants. It protects facilities and equipment.

The rule is reasonable because it is customary.

Rule 15.047 requires Class A and B licensees to make security modifications ordered by the Commission. The rule also provides sanctions.

Excellent security is essential for the reasons specified in support of rule 15.046. The state of the act of security also changes quickly, greatly and constantly. As a result, it is

necessary that the Commission possess an ability to require modifications.

The rule is reasonable because it is applied successfully in other states.

Rule 15.048 requires medical services. Subsection A. requires a first aid room, subsection B. a physician and nurse on duty while horses races, C. a nurse while horses exercise and D. an ambulance for humans while horses race or exercise.

The rule is necessary to health and safety. Thousands of spectators will attend races, and scores of jockeys and drivers as well as others will ride or otherwise be near horses. Injuries to persons on or near horses are common.

The rule is reasonable because it is customary. The rule also requires equipment and staff only during times of probable need.

Rule 15.049 provides for care of horses. Subsection A. requires individual box stalls, B. a security fence surrounding stables, C. stabling and training facilities available at least three weeks before the first race meeting for a species at a track in any year, D. a mounted outrider during exercise periods and E. a horse ambulance.

The rule is necessary to the health, safety and comfort of horses. It is important in order to attract horses to a horse racing facility. Thus, it is necessary to the integrity of horse racing and the public interest.

Subsection E. also shields spectators and bettors from the sight of crippled animals.

The rule is reasonable. It is applied in other states successfully.

Rule 15.050 requires Class A, B and D licenses to submit all contracts and subcontracts to the Commission for approval. It also requires inclusion of affirmative action plans and Commission decisions or contract approvals within 30 days.

Minn. Stat. §240.19 mandates that the Commission require approval of contracts and inclusion of affirmative action plans. It is necessary to apply the rule to subcontracts as well to prevent circumvention.

The 30-day deadline for Commission decisions ensures a quick turnaround and, as a result, minimizes the burden on licensees.

An issue remains which the Statement of Need and Reasonableness must explore. Minn. Stat. §14.115 requires consideration of small business in rulemaking if rules may directly affect small businesses. See subdivision 7(b) of section 14.115. It is possible, although unlikely, that some Class B applicants and licensees will be small businesses as defined in subdivision 1.

The Commission believes Section 14.115 does not apply to Class B applicants and licensees, because subdivision 7(c) provides that the section is inapplicable to service businesses regulated by governmental bodies for standards and costs. That is the role of the Commission in regulation of the sponsors and managers of horse racing.

The Commission has considered, however, ways to minimize the impact of these rules on small businesses. The rules do require compliance and reporting and do establish deadlines as well as design and operational standards. However, the rules implement statutes, and establishment of less stringent rules, alternative rules or exemptions for small businesses would be contrary to the general mandate of chapter 240 that the Commission protect the public interest, integrity of horse racing, public safety, health and welfare in pari-mutuel betting and horse racing and contrary to the requirements and objectives of other provisions of the chapter.

As a result, subdivision 3 of section 14.115 does not require the Commission to incorporate less stringent provisions, alternatives or exemptions for small business into these rules.

All potential Class B license applicants, large or small, have been directly notified of these rules. See section 14.115 subd. 4(c).

If you wish to be notified when the Hearing Examiner's Report is available, please put your name and address on one of the envelopes supplied.

RULE HEARING REGISTER

PLEASE PRINT CLEARLY

NAME	REPRESENTING	COMPLETE ADDRESS	TELEPHONE	CHECK HERE IF YOU WISH TO MAKE A STATEMENT AT THE HEARING	CHECK HERE IF YOU WISH TO BE NOTIFIED BY THE AGENCY WHEN THE HEARING RECORD HAS BEEN SUBMITTED TO THE ATTORNEY GENERAL
John H. Daniels Jr	Minnesota Racing Comm	1201 Marquette, Suite 330, Mpls	333-7100	✓	
Byron E. Starns	Leonard, Street & Deinard	National City Bank, 1200 510 Marquette, Mpls 55402	339-1200		✓
Joseph T. O'Neill	O'Neill, Burke & O'Neill	800 NW Center Saint Paul, Minn 55101	227-9505	✓	✓
Bruce D. Malkerson	Popham, Haik, Schnobrich	4344 IDS Center Mpls. Mn. 55402	333-4800	✓	✓
Krista L. Sanda	MN. Racing Comm	2001 Killebrew Dr Mpls 55422	853-6261		✓
Kathleen Henning	Farmington Race Assn.	13200 Henning cr Prior Lake 55372	445-2177		✓
David Johnson		2019 21st Ave So. #N16 Mpls. Mn.	—		✓

HG-00048-01

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY LTD.
4344 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE AND TELECOPIER
612-333-4800

RECEIVED
DEC 22 1983
ADMINISTRATIVE HEARINGS

WAYNE G. POPHAM
ROGER W. SCHNOBRICH
DENVER KAUFMAN
DAVID S. DOTY
ROBERT A. MINISH
ROLFE A. WORDEN
G. MARC WHITEHEAD
BRUCE D. WILLIS
FREDERICK S. RICHARDS
G. ROBERT JOHNSON
GARY R. MACOMBER
ROBERT S. BURK
HUGH V. PLUNKETT, III
FREDERICK C. BROWN
THOMAS K. BERG

BRUCE D. MALKERSON
JAMES R. STEILEN
JAMES B. LOCKHART
ALLEN W. HINDERAKER
CLIFFORD M. GREENE
D. WILLIAM KAUFMAN
DESYL L. PETERSON
MICHAEL O. FREEMAN
THOMAS C. D'AQUILA
LARRY D. ESPEL
JANIE S. MAYERON
DAVID A. JONES
LEE E. SHEEHY
LESLIE GILLETTE
MICHAEL T. NILAN

ROBERT C. MOILANEN
STEVEN G. HEIKENS
THOMAS F. NELSON
THOMAS J. RADIO
KATHLEEN M. MARTIN
JOHN C. CHILDS
DOUGLAS P. SEATON
BRUCE B. McPHEETERS
GARY D. BLACKFORD
SCOTT E. RICHTER
GREGORY L. WILMES
ELIZABETH A. THOMPSON

OF COUNSEL
FRED L. MORRISON

2060 PETRO-LEWIS TOWER
717 SEVENTEENTH STREET
DENVER, COLORADO 80202
TELEPHONE AND TELECOPIER
303-292-2660

SUITE 802-2000 L STREET, N. W.
WASHINGTON, D. C. 20036
TELEPHONE AND TELECOPIER
202-887-5154

December 22, 1983

Public Exh. No. C
File No. Date

Mr. George Beck
State Hearing Examiner
Administrative Hearings
3rd Floor Summit Bank Building
310 South 4th Avenue
Minneapolis, MN 55415

Proposed Rules of the Minnesota Racing Commission

Dear Mr. Beck:

I. Introduction

The purpose of this letter is to introduce additional testimony why the proposed rules of the Minnesota Racing Commission as amended by them on Wednesday, December 14, 1983, and as introduced into the hearing record on Thursday, December 15, 1983 should be approved by you as submitted. As you may recall, I testified before you on December 15, 1983 in full support of the rules as proposed and the January 15, 1984 application date.

My clients, Mr. Brooks Fields, Jr. and Mr. Brooks Hauser have formed a new company called Minnesota Racetrack, Inc. and with Scottland Inc. and The Santa Anita Companies have formed a joint venture to build, own and operate the racetrack in the City of Shakopee if they are awarded the Class A and Class B license. Hopefully, the Minnesota Racing Commission will award the licenses to us in the spring of 1984 so that racing can commence in 1985.

II. My clients and their consultants find the proposed rules as amended to be reasonable in all respects.

The testimony submitted herein is based upon my eleven years of practice as an attorney representing numerous political subdivisions of the state of Minnesota and applicants before administrative bodies. My testimony is also the result of a detailed analysis of the proposed rules on my own behalf and with my clients and their consultants.

Brooks Fields, Jr. and Brooks Hauser were born and raised in Minnesota and have been involved in numerous successful Minnesota operating businesses and real estate developments. Therefore, they are very knowledgeable about the financial analysis needed for such a project.

Scottland Inc., a Minnesota Corporation, has owned and developed the Valley Industrial Park in Shakopee, Minnesota since 1969. The Company and its wholly owned subsidiary, Scott Builders, Inc., have built and managed over 300 million dollars of construction and land development and fully understand how to build and manage a large development of this nature. The principals of Scottland Inc. are very experienced in the construction of complicated projects such as the racetrack and related facilities.

The Santa Anita Companies comprise two separate, but paired companies, Santa Anita Realty Enterprises, Inc. and the Santa Anita Operating Company.

The Santa Anita Companies today is one of the recognized leaders in the horse racing industry in the United States, as well as the world, having operated the world famous Santa Anita track for 50 years. The Santa Anita Companies have demonstrated the ability to successfully market horse racing during a period when some racetracks have experienced difficulty. The attendance at the track has grown through the years. The 1983, 89-day winter meet at Santa Anita led the nation with an average daily attendance of 32,014. The 1982, 27-day fall meet was second in national rank behind Santa Anita's winter meet with a daily average attendance of 28,822. Through good management and marketing, the fall meet has grown over 14 years from 14,000 daily average to the present daily average of 28,822.

The Santa Anita Companies have also been involved in many other businesses such as resorts, amusement parks and real estate development.

Much of our analysis of the proposed rules draws upon these years of successful track operations.

My clients have reviewed the proposed rules as amended and find them to be reasonable in all respects. However, we believed it was important not to rely just upon their analysis. Therefore, we have retained outstanding consultants with national reputations to assist us in the development of this project and the analysis of the proposed rules of the Minnesota Racing Commission.

To assist us in the analysis of the proposed rules relating to project design and structures, we have a collaborative effort of architecture, engineering, landscaping and interior design between the Minnesota firm of Hammel, Green and Abrahamson, Inc. (HGA) and the Ewing Cole Krause Sports Facilities Division of Ewing Cole Cherry Parsky (Parsky, Krause) which has offices in Illinois, Pennsylvania and New Jersey. HGA has worked on numerous sports and public facilities. The principals in Parsky/Krause have been involved in either the total architectural design and planning or alterations and additions on over 30 thoroughbred, standard bred and dog tracks worldwide. Principals from both firms have reviewed the proposed rules and find them to be reasonable in all respects as they relate to project construction.

The Minnesota firm of Barton-Aschman Associates, Inc. (Barton-Aschman) is providing all traffic and parking analysis and land use and environmental planning for the racetrack. In 1977, Barton-Aschman prepared the Stadium Location Evaluation report for the Metropolitan Sports Facilities Commission. Barton-Aschman has performed similar services for numerous major Minnesota projects such as Valley Fair Amusement Park, Orchestra Hall, University of Minnesota, and the Minnesota Zoo. Barton-Aschman has also provided land use and transportation services to numerous clients outside the Twin Cities Metropolitan Area. Some representative projects include: Transportation Services, 1982 World's Fair, Knoxville, Tennessee; Transportation System, Chicago World's Fair (planned

for 1992); Visitor Traffic and Parking Plan for John F. Kennedy Library, Cambridge, Massachusetts; Traffic Analysis for Proposed Theme Park, Howard County, Maryland; Traffic, Access and Parking for Proposed Multi-purpose Development, Miami Beach, Florida; Taft Theme Park Site Design, Kane County, Illinois; and General Land Use Plan and Environmental Impact Assessment, Berry's Creek Center, Hacensack Meadowlands, New Jersey. Principals from the firm have reviewed the proposed rules as amended and find them to be reasonable in all respects relating to traffic, land use and environmental concerns.

In addition, principals of the law firm of Popham, Haik, Schnobrich, Kaufman & Doty, Ltd., who specialize in administrative law, including the undersigned, have reviewed the proposed rules as amended and find them to be reasonable in all respects.

III. The Racing Commission and its staff have afforded all parties procedural due process in the development of the proposed rules.

As an administrative law specialist, I have attended hundreds of hearings and meetings involving state, regional and local administrative bodies, including numerous hearings and meetings involving rulemaking. On behalf of my clients, I or someone on my behalf, have attended every Racing Commission meeting or Rules Subcommittee meeting, except one, since the formation of the Racing Commission. I have never before seen such an open and deliberative process. From the outset, the comissioners and their staff advised all interested parties of the procedures to be followed, welcomed input from all parties, made available drafts of proposed rules, and met on numerous occasions with all interested parties. The meetings were always conducted in a manner to make all parties feel comfortable with the process and in an atmosphere which encouraged input from all involved.

IV. The proposed amendments to the proposed rules concerning disclosures of corporate shareholders of a corporate applicant are reasonable in all respects and are necessary.

Prior to the promulgation of the proposed rules, I recommended several changes to the Rules Subcommittee at two of their meetings, concerning the proposed rules on disclosure of corporate shareholders of a corporate applicant. The proposed rules were promulgated without including those recommendations. Therefore, at two Rules Subcommittee meetings I again expressed my concerns and the members of the Subcommittee agreed that the proposed rules on that issue should be modified to reflect the realities of

publicly owned and traded companies and directed its staff to develop those changes. Those changes were completed by staff and approved unanimously by the Racing Commission at its meeting on Wednesday, December 14, 1983. No one spoke in opposition to those changes. At the hearing before you on December 15, 1983, Mr. Hentges, consultant to the Racing Commission, explained in detail the reasons for those changes. No one spoke in opposition to those changes.

I testified in support of them and believe you should find them to be reasonable in all respects for the following reasons:

1. The rules as originally proposed required that if Company A is an applicant, Company A must disclose all of its shareholders. That is reasonable as long as the applicant may provide computer printout lists or other lists which to the best of its knowledge is the most recent compilation of shareholders. However, many of those outstanding shares may be held in "street name" by investment bankers and brokers and it would be impossible to determine for whose benefit they are held. Some may be held in a "blind" trust. Of course, shares are traded daily and therefore the compilation will always be "dated", probably each day.

2. The rules as originally proposed also required that Company A must disclose all ownership or other voting interest in Company B, if Company B owns one or more shares of Company A. All of the above problems and realities apply to this disclosure also. Additionally, Company A has no leverage over Company B so Company B may refuse to provide information concerning its shareholders to Company A. This refusal may be the result of a fear of a corporate takeover by others; it may be against the law in some jurisdictions; it may be too onerous a task to complete (i.e. a 10 million share company).

3. In each case, the above requirements could apply to Company C which owns one share of Company B, then Company D, E, F, etc.

4. Moreover, if someone wanted to prevent Company A from obtaining a license, he/she could cause Company Z to buy one share of Company A, B, C, D, E, etc. and then refuse to disclose any information.

5. Even if most of the above information were obtained, the list of shareholders could be in the millions and no meaningful review would be possible.

6. Unless the shareholder (corporate or individual) owns a substantial direct or indirect interest in Company A, the information as to that shareholder is not even relevant because that shareholder cannot exercise any control over Company A.

7. Most (if not all states) recognize these realities and provide that the applicant must disclose ownership interests in excess of a certain percentage, such as 5%. They do not ask for disclosure of the shareholders of corporate shareholders of a corporate applicant.

8. Unless modifications were made to the rules to address the above problems, the Racing Commission would have eliminated thousands of potential investors and perhaps numerous applicants.

The Racing Commission listened to these concerns and the recommendations of the Rules Subcommittee and its staff in support of the changes, and adopted the change now reflected in the proposed rules.

V. The Inclusion of "Best Efforts" in the Rules is Reasonable.

It is reasonable that the proposed rules include the phrase "best efforts" in several locations. "Best Efforts" is a defineable standard by which applicants may conduct their activities and the Racing Commission can review the applications. It is not a vague standard in any way. There are many court cases interpreting the meaning of "best efforts", several of which are cited in the Statement of Need and Reasonableness.

Moreover, the proposed rules require much detailed information which is not mandated by statute and therefore the Racing Commission may provide the "best efforts" standard for such additional information.

The "best effort" standard is also reasonable in that it may be that some information may prove to be impossible to obtain because the disclosures of the information to the applicant by someone (so the applicant can disclose it to the Racing Commission) may violate state or federal law. The person from whom the applicant can only obtain the information may be unavailable or may refuse or fail to respond.

Any applicant obviously will do whatever the applicant can do to provide the information requested because of the potential adverse consequences with the Racing Commission, but no applicant should automatically be disqualified because certain information is not obtained because of factors beyond its control.

It is important to remember that the Racing Commission seeks this information so it can determine which project and licensees are best for the State of Minnesota. This can not involve a mechanical testing procedure or a set of rigid specifications as one might use in request for proposals to build a bridge for example.

VI. The Inclusion of "Including but not Limited to" in the Rules is Reasonable.

It is reasonable that the proposed rules include the phrase "including but not limited to" in several locations.

Again, the proposed rules require much detailed information which is not mandated by statute and therefore the Racing Commission may provide guidance to the applicant of what may be relevant and at the same time allow the applicant to submit other information relevant to the process but not specifically enumerated in the rules. As stated previously we are not building a bridge where the specifications are standard throughout the state and the country. The Racing Commission wants the best racetrack and operator possible for the benefit of the state and rightfully has encouraged applicants to be creative in their responses and should not arbitrarily exclude information which helps to ensure the best choice possible.

VII. Summary.

The rules as amended are in all respects reasonable and should be adopted as introduced into the record by the Racing Commission. The proposed deadline for applications of January 15, 1984 was reasonable and the nearest possible deadline date should be approved.

Very truly yours,

Bruce D. Malkerson

Bruce D. Malkerson

BDM/ks
3596j

AMOS S. DEINARD
SIDNEY LORBER
SIDNEY BARROWS
HAROLD D. FIELD, JR.
ALLEN I. SAEKS
THOMAS D. FEINBERG
MORRIS M. SHERMAN
GEORGE REILLY
DAVID N. COX
STEPHEN R. PFLAUM
CHARLES A. MAYS
NANCY C. DREHER
LOWELL J. NOTEBOOM
GEORGE F. McGUNNIGLE, JR.
FREDRIC T. ROSENBLATT
BYRON E. STARNS
STEVEN D. DeRUYTER
ALAN J. WILENSKY
STEPHEN J. DAVIDSON
STEPHEN R. LITMAN
DAVID C. ZALK
EDWARD M. MOERSFELDER
ROBERT LEWIS BARROWS
HUGH M. MAYNARD
KENNETH H. PROCHNOW
MICHAEL A. NEKICH
MARTHA C. BRAND
PROFESSIONAL CORPORATIONS

LAW OFFICES

LEONARD, STREET AND DEINARD
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
1200 NATIONAL CITY BANK BUILDING
510 MARQUETTE AVENUE
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE AND TELECOPIER
(612) 339-1200

M. PATRICIA SCHAFFER
JAMES V. ROTH
ROBERT L. DeMAY
ANGELA M. BOHMANN
ROBERT D. ARKIN
ROBERT P. THAVIS
JAMES G. BULLARD
JOSEPH M. FINLEY
LAWRENCE J. FIELD
JONI MARIE KELLY
RICHARD RAPSON
GEORGE B. WYETH
NANCY A. WELSH
MARSHA A. FREEMAN
LOWELL V. STORTZ
MARY BENJAMIN TREVOR
J. BRADFORD GOSS
DOUGLAS B. GREENSWAG

GEORGE B. LEONARD (1872-1956)
ARTHUR L. H. STREET (1877-1961)
BENEDICT DEINARD (1899-1969)

IRENE SCOTT
OF COUNSEL

RECEIVED
DEC 22 1983
ADMINISTRATIVE HEARINGS

December 22, 1983

Public Exh. No. B
File No.
Date

George Beck, Esq.
Hearing Examiner
Office of Administrative Hearings
Room 400
Summit Bank Building
310 South 4th Avenue
Minneapolis, MN 55415

Re: Proposed Rules of the Minnesota Racing Commission

Dear Mr. Beck:

This letter constitutes written comments on the proposed rules of the Minnesota Racing Commission ("Racing Commission") relating to Class A and B license application procedures and requirements which were before you for public hearing on December 15, 1983. These comments are filed on behalf of Minnesota Jockey Club, Inc. ("Minnesota Jockey Club"), an applicant for Class A and B licenses from the Minnesota Racing Commission for a facility to be located in Eagan, Minnesota.

SUMMARY OF COMMENTS

For the reasons detailed below, Minnesota Jockey Club feels that the Racing Commission has manifestly demonstrated the need and reasonableness of the proposed rules and supports fully their approval. In addition, Minnesota Jockey Club respectfully requests your finding that the Commission may shorten the time period for receipt of license applications after the effective date of the rules from the 14-day period prescribed

in Rule 4 MCAR § 15.040 to 5 working days or less. Finally, Minnesota Jockey Club has some comments in support of other rules which are set forth below.

THE RULES ARE NEEDED AND REASONABLE

The Racing Commission has clearly demonstrated the need for and reasonableness of the proposed rules governing Class A and B license application requirements and procedures. Obviously, the public interest and the express terms of the Racing Commission statute require the degree of disclosure of character and financial information required by the proposed rules to insure the integrity of horse racing in Minnesota. Detailed disclosure of facility plans, personnel, management plans, business plans and promotional activities contemplated by applicants is also needed to guarantee that the facility ultimately built will be the best possible facility and that the licensee has the financial and business ability to make it a viable operation.

THE RULES ARE NONCONTROVERSIAL IN REALITY

As Minnesota Jockey Club's representative stated at the hearing on the rules, the Commission has clearly fulfilled all applicable substantive and procedural requirements of state law with respect to its rule-making effort. In fact, Minnesota Jockey Club feels that the Racing Commission has gone far beyond the legal requirements and given parties interested in the rule-making process an unprecedented opportunity to participate in the formulation of and comment upon the contents of the proposed rules. The Racing Commission's rule-making process provided full public notice, free and full opportunity for participation and fair consideration of the views of all interested parties who chose to participate in the process. Indeed, the absence of any adverse comment on substantive provisions of the proposed rules at the hearing amply demonstrates that the rules are at the present time uncontested and noncontroversial. The only provision drawing comment at the hearing was the deadline for receipt of applications.

The only reason for the hearing and the necessity to proceed under the controversial rule procedure was the dissatisfaction of a single license applicant with a provision of Rule 4 MCAR § 15.050 setting a possible application deadline of January 15.

Attached as Exhibit 1 is an article from the December 15, 1983 Minneapolis Tribune in which a representative of this applicant is reported to have said that its objection to noncontroversial rule making was made solely because of the January 15 deadline contained in Rule 15.040. Of course, with the invocation of the controversial rule procedure, the January 15 deadline for filing of applications for Class A and B licenses is now moot because the effective date of the rules will be well after that date. The fact that elimination of the potential application deadline of January 15 was the only objective of the only party who had any objection to any aspect of the rules was amply illustrated by the failure of a representative for that organization to appear at the hearing and make any comment whatsoever upon the rules. Thus, in reality the rules currently before you for review are uncontested and noncontroversial.

THE APPLICATION DEADLINE

Minnesota Jockey Club respectfully requests a finding that the 14-day deadline for application filing after the effective date of the rules provided by Rule 4 MCAR § 15.040 is not required by law or needed and that a shorter period would also be reasonable. As its representative suggested at the hearing, Minnesota Jockey Club feels that the Racing Commission should be advised that it has the discretion to shorten the 14-day period to a period of 5 working days or less for a number of reasons. First, all of the interested parties in the application process have been on notice of the application disclosure and content requirements and the Racing Commission's desire for an early filing date since October, 1983. Thus, by the effective date of the regulations all interested parties will have had at least five months to organize and to complete preparation of appropriate application information. Further, it is inconceivable that a potential license applicant was not following the licensing process well before October, 1983. There was well publicized legislative activity preceding the approval of the constitutional amendment authorizing horse racing and pari-mutuel betting in Minnesota in November, 1982. Legislative action in 1983 to implement the constitutional amendment and the Governor's extraordinary efforts to complete appointments to the Racing Commission were also well publicized. The public policy goal enunciated by the Governor to begin horse racing in 1985 has

also been well publicized. The reasons articulated for this objective, to create new jobs as fast as possible and to begin the process of increasing state revenues from the pari-mutuel betting activities associated with horse racing as quickly as possible, clearly support a finding that an application deadline of less than 14 days is reasonable.

Minnesota Jockey Club has the following comments on specific proposed rules.

1. The Best Effort Standard of Disclosure.

The proposed rules imposing disclosure requirements for Class A and B license applicants impose a "best efforts" standard of disclosure. See 4 MCAR § 15.003(E) (at page 4), § 15.016 (at page 16), § 15.020(E) (at page 23) and § 15.033 (at page 34). Minnesota Jockey Club supports this standard of disclosure. Manifestly, there must be some standard for the guidance of applicants. Moreover, in the absence of a standard, the Minnesota Racing Commission will be handicapped in its decision-making process if applicants do not make the fullest possible disclosure of the information required by the application disclosure rules. Finally, the best effort standard is an objective standard which is ascertainable and can be applied. It is a standard which is well known in the common law.

2. Criteria.

A number of the criteria for the issuance of Class A and B licenses are further defined in terms of specific sub-categories preceded by the phrase "included but not limited to". See 4 MCAR § 15.017(A), (C), (E), (F), (G), (J), (L) (at pages 17 and 19) and 4 MCAR § 15.034(A), (C), (D), (F), (J) (at pages 35-37). It may be argued that this wording of the criteria rules grants the Racing Commission undue discretion in making its decision on the license applications. Minnesota Jockey Club feels that such an argument, if made, would be without support as a matter of law and contrary to sound public policy.

To begin with, the subcriteria which are identified are a limitation, not an expansion, of the Racing Commission's discretion. The legislature made clear that the Minnesota Racing Commission

was to have the broadest possible discretion in making its licensing decisions. For example, Laws 1983, Chapter 214, Section 5, Subd. 3, (codified as § 240.05, subd. 3) provides as follows:

> "It is the intent of the legislature that authority granted by law to the Commission to issue licenses not be construed as requiring the Commission to issue any license."

Moreover, the general powers granted to the Commission by Laws 1983, Chapter 214, Section 3 (codified as § 240.03) grant the Commission broad discretion to regulate horse racing "to insure that it is conducted in the public interest" and to "take all necessary steps to insure the integrity of racing in Minnesota". In view of this broad grant of discretion, the Racing Commission's criteria rules can be viewed only as a self limitation upon its broad discretion.

In fact, it could be argued in view of the statutory criteria for licenses in Laws 1983, Chapter 214, Section 6, Subd. 4, and Section 7, Subd. 3 (codified as § 240.06, Subd. 4 and § 240.07, Subd. 3) that criteria rules are not needed or required by state law. At the very least, the specific criteria which are limited by the subcriteria preceded by the phrase "included but not limited to" are legally sufficient in the absence of further subcriteria. The attempt by the Racing Commission to further define legally acceptable criteria through the articulation of a lower tier of subcriteria cannot be found to be an attempt to expand its discretion.

The articulation of subcriteria also promotes the public policy of informing applicants of the standards against which they will be judged. Because the criteria limited by sub-criteria would be independently sufficient, the listing of subcriteria is a further attempt by the Racing Commission to place all potential applicants on notice of the criteria it will apply in evaluating license applications. This type of rule making should be encouraged, not rejected, as a matter of public policy.

3. The Investigation Fee.

Minnesota Jockey Club also supports Rule 4 MCAR § 15.037 (at pages 37-38) which requires applicants to submit a $10,000 advance investigation fee to cover the costs of the investigation of applicants mandated by the Racing Commission statute. The Minnesota Jockey Club feels that the amount is reasonable and supported by the evidence produced by the Racing Commission at the hearing. In fact, the investigation costs for applicants may very likely exceed the amount of the advance payment particularly in those cases where there are a great number of parties with ownership or beneficial interests identified in an applicant's disclosures.

CONCLUSION

In conclusion, therefore, Minnesota Jockey Club urges you to prepare your report approving all of the proposed rules without modification and advising the Racing Commission that it can shorten the deadline for filing applications after the effective date of the rules to a period of 5 working days if it so chooses. We also urge you to complete your report as promptly as possible so that the application submission deadline can thereby be advanced. Thank you for your consideration of these comments.

Respectfully submitted,

LEONARD, STREET AND DEINARD

By Byron E. Starns
Byron E. Starns

BES/jm
Enclosure

cc: Robert Nardi, Esq.
Michael Miles, Esq.
Robert Hentges, Esq.
Mr. James Weiler

EXHIBIT 1

Minneapolis Star and Tribune

Thursday
December 15/1983 1Y

Although several homes in Coon ever been," Jewell said. Melanie Thornberg, Champlin, Minn.

Racing board postpones deadline for license bids

By Robert Whereatt
Staff Writer

A representative of the group that wants to build a horse-racing track in Blaine Wednesday forced a six- to 10-week delay in the deadline for submitting license applications to the Minnesota Racing Commission.

When members of the commission voted against giving potential developers a deadline extension to Feb. 15, Blaine representative Charles Weaver filed documents challenging the commission's proposed operating rules. A review of the rules brought about by his challenge will require the commission to delay the application deadline to about March 1 at the earliest.

Weaver said the Blaine group wanted time to line up alternative financing in case industrial revenue bonds could not be used to fund construction of a $42 million track complex. Congress has been considering curtailing the use of tax-free industrial revenue bonds.

The original deadline incorporated in the commission's proposed operating rules was Jan. 15. Weaver challenged the proposed rules and legally forced an extended public hearing on them.

Weaver acknowledged after the commission meeting that his group's only concern with the proposed rules is the Jan. 15 deadline. The complex rules spell out in 42 pages the conditions for getting a license to build and operate a track and all the information that must be submitted.

The maneuver means a six- to 10-week delay before the commission can accept applications and begin the process of deciding which site gets a license to build a track in the seven-county metropolitan area.

The postponement means that the already tight schedule to open a track in 1985 is tighter. Commission Chairman Ray Eliot already has said that a 1985 opening was improbable, although that was still his goal.

Weaver's Blaine group was not the only potential race-track developer that sought a deadline extension. Representatives of sites in Savage, Woodbury, Lino Lakes, Farmington and Hastings notified the board that they wanted more time to line up financing and get their proposals together.

Joseph O'Neill, an attorney for developers who have a site in Eagan, was the only person to tell commissioners that his group was ready to proceed and could meet the Jan. 15 deadline. "There really is a time to fish or cut bait," O'Neill told commission members.

After the meeting, a representative of a Shakopee site said his group also was prepared to meet the early deadline.

The commission considered amending its rules and extending the deadline to Feb. 15. That failed on a 4-4 vote. One member, C. Elmer Anderson, Brainerd, was absent.

After the one-month extension was denied by the commission, Weaver submitted seven letters signed by Minnesotans, challenging the rules. By law, that is the minimum number of challenges needed to send the proposed rules into a public hearing under a hearing examiner who will take testimony and write a report.

Public Exh. No. A
File No.
Date

CHARLES R. WEAVER
Attorney at Law

HOLMES & GRAVEN
CHARTERED
470 Pillsbury Center, Minneapolis, Minnesota 55402
Telephone 612/338-1177

RECEIVED
DEC 21 1983
ADMINISTRATIVE HEARINGS

December 20, 1983

Mr. George Beck
Hearing Examiner
Office of Administrative Hearings
310 South Fourth Avenue
400 Summit Bank Building
Minneapolis, MN 55415

Re: Proposed Rules 4 M.C.A.R. §15.001 - 15.050

Dear Mr. Beck:

I am an attorney representing the North Star Racetrack Association ("North Star"). On December 15, 1983, you conducted a hearing regarding the adoption of 4 M.C.A.R. §15.001 - 15.050, the proposed rules to regulate horse racing in Minnesota. Minn. Stat. §14.15, subd. 1, permits written material to be submitted and recorded in the record for five working days after the date of the hearing. Pursuant to this provision, I am submitting for consideration this letter, which expresses the concerns of North Star over the proposed rules.

North Star is a non-profit corporation created for the express purpose of promoting the licensure of the metropolitan racetrack in the City of Blaine, located in Anoka County, Minnesota. No member of the Board of Directors of North Star has any direct financial interest in the proposed site and North Star is not a developer. In addition to North Star, the Anoka County Board also is promoting the Blaine site. To facilitate this purpose, the Board appointed a Blue Ribbon Commission ("Commission") to act as a liaison between the County and North Star. This letter also reflects the Commission's viewpoints on the proposed rules.

North Star and the Commission both have a long history of involvement in the promulgation of legislation and rulemaking regulating horse racing in Minnesota. Prior to the 1983 legislative session, both North Star and the Commission were extremely active in promoting the Blaine site. Every session of the committee considering paramutual legislation was attended by a North Star and Commission representative. On several occasions, these representatives testified before the committee. In addition, during the legislative session both groups made presentations to virtually every service group and unit of local government in the north metropolitan area.

North Star, the City of Blaine, and the staff of Anoka County have prepared all of the documents necessary for submission of the Blaine site proposal to the Metropolitan Council. Included in this report was all of the pertinent infrastructure information regarding the potential impact on various metropolitan systems

(highways, sewers, parks, open spaces, and airports) which may result from the construction of a racetrack on the Blaine site. After Governor Perpich appointed all of the members of the racing commission, a North Star representative attended the meetings of the racing commission along with the meetings of the rules committee. North Star actively participated in these meetings.

North Star and the Commission are generally pleased with the proposed rules and commend the drafters. However, both groups are very concerned about 4 M.C.A.R. §15.040 relating to the time of submission of the application for a Class A license. The rule as proposed reads as follows:

> 4 MCAR § 15.040 Deadlines for submission of Class A and B license applications.
>
> Deadlines for submission of a Class A or B license application are as follows:
>
> A. applications for a Class A license to own and operate a racetrack in the seven-county metropolitan area must be received by the commission's designee before 5:00 p.m. on the 14th day, as computed pursuant to Minnesota Statutes, section 645.15, after these rules become effective or on January 15, 1984, whichever is later. The designee must deliver investigation fees to the commission promptly upon receipt. The designee must retain and safeguard until the deadline with seals intact all applications received. Promptly after the deadline, the designee must deliver the applications to the commission for opening;
>
> B. applications for Class A licenses to own and operate racetracks outside the seven-county metropolitan area are not subject to the deadline imposed by A. If the commission determines that applications will be submitted for Class A licenses to own and operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications;
>
> C. applications for Class B licenses must be submitted at least 160 days before the date on which the applicant proposes to commence horse races.

The deadline for the submission of an application for a Class A license could be as early as January 15, 1984. This deadline is too early for many applicants to meet. Evidence presented at the hearing indicates that 7 of the 9 prospective applicants for a Class A license would be unable to meet such a deadline. In addition, one of the two prospective applicants who stated that such a deadline could be met also indicated that it would prefer an extension.

Concern has been expressed that an extension of time until March 1, 1984, as requested by North Star, would interfere with the apparent goal of the Commission to open the racetrack by July 1, 1985. However, the Commission's own Statement of Need and Reasonableness regarding 4 M.C.A.R. §16.006, page 10, paragraph 5, states that "at present several strong potential applicants are interested in the Twin Cities license. The strong potential applicants and competition maximize the likelihood of a successful facility." In addition, the same Statement of Need and

Reasonableness, regarding §15.040, page 22, presumes that the earliest date for applications would be 14 days after March 1, 1984, and that submission by that date would be consistent with the proposed completion date of July 1, 1985. Therefore, the timetable for the racetrack development would not be affected if the time for application submission is extended until March 1, 1985. Indeed, it would appear that this was the date originally intended for the submission of Class A license applications. An inequitable, unjust result would occur if 7 out of the 9 applicants could not compete for a license simply because they could not meet an unreasonable time deadline.

North Star has been diligently pursuing the entire process for over one year and has successfully assembled a team consisting of a developer, an underwriter, engineers, architects, a general contractor, a financial feasibility consultant, and several other specialty consultants. Although it may be doubtful that this team will be able to coordinate the efforts of the 9 subcontractors who are currently preparing the application, I have been assured that the application will be ready for submission if the earliest date is extended until March 1, 1984. After the considerable investment in time and money of North Star and the 8 other competing applicants, have made regarding this license application it is only fair and reasonable that the time deadline be extended until March 1, 1984.

While we applaud the thoroughness of the proposed rule and we wholeheartedly agree that deadlines must be established and maintained for submission of the application, we ask that you seriously consider modifying the deadline for submitting applications from January 15, 1984 to March 1, 1984.

Sincerely,

Charles R. Weaver

CRW/bjm

Exh. No. 8
File No.
Date

HOLMES & GRAVEN
CHARTERED
470 Pillsbury Center, Minneapolis, Minnesota 55402
Telephone 612/338-1177

CHARLES R. WEAVER
Attorney at Law

December 13, 1983

James Weiler
Suite 400
United Labor Center
312 Central Avenue
Minneapolis, MN 55414

RE: Request for Public Hearing
Minnesota Racing Commission

Dear Mr. Weiler:

I represent the seven people whose letters are requesting a public hearing concerning the proposed adoption of rules by the Minnesota Racing Commission. Specifically, we have one major concern with the rules: the extremely short time period allowed for the submission of applications for the Class A license. Therefore, we are requesting a public hearing to provide an opportunity to contest the time period. However, if it is possible for us to reach agreement with you that the date be extended beyond that now provided in the rules, we will withdraw our request for the public hearing. Please contact me as soon as possible to let me know if there is a possibility of reaching such a compromise. In the absence of an agreement, we wish to proceed with our demand for a public hearing.

Thank you for your assistance. I look forward to hearing from you.

Sincerely,

Charles R. Weaver (pl)

Charles R. Weaver

CRW:jes

Enclosures

November 16, 1983

James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

I have been told that the State Racing Commission is trying to pass rules for the operation of horseracing without a public hearing, that a scheduled hearing will be canceled if no one requests in writing that it be held.

This is my request that the public hearing be held.

Sincerely,

Robertsen A. Strothers
5525 Dundee
Edina, Minn.

Robertsen A. Strothers
5525 Dundee Road
Edina, MN 55436

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Center
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, and the notice of intent to cancel hearing if fewer than seven persons request a hearing.

This is my request that the hearing be held as scheduled on December 15th and 16th.

Very truly yours,

Carl F. Nelson

Carl F. Nelson
8420 County Road 10
Waconia, Minnesota 55387

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

It has been brought to my attention that a scheduled public hearing to consider rules governing horseracing in the State of Minnesota will be canceled unless seven or more persons request a hearing be held.

I am writing to request that this letter be considered as my request that the hearing be held.

Yours truly,

Lyle M. Jensen

Lyle M. Jensen
4625 Bassett Creek Lane
Minneapolis, MN 55422

November 16, 1983

Mr. James Weiler, Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

D. J. Cassin
4400 Gilford Drive
Edina, MN 55435

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

Regarding the Notice of Hearing and Intent to Cancel the hearing in the matter of the Adoption of Rules governing Minnesota Racing licensure, I request that the Public Hearing scheduled for December 15th and 16th be held. I believe that rules for pari-mutuel horseracing are important enough to warrant all possible public input.

Sincerely,

Joan Gilchrist
1001 Second Street N.W.
Waseca, Minn. 56093

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400
United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

I request that the public hearing for the adoption of rules governing licensing for Minnesota Racing be held on December 15 and 16, 1983, as scheduled.

I find it incongruous that the State would attempt to establish rules for pari-mutuel racing without a public hearing.

Sincerely,

Steward O. Mercer
9845 E. Green Lakes Trail
Chisago City, MN

November 16, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

Pursuant to the notice issued by Mr. Ray Eliot, Chairman of the Minnesota Racing Commission, I hereby request that the public hearing on the Proposed Adoption of Rules of the Minnesota Racing Commission be held.

Sincerely,

Warren White

2821 Copperfield Circle
Wayzata, Minn. 55391

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Kathy Brehm
3920 Skyview Road
Minnetonka, MN

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Mary G Dobbins

Mary G. Dobbins
3719 Columbus Avenue So.
Minneapolis, MN 55407

December 14, 1983

Mr. James Weiler
Project Administrator
Suite 400 United Labor Centre
312 Central Avenue
Minneapolis, MN 55414

Dear Mr. Weiler:

In the matter of the proposed adoption of rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, I request that the public hearing be held.

Sincerely,

Janet Smith

Janet Smith
535 West Sandhurst Drive
Roseville, MN 55113

Exh. No. 15
File No.
Date

Minnesota Pollution Control Agency

December 12, 1983

DEC 13 1983

Mr. James Weiler
Project Administrator
United Labor Center, Suite 400
312 Central Avenue
Minneapolis, Minnesota 55414

Dear Mr. Weiler:

The Minnesota Pollution Control Agency (MPCA) staff has reviewed the proposed Rules of the Minnesota Racing Commission governing class A and B licensing and has several suggested changes to the rules to offer for your consideration. We believe that the suggested changes serve to clarify the rules and do not involve a substantial change in the proposed language.

The suggested changes are as follows:

1. 4 MCAR §15.005B and 15.022B

   We recommend that the phrase "including ones affected jurisdictions determine must be built to handle traffic" be added at the end of the existing language in both of these sections. The operation of a racetrack will involve substantial increases in traffic, likely necessitating roadway improvements so that congestion and air quality problems do not result. It is, therefore, important to note all improvements that are necessary due to the project, not just those that are currently proposed. Issuance of MPCA's indirect source permit is contingent upon documented commitment to all improvements necessary to insure no adverse air quality impacts.

2. 4 MCAR §15.005K and 15.022K

   We recommend that the phrase "and for those working at or visiting the facility"be added after "public" on line two. A facility of this nature will include large numbers of employees and other personnel associated with the horses. Parking needed for these people, as well as the people attending the racing events, must be provided and must be taken into account in any analysis of impacts and MPCA permitting.

Phone: 296-7799
1935 West County Road B2, Roseville, Minnesota 55113-2785
Regional Offices • Duluth/Brainerd/Detroit Lakes/Marshall/Rochester
Equal Opportunity Employer

3. 4 MCAR §15.017F

Two changes are suggested here. The first is the addition of "as determined by the affected jurisdictions" after "improvements" in number 1. The rationale here is the same as that for the change suggested in 4 MCAR §15.005B and 15.022B. The second is the addition of "construction" between "ownership" and " and" in number 3. This change is intended to take into account the fact that the MPCA indirect source permit is required for construction of the facility.

Thank you for the opportunity to comment on these proposed rules. Please feel free to call me if you have any questions on these comments or would like to discuss them.

Sincerely,

Deborah R. Pile

Deborah R. Pile
Director
Office of Planning & Review

DRP:es

POPHAM, HAIK, SCHNOBRICH, KAUFMAN & DOTY, LTD.
4344 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE AND TELECOPIER
612-333-4800

WAYNE G. POPHAM
RAYMOND A. HAIK
ROGER W. SCHNOBRICH
DENVER KAUFMAN
DAVID S. DOTY
ROBERT A. MINISH
ROLFE A. WORDEN
G. MARC WHITEHEAD
BRUCE D. WILLIS
FREDERICK S. RICHARDS
G. ROBERT JOHNSON
GARY R. MACOMBER
ROBERT S. BURK
HUGH V. PLUNKETT, III
FREDERICK C. BROWN
THOMAS K. BERG
BRUCE D. MALKERSON
JAMES R. STEILEN
JAMES B. LOCKHART
ALLEN W. HINDERAKER
CLIFFORD M. GREENE
D. WILLIAM KAUFMAN
DESYL L. PETERSON
MICHAEL O. FREEMAN
THOMAS C. D'AQUILA
LARRY D. ESPEL
JANIE S. MAYERON
DAVID A. JONES
LEE E. SHEEHY
LESLIE GILLETTE
MICHAEL T. NILAN
ROBERT C. MOILANEN
DAVID J. EDQUIST
STEVEN G. HEIKENS
THOMAS F. NELSON
THOMAS J. RADIO
KATHLEEN M. MARTIN
JOHN C. CHILDS
DOUGLAS P. SEATON
BRUCE B. McPHEETERS
GARY D. BLACKFORD
SCOTT E. RICHTER
GREGORY L. WILMES
ELIZABETH A. THOMPSON

2660 PETRO-LEWIS TOWER
717 SEVENTEENTH STREET
DENVER, COLORADO 80202
TELEPHONE AND TELECOPIER
303-292-2660

SUITE 802-2000 L STREET N. W.
WASHINGTON, D. C. 20036
TELEPHONE AND TELECOPIER
202-887-5154

December 6, 1983

Minnesota Racing Commission
Rules Subcommittee
312 Central Avenue
Suite 400
Minneapolis, MN 55414

Re: Proposed Rules

Dear Commissioners:

At the last two rules subcommittee meetings, we expressed concern that the proposed rules for Class A and Class B should be modified to reflect the realities of any publicly held and traded company which might be an applicant or which may own one or more shares of a company which is an applicant. We believed that these concerns were to be addressed in the next draft of the rules. Apparently, they were not.

The rules as proposed then and now require that if Company A is an applicant, Company A must disclose all of its shareholders. That is reasonable as long as the applicant may provide computer printout lists or other lists which to the best of its knowledge is the most recent compilation of shareholders. However, many of those outstanding shares may be held in "street name" by investment bankers and brokers and it would be impossible to determine for whose benefit they are held. Some may be held in a "blind" trust. Of course, shares are traded daily and therefore the compilation will always be "dated", probably each day.

The proposed rules also require that Company A must disclose all ownership or other voting interest in Company B, if Company B owns one or more shares of Company A. All of the above problems and realities apply to this disclosure also. Additionally, Company A has no leverage over Company B so Company B may refuse

to provide information concerning its shareholders to Company A. This refusal may be the result of a fear of a corporate takeover by others; it may be against the law in some jurisdictions; it may be too onerous a task to complete (i.e. a 10 million share company).

In each case, the above could apply to Company C which owns one share of Company B, then Company D, E, F, etc.

Moreover, if someone wanted to prevent Company A from obtaining a license, he/she could cause Company Z to buy one share of Company A, B, C, D, E, etc. and then refuse to disclose any information. Even if most of the above information were obtained, the list of shareholders could be in the millions and no meaningful review would be possible. Unless the shareholder (corporate or individual) owns a substantial direct or indirect interest in Company A, the information as to that shareholder is not even relevant because that shareholder cannot exercise any control over Company A.

Most (if not all states) recognize these realities and provide that the applicant must disclose ownership interests in excess of a certain percentage, such as 5%. They do not ask for disclosure of the shareholders of corporate shareholders of a corporate applicant.

We believe that a reasonable rule for Class A and Class B licenses would provide for 1) disclosure of all shareholders of the applicant; 2) disclosure of all shareholders who own 5% or more of a company which owns 5% or more of the shares in the corporate applicant.

If the Racing Commission wants disclosure of the shareholders of any company which owns 5% or more of a company which owns 5% or more of the shares in the corporate applicant, then the corporate applicant should use its "best efforts" to obtain that information which I believe should entail sending a letter requesting that information to the President of such company with an affidavit of mailing attached to the letter which is made part of the application.

Unless modifications are made to the rules to address the above problems, the Racing Commission will have eliminated thousands of potential investors and perhaps numerous applicants.

The proposed rules in this regard are unreasonable and do not promote the interests of the State of Minnesota.

If the Racing Commission believes that that much detail is necessary, then it should require such or similar disclosures from all mortgage holders, bond holders or other debt holders because each has the limited potential of influencing the applicant and if there is a default, each may in fact own the racetrack.

In summary, I ask that the rules subcommittee give direction to staff to address these concerns and suggest some additional language at the next subcommittee meeting.

Very truly yours,

Wayne G. Popham

WGP/jf
cc: Racing Commission
Mr. Jim Weiler
Mr. Mike Miles
Mr. Robert Nardi
Mr. Robert Hentges
3520j

Jamb architects
43 S. LAKE ST. FOREST LAKE, MN. 55025

9 December, 1983

DEC 12 1983

Minnesota Racing Commission
Suite 400
312 Central Ave.
Minneapolis, MN 55414

Members of the MN Racing Commission:

It was brought to my attention that the Racing Commission is considering a January 1 deadline for the Class A racetrack license applications, which are not yet available. I feel that this date would not give our site representatives adequate time to prepare an application.

When the license applications are issued by the commission, we would like to have a minimum of two months to submit. I understand that other sites are requesting a date of May 1, and I would certainly support this request.

Please contact me as soon as the applications are available, and inform me of the final application deadline.

Sincerely,

JAMB ARCHITECTS

Joanne Gallaher

Joanne Gallaher

WOODBURY CENTER

A Minnesota Limited Partnership

1365 Englewood Avenue | Tel: 612 / 644-8281 | St. Paul, Minnesota 55104

December 9, 1983

DEC 10 1983

Mr. Ray Elliott
Chairman, Minnesota Racing Commission

At a meeting of the Rules Committee on Tuesday, December 6, 1983, Mr. Hentges advised that the process of accepting applications could occur as early as January 15, 1984. Commissioner Daniels asked for comments from those of us in attendance on the matter.

I stated that we had been advised that the indicated date for applications would be March 1, 1984, and that we were proceeding on that basis in formulating all aspects of our proposal for the Woodbury site.

I wish to advise you and the other members of the Commission that a date earlier than March 1, 1984, would not allow us adequate time to properly complete our proposal and may therefore place the viability of our proposal in jeopardy. I believe there are other site developers who are also basing their plans on a March 1, 1984, date.

Our plans will call for completion of the project in time for a 1985 racing program. Our site requires minimal site preparation and no major road or interchange construction so we have the advantages of time and cost in that respect.

I sincerely hope that no change from the indicated date of March 1, 1984, will occur and will look forward to the Commission action on this matter by December 13, 1983.

Very truly yours,

Ronald A. Signorelli
General Partner

CITY OF HASTINGS L STOFFEL
100 SIBLEY ST
HASTINGS MN 55033 13AM

Western Union Mailgram® UNITED STATES POSTAL SERVICE U.S.MAIL

4-041078S347 12/13/83 ICS IPMBNGZ CSP MPSB
6124373106 MGM TDBN HASTINGS MN 31 12-13 0508P EST

MINNESOTA RACING COMMISSION
312 CENTRAL AVE ROOM 400
MINNEAPOLIS MN 55414

HASTINGS COMMITTEE REQUESTS THAT THE DATE FOR APPLICATION BE EXTENDED TO APRIL 30, 1984.
LOU STOFFEL, MAYOR CITY OF HASTINGS

17:09 EST

MGMCOMP

DEC 14 1983

5241 (R 7/82)

TO REPLY BY MAILGRAM MESSAGE, SEE REVERSE SIDE FOR WESTERN UNION'S TOLL - FREE PHONE NUMBERS

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts, 4 MCAR §§ 15.001-15.050

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Robert R. Nardi, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Robert R. Nardi

Special Assistant
Attorney General

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts, 4 MCAR §§ 15.001-15.050

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA:
: ss.
COUNTY OF HENNEPIN:

James D. Weiler, being first duly sworn, deposes and says:

That on the 19 day of January, 1984, in the City of Minneapolis, County of Hennepin, State of Minnesota, he served the attached Notice of Submission to the Attorney General by depositing in the United States mail at said City of Minneapolis a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

James D. Weiler

Subscribed and sworn to before me this 19 day of January, 1984.

Sharon A. Beighley

SHARON A. BEIGHLEY
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1989

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules of the Minnesota Racing Commission Governing Class A License Application, Class A License Criteria, Class B License Application, Class B License Criteria, Class A and Class B License Procedures, Revocation and Suspension of Licenses, Assessment of Penalties, Facilities and Security Modifications, Medical Services, Care of Horses, Approval of Contracts, 4 MCAR §§ 15.001-15.050

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.16:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date, January 19, 1984, for review as to form and legality. Pursuant to 1 MCAR § 1.206B, the Attorney General will not aprove the rules for at least ten calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, 204 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-1288. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after the hearing and before submission to the Attorney General, you may contact James Weiler, Minnesota Racing Commission, Suite 400, United Labor Centre, 312 Central Avenue, Minneapolis, Minnesota 55414, telephone (612) 341-7555.

JAMES WEILER
Project Administrator
Minnesota Racing Commission