

Minnesota Attorney General: Administrative Rules Proceedings

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DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: August 9, 1991

TO: RICHARD KRUEGER
Minnesota Racing Commission

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Class D Licenses

The above-referenced rule has been approved as to its legality by the Attorney General on August 6, 1991.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJM:sc
Enclosures
cc: Mary Magnuson
William Brown, Chief Judge
MaryAnn Hruby

MINNESOTA RACING COMMISSION

11000 West 78th Street, Suite 201
Eden Prairie, Minnesota 55344
Telephone: 612-341-7555
Fax: 612-341-7563

Licensing Office (April - October)
P.O. Box 315, Shakopee, Minnesota 55379
Telephone: 612-496-7739 Fax: 612-496-7756

Veterinary Office (April - October)
P.O. Box 315, Shakopee, Minnesota 55379
Telephone: 612-496-7753 Fax: 612-496-7762

July 23, 1991

Ms. Patty Nolte
Attorney General's Office
525 Park Street
St. Paul MN 55102

Dear Patty:

Enclosed you will find the following additional documents relative to our Class D (County Fair) Rulemaking Process:

1. A Copy of the Notice Of Proposed Adoption of A Rule Without A Public Hearing.

2. A copy of the Certificate of Commission's Authorizing Resolution.

3. A copy of the State Register in which the proposed rules were published.

4. An additional copy of the Rules as Proposed.

Should you need further information, please let me know.

Sincerely,

Sharon A. Beighley

SHARON A. BEIGHLEY
Office Manager

SB/
encl.

cc: Richard Krueger
Mary Magnuson

Minnesota Racing Commission

Adopted Permanent Rules Relating to Class D Licenses

Rules as Adopted

CLASS D LICENSE

7870.0600 IDENTIFICATION OF APPLICANT FOR CLASS D LICENSE.

An application for a Class D license must include, on a form prepared by the commission, an affidavit of the chief executive officer setting forth:

A. That application is made for a Class D 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, 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 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

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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, 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 of organization, position, address, and telephone number.

J. The date.

7870.0620 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class D license must disclose:

A. The type of organizational structure of the applicant, whether a county agricultural society or association, or a nonprofit corporation, and:

(1) The applicant's full name.

(2) Date the applicant commenced operating its fair.

(3) Copies of the applicant's bylaws, rules and regulations, or any agreements creating or governing the applicant's organization.

(4) Full names, in alphabetical order, dates of birth, and addresses of officers of applicant. As to each, the applicant must disclose the nature and extent of any voting interest in the applicant.

(5) Full names, in alphabetical order, dates of birth, and addresses of all members or shareholders, as of the date of the application, and the nature and extent of the voting interest of each.

B. 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

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extent of control.

C. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding applicant's sponsorship or management of horse racing, and copies of any written agreements.

D. 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.

E. Whether the applicant, any director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more, if 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.

7870.0630 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class D license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to parts 7870.0620, item B or C, and 7870.0695, item B or C, has:

A. Been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, extortion, jury tampering, obstruction of justice, perjury, or 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

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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 or 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.

7870.0640 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT.

An application for a Class D 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, quarter horse, or other.

D. Racetrack dimensions by circumference, width,

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banking, location of chutes, length of stretch, type of surface, and description of equipment which will be used to maintain the track 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 mens' and womens' 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 area, giving distance to track and paddock, number of sampling stalls, placement of viewing ports on each stall, number of wash stalls with hot and cold water and drains; and a description of the walking ring.

H. A description of the paddock, if applicable, 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' and drivers' quarters in relation to the paddock.

J. A description of the pari-mutuel totalizator system, 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, distinguishing between public and other; a description of the road surface on

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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 improvements and equipment at the racetrack for security purposes including the provider of equipment, if known.

M. A description of starting, timing and photo finish equipment, and personnel, including the provider, if known.

N. A description of work areas for the commission members, officers, employees, and agents.

7870.0650 DISCLOSURE OF AUTHORIZATION TO USE HORSE RACING FACILITY.

An applicant for a Class D 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.

7870.0660 DISCLOSURE OF FINANCIAL RESOURCES.

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

A. The past five annual reports of the secretary of the applicant to the commissioner of agriculture.

B. A financial statement reflecting the applicant's current assets, including investments, loans and advances receivable, and fixed assets and current liabilities, including loans and advances payable, long-term debt, and equity.

C. 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, form, method

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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.

D. 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.

7870.0670 DISCLOSURE OF DEVELOPMENT PROCESS.

If an applicant for a Class D license proposes to conduct pari-mutuel horse racing at a facility to be constructed, the applicant must disclose with regard to development of its horse racing facility:

A. the total costs 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 part 7870.0640, items D to N, and other categories of improvements and equipment;

(5) interim financing;

(6) permanent financing; and

(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;

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(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel;

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

7870.0680 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class D license must disclose with regard to its financial plan, financial projections for any development period of 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 days and types of betting applicant seeks each year. The commission will use financial projections in deciding whether to issue Class D 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:

A. the following assumptions and support for them:

(1) average daily attendance;

(2) average daily per capita handle and average bet;

(3) retainage;

(4) admissions to track, including ticket prices and free admission;

(5) parking volume, fees, and revenues;

(6) concessions and program sales;

(7) cost of purses;

(8) pari-mutuel expense;

(9) breeders' fund;

(10) payroll;

(11) operating supplies and services;

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(12) utilities;

(13) repairs and maintenance;

(14) insurance;

(15) membership expense;

(16) security expense;

(17) legal and audit expense; and

(18) debt service;

B. the following profit and loss elements:

(1) total revenue, including projected revenues from retainage and breakage, admissions, parking, and concessions and program operations;

(2) total operating expenses, including anticipated expenses for:

(a) purses;

(b) pari-mutuel;

(c) state and local taxes;

(d) breakage to state;

(e) breeders' fund;

(f) cost of concession goods and programs;

(g) advertising and promotion;

(h) payroll;

(i) operating supplies and service;

(j) maintenance and repairs;

(k) security; and

(l) legal and audit;

(3) nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of the method used, and equipment depreciation and identification of the method used;

C. projected cash flow, including assessment of:

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

(2) disbursements, including land, improvements, equipment, debt service, operating expense, and organizational expense; and

D. projected balance sheets as of the end of any

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development period and the first or next three racing years setting forth current, fixed, and other noncurrent assets; current and long-term liabilities; and capital accounts.

7870.0690 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

A. If any required government approvals for development, management, and sponsorship of horse racing have been obtained:

(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 horse racing facility complies with all statutes, charter provisions, ordinances, and regulations pertaining to the development, sponsorship, and management of horse racing. If not in compliance, the applicant must disclose the reasons why not.

D. An applicant for a Class D license must provide a certified copy of the county's authorizing resolution to conduct pari-mutuel horse racing.

7870.0695 DISCLOSURE OF MANAGEMENT.

An applicant for a Class D 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

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function, job descriptions and qualifications for each management position, and a copy of the organizational chart.

B. Management personnel or volunteers and to extent known with respect to each:

(1) legal name, aliases, and previous names;

(2) current residence and business address 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; and

(g) human and animal health and safety; and

(4) a description of the terms and conditions of employment, and a copy of the agreement if one exists.

C. Consultants and other contractors to the 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; and

(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;

(2) specific security plans for stabling area, detention area, pari-mutuel betting facilities, purses, and cash room;

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(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; and

(4) coordination of security with law enforcement agencies.

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

G. A description of the applicant's plans for animal health and safety, including provisions for maintenance of the racing surface and removal of injured horses from the track.

H. A description of the applicant's marketing, promotion, and advertising plans.

I. 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.

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

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

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

M. A description of training of the applicant's personnel.

N. A description of plans for compliance with laws pertaining to discrimination, equal employment, and affirmative action.

7870.0720 EFFECTS ON COMPETITION.

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

7870.0730 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0740 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class D license, the applicant must make its best effort to include the following with respect to each individual identified pursuant to part 7870.0620 as a director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0695:

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; and

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

(1) authorizes a review by and full disclosure to an agent of the Minnesota Department of Public Safety, Division of Gambling Enforcement, 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 Minnesota Racing Commission, its members and employees, and agents of the Division of Gambling Enforcement to determine the signer's qualifications for a Class D license; and

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

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7870.0750 CLASS D LICENSE CRITERIA.

The commission may issue a Class D license if it determines on the basis of all the facts before it that: racing will be operated according to 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 directors, trustees, officers, managers, and holders of voting interests or control, including:

(1) criminal records;

(2) involvement in litigation over business practices;

(3) involvement in disciplinary actions over a business license or permit or refusal to review 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 decision making as long as the same indices are considered with regard to all applicants;

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

C. the quality of physical improvements and equipment applicant will use, including:

(1) racetrack or tracks;

(2) stabling;

(3) grandstand;

(4) detention area;

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(5) paddock;

(6) jockeys' and drivers' quarters and equipment;

(7) pari-mutuel tote;

(8) parking;

(9) access by road and public transportation;

(10) backstretch security fence;

(11) other security improvements and equipment;

(12) starting, timing, and photo finish equipment;

(13) commission work areas; and

(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. imminence of completion of facility;

E. financial ability to develop, sponsor, and manage pari-mutuel horse racing successfully, including:

(1) ownership and control structure;

(2) amounts and reliability of development costs;

(3) certainty of site acquisition or lease;

(4) terms and conditions of the applicant's authorization to use facility;

(5) current financial condition;

(6) sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

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

(8) feasibility of the financial plan;

(9) 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;

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

G. management ability of the applicant, including:

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(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 plans;

(9) plan for personnel training;

(10) equal employment and affirmative action compliance; and

(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;

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

I. extent of public support and opposition; and

J. effects on competition, including:

(1) number, nature, and relative location of other Class D licenses;

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

(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.

7870.0760 CLASS D LICENSE APPLICATION DISCLOSURES.

An applicant for a Class D license in its disclosures must:

A. Provide disclosures in printed or typewritten form

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on 8-1/2 by 11-inch paper. Immediately preceding each response, an applicant must state 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 part 7870.0620 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.

7870.0770 CLASS D LICENSE APPLICATION SUBMISSION.

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

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

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

7870.0780 CLARIFICATION OF CLASS D LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class D 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.

7870.0790 CHANGES IN CLASS D LICENSE APPLICATIONS.

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

7870.0800 DEADLINES FOR SUBMISSION OF CLASS D LICENSE APPLICATIONS.

Applications for Class D licenses must be submitted by at least 90 days before the date on which the applicant proposes to

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commence horse racing.

7870.0810 ORAL PRESENTATION BY APPLICANT FOR A CLASS D LICENSE.

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

7870.0820 PAYMENT OF CLASS D LICENSE FEE.

A Class D license does not become effective until the commission receives a certified check or bank draft made payable 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 fee for a Class D license equal to $50 times the optimum number of racing days sought in the license application. The commission must promptly refund to the licensee any amount by which the fee paid exceeds $50 times the number of actual days of racing sponsored and managed by the licensee.

7870.0830 CLASS D LICENSE APPLICATION INFORMATION.

False or misleading information in a Class D 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.

7870.0840 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

No Class D licensee may manage and conduct pari-mutuel horse racing at a facility at which construction, expansion, extension, alteration, or remodeling has occurred. No Class D licensee may construct, expand, extend, alter, or remodel a racetrack at a cost in excess of $10,000 unless the commission has approved the expansion, extension, alteration, or

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remodeling. Management or conduct of racing without approval is cause for revocation or suspension of a license or imposition of a fine.

7870.0850 SECURITY.

Class D 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.

7870.0855 SECURITY MODIFICATIONS.

The commission may order Class D licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to ensure 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.

7870.0860 MEDICAL SERVICES.

It shall be the responsibility of the Class D licensee to have a ~~licensed~~ certified paramedic~~,~~ or emergency medical technician~~,-or-the-equivalent,~~ and an ambulance ~~or-other suitable-transportation-available~~ on the premises during the period beginning 30 minutes prior to the post time for the first race on the program, or first qualifying race, through the conclusion of the racing program. ~~For-the-purposes-of-this part,-"ambulance"-or-"other-suitable-transportation"-shall-be defined-as-one-capable-of-transporting-injured-parties-to-an appropriate-medical-facility.~~

7870.0870 CARE OF HORSES.

A Class D licensee must provide the following facilities, equipment, and personnel for horses:

A. an individual stall for each horse, or other stabling facilities;

B. a fence surrounding the stabling facilities;

C. a licensed outrider mounted and on duty whenever pari-mutuel racing is being conducted; and

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D. a conveyance available for the safe and expedient removal of crippled animals. The appearance and operation of such conveyance must be approved by the commission veterinarian prior to the taking of entries for the first day of racing. Whenever pari-mutuel racing is being conducted, this conveyance must be available in a location such that it may be immediately driven to an injured horse by a driver capable of assisting in the safe and expedient removal of said horse from the racetrack surface.

7891.0110 POSTMORTEM EXAMINATION.

Subpart 1. **Horses that must undergo postmortem examination.** Every horse which suffers a breakdown at a licensed racetrack under the jurisdiction of the commission, in training or in competition, and which is euthanized, and every horse which expires while stabled at a licensed racetrack under the jurisdiction of the commission, shall undergo a postmortem examination to be conducted by the commission veterinarian or the veterinarian's designee to determine the injury or illness which resulted in euthanasia or natural death. A Class D license holder is responsible for furnishing transportation, within six hours of death, to deliver a horse to a postmortem site to be determined by the commission veterinarian.

Subp. 2. **Test samples to be taken for analysis.** Test samples must be obtained from every horse which undergoes a postmortem examination. The samples shall be sent for analysis to a laboratory approved by the commission and the commission may direct the laboratory to retain and preserve such samples for future analysis.

When practical, both blood and urine test samples shall be obtained prior to euthanasia.

Subp. 3. **Owner and trainer responsible.** The owner and attending trainer are responsible for reporting to the commission veterinarian the death of a horse within one hour of its death, and for having the postmortem examination performed in accordance with this part.

Approved
by Revisor _____

Subp. 4. **Report of exam.** A report of every postmortem examination shall be filed with the commission within 72 hours of the horse's death on a form prepared by the commission.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY
8/6, 1991
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 8 1991
Joan Anderson Growe
Secretary of State
3:40 P.M
M

Mailing Requirements & Problems

MJM 7/25

RULE REVIEW CHECKLIST

File No. 1841
DATE RECEIVED 7-23-91
REVIEW DATE 8-1-91
DUE DATE ~~8-6-91~~ 8/6/91
~~(DIS)~~APPROVED
WITHDRAWN

Docket No. 15.0009.0733
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 7/25/91
REVISOR (DIS)APPROVED 7/29/91
FILED W/SEC. OF STATE 8/8/91
RETURNED TO AGENCY 8/9/91

✓ Rule as adopted (4 copies)

Notice to Solicit Outside Information/Opinion (if applicable)
- Date published in State Register
- Comments

Petition for Adoption of a Rule

✓ Board's Authorizing Resolution
- Feb 20, 1991 Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 240.23 Statutory Authority
- ✓ Small Business Statement
- ✓ Expenditure of public money statement
- Feb 20, 1991 Signature

✓ Statement of Need and Reasonableness (if applicable)
- ✓ Small Business Statement
- Fees - § 16A.128? see notes

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- April 22, 1991 Dated (30)/25 days before adoption
- ✓ Notice attached indicates it is attached
- Copy of rule or summary attached

✓ Publication in State Register
- April 22, 1991 Date (30)/25 days before adoption

✓ 180-day deadline from:
- ✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not new
- ✓ end of comment period (§ 14.26) (rules without hearing)
- effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
- July 17, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
- July 17, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
- Mary Magnuson Name of SAAG representing agency

~~Notice of Submission to Attorney General (if applicable)~~

Affidavit of Mailing Notice to Attorney General (if applicable)

Rules acl

Office of the Revisor of Statutes

Administrative Rules

Paul M. Marinac
Assistant Deputy Revisor
296-0948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

July 29, 1991

Sharon A. Beighley
Minnesota Racing Commission
11000 West 78th Street, No. 201
Eden Prairie, MN 55344

RE: File No. 1860

Dear Ms. Beighley:

I have approved your rules adopted without a public hearing, and am enclosing a copy of these rules for your records.

I have also delivered two copies of these rules to the Attorney General for approval. If they are approved, the Attorney General will file two copies of the approved rules with the Secretary of State. The Secretary of State will then notify me of that fact.

After I am notified that the rules are filed with the Secretary of State, I will prepare three copies of a notice of adoption for you.

If you have any questions, please call me.

Very truly yours,

Paul M. Marinac

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of the Rule of the Minnesota Racing Commission Relating to Class D Licenses.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT

(1) Notice of the Minnesota Racing Commission intent to adopt the above-entitled rule was published in the State Register on April 22, 1991 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on April 22, 1991. (3) The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. (5) One request for a public hearing on the rule was received by the agency.

(7) Comments on the rule were received by the agency and were considered by the Minnesota Racing Commission. No requests for notice of submission to the attorney general were received by the agency.

Based on the evidence in the record before the Minnesota Racing Commission, I find the following:

FINDINGS OF FACT

(6) 1. Minn. Rule pt. 7870.0860 has been modified slightly to correct an error that appeared in the rule as published. The modification conforms the rule to Minn. Stat. Sec. 144.801 by changing the reference to a "licensed paramedic" to a "certified paramedic" and by conforming the definition of an ambulance to that contained in the law. The change is necessary to ensure that the rule meets all the requirements of Minnesota law imposed on paramedics and providers of ambulance services. The modification is reasonable because it does not substantially change the substance of the rule.

2. The rule, as modified, is not substantially different than the rule as originally published. The modified rule affects

no classes of persons which could not have reasonably been expected to comment, nor does the rule go to new subject matter of significant substantive effect or make a major substantive change not raised by the original Notices of Intent to Adopt the Rule. Therefore, the modifications are needed and reasonable.

CONCLUSION

The rule, as proposed and including the above-described modifications, is needed and reasonable (8) and supported by the evidence in the rule-making record.

NOW, THEREFORE, IT IS ORDERED that the rule identified as governing amendments to existing rules is adopted this 17th day of July, 1991, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes, section 240.23 (1990).

(9)

RICHARD KRUEGER
Director
Minnesota Racing Commission

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STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Relating to Class D License Applications and Class D License Criteria,

STATEMENT OF NEED AND REASONABLENESS

GENERAL

Minn. Stat. §240.03 empowers the Minnesota Racing Commission to regulate horse racing in the state to ensure it 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.

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 D license applicants who construct, own and operate horseracing facilities.

The Commission believes the proposed rule is 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 rule is necessary to ensure that Class D licensees are financially strong, possess good character and will operate, sponsor and manage facilities, equipment, personnel, and systems in a safe manner. The Commission further submits that the proposed rule must be promulgated in order that an applicant for a Class D license may know the nature of the business it seeks to enter, as well as the application procedure and criteria for issuance of licenses.

The Commission believes the proposed rules are reasonable, because they are customary in the horse racing industry. Indeed, the proposed rule is very similar to the rules promulgated for the licensing of persons to obtain Class A and B licensees to own and operate a racetrack. Although the rule requirements are stringent, successful entrance into and participation in the industry has not been deterred. A Notice of Intent to Solicit Outside Opinion regarding the proposed rule was published in the State Register on January 2, 1990.

CLASS D LICENSES

1. SUMMARY

Minn. Stat. §240.05 Subd. 1(d) and subd. 3 clearly indicates that the Commission is not required to issue any license. Minn. Stat. §§240.09 provides that the Commission may issue a Class D license to county agricultural societies and other non-profit organizations operating or sponsoring county fairs 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.

The proposed rules require complete disclosure of the applicant and all its officers, directors and shareholders as well as those of any holding company. Moreover, the proposed rule permits 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.

Further, the proposed rule requires applicants for Class D 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.

The proposed rules require Class D applicants to submit detailed plans and specifications of an applicant's track, buildings, fences, and other improvements to the racing facility.

Proposed rules also require a comprehensive background and financial investigation of an applicant for a Class D license including all sources of financing. The investigation must be conducted by the Commission in cooperation with the Minnesota Department of Public Safety Gambling Enforcement Division. Access is afforded the Commission to all criminal history information which the Gambling Enforcement Division compiles on applicants and licensees.

The proposed rule mandate disclosure of all 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 proposed rules also require submission of affidavits from those persons regarding their finances and character.

Finally, the proposed rules provide that the Commission and its 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.

4. RULE-BY-RULE ANALYSIS

7870.0600. This part requires identification of an applicant for a Class D 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. This rule also requires an affidavit of the applicant.

Subsection A. identifies the license sought.

Subsection B. ensures that the affiant is authorized to represent the applicant.

Subsection C. is necessary to make clear that no individual or entity is entitled to a Class D license as of right, and that the burden of proving the qualification for a license is on the applicant. The subsection obtains the applicant's recognition of and agreement with those principles.

Subsections D. and E. are necessary to protect the state of Minnesota, its employees, Commission members, staff and agents from the attempts of the applicant to prevent a full investigation into the finances, character or other qualifications of the applicant. In addition subsection D protects the state from liability 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 attest to the truth of the contents of applications.

Subsection G. is necessary to obtain applicants' recognition of and agreement with possible sanctions that may be imposed for providing false or misleading information. This section is necessary to simply notify the applicant of the possible sanctions.

Subsection H. is necessary to expressly obtain the applicant's agreement to comply with Minn. Stat. ch. 240 and all rules of the Commission.

Subsections I. and J. are necessary to identify the affiant and provide the date of the affidavit.

The requirement that the Chief Executive Officer or a major financial participant in an applicant for a Class D license serve as the 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 knowledgeable 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 the 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. Information required is reasonable to ensure the integrity of the sponsors of pari-mutuel horse racing.

7870.0620 requires disclosure of the ownership and control of Class D license applicants.

Subsection A. provides for identification of the type of organizational structure of an applicant. This information is necessary in order to determine what specific 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 and other potential obligations. This information is necessary to identify hidden ownership or hidden control by undesirable individuals or companies.

Subsection E. provides that all individuals with ownership or voting interests in the applicant be disclosed.

Many of the provisions of Minn. Stat. ch. 240 identified and explained above necessitate complete disclosure of who owns or controls a Class D license applicant.

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 information required by the rule will enable the Commission to make a sound licensing decision based on the public interest.

Chapter 240 requires disclosure of persons with any interest in the 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 the industry. No undue burden is imposed.

7870.0630 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 disclosure of involvement in civil proceedings relating to business practices. Subsection C. requires disclosure of involvement in disputes over racing, gambling, or business licenses. Subsection D. requires diclosure of involvement in administrative or judicial proceedings over horse racing, gambling, alleged unfair labor practices or discrimination. Subsection E. requires disclosure of actions against a regulator of horse racing or gambling. Subsection F. requires disclosure of involvement in bankruptcy proceedings. Subsection G. requires disclosure of failure to satisfy a judgment, decree or order. Subsection H. requires disclosure of 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 and 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 inimical to horse racing or are not of good character.

Minn. Stat. ch. 240 mandates that applicants submit affirmative action plans. These provisions evidence legislative concern over human rights in pari-mutuel betting and horse racing. The concern is reflected in the requirement of subsection D. for disclosure of accusations of discrimination.

The proposed rule 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 disclosure 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.

7870.0640 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, comfortable, enjoyable, honest and financially successful as a matter of sport and recreation.

The statute specifically requires submission of detailed plans and specifications for 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; subsection D. description of the racetrack; subsection E. stabling; subsection F. grandstand; subsection G. detention barn and walking ring; subsection H. paddock; Subsection I. jockey and driver quarters; subsection J. pari-mutuel tote; subsection K. parking; subsection L. improvements and equipment needed for adequate security; subsection M. starting, timing and photo finish equipment; and subsection N. Commission work areas.

Minn. Stat. §240 requires a horseracing facility to include work areas for Commission members, officers, employees and agents. Subsection N. 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 have been 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. and M.

7870.0650 requires an applicant to 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 requires the applicant to provide a copy of the agreement. This requirement is necessary to demonstrate that racing may be conducted if a license is granted.

7870.0660 requires disclosure of financial resources.
Subsection A. requires the past five annual reports of the secretary of the applicant to the Commissioner of Agriculture, Subsection B. financial statements reflecting the applicant's current assets and liabilities, subsection C. equity and debt sources of funds to sponsor

and manage horse racing, and subsection D. identification and description of sources of additional funds, if needed, due to cost overruns or other cause.

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 to 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 funding. These statutory requirements render the proposed rule necessary.

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 D. 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.

7870.0670 requires that if an applicant for a Class D license proposes to conduct pari-mutuel horseracing at a facility to be constructed, that the applicant make certain disclosures with regard to the development of its horse racing facility.

Subsection A. requires the furnishing of total costs of construction of the facility, distinguishing between fixed costs and projections; Subsection B. requires identification of costs involved for facility design, land acquisition, site preparation, improvements and equipment, interim and/or permanent financing, and costs involved for organization, administration, accounting and legal services. Subsection C. requires documentation of fixed costs; Subsection D. requires the schedule for construction of the facility, including estimated completion date; Subsection E. requires schematic drawings; Subsection F. requires copies of various contracts and performance bonds; and subsection G. requires a determination whether the site has been acquired or leased and provision of appropriate documentation.

7870.0680 requires disclosure of an applicant's financial plan.

This section requires disclosure of comprehensive financial projections for the first or next three 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 optimum 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.

The proposed rule relating to financial strength is necessary for the same reason that part 7870.0660 is necessary. The development period and first or next three years of racing is the period over which the financial viability of the applicant will likely 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 racing, cable television and other industries. It has been applied successfully.

7870.0690 requires disclosure of compliance with law and the status of governmental actions required or caused by applicants' proposed facilities.

Subsection A. requires a description of the required governmental approval, unit of government, date and documentation; whether public hearings were held; whether the unit of government attached any conditions to the approval, and disclosure and documentation of any said conditions.

Subsection B. requires disclosure of any governmental approvals remaining to be obtained, including conditions and documentation.

Subsection C. requires determination that the facility is in compliance with all statutes, charter provisions, ordinances and regulations pertaining to the development, sponsorship and management of horse racing.

Subsection D. requires a certified copy of the County's authorizing resolution to conduct pari-mutuel horse racing.

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.

7870.0695 requires disclosure of the management of applicant's facilities.

Subsection A. requires 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 organizational chart.

Subsection B. requires disclosure of management personnel or volunteers, including legal names, aliases and previous names; current residence address, business and telephone numbers; qualifications and experience; and a description of the terms and conditions of employment.

Subsection C. requires disclosure of consultants and other contractors to the applicant who will provide management-related services; Subsection D. requires disclosure of memberships of the applicant, its management personnel and consultants in horse racing organizations.

Subsections E. through N. require disclosure of the applicant's security plan, plans for human health and safety including emergencies, description of plans for animal health and safety including provisions for maintenance of the racing surface and removal of injured horses from the track, a description of marketing, promotion and advertising plans, a description of the plan to conduct horse racing including types of racing, number of days, weeks, specific dates, number of races per day, time of day and special events, a description of the plan for purses including total purses, formula, minimum, stakes races and purse-handling procedures, a description of the plan for pari-mutuel betting, concessions, training of the applicant's personnel and plans for compliance with laws pertaining to 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 and safety of horseracing.

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 D 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 L. 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 N. 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" that an applicant may not have entered into agreements with management consultants or concessionaires at the time of application. Use of "any" in reference to management consultant contracts recognizes the same reality. The use of "to the extent known" and "any" is further evidence of the reasonableness of the rule.

7870.0720 requires disclosure of the effects of applicant's horseracing facilities on competitors in the horseracing industry. The proposed rule reflects the requirement of the statute that the Commission determine that the issuance of a Class D license will not create a competitive situation which will adversely affect racing and the public interest.

The rule is reasonable. It does not require any substantive action by the applicant, and simply requires reporting of actions taken for other reasons and the impacts of the actions. The rule requires disclosure 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 rule imposes no undue burden.

7870.0730 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.

7870.0740 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 the 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 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 data and

releases suppliers and users of the data from liability.

The statute mandates that the Commission conduct, or request the Gambling Enforcement Division to conduct, a comprehensive background and financial investigation of the applicant and sources of financing. The Commission has access to criminal histories compiled by the Gambling Enforcement Division.

The Gambling Enforcement Division 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 various crime bureau authorizations and waivers. Those authorizations and waivers have been used successfully for many years in Minnesota investigations.

Minnesota law protects the non-public nature of certain proprietary and security data. The rule does not impose an undue burden.

7870.0750 sets forth factors the Commission must consider as it makes the statutorily mandated determinations regarding the issuance of a Class D 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 a Class D license will not deny the applicant any constitutional protections by failing to inform applicants of the bases of a decision, by allowing arbitrary decisions or by violating 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 rule. It ignores none of the data requested.

7870.0760-7891.0110 provides procedures for application and issuance of Class D. licenses.

Proposed rule 7870.0760 requires Class D 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 the applications. The subsection imposes no undue burden.

Subsection B. requires an applicant to make its best effort to provide all information requested by applicable questions.

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, it recognizes an applicant may be unable realistically to gather and provide some information which is requested. The subsection does not demand the impossible.

Subsection 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 D. imposes no burden.

Rule 7870.0770 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.

7870.0780 requires the Commission to designate an individual to Clarify Class D 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.

7870.0785 requires a Class D license applicant to submit $1,000 at the time of application to cover the costs of the investigation.

Chapter 240 requires a comprehensive personal and financial investigation by the Commission or Gambling Enforcement Division 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 Gambling Enforcement Division estimates a typical investigation will cost approximately $1,000. Neither the Commission nor the Gambling Enforcement Division 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 $1,000 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.

An applicant unable to submit $1,000 is not likely to possess the financial strength to operate a racetrack or conduct horse races successfully.

7870.0790 prohibits Commission consideration of substantive amendments to applications after submission. The application process 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 the application. The uncertainty, expense and delay of litigation most certainly would follow. Thus, the rule is reasonable.

7870.0800 establishes application deadlines. The rule requires submission of applications for Class D licenses at least 90 days prior to the date on which the applicant proposes to commence horse racing.

A deadline is necessary to give the Commission time to conduct statutorily mandated personal and financial investigations. The Gambling Enforcement Division has informed the Commission that 90 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 for that licensing to occur as well.

The rule is reasonable. States set deadlines in other jurisdictions. Further, Class D applicants must make preparations for racing several months in advance of commencement in any event in order to attract horses and for other pruposes. 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.

7870.0810 requires the Commission to provide an applicant for a Class D 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 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 an applicants to make the presentation required by the rule, a second opportunity to make a presentation is not necessary.

The rule imposes no undue burden outside the Commission.

7870.0820 provides that the Class D 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. Chapter 240 provides for revocation of Class D licenses for willful failure to make payments required by the statute

The rule is reasonable. It provides for a refund to a Class D 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 license 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.

7870.0830 provides for denial, revocation or suspension of a Class D 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 D 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.

Chapter 240 provides for the revocation of a Class D license for an intentional false statement in an application. Those subdivisions also authorize revocation or suspension for rules violations which the Commission believes adversely affects 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 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.

7870.0840 requires Commission approval of modifications of a horseracing facility and provides sanctions against Class D 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 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 threshhold of $10,000 to avoid approval of insignificant modifications.

7870.0850 requires Class D licensees to maintain adequate security.

The rule is necessary because 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 drivers, horses and all other participants. It protects facilities and equipment.

The rule is reasonable because it is customary.

7870.0855 requires Class D 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 7870.0695, E. The state of the art 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 and a similar rule has been used successfully in Minnesota for Class B racing.

7870.0860 requires medical services. The rule is necessary to health and safety. Hundreds 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. Furthermore, many county fair grounds are not in close proximity to a significant medical facility. Therefore, prompt attention and transportation is critical to the safety of the racing participants and the public.

The rule is reasonable because it only requires equipment and staff during times of probable need.

7870.0870 provides for the care of horses. Subsection A. requires individual stalls, B. a fence surrounding the stabling facilities, C. a mounted outrider whenever pari-mutuel racing is being conducted, and D., a conveyance for the safe and expedient removal of injured animals.

The rule is necessary to the health, safety, comfort and humane treatment of horses. It is important to attract horses to a horse racing facility. The better facilities may attract better horses. Thus, it is necessary to the integrity of horse racing and the public interest.

The rule is reasonable. It is applied in other states successfully and used here in Minnesota at Canterbury Downs.

7891.0110 provides that horses that are euthanized at licensed racetracks because of severe injury must undergo a postmortem examination.

The proposed amendment is necessary to insure the integrity of racing at Class D facilities. The rule is reasonable because it is applied successfully in other states as well as here in Minnesota at Canterbury Downs.

OTHER STATUTORY REQUIREMENTS

Minn. Stat. §14.115 requires agencies, when proposing a new rule or amending existing rules which may affect small businesses, to consider certain methods for reducing the impact of the rule on small business.

The proposed rules impact upon small businesses

Class D licenses may nly be issued to county agricultural societies or associations incorporated under chapter 38 or nonprofit corporations organized under chapter 317A in existence and operating fairs on April 21, 1951. These organizations are at least comparable to small businesses. Therefore, the Commission considered the effect of the proposed rules on these potential applicants. In several instances the proposed rules were drafted to accomodate the status and limitations of these organizations. Representatives of the County Fair Association and the standardbred racing industry were consulted regarding the impact of the proposed rules on county agricultural associations and corporations.

In many instances however, the proposed rules require the same information required of applicants for Class A or Class B licenses. The Commission considered the impact of the rule on small business and determined that because of the nature of the industry, the Commission cannot be less rigorous in its regulation of one type of business than another.

Minn. Stat. §14.11 subd. 2 is inapplicable because the proposed amendments will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subd. 1, 116.07, subd. 6 and 144A.29, subd. 4 are not applicable. Section 16A.128, subd. 1 does not apply. Likewise, a fiscal note is not required pursuant to 3.892 as the rule will not force any local agency or school district to incur costs.

As these proposed rules require payment of an investigation reimbursement fee, a fiscal note has been transmitted to the Commissioner of Finance, the Chairman of the Senate Finance Committee, and the Chairman of the House Appropriations Committee.

CONCLUSION

Based on the foregoing, the Minnesota Racing Commission's proposed rules governing horse racing are both necessary and reasonable.

RICHARD G. KRUEGER
MINNESOTA RACING COMMISSION

Stat Authority 240.23
The commission has the authority, in addition to all other rulemaking authority granted ~~elsewhere~~ elsewhere in Laws 1983, chapter 214, to promulgate rules governing
(a) the conduct of horse races held at licensed racetracks in Minnesota, including but not limited to the rules of racing etc

Solar
7870.0670 weak SOLAR
7870.0685 weak SOLAR

7870.0730 line 10 "make its best effort"

7870.0785 Fee = where is approval from Finance and letters to appropriate committees
is this a fee or cost for administration
see notes on next page

7870.0820 MN Stat 645.15 ~~sets fee $50 times~~ computes time number of racing days (check if PN by Statute) pursuant to Rule
see next page
SOLAR states chapter 240 is this the same as 645.15 (PN check) - no, P.N

7891.0110 Weak SOLAR
sub 3 why report death one hour after death
sub 4 why report within 72 hours

should have explained change 7891.0110 subp 1 lines 29-32 - it may not be a substantial change but they should have explained it in the findings of fact

It does make more requirements - ie within 6 hours site determined by the veterinarian

Indicates in SOLAR ~~[illegible]~~ 16A.128 not applicable

Rule - 7870.0820 - Fee 645.15 - Computation of Time

Where the performance of doing any act, duty, matter, payment, or thing is ordered or directed, and the period of time or duration for the performance or doing thereof is prescribed, ...

MN Stat 240.10 establishes license fees for the ~~various~~ various classes

Minn Stat 240.10

The fee for a class A license is $10,000 per year. ... The fee for a class D license is $50 for each assigned racing day on which racing is actually conducted.

This is a fee established by statute and not by rule so 16A.128 would not apply.

7870.0785 - Fee

~~I think this was~~

This was dropped from the proposed to the adopted. This is new material There is no 7870.0785 in the Rules-Pocket part nor the rules submitted to us in March which Mary Jo reviewed

This may have been an error on the Revisors part - see 7870.0785 on proposed rules

I could not find anywhere in the statute which is mandates the $1,000 fee

16A.128 sub-2 - The kinds of fees that need not be fixed by rule unless specifically required by law are:

(1) fees based on actual direct costs of a service

but they established them by rule even though maybe they would not have should they have gotten permission from finance and written the letters to the house appropriations committee and senate finance committee

MINNESOTA RACING COMMISSION

11000 West 78th Street, Suite 201
Eden Prairie, Minnesota 55344
Telephone: 612-341-7555
Fax: 612-341-7563

Licensing Office (April - October)
P.O. Box 315, Shakopee, Minnesota 55379
Telephone: 612-496-7739 Fax: 612-496-7756

Veterinary Office (April - October)
P.O. Box 315, Shakopee, Minnesota 55379
Telephone: 612-496-7753 Fax: 612-496-7762

July 3, 1991

Mr. Dan Mjolsness
Seven Springs Farm
RR 2
Red Wing MN 55066

Dear Dan:

The purpose of this letter is to acknowledge receipt of your memorandum of April 30, 1991 whereby you request that the Racing Commission hold a public hearing for the purpose of receiving public comments on its proposed Class D licensing rules.

Your memorandum was reviewed and considered by the Commission's Rules Committee at its meeting on June 24, 1991. As noted in the Notice of Intent to Adopt the Class D Rules, the Administrative Procedures Act requires a governmental organization to hold a public hearing on a proposed rule only if 25 or more requests for a public hearing are submitted. Because you submitted the only request for a public hearing, the Committee reviewed your memorandum but decided not to recommend to the Commission that a public hearing be convened.

Your memorandum will become part of the record of the Rules Committee held on June 24, 1991, as well as part of the rulemaking record submitted to the Attorney General.

Thanks for your continued interest and concern for racing in Minnesota and the activities of the Commission.

Sincerely,

RICHARD G. KRUEGER
Executive Director

RGK:sb

Walk

MINNESOTA RACING COMMISSION

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Eden Prairie, Minnesota 55344
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Telephone: 612-496-7753 Fax: 612-496-7762

June 27, 1991

Mr. O'Brien J. Doyle, Jr.
15775 Hannover Path
Apple Valley, MN 55124

Dear Mr. Doyle:

As we discussed on Monday, the Commission's Rules Committee considered the comments you submitted regarding the proposed Class D licensing rules.

Based on those comments as well as my phone conversation with you just prior to the meeting, the Rules Committee modified the rule as you suggested. The word "licensed" was replaced with the word "certified" and all references to "other suitable transportation" were stricken from the rules.

Thank you very much for your interest in racing in Minnesota and the activities of the Commission.

Sincerely,

Richard G. Krueger
Executive Director
Minnesota Racing Commission

RGK/mc

enc.

SEVEN SPRINGS FARM

Dan and Bev Mjolsness
Rural Route Two
Red Wing, MN 55066
612. 388. 3811

RECEIVED
MN RACING COMMISSION
MAY - 6 1991
AM 7|8|9|10|11|12|1|2|3|4|5|6 PM

April 30, 91

Richard Krueger, Director
Minnesota Racing Comm.
11000 West 78th St., Suite 201
Eden Prairie, Mn. 55344

Dear Mr. Krueger,

I hereby request that a public hearing be held regarding the proposed adoption of the Minnesota Racing Commission Rule governing Class D (County Fair) Racing.

My reasons for making this request are as follows:

1. A Class D licensee may be a non-profit corporation which varies greatly from present Class B license holders and can become unfair competition for profit corporations. (7870.0620)
2. Types of racing will not be limited to harness racing and that has implications for all racing breeds. (7870.0640)
3. "Facility to be constructed " makes it possible to establish another racetrack facility when the present one is marginal. I assumed that county fair sites would be used essentially as they currently exist. (7870.0670).
4. Cost of purses and the breeders fund have implications for all horse owners whether they now, or in the future, own Quarter horses, Standardbred's or Thoroughbreds. This issue is complicated by existing law treating the breeders' fund for the racing breeds differently. (7870.0680)
5. Effects of competition (7870.0720) needs to be addressed in a' public forum so future impacts on the state's horseracing industry can be fully understood.
6. Number, nature and relative location of Class D licenses can and will have an influence (positive or negative) on the interest and growth of horseracing in the state.

In conclusion, I have had some experience with County Fair organizations and have observed harness racing meets at Cannon Falls, Minnesota, and with this knowledge I am of the opinion that the subject rule proposed that has broad industry implications requires a public hearing.

Sincerely,

Dan Mjolsness

Dan Mjolsness

O'BRIEN J. DOYLE, JR.

Consultant

06 May 1991



Mr. Richard Krueger
Minnesota Racing Commission
11000 West 78th Street, Suite 201
Eden Prarie, MN 55344

Dear Mr. Krueger:

Thank you for returning my phone call several weeks ago, regarding proposed rules relating to Class D Licenses, as published in the 22 April 1991 State Register.

Pursuant to your requet, I am forwarding some proposed changes in your language, and offering some clarification.

1870.0810 First, paramedics and Emergency Medical Technicians (EMTs) are not "licensed" in Minnesota, but are certified to perform certain medical procedures, operating under a licensed physicians direction. In addition, there is nothing that could be considered an "equivalent" to the above providers. Either a person is a certified EMT/Paramedic or they are not.

" Second, the rule in question appears to contemplate that an injured or ill person could be transported in an ambulance (which is appropriate) or, "other suitable transportation". I would argue that for the patient, there is no other suitable transportation than an ambulance. If trained personnel are treating the patient and they use a vehicle other than a licensed ambulance, one could make a fairly decent case that the owner of the 'other' vehicle is operating an ambulance without a license in violation of M.S. 144.801. There could be significant exposure here for a tort claim if something went wrong.

Below is a possible alternative to your currently proposed language:

"It shall be the responsibility of the Class D licensee to have at least two paramedics or emergency medical technicians certified by the commissioner of health and an ambulance licensed pursuant to M.S. 144.801 available on the premises during the period beginning 30 minutes prior to the post time for the first race on the program, or first qulaifying race, through the conclusion of the racing program." Your attorney may want to rewrite the above, but this may give you the general direction. You will also note that I added that two of the above personnel must be available. That is because all ambulances in the state must operate with at least a two-person crew.

15775 Hannover Path • Apple Valley, MN 55124 • (612) 431-7352/(612) 750-0087

Thank you for your consideration in this matter. Should you have any further questions, please do not hesitate to contact me.

Sincerely,

O.J. Doyle, Paramedic
Emergency Medical Services Consultant

cc: Rick Wagner
Norm Hanson

7-23-91

Called Sharon Beighley
told her they are missing
the proposed rule, Notice of
Intent, Notice of Intent as
published in the State Register

Shawn said she would send it

7-23-91 - called her and
told her there is no
resolution for the Notice
of Intent

MINNESOTA RACING COMMISSION

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July 22, 1991

Ms. Patty Nolte
Attorney General's Office
525 Park Street
St Paul MN 55155

Dear Patty:

At its meeting on Wednesday, July 17, 1991 the Minnesota Racing Commission formally adopted rules governing Class D (County Fair) racing. In accordance with that adoption, enclosed you will find the following documents:

1. Two copies of the Rules as proposed;

2. Four copies of the Rules as adopted;

3. Copy of Affidavit of Mailing of Rule and Certificate of Mailing List;

4. Copy of Statement of Need and Reasonableness;

5. Copy of Findings of Fact, Conclusions, and Order Adopting a Rule Without a Public Hearing;

6. Certificate of the MRC Resolution Adopting the rule;

7. Declaration of Counsel;

8. Copies of the two letters received regarding the rules, and the MRC's responses to those letters.

Would you please review and approve these rules on behalf of the Attorney General, and notify me in writing when such approval is granted. The MRC will then arrange to have Notice of Adoption published in the State Register.

If you have any questions, please give me a call.

Sincerely,

Sharon A. Beighley

SHARON A. BEIGHLEY
Office Manager

cc: Richard G. Krueger
Mary Magnuson

RECEIVED

JUL 23 1991

Office of the Attorney General
Government Services Section
Capitol Office Bldg. - Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

IN THE MATTER OF THE
PROPOSED ADOPTION OF THE
MINNESOTA RACING COMMISSION
RULE GOVERNING CLASS D
(COUNTY FAIR) RACING

NOTICE OF PROPOSED
ADOPTION OF A RULE
WITHOUT A PUBLIC HEARING

(1) NOTICE IS HEREBY GIVEN THAT THE MINNESOTA RACING COMMISSION PROPOSES TO ADOPT THE ABOVE-ENTITLED RULE WITHOUT A PUBLIC HEARING FOLLOWING THE PROCEDURES SET FORTH IN MINNESOTA STATUTES, SECTIONS 14.22 TO 14.28. THE STATUTORY AUTHORITY TO ADOPT THE RULE IS MINNESOTA STATUTES, SECTION 240.23 (1990).

(2) ALL PERSONS HAVE 30 DAYS IN WHICH TO SUBMIT COMMENT IN SUPPORT OF OR IN OPPOSITION TO THE PROPOSED RULE OR ANY PART OR SUBPART OF THE RULE. COMMENT IS ENCOURAGED. (3) EACH COMMENT SHOULD IDENTIFY THE PORTION OF THE PROPOSED RULE ADDRESSED, THE REASON FOR THE COMMENT, AND ANY CHANGE PROPOSED.

ANY PERSON MAY MAKE A WRITTEN REQUEST FOR A PUBLIC HEARING ON THE RULE WITHIN THE 30-DAY COMMENT PERIOD. (4) IF 25 OR MORE PERSONS SUBMIT A WRITTEN REQUEST FOR A PUBLIC HEARING WITHIN THE 30-DAY COMMENT PERIOD, A PUBLIC HEARING WILL BE HELD UNLESS A SUFFICIENT NUMBER WITHDRAW THEIR REQUEST. (6) ANY PERSON REQUESTING A PUBLIC HEARING SHOULD STATE HIS OR HER NAME AND ADDRESS, AND IS ENCOURAGED TO IDENTIFY THE PORTION OF THE PROPOSED RULE ADDRESSED, THE REASON FOR THE REQUEST, AND ANY CHANGE PROPOSED. (7) IF A PUBLIC HEARING IS REQUIRED, THE AGENCY WILL PROCEED PURSUANT TO MINNESOTA STATUTES, SECTIONS 14.131 TO 14.20.

(5) COMMENTS OR WRITTEN REQUESTS FOR A PUBLIC HEARING MUST BE SUBMITTED TO:

RICHARD KRUEGER
MINNESOTA RACING COMMISSION
11000 WEST 78TH STREET, SUITE 201
EDEN PRAIRIE, MN 55344
TELEPHONE: (612) 341-7555

(8) THE PROPOSED RULE MAY BE MODIFIED IF THE MODIFICATIONS ARE SUPPORTED BY DATA AND VIEWS AND DO NOT RESULT IN A SUBSTANTIAL CHANGE IN THE PROPOSED RULE AS NOTICED.

(11) A COPY OF THE PROPOSED RULE IS ATTACHED TO THIS NOTICE.

(12) A STATEMENT OF NEED AND REASONABLENESS THAT DESCRIBES THE NEED FOR AND REASONABLENESS OF EACH PROVISION OF THE PROPOSED

RULE AND IDENTIFIES THE DATA AND INFORMATION RELIED UPON TO SUPPORT THE PROPOSED RULE HAS BEEN PREPARED AND IS AVAILABLE FROM THE MINNESOTA RACING COMMISSION UPON REQUEST.

(11) PROMULGATING OF THE PROPOSED RULES WILL NOT RESULT IN THE EXPENDITURE OF PUBLIC MONIES BY LOCAL PUBLIC BODIES, FIX OR ADJUST ANY FEES, OR HAVE AN IMPACT ON AGRICULTURAL LAND. THE AFFECT, IF ANY, THAT THE PROPOSED RULE MAY HAVE ON SMALL BUSINESSES IS DISCUSSED IN THE STATEMENT OF NEED AND REASONABLENESS. (12)

(9) IF NO HEARING IS REQUIRED, UPON ADOPTION OF THE RULE, THE RULE AND THE REQUIRED SUPPORTING DOCUMENTS WILL BE SUBMITTED TO THE ATTORNEY GENERAL FOR REVIEW AS TO LEGALITY AND FORM TO THE EXTENT THE FORM RELATES TO LEGALITY. ANY PERSON MAY REQUEST NOTIFICATION OF THE DATE OF SUBMISSION TO THE ATTORNEY GENERAL. 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 ADOPTED RULE, MUST SUBMIT **THE** WRITTEN REQUEST TO THE MINNESOTA RACING COMMISSION AT THE ADDRESS LISTED ABOVE.

DATED: FEBRUARY 20, 1991

RICHARD KRUEGER
DIRECTOR
MINNESOTA RACING COMMISSION

MINNESOTA RACING COMMISSION

CERTIFICATE OF COMMISSION'S AUTHORIZING RESOLUTION

I, RALPH STRANGIS, HEREBY CERTIFY THAT I AM THE CHAIR 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 20TH DAY OF FEBRUARY, 1991, THAT A QUORUM WAS PRESENT, AND THAT A MAJORITY OF THOSE PRESENT VOTED FOR THE RESOLUTION WHICH HAS NOT BEEN RESCINDED OR MODIFIED.

RESOLVED, THAT RICHARD KRUEGER, DIRECTOR OF PARI-MUTUEL RACING, IS HEREBY GRANTED THE AUTHORITY AND DIRECTED TO SIGN AND TO GIVE THE NOTICE OF THE COMMISSION'S PROPOSED ADOPTION OF A RULE WITHOUT A PUBLIC HEARING GOVERNING CLASS D (COUNTY FAIR) RULES TO ALL PERSONS WHO HAVE REGISTERED THEIR NAMES WITH THE COMMISSION FOR THAT PURPOSE AND TO PUBLISH THE NOTICE AND RULE IN THE STATE REGISTER, AND PERFORM ANY AND ALL ACTS INCIDENTAL THERETO.

IN THE EVENT A PUBLIC HEARING BECOMES NECESSARY, THE DIRECTOR IS HEREBY GRANTED THE AUTHORITY AND DIRECTED TO CALL A HEARING FOR THE PURPOSE OF PROMULGATING SAID RULES, AS WELL AS PERFORM ANY AND ALL ACTS INCIDENTAL THERETO, INCLUDING BUT NOT LITMITED TO, SIGNING AN ORDER FOR HEARING AND NOTICE OF HEARING AS WELL AS ACT AS THE COMMISSION'S REPRESENTATIVE TO THE HEARING.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 20TH DAY OF FEBRUARY, 1991.

RALPH STRANGIS
MINNESOTA RACING COMMISSION

need 4/latest version to be sent

Minnesota Racing Commission

Proposed Permanent Rules Relating to Class D Licenses

Rules as Proposed (all new material)

CLASS D LICENSE

7870.0600 IDENTIFICATION OF APPLICANT FOR CLASS D LICENSE.

An application for a Class D license must include, on a form prepared by the commission, an affidavit of the chief executive officer setting forth:

A. That application is made for a Class D 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, 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 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

Approved by Revisor

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, 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 of organization, position, address, and telephone number.

J. The date.

7870.0620 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class D license must disclose:

A. The type of organizational structure of the applicant, whether a county agricultural society or association, or a nonprofit corporation, and:

(1) The applicant's full name.

(2) Date the applicant commenced operating its fair.

(3) Copies of the applicant's bylaws, rules and regulations, or any agreements creating or governing the applicant's organization.

(4) Full names, in alphabetical order, dates of birth, and addresses of officers of applicant. As to each, the applicant must disclose the nature and extent of any voting interest in the applicant.

(5) Full names, in alphabetical order, dates of birth, and addresses of all members or shareholders, as of the date of the application, and the nature and extent of the voting interest of each.

B. 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

Approved
by Revisor _____

extent of control.

C. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding applicant's sponsorship or management of horse racing, and copies of any written agreements.

D. 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.

E. Whether the applicant, any director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more, if 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.

7870.0630 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class D license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to parts 7870.0620, item B or C, and 7870.0695, item B or C, has:

A. Been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, extortion, jury tampering, obstruction of justice, perjury, or 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

Approved
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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 or 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.

7870.0640 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT.

An application for a Class D 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, quarter horse, or other.

D. Racetrack dimensions by circumference, width,

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banking, location of chutes, length of stretch, type of surface, and description of equipment which will be used to maintain the track 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 mens' and womens' 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 area, giving distance to track and paddock, number of sampling stalls, placement of viewing ports on each stall, number of wash stalls with hot and cold water and drains; and a description of the walking ring.

H. A description of the paddock, if applicable, 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' and drivers' quarters in relation to the paddock.

J. A description of the pari-mutuel totalizator system, 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, distinguishing between public and other; a description of the road surface on

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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 improvements and equipment at the racetrack for security purposes including the provider of equipment, if known.

M. A description of starting, timing and photo finish equipment, and personnel, including the provider, if known.

N. A description of work areas for the commission members, officers, employees, and agents.

7870.0650 DISCLOSURE OF AUTHORIZATION TO USE HORSE RACING FACILITY.

An applicant for a Class D 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.

7870.0660 DISCLOSURE OF FINANCIAL RESOURCES.

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

A. The past five annual reports of the secretary of the applicant to the commissioner of agriculture.

B. A financial statement reflecting the applicant's current assets, including investments, loans and advances receivable, and fixed assets and current liabilities, including loans and advances payable, long-term debt, and equity.

C. 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, form, method

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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.

D. 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.

7870.0670 DISCLOSURE OF DEVELOPMENT PROCESS.

If an applicant for a Class D license proposes to conduct pari-mutuel horse racing at a facility to be constructed, the applicant must disclose with regard to development of its horse racing facility:

A. the total costs 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 part 7870.0640, items D to N, and other categories of improvements and equipment;

(5) interim financing;

(6) permanent financing; and

(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;

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(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel;

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

7870.0680 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class D license must disclose with regard to its financial plan, financial projections for any development period of 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 days and types of betting applicant seeks each year. The commission will use financial projections in deciding whether to issue Class D 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:

A. the following assumptions and support for them:

(1) average daily attendance;

(2) average daily per capita handle and average bet;

(3) retainage;

(4) admissions to track, including ticket prices and free admission;

(5) parking volume, fees, and revenues;

(6) concessions and program sales;

(7) cost of purses;

(8) pari-mutuel expense;

(9) breeders' fund;

(10) payroll;

(11) operating supplies and services;

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(12) utilities;

(13) repairs and maintenance;

(14) insurance;

(15) membership expense;

(16) security expense;

(17) legal and audit expense; and

(18) debt service;

B. the following profit and loss elements:

(1) total revenue, including projected revenues from retainage and breakage, admissions, parking, and concessions and program operations;

(2) total operating expenses, including anticipated expenses for:

(a) purses;

(b) pari-mutuel;

(c) state and local taxes;

(d) breakage to state;

(e) breeders' fund;

(f) cost of concession goods and programs;

(g) advertising and promotion;

(h) payroll;

(i) operating supplies and service;

(j) maintenance and repairs;

(k) security; and

(l) legal and audit;

(3) nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of the method used, and equipment depreciation and identification of the method used;

C. projected cash flow, including assessment of:

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

(2) disbursements, including land, improvements, equipment, debt service, operating expense, and organizational expense; and

D. projected balance sheets as of the end of any

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development period and the first or next three racing years setting forth current, fixed, and other noncurrent assets; current and long-term liabilities; and capital accounts.

7870.0690 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

A. If any required government approvals for development, management, and sponsorship of horse racing have been obtained:

(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 horse racing facility complies with all statutes, charter provisions, ordinances, and regulations pertaining to the development, sponsorship, and management of horse racing. If not in compliance, the applicant must disclose the reasons why not.

D. An applicant for a Class D license must provide a certified copy of the county's authorizing resolution to conduct pari-mutuel horse racing.

7870.0695 DISCLOSURE OF MANAGEMENT.

An applicant for a Class D 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

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function, job descriptions and qualifications for each management position, and a copy of the organizational chart.

B. Management personnel or volunteers and to extent known with respect to each:

(1) legal name, aliases, and previous names;

(2) current residence and business address 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; and

(g) human and animal health and safety; and

(4) a description of the terms and conditions of employment, and a copy of the agreement if one exists.

C. Consultants and other contractors to the 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; and

(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;

(2) specific security plans for stabling area, detention area, pari-mutuel betting facilities, purses, and cash room;

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(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; and

(4) coordination of security with law enforcement agencies.

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

G. A description of the applicant's plans for animal health and safety, including provisions for maintenance of the racing surface and removal of injured horses from the track.

H. A description of the applicant's marketing, promotion, and advertising plans.

I. 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.

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

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

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

M. A description of training of the applicant's personnel.

N. A description of plans for compliance with laws pertaining to discrimination, equal employment, and affirmative action.

7870.0720 EFFECTS ON COMPETITION.

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

7870.0730 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0740 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class D license, the applicant must make its best effort to include the following with respect to each individual identified pursuant to part 7870.0620 as a director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0695:

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; and

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

(1) authorizes a review by and full disclosure to an agent of the Minnesota Department of Public Safety, Division of Gambling Enforcement, 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 Minnesota Racing Commission, its members and employees, and agents of the Division of Gambling Enforcement to determine the signer's qualifications for a Class D license; and

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

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7870.0750 CLASS D LICENSE CRITERIA.

The commission may issue a Class D license if it determines on the basis of all the facts before it that: racing will be operated according to 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 directors, trustees, officers, managers, and holders of voting interests or control, including:

(1) criminal records;

(2) involvement in litigation over business practices;

(3) involvement in disciplinary actions over a business license or permit or refusal to review 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 decision making as long as the same indices are considered with regard to all applicants;

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

C. the quality of physical improvements and equipment applicant will use, including:

(1) racetrack or tracks;

(2) stabling;

(3) grandstand;

(4) detention area;

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(5) paddock;

(6) jockeys' and drivers' quarters and equipment;

(7) pari-mutuel tote;

(8) parking;

(9) access by road and public transportation;

(10) backstretch security fence;

(11) other security improvements and equipment;

(12) starting, timing, and photo finish equipment;

(13) commission work areas; and

(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. imminence of completion of facility;

E. financial ability to develop, sponsor, and manage pari-mutuel horse racing successfully, including:

(1) ownership and control structure;

(2) amounts and reliability of development costs;

(3) certainty of site acquisition or lease;

(4) terms and conditions of the applicant's authorization to use facility;

(5) current financial condition;

(6) sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

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

(8) feasibility of the financial plan;

(9) 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;

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

G. management ability of the applicant, including:

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(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 plans;

(9) plan for personnel training;

(10) equal employment and affirmative action compliance; and

(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;

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

I. extent of public support and opposition; and

J. effects on competition, including:

(1) number, nature, and relative location of other Class D licenses;

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

(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.

7870.0760 CLASS D LICENSE APPLICATION DISCLOSURES.

An applicant for a Class D license in its disclosures must:

A. Provide disclosures in printed or typewritten form

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on 8-1/2 by 11-inch paper. Immediately preceding each response, an applicant must state 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 part 7870.0620 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.

7870.0770 CLASS D LICENSE APPLICATION SUBMISSION.

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

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

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

7870.0780 CLARIFICATION OF CLASS D LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class D 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.

omitted from 4/11/91 version + published version

7870.0785 INVESTIGATION FEE FOR CLASS D LICENSES.

An applicant for a Class D license must submit to the commission's designee at the time of application a certified check or bank draft made payable to the State of Minnesota in the amount of $1,000 to cover the costs of the investigation up to that amount. Upon completion of the investigation, the commission must refund promptly to the applicant any amount by

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which the $1,000 exceeds the actual cost of investigation.

7870.0790 CHANGES IN CLASS D LICENSE APPLICATIONS.

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

7870.0800 DEADLINES FOR SUBMISSION OF CLASS D LICENSE APPLICATIONS.

Applications for Class D licenses must be submitted by at least 90 days before the date on which the applicant proposes to commence horse racing.

7870.0810 ORAL PRESENTATION BY APPLICANT FOR A CLASS D LICENSE.

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

7870.0820 PAYMENT OF CLASS D LICENSE FEE.

A Class D license does not become effective until the commission receives a certified check or bank draft made payable 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 fee for a Class D license equal to $50 times the optimum number of racing days sought in the license application. The commission must promptly refund to the licensee any amount by which the fee paid exceeds $50 times the number of actual days of racing sponsored and managed by the licensee.

7870.0830 CLASS D LICENSE APPLICATION INFORMATION.

False or misleading information in a Class D 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

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a fine.

7870.0840 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

No Class D licensee may manage and conduct pari-mutuel horse racing at a facility at which construction, expansion, extension, alteration, or remodeling has occurred. No Class D licensee may construct, expand, extend, alter, or remodel a racetrack at a cost in excess of $10,000 unless the commission has approved the expansion, extension, alteration, or remodeling. Management or conduct of racing without approval is cause for revocation or suspension of a license or imposition of a fine.

7870.0850 SECURITY.

Class D 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.

7870.0855 SECURITY MODIFICATIONS.

The commission may order Class D licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to ensure 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.

7870.0860 MEDICAL SERVICES.

It shall be the responsibility of the Class D licensee to have a licensed paramedic, emergency medical technician, or the equivalent, and an ambulance or other suitable transportation available on the premises during the period beginning 30 minutes prior to the post time for the first race on the program, or first qualifying race, through the conclusion of the racing program. For the purposes of this part, "ambulance" or "other suitable transportation" shall be defined as one capable of transporting injured parties to an appropriate medical facility.

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7870.0870 CARE OF HORSES.

A Class D licensee must provide the following facilities, equipment, and personnel for horses:

A. an individual stall for each horse, or other stabling facilities;

B. a fence surrounding the stabling facilities;

C. a licensed outrider mounted and on duty whenever pari-mutuel racing is being conducted; and

D. a conveyance available for the safe and expedient removal of crippled animals. The appearance and operation of such conveyance must be approved by the commission veterinarian prior to the taking of entries for the first day of racing. Whenever pari-mutuel racing is being conducted, this conveyance must be available in a location such that it may be immediately driven to an injured horse by a driver capable of assisting in the safe and expedient removal of said horse from the racetrack surface.

Rules as Proposed

7891.0110 POSTMORTEM EXAMINATION.

Subpart 1. **Horses that must undergo postmortem examination.** Every horse which suffers a breakdown at a licensed racetrack under the jurisdiction of the commission, in training or in competition, and which is ~~**destroyed**~~ euthanized, and every horse which expires while stabled at a licensed racetrack under the jurisdiction of the commission, shall undergo a postmortem examination to be conducted by the commission veterinarian or ~~his or her~~ the veterinarian's designee to determine the injury or illness which resulted in euthanasia or natural death. A Class D license holder is responsible for furnishing transportation, within six hours of death, to deliver a horse to a postmortem site to be determined by the commission veterinarian.

Subp. 2. **Test samples to be taken for analysis.** Test samples must be obtained from every horse which undergoes a postmortem examination. The samples shall be sent for analysis

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to a laboratory approved by the commission and the commission may direct the laboratory to retain and preserve such samples for future analysis.

When practical, both blood and urine test samples shall be obtained prior to euthanasia.

Subp. 3. **Owner and trainer responsible.** The owner and attending trainer are responsible for reporting to the commission veterinarian the death of a horse within one hour of its death, and for having the postmortem examination performed in accordance with this part.

Subp. 4. **Report of exam.** A report of every postmortem examination shall be filed with the commission within 72 hours of the horse's death on a form prepared by the commission.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Class D Licenses

AGENCY: Minnesota Racing Commission

MINNESOTA RULES: Chapters 7870 and 7891

The attached rules are approved for
publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Class D rule

The Minnesota

State Register

Department of Administration—Print Communications Division



Rules edition
Published every Monday
(Tuesday if Monday is a holiday)

Monday 22 April 1991

Volume 15, Number 43

Pages 2289-2328

A copy of the rule may also be viewed at any of the 87 county welfare or human service agencies in the State of Minnesota.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from:

Nancy Bishop
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816
(612) 296-7454

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to:

Eleanor Weber
Rules and Bulletins Division
Department of Human Services
444 Lafayette Road
St. Paul, MN 55155-3816

Natalie Haas Steffen
Commissioner of Human Services

Rules as Proposed

9505.0323 MENTAL HEALTH SERVICES.

[For text of subps 1 to 30, see M.R.]

Subp. 31. **Medical assistance payment for mental health services by mental health practitioner.** Notwithstanding other provisions of this part, a mental health service provided by a mental health practitioner is a covered service if the mental health practitioner has the qualifications in items A to C and the service is provided under the clinical supervision of a mental health professional. Medical assistance for services performed according to this subpart shall be paid at one-half the medical assistance payment rate for the same service provided by a mental health professional.

A. The mental health practitioner holds at least a bachelor's degree in one of the behavioral sciences or related fields from an accredited college or university.

B. The mental health practitioner is employed by a private nonprofit entity specializing in mental health services to low income children under age 15.

C. The mental health practitioner has provided outpatient mental health services with a primary emphasis on family-oriented mental health services, to children under age 15, under clinical supervision for at least ten years after receiving a bachelor's degree.

For purposes of this subpart, "low income children under age 15" refers to children under age 15 in a family having a gross family income equal to or less than 185 percent of the federal poverty guidelines for the same family size.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Class D Licenses

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 240.23 (1990).

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Richard Krueger
Minnesota Racing Commission
11000 West 78th Street, Suite 201
Eden Prairie, MN 55344
Telephone: (612) 341-7555

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision ofthe proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available from the Minnesota Racing Commission upon request.

Promulgating of the proposed rules will not result in the expenditure of public monies by local public bodies, fix or adjust any fees, or have an impact on agricultural land. The affect, if any, that the proposed rule may have on small businesses is discussed in the statement of need and reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the attorney general for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the attorney general. 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 adopted rule, must submit the written request to the Minnesota Racing Commission at the address listed above.

Dated: 20 February 1991

Richard Krueger
Director
Minnesota Racing Commission

Rules as Proposed (all new material)

CLASS D LICENSE

7870.0600 IDENTIFICATION OF APPLICANT FOR CLASS D LICENSE.

An application for a Class D license must include, on a form prepared by the commission, an affidavit of the chief executive officer setting forth:

A. That application is made for a Class D 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, 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 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.

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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, 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 of organization, position, address, and telephone number.

J. The date.

7870.0620 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class D license must disclose:

A. The type of organizational structure of the applicant, whether a county agricultural society or association, or a nonprofit corporation, and:

(1) The applicant's full name.

(2) Date the applicant commenced operating its fair.

(3) Copies of the applicant's bylaws, rules and regulations, or any agreements creating or governing the applicant's organization.

(4) Full names, in alphabetical order, dates of birth, and addresses of officers of applicant. As to each, the applicant must disclose the nature and extent of any voting interest in the applicant.

(5) Full names, in alphabetical order, dates of birth, and addresses of all members or shareholders, as of the date of the application, and the nature and extent of the voting interest of each.

B. 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.

C. Any agreements or understandings which the applicant or any individual or entity identified pursuant to this part has entered into regarding applicant's sponsorship or management of horse racing, and copies of any written agreements.

D. 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.

E. Whether the applicant, any director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more, if 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.

7870.0630 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class D license must make its best effort to disclose whether the applicant or any individual or other entity identified pursuant to parts 7870.0620, item B or C, and 7870.0695, item B or C, has:

A. Been charged in a criminal proceeding with a felony or fraud, misrepresentation, theft, larceny, extortion, jury tampering, obstruction of justice, perjury, or 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 or 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.

7870.0640 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT.

An application for a Class D 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, quarter horse, or other.

D. Racetrack dimensions by circumference, width, banking, location of chutes, length of stretch, type of surface, and description of equipment which will be used to maintain the track 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 mens' and womens' 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 area, giving distance to track and paddock, number of sampling stalls, placement of viewing ports on each stall, number of wash stalls with hot and cold water and drains; and a description of the walking ring.

H. A description of the paddock, if applicable, 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' and drivers' quarters in relation to the paddock.

J. A description of the pari-mutuel totalizator system, 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, 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 improvements and equipment at the racetrack for security purposes including the provider of equipment, if known.

M. A description of starting, timing and photo finish equipment, and personnel, including the provider, if known.

N. A description of work areas for the commission members, officers, employees, and agents.

7870.0650 DISCLOSURE OF AUTHORIZATION TO USE HORSE RACING FACILITY.

An applicant for a Class D 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.

7870.0660 DISCLOSURE OF FINANCIAL RESOURCES.

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

A. The past five annual reports of the secretary of the applicant to the commissioner of agriculture.

B. A financial statement reflecting the applicant's current assets, including investments, loans and advances receivable, and fixed assets and current liabilities, including loans and advances payable, long-term debt, and equity.

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C. 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, 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.

D. 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.

7870.0670 DISCLOSURE OF DEVELOPMENT PROCESS.

If an applicant for a Class D license proposes to conduct pari-mutuel horse racing at a facility to be constructed, the applicant must disclose with regard to development of its horse racing facility:

A. the total costs 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 part 7870.0640, items D to N, and other categories of improvements and equipment;

(5) interim financing;

(6) permanent financing; and

(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; and

(5) equipment procurement personnel;

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

7870.0680 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class D license must disclose with regard to its financial plan, financial projections for any development period of 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 days and types of betting applicant seeks each year. The commission will use financial projections in deciding whether to issue Class D 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:

A. the following assumptions and support for them:

(1) average daily attendance;

(2) average daily per capita handle and average bet;

(3) retainage;

(4) admissions to track, including ticket prices and free admission;

(5) parking volume, fees, and revenues;

(6) concessions and program sales;

(7) cost of purses;

(8) pari-mutuel expense;

(9) breeders' fund;

(10) payroll;

(11) operating supplies and services;

(12) utilities;

(13) repairs and maintenance;

(14) insurance;

(15) membership expense;

(16) security expense;

(17) legal and audit expense; and

(18) debt service;

B. the following profit and loss elements:

(1) total revenue, including projected revenues from retainage and breakage, admissions, parking, and concessions and program operations;

(2) total operating expenses, including anticipated expenses for:

(a) purses;

(b) pari-mutuel;

(c) state and local taxes;

(d) breakage to state;

(e) breeders' fund;

(f) cost of concession goods and programs;

(g) advertising and promotion;

(h) payroll;

(i) operating supplies and service;

(j) maintenance and repairs;

(k) security; and

(l) legal and audit;

(3) nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of the method used, and equipment depreciation and identification of the method used;

C. projected cash flow, including assessment of:

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

(2) disbursements, including land, improvements, equipment, debt service, operating expense, and organizational expense; and

D. projected balance sheets as of the end of any development period and the first or next three racing years setting forth current, fixed, and other noncurrent assets; current and long-term liabilities; and capital accounts.

7870.0690 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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A. If any required government approvals for development, management, and sponsorship of horse racing have been obtained:

(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 horse racing facility complies with all statutes, charter provisions, ordinances, and regulations pertaining to the development, sponsorship, and management of horse racing. If not in compliance, the applicant must disclose the reasons why not.

D. An applicant for a Class D license must provide a certified copy of the county's authorizing resolution to conduct pari-mutuel horse racing.

7870.0695 DISCLOSURE OF MANAGEMENT.

An applicant for a Class D 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 organizational chart.

B. Management personnel or volunteers and to extent known with respect to each:

(1) legal name, aliases, and previous names;

(2) current residence and business address 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; and

(g) human and animal health and safety; and

(4) a description of the terms and conditions of employment, and a copy of the agreement if one exists.

C. Consultants and other contractors to the 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; and

(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;

(2) specific security plans for stabling area, detention area, 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; and

(4) coordination of security with law enforcement agencies.

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

G. A description of the applicant's plans for animal health and safety, including provisions for maintenance of the racing surface and removal of injured horses from the track.

H. A description of the applicant's marketing, promotion, and advertising plans.

I. 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.

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

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

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

M. A description of training of the applicant's personnel.

N. A description of plans for compliance with laws pertaining to discrimination, equal employment, and affirmative action.

7870.0720 EFFECTS ON COMPETITION.

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

7870.0730 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0740 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class D license, the applicant must make its best effort to include the following with respect to each individual identified pursuant to part 7870.0620 as a director, trustee, officer, member, shareholder, or other holder of a direct or indirect record or beneficial voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0695:

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; and

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

(1) authorizes a review by and full disclosure to an agent of the Minnesota Department of Public Safety, Division of Gambling Enforcement, 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 Minnesota Racing Commission, its members and employees, and agents of the Division of Gambling Enforcement to determine the signer's qualifications for a Class D license; and

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

7870.0750 CLASS D LICENSE CRITERIA.

The commission may issue a Class D license if it determines on the basis of all the facts before it that: racing will be operated according to 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 directors, trustees, officers, managers, and holders of voting interests or control, including:

(1) criminal records;

(2) involvement in litigation over business practices;

(3) involvement in disciplinary actions over a business license or permit or refusal to review 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;

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(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 decision making as long as the same indices are considered with regard to all applicants;

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

C. the quality of physical improvements and equipment applicant will use, including:

(1) racetrack or tracks;

(2) stabling;

(3) grandstand;

(4) detention area;

(5) paddock;

(6) jockeys' and drivers' quarters and equipment;

(7) pari-mutuel tote;

(8) parking;

(9) access by road and public transportation;

(10) backstretch security fence;

(11) other security improvements and equipment;

(12) starting, timing, and photo finish equipment;

(13) commission work areas; and

(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. imminence of completion of facility;

E. financial ability to develop, sponsor, and manage pari-mutuel horse racing successfully, including:

(1) ownership and control structure;

(2) amounts and reliability of development costs;

(3) certainty of site acquisition or lease;

(4) terms and conditions of the applicant's authorization to use facility;

(5) current financial condition;

(6) sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;

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

(8) feasibility of the financial plan;

(9) 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;

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

G. management ability of the applicant, including:

(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 plans;

(9) plan for personnel training;

(10) equal employment and affirmative action compliance; and

(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;

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

I. extent of public support and opposition; and

J. effects on competition, including:

(1) number, nature, and relative location of other Class D licenses;

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

(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.

7870.0760 CLASS D LICENSE APPLICATION DISCLOSURES.

An applicant for a Class D 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 state 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 part 7870.0620 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.

7870.0770 CLASS D LICENSE APPLICATION SUBMISSION.

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

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

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

7870.0780 CLARIFICATION OF CLASS D LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class D 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.

7870.0790 CHANGES IN CLASS D LICENSE APPLICATIONS.

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

7870.0800 DEADLINES FOR SUBMISSION OF CLASS D LICENSE APPLICATIONS.

Applications for Class D licenses must be submitted by at least 90 days before the date on which the applicant proposes to commence horse racing.

7870.0810 ORAL PRESENTATION BY APPLICANT FOR A CLASS D LICENSE.

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

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7870.0820 PAYMENT OF CLASS D LICENSE FEE.

A Class D license does not become effective until the commission receives a certified check or bank draft made payable 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 fee for a Class D license equal to $50 times the optimum number of racing days sought in the license application. The commission must promptly refund to the licensee any amount by which the fee paid exceeds $50 times the number of actual days of racing sponsored and managed by the licensee.

7870.0830 CLASS D LICENSE APPLICATION INFORMATION.

False or misleading information in a Class D 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.

7870.0840 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

No Class D licensee may manage and conduct pari-mutuel horse racing at a facility at which construction, expansion, extension, alteration, or remodeling has occurred. No Class D licensee may construct, expand, extend, alter, or remodel a racetrack at a cost in excess of $10,000 unless the commission has approved the expansion, extension, alteration, or remodeling. Management or conduct of racing without approval is cause for revocation or suspension of a license or imposition of a fine.

7870.0850 SECURITY.

Class D 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.

7870.0855 SECURITY MODIFICATIONS.

The commission may order Class D licensees to make modifications to security facilities, equipment, systems, personnel, or their deployment which are necessary to ensure 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.

7870.0860 MEDICAL SERVICES.

It shall be the responsibility of the Class D licensee to have a licensed paramedic, emergency medical technician, ~~or the equivalent, and an ambulance~~ or ~~other~~ suitable ~~transportation available~~ on the premises during the period beginning 30 minutes prior to the post time for the first race on the program, or first qualifying race, through the conclusion of the racing program. ~~For the~~ purposes of this part, "ambulance" or "other suitable transportation" shall be defined as one capable of transporting injured parties to an appropriate medical ~~facility.~~

7870.0870 CARE OF HORSES.

A Class D licensee must provide the following facilities, equipment, and personnel for horses:

A. an individual stall for each horse, or other stabling facilities;

B. a fence surrounding the stabling facilities;

C. a licensed outrider mounted and on duty whenever pari-mutuel racing is being conducted; and

D. a conveyance available for the safe and expedient removal of crippled animals. The appearance and operation of such conveyance must be approved by the commission veterinarian prior to the taking of entries for the first day of racing. Whenever pari-mutuel racing is being conducted, this conveyance must be available in a location such that it may be immediately driven to an injured horse by a driver capable of assisting in the safe and expedient removal of said horse from the racetrack surface.

Rules as Proposed

7891.0110 POSTMORTEM EXAMINATION.

Subpart 1. **Horses that must undergo postmortem examination.** Every horse which suffers a breakdown at a licensed racetrack under the jurisdiction of the commission, in training or in competition, and which is ~~destroyed~~ euthanized, and every horse which expires while stabled at a licensed racetrack under the jurisdiction of the commission, shall undergo a postmortem examination to be conducted by the commission veterinarian or ~~his or her~~ the veterinarian's designee to determine the injury or illness which resulted in euthanasia or natural death. A Class D license holder is responsible for furnishing transportation, within six hours of death, to deliver a horse to a postmortem site to be determined by the commission veterinarian.

Subp. 2. **Test samples to be taken for analysis.** Test samples must be obtained from every horse which undergoes a postmortem examination. The samples shall be sent for analysis to a laboratory approved by the commission and the commission may direct the laboratory to retain and preserve such samples for future analysis.

When practical, both blood and urine test samples shall be obtained prior to euthanasia.

Subp. 3. **Owner and trainer responsible.** The owner and attending trainer are responsible for reporting to the commission veterinarian the death of a horse within one hour of its death, and for having the postmortem examination performed in accordance with this part.

Subp. 4. **Report of exam.** A report of every postmortem examination shall be filed with the commission within 72 hours of the horse's death on a form prepared by the commission.

Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. §14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. §14.33 and upon the approval of the Revisor of Statutes as specified in §14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under §14.18.

Minnesota Racing Commission

Adopted Permanent Rules Relating to Pari-mutuel Horse Racing

The rules proposed and published at *State Register*, Volume 15, Number 30, pages 1627-1640, January 22, 1991 (15 SR 1627) are adopted with the following modifications:

Rules as Adopted

7892.0120 TAKING OF SAMPLES.

Subp. 5. **Split samples.**

A. A portion of the sample from each horse tested, after a sufficient amount has been sent to the official laboratory, must be preserved by the commission. It must be available for testing at the request of a person accused of a violation of chapter 7890. ~~A person so accused may request that the portion of the test sample retained by~~ The commission shall approve a list of laboratories which may provide split sample testing. From this list, a person accused of a violation of chapter 7890 shall designate the laboratories in descending order of preference. The sample must be sent to the laboratory given the highest preference and that is capable of testing for the substance within 14 days. The commission veterinarian shall have overall responsibility for the storage, safeguarding, and shipment of the split sample and for the receipt of results from the drug testing laboratory to which the sample was sent.

7897.0100 PROHIBITED ACTS.

Subp. 10. **Financial responsibility.** No licensee shall willfully or deliberately refuse to pay any money when due for any service, supplies, or fees connected with his or her activities as a licensee, nor shall he or she falsely deny any such amount due or the validity of the claim therefore with the purpose of hindering or defrauding the person to whom the indebtedness is due. All financial responsibility complaints against a licensee shall be made in writing, presenting facts sufficient to enable the stewards to determine that the claim is meritorious and is directly related to the licensee's activities in their state and that the debt became due within the last two years. Upon receipt of a complaint, the stewards may conduct an investigation and attempt to resolve the matter informally. If the stewards determine that the complaint has merit, and cannot resolve the matter informally or determine that it is not appropriate to settle the matter informally, then the stewards shall commence the appropriate disciplinary procedures in chapter ~~7879~~ 7897.

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.

CERTIFICATE OF THE
MINNESOTA RACING COMMISSION
RESOLUTION ADOPTING THE RULE

I, Ralph Strangis, do hereby certify that I am a member and the Chair 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 July, 1991, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

> "RESOLVED, that the rule relating to Class D licenses is approved and adopted, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes 240.23.
>
> Richard G. Krueger, Director of the Division of Pari-mutuel Racing, is authorized to sign the findings of fact, conclusions and order adopting the rule and further is authorized to modify the rule if necessary to obtain approval of the rule by the Attorney General and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 17th day of July, 1991.

RALPH STRANGIS
Chair

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA RACING COMMISSION GOVERNING CLASS D (COUNTY FAIR) RULES

AFFIDAVIT OF MAILING THE NOTICE OF PROPOSED ADOPTION OF RULE AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

I, RICHARD G. KRUEGER, BEING FIRST DULY SWORN DEPOSES AND SAYS:

I HEREBY CERTIFY THAT THE LIST OF PERSONS AND ASSOCIATIONS WHO HAVE REQUESTED, PURSUANT TO MINNESOTA STATUTES, SECTIONS 14.14, SUBDIVISION 1A. AND 14.22 OR 14.30, THAT THEIR NAMES BE PLACED ON THE MINNESOTA RACING COMMISSION'S RULEMAKING LIST IS ACCURATE, COMPLETE, AND CURRENT AS OF THIS 22nd DAY OF April, 1991.

THAT ON THE 22nd DAY OF April, 1991 AT THE CITY OF EDEN PRAIRIE, COUNTY OF HENNEPIN, STATE OF MINNESOTA, I MAILED THE ATTACHED NOTICE OF PROPOSED ADOPTION OF RULE BY DEPOSITING IN THE UNITED STATES MAIL, A COPY THEREOF WITH POSTAGE PREPAID, TO ALL PERSONS AND ASSOCIATIONS ON THE AFOREMENTIONED MAILING LIST.

Richard G. Krueger
MINNESOTA RACING COMMISSION

SUBSCRIBED AND SWORN TO BEFORE ME

THIS 22nd DAY OF April, 1991

Sharon A. Beighley
NOTARY PUBLIC

SHARON A. BEIGHLEY
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1995

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****
****

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STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES GOVERNING AMENDMENTS TO EXISTING RULES.

DECLARATION OF COUNSEL

I, Mary B. Magnuson, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0733.

MARY B. MAGNUSON
Special Assistant
Attorney General

Dated: July 10, 1991