

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MSM
5/28/92 ☺

RULE REVIEW CHECKLIST
RESUBMITTED RULE

File No. 1882 Docket No. 05 0089 0733

RESUBMISSION DATE 5-27-92
DATE DUE 6/10/92
APPROVED 6-9-92
DISAPPROVED
WITHDRAWM

ADOPTED W/O HEARING
EMERGENCY RULE
To Revisor on 5/28/92
REVISOR APPROVED 5/28/92
REVISOR DISAPPROVED
FILED W/SEC. STATE 6-10-92
RETURNED TO AGENCY 6-10-92

____ **Does the revision raise significant new legal issues?**

____ Review date

✓ Rule as adopted (4 copies)

✓ Supplemental Findings of Fact, Conclusions & Order Adopting

✓ Board's Supplemental Resolution Adopting

____ Notice of submission to Attorney General

____ Affidavit of Mailing Notice to Attorney General

mary Jo
I think they made the changes
they were suppose regarding affirmative actin

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: June 10, 1992

TO: RICHARD KRUEGER
Minnesota Racing Commission

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

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Teleracing and Simulcast

The above-referenced rule has been approved as to its legality by the Attorney General on June 9, 1992.

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

Adopted Permanent Rules Relating to Teleracing and Simulcast

Rules as Adopted

7870.0510 AFFIRMATIVE ACTION.

Subpart 1. **Economic opportunities for disadvantaged and emerging small business.** Class A, B, and D~~,-and-E~~ licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for disadvantaged and emerging small businesses:

A. a minimum goal of ten percent for construction subcontract and material suppliers with disadvantaged and emerging small business enterprises during construction of the facility, and a labor and employment goal of ten percent for disadvantaged and emerging small business in on-site construction jobs;

B. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction; and

C. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction.

Subp. 2. **~~Economic-opportunities-for-racial-minorities~~** Certificate of compliance. Class A, B, and D~~,-and-E~~ licensees ~~are-required,-to-the-extent-feasible,-to-establish-the-following-goals-to-assist-in-providing-economic-opportunities-for-racial-minorities:~~

~~A.--a-minimum-goal-of-ten-percent-for-hiring-racial-minorities-in-all-categories-of-the-licensee's-workforce,-including-clerical,-laborers,-officials-and-managers,-professionals,-technicians,-and-salesworkers,-and-make-a-good-faith-effort-to-achieve-this-goal-within-two-years-of-commencing~~

Approved by Revisor PMM

~~racing-operations;-and~~

~~B.--a-minimum-goal-of-making-available-up-to-ten percent-of-available-equity-ownership-to-racial-minorities~~ must obtain and file with the commissioner every two years a copy of a certificate of compliance from the Minnesota Department of Human Rights, according to Minnesota Statutes, chapter 363.

~~Subp.-3.--Economic-opportunities-for-women.--Class-A,-B,-D,-and-E-licensees-are-required,-to-the-extent-feasible,-to establish-the-following-goals-to-assist-in-providing-economic opportunities-for-women:~~

~~A.--a-minimum-goal-of-51.4-percent-for-hiring-women-in all-job-categories-of-the-licensee's-workforce,-including clerical,-laborers,-officials-and-managers,-professionals, technicians,-and-salesworkers,-and-make-a-good-faith-effort-to achieve-this-goal-within-two-years-of-commencing-racing operations;-and~~

~~B.--a-minimum-goal-of-making-available-up-to-ten percent-of-the-available-equity-ownership-to-women.~~

Subp. ~~4.~~ 3. **Economic opportunities for disabled.** Class A, B, and D~~,-and-E~~ licensees are required, to the extent feasible, to establish reasonable goals to assist in providing economic opportunities for disabled individuals. These affirmative action goals must be set with respect to the Class A, B, and D~~,~~ ~~and~~-E licensee's construction subcontracts/material suppliers during facility construction, on-site construction jobs, postconstruction labor force, postconstruction vendor, supplier and other contracts, and available equity ownership opportunities.

Subp. ~~5.~~ 4. **Compliance reports.** Class A, B, and D~~,-and~~ E licensee's are required to file quarterly reports with the commission demonstrating compliance with the requirements of this part on forms provided by the commission.

Subp. ~~6.~~ 5. **Definitions.** For the purpose of this part, the following words have the meanings given them.

A. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or

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by Revisor _____

more major life activity; it does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

B. "Good faith effort" means a reasonable effort to accomplish goals and timetables.

C. "Disadvantaged and emerging small business" means a business located within the state of Minnesota which employs 25 employees or less, has not had gross sales in excess of $6,000,000 over the past three years, and has been in business at least one year.

~~D.--"Racial-minority"-means:~~

~~(1)-Blacks,-or-persons-having-origins-in-any-of the-Black-African-racial-groups-not-of-Hispanic-origin;~~

~~(2)-Hispanics,-or-persons-of-Mexican,-Puerto Rican,-Cuban,-Central-American,-South-American,-or-other-Spanish culture-or-origin,-regardless-of-race;~~

~~(3)-Asian-and-Pacific-Islanders,-or-persons having-origins-in-any-of-the-original-people-of-the-Far-East, Southeast-Asia,-the-Indian-Subcontinent,-or-the-Pacific-Islands; and~~

~~(4)-American-or-Alaskan-natives,-or-persons having-origins-in-any-of-the-original-people-of-North-America and-maintaining-identifiable-tribal-affiliations-through membership-and-participation-or-community-identification.~~

REPEALER. Minnesota Rules, part 7870.0500, subparts 6, 7, 8, 9, 10, and 22, are repealed.

Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JUN 10 1992

Joan Anderson Growe
Secretary of State

9:20 AM
PRB

June 9 92

MJM
12/26/91

RULE REVIEW CHECKLIST

File No. 1882
DATE RECEIVED 12-20-91
REVIEW DATE 12/30/91
DUE DATE 1/3/92
(DIS)APPROVED 1-3-92
WITHDRAWN _____

Docket No. 05 0009 0733
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12-23-91
REVISOR (DIS)APPROVED 12-26-91
FILED W/SEC. OF STATE 6-10-92
RETURNED TO AGENCY 6-10-92

✓ 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
Oct 2, 1991 Date adopted

✓ Proposed Rule Paul Mounac is going to send it
_____ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
240.23 Statutory Authority MN Laws 1991 33 attached
no statement Small Business Statement
N/A Expenditure of public money statement
Oct 9, 1991 Signature

✓ Statement of Need and Reasonableness (if applicable) Poor
_____ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Oct 24, 1991 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
Oct 28, 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
_____ end of ~~comment period~~ (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
Dec 19, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Dec 19, 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)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : May 26, 1992

TO : **MARY JO MURRAY**
Special Assistant
Attorney General

FROM : **E. JOSEPH NEWTON**
Special Assistant
Attorney General

Rec 5-27-92

PHONE : 296-1408

SUBJECT : Approval of Minn. R. 7870.0510 - As Amended

Mary Jo:

The above-referenced rules were included in the off-track betting and telephone account wagering rules submitted for approval on or about December 23, 1991. As you are aware, the entire rules package was withdrawn from consideration on or about January 3, 1992. I am hereby resubmitting these rules for approval pursuant to Minn. R. 2010.0300. To that end, I forward to you a Supplemental Certificate of the Agency's Resolution Adopting the Rule, Supplemental Findings of Fact, Conclusions and Order Adopting Rule Without Public Hearing and four copies of the Rule as Adopted with the modifications reflected and approved as to form by the Revisor of Statutes. Please contact me should you require any further documentation or information and thank you for your consideration.

EJN/psav3
Enclosures

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: January 2, 1992

TO: Linda F. Close
Deputy Attorney General

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Racing Commission Rules on Teleracing and Simulcast Pari-Mutuel Betting

On December 20, 1991, the Attorney General's Office received the Rules for Teleracing and Simulcast from the Minnesota Racing Commission for review. The Rules must be approved or rejected no later than Friday, January 3, 1992.

There is a significant problem with these Rules. The Minnesota Constitution (Article X, Section 8) permits the Legislature to authorize "on-track pari-mutuel betting on horse racing in a manner prescribed by law." The Constitution does not authorize off-track betting, and the April 24, 1991 memo from Attorney General Humphrey to Tom Osthoff provides strong support to the argument that Teleracing and Simulcast off-track betting is unconstitutional. However, there is room for the argument that there is no need to authorize off-track betting with a Constitutional amendment. Additionally, some question still exists as to whether off-track betting would be considered a prohibited "lottery," and the Minnesota courts still have not specifically addressed this issue. Courts in other jurisdictions have ruled both ways, although the majority of decisions have held that pari-mutuel betting is not a lottery.

While the affirmative action program in Part 7870.0510 is thorough, the Statement of Need and Reasonableness does not explain the basis upon which the program was created, nor do the Findings of Fact discuss the evidence which shows the existence of prior discrimination and that the program, as developed by the rules, properly remedies that discrimination. The statistics upon which the minimum hiring goals in the rule were developed do not address comparisons to eligible persons in the relevant population. There is not sufficient evidence or findings to demonstrate that as proposed, the program is consistent with recent affirmative action program decisions of the US Supreme Court.

The other two issues in my original memo have been resolved (out-of-state broadcasting is not contemplated by the rules, and affirmative action references to Class E licenses will be corrected).

CERTIFICATE OF THE
MINNESOTA RACING COMMISSION
RESOLUTION ADOPTING THE RULE

I, RICHARD PEMBERTON, 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 20th day of May, 1992, 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 rules relating to affirmative action is approved and adopted, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes 240.23 (1990 and 1991 Supp.).
>
> Richard Krueger, Director 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 20th day of May, 1992.



RICHARD PEMBERTON
Chair

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of the Rule of the Minnesota Racing Commission Relating to Amendments to Existing Rules.

SUPPLEMENTAL FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

The above-entitled matter came before the Minnesota Racing Commission on the 19th day of December, 1991. After according all interested persons the opportunity to present written and oral data, statements and arguments to the Minnesota Racing Commission, and in accordance with statutory requirements regarding the adoption of non-controversial rules, after considering all the evidence adduced upon the records, files and proceedings herein, the Minnesota Racing Commission, being fully advised of the premises, hereby adopts the following Supplemental Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

1. The above-entitled rules were adopted by the Minnesota Racing Commission on December 19, 1991.

2. The above-entitled rules were submitted to the Attorney General for approval on December 23, 1991.

3. The Attorney General's Office questioned the constitutionality of the off-track betting and telephone account wagering section of the rules submitted and the rules were withdrawn from the Attorney General's Office on January 3, 1992.

4. The Commission may resubmit the rules to the Attorney General's Office for approval within 180 days of the date that the comment period of the rule ended and the Commission has until May 26, 1992 to do so.

5. The Affirmative Action rules have been severed from the off-track betting and telephone account wagering rules and are to be submitted to the Attorney General for approval as severed.

6. The rules can be severed because they are not related and the off-track betting and telephone account wagering section of the rules are separate from the affirmative action section.

7. To resolve particular questions regarding the legality of the Affirmative Action rules as submitted, the Minnesota Racing Commission hereby makes the following changes to the following rules:

a. The change in Minn. R. 7870.0510, subp. 1, 4 and 5 eliminates the requirement that Class E licensees establish particular hiring and contracting goals to promote economic opportunities for disadvantaged and emerging small businesses and disabled individuals and eliminates the requirement they file compliance reports. The change is not substantial because it affects no one, introduces no significant new subject matter, nor does it make a substantive change not raised by the proposed rule as noticed. The rule simply eliminates certain requirements of Class E licensees which licensees are not in existence and may not come into existence in the near future. Since the change affects no one because no Class E licensees exist, it is not substantial. The change is necessary because without the change regulations would be imposed on a non-existent class

of licensee. The change is reasonable because it imposes no additional burdens on anyone and is merely made to comply with present classes of licenses.

b. The change in Minn. R. 7870.0510, subp. 2-3 deletes certain language and now mandates that Class A, B and D licensees obtain and file with the Commission every two years a copy of a Certificate of Compliance which they must obtain from the Minnesota Department of Human Rights pursuant to Minnesota law. The change is not substantial because licensees are presently required to meet certain minimum goals in hiring and contracting and obtain a Certificate of Compliance if they are to contract with state agencies or bid on state projects. No one is affected by this change because it requires nothing new or different to those desiring to contract with the state. Licensees will not be required to meet the goals as originally published but merely need to obtain and file with the Commission a Certificate of Compliance which most are presently required to do. The change is necessary in order to comply with present Minnesota law and to avoid duplicating statistical studies which have been accomplished by other state agencies in an effort to minimize the cost to the state. The change is reasonable because it imposes less of a burden on licensees.

c. The change in Minn. R. 7870.0510, subp. 6 deletes the definition of racial minority. The change is not substantial because it does not affect anyone who could have reasonably been expected to comment on the rules, it introduces no significant new subject matter and in fact deletes subject matter and makes no substantive change not raised in the rule as noticed. Because of the deletion of subparts 2 and 3 from this particular rule, the definition of racial minority is no

longer necessary. The change is reasonable because no definition is required and in fact racial minority is defined elsewhere in Minnesota law and rule.

d. Minn. R. 7870.0510, subp. 4, 5, 6 were renumbered Minn. R. 7870.0510, subp. 3, 4, 5 respectively. The change is merely clerical and poses no substantial change. The change is necessary and reasonable because it allows for proper numerical ordering.

CONCLUSIONS

1. The Minnesota Racing Commission duly acquired and has jurisdiction over this proceeding.

2. All relevant legal and procedural requirements of statute and rule have been complied with.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the rule as amended is adopted this 20th day of May, 1992, pursuant to authority vested in the Minnesota Racing Commission by Minn. Stat. § 240.23 (1990 and 1991 Supp.).

RICHARD KRUEGER
Minnesota Racing Commission

.au8

jlle

DEPARTMENT: Office of the Attorney General

STATE OF MINNESOTA

OFFICE MEMORANDUM

DATE: February 18, 1992

TO: Richard L. Pemberton
Chair, Minnesota Racing Commission

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Teleracing Rules
Minnesota Racing Commission File No. 91-5230

Mary Magnuson has requested that I respond to your letter of January 13, 1992 regarding the procedure for resubmitting the rules which were withdrawn earlier this year from consideration by the Attorney General. I regret that I was not able to provide you with an earlier response.

Rules may be withdrawn from consideration by the Attorney General any time prior to the expiration of the Attorney General review period. The rule may be resubmitted at any time within the 180 day period following the close of the comment period.

The comment period for these rules expired on November 27, 1991. Therefore, the rules may be resubmitted for consideration at any time through May 26, 1992 (the 180th day, May 25th, is a holiday). At that time, the rules would be reviewed consistent with general rule review procedures. The review period would begin to run again; thus, there would be more than one day in which to review and approve/disapprove the rules. The time in which rule review must be completed is 14 days for rules adopted without a public hearing.

There is no guarantee that any rules submitted will be approved. Hopefully, the issue of constitutionality would be resolved at the time of resubmission. I would like to take this opportunity to remind you that the earlier review process also raised serious concerns with the affirmative action plan provisions of Part 7870.0510. If those concerns cannot be resolved prior to resubmission, the whole rule might face disapproval, as rules submitted to the Attorney General cannot be approved piecemeal. However, it is not necessary to resubmit the entire rule if the concerns about a particular portion of a rule cannot be resolved.

I hope this outline of the process has been of assistance to you. If you need additional information, please do not hesitate to have Mary Magnuson contact me.

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : January 27, 1992

TO : **MARY JO MURRAY**
Special Assistant
Attorney General

FROM : **MARY B. MAGNUSON**
Special Assistant
Attorney General

PHONE : 296-9400

SUBJECT : The attached.

Mary Jo:

Charlie and I discussed the attached letter from Dick Pemberton and he concluded that perhaps a response should come from you. I believe all Dick wants is confirmation that the teleracing rules may be resubmitted without pain or prejudice.

Can you respond? Will you respond? I will be on vacation starting February 3, 1992, so if you can't respond please call before then. Thanks.

MBM/pshb0
Attachment

MINNESOTA RACING COMMISSION
7825 Washington Avenue South, Suite 800
Bloomington, Minnesota 55439
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

Mary Beth Magnuson
Special Assistant Attorney General
State of Minnesota
1100 Bremer Tower
7th Place at Minnesota Street
St. Paul, MN 55101

January 13, 1992

RE: Minnesota Racing Commission
Our File #91-5230

Dear Mary:

Dick Krueger tells me that based upon a conversation which you and he had recently, he withdrew the Tele-Racing Rules from further consideration by the Attorney General. His understanding from you in doing so was that if he did not do so, the Attorney General would disapprove them in view of the legal proceeding commenced against the Racing Commission by Representative Rice. Dick's further understanding from me, is that if the Rice proceeding is resolved establishing the constitutionality and validity of the rules, they may be resubmitted to the Attorney General and the rule making process will go forward just as if they had not been withdrawn. Under theses circumstances, the Attorney General would have one day after resubmission within which to approve or disapprove the rules, since there are 10 days in all and 9 of those days had elapsed prior to Mr. Krueger's withdrawal of the rules from further consideration by the Attorney General. I further understand from Mr. Krueger that the basis for disapproval of the Tele-Racing Rules by the Attorney General would relate to the same issues raised in the Rice proceeding, so if that is resolved as above postulated, it would be reasonable to assume that the Attorney General would approve the rules.

I would appreciate your written confirmation of this understanding in order to insure that we are on the same wavelength. It would

ATTY GENERAL

14 JAN 92 11:00

seem preferable to leave the matter in status quo if that understanding is accurate. If it is not, then we would have to give consideration to getting the time and process toward formal hearing.

We would appreciate your reply just as soon as possible.

Richard L. Pemberton

Richard L. Pemberton, Chairman
Minnesota Racing Commission

ss92013.1/5

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: January 7, 1992

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 Teleracing and Simulcast

The above-referenced rule has been approved as to its legality by the Attorney General on January 3, 1992.

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

Adopted Permanent Rules Relating to Teleracing and Simulcast

Rules as Adopted

7873.0110 APPROVAL OF PARI-MUTUEL POOLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Live racing days; director of pari-mutuel racing authority.** The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve variation and changes in the pari-mutuel pools previously approved by the commission, placement of pools in the program, and simulcasts requested by the licensee that meet the criteria in subpart 2. The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve changes in the placement of pari-mutuel pools in the program, the addition of approved pari-mutuel pools to the program, and changes in simulcasting requests by the licensee that meet the criteria in subpart 2. Before approving a change in the pick six, pick seven, twin trifecta, and super-tri wagering pools, the director of pari-mutuel racing or the commission's director of pari-mutuels must consult with the commission's executive committee.

7873.0120 PARI-MUTUEL BETTING.

Subpart 1. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

7873.0190 PICK SIX.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick six.** In the event one or two of the races comprising the pick six are canceled for any reason, or in the event one or two of the races

Approved by Revisor

comprising the pick six is declared as no contest by the stewards, 100 percent of the current program's net pari-mutuel pool shall be distributed among the holders of pick six tickets which correctly designate the most official winners of the remaining races comprising the pick six. The cumulative net pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of three or more races comprising the pick six pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick six on that day. One hundred percent of the remaining amount in the pick six pari-mutuel pool shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0198 PICK SEVEN.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick seven.** In the event three or fewer of the races comprising the pick seven is canceled for any reason, or in the event three or fewer of the races comprising the pick seven is declared as no contest by the stewards, 100 percent of the current program's net pari-mutuel pool shall be distributed among the holders of pick seven tickets which correctly designate the most official winners of the remaining races comprising the pick seven. The cumulative pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of four or more races comprising the pick seven pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick seven on that day. One hundred percent of the remaining amount in the pick seven pari-mutuel pool shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an

Approved
by Revisor _____

additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7874.0100 GENERAL PROVISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 4. **Recapitulation.** On each day that deposits are made by the association, a report must be filed with the commission containing the following recapitulation:

[For text of items A to D, see M.R.]

E. state's share of breakage; and

[For text of item F, see M.R.]

Separate recapitulations must be filed for each full card simulcast~~, whether at the racetrack or a teleracing facility~~.

7877.0155 CONDITIONS PRECEDENT TO LICENSING.

Acceptance of a Class C license, including a temporary or emergency license, shall mean that the licensee consents and agrees to the following conditions:

[For text of items A to D, see M.R.]

E. The licensee will submit to inspections and searches as hereinafter provided:

(1) When investigating for violations of law or rules upon the grounds of an association, the commission or the stewards may designate the Minnesota Department of Public Safety, Gambling Enforcement Division or another appropriate law enforcement agency as having authority to conduct searches of any Class C licensee, or any employee or agent of a Class A, B, or D~~, or E~~ licensee under the commission's jurisdiction. This authority shall extend to searches and inspections of persons and personal effects in and about grounds.

(2) Each applicant for a Class C license and each employee or agent of a Class A~~,~~ or B~~, or E~~ licensee consents to such searches and inspections, and waives all claims or possible actions for damages that he or she believes he or she may have suffered in connection with any such search or inspection.

[For text of items F to H, see M.R.]

Approved by Revisor _____

7878.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

[For text of subps 3 to 7, see M.R.]

Subp. 7a. **Division.** "Division" means the Division of Gambling Enforcement in the state Department of Public Safety.

[For text of subps 8 to 10, see M.R.]

7878.0110 MINIMUM SELECTION STANDARDS.

Subpart 1. **Applicant must meet selection standards.** A person eligible to be licensed by the commission as a security officer must be an employee of a Class A, B, or D~~, or E~~ licensee and shall meet the following minimum selection standards prior to being appointed a security officer. The appointing authority may certify that the applicant has already completed certain of these standards and provide documentation to that effect pursuant to subpart 2. In all cases, the security officer must:

[For text of items A to D, see M.R.]

E. provide fingerprint cards to the commission;

[For text of items F to H, see M.R.]

[For text of subp 2, see M.R.]

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointment and approval of stewards.** The following procedures must be observed in the appointment of stewards:

[For text of item A, see M.R.]

B. In the event a steward becomes ill, resigns, or is unable to serve for any reason, the remaining stewards shall nominate a temporary steward to the commission for approval. In emergencies, the director of pari-mutuel racing may approve appointment of a temporary steward.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Jan 3 1992

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 3 1992

Joan Anderson Growe
Secretary of State

4:00 PM PB

MINNESOTA RACING COMMISSION
7825 Washington Avenue South, Suite 800
Bloomington, Minnesota 55439
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

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P.O. Box 315, Shakopee, Minnesota 55379
Telephone: 612-496-7753 Fax: 612-496-7762

January 3, 1992

Mr. Hubert H. Humphrey, III
Attorney General
102 State Capitol
St. Paul, Minnesota 55155

Re: In the Matter of the Rules of the Minnesota Racing Commission Governing Class E (teleracing) Licenses, Simulcasting and Pari-Mutuel Betting

Dear Attorney General Humphrey:

The Minnesota Racing Commission requests that the following parts of the above-referenced rule be withdrawn from consideration by your office:

Parts 7869.0100 through 7871.0160, 7873.0400, 7875.0100 through 7877.0110, 7878.0100, subps. 2 and 11, 7878.0160, 7897.0100, 7897.0130 and the repealer.

With respect to the remaining parts of the rule, enclosed please find Amended Findings of Fact, Conclusions of Law, and an Order adopting those parts.

Upon receipt of this letter, please transmit a copy to Paul Marinac, Deputy Revisor, so that an appropriate Notice of Adoption may be prepared for publication in the State Register.

If you have any questions, please feel free to contact me.

Very truly yours,

RICHARD G. KRUEGER

RGK:js/.gx9

Enclosure

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of the Rule of the Minnesota Racing Commission Governing Pari-Mutuel Betting

AMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Minnesota Racing Commission intent to adopt a rule governing the issuance of Class E (teleracing) licenses, simulcasting and pari-mutuel betting with a public hearing, or in the alternative, if less than 25 persons requested a public hearing, without a public hearing, was published in the State Register on October 28, 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 October 24, 1991. The statement of need and reasonableness was prepared before the Commission authorized publication of the notice of intent to adopt a rule and before the Notice was mailed to all persons on the rulemaking mailing list, published in the State Register and made available to the public.

No requests for a public hearing on the rule were received by the agency. All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking.

One comment on the rule was received by the agency and was considered by the Minnesota Racing Commission. No requests for notice of submission to the Attorney General were received by the agency. The rules were submitted to the Attorney General for review as to form and legality on December 20, 1991.

On January 3, 1992, I, on behalf of the Minnesota Racing commission, transmitted a letter to the Attorney General requesting that certain identified parts of the rule be withdrawn from consideration. Accordingly, parts 7869.0100 through 7871.0160, 7873.0400, 7875.0100 through 7877.0110, 7878.0100, subparts 2 and 11, 7878.0160, 7897.0100, 7897.0130 and the repealer were withdrawn from consideration.

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

FINDINGS OF FACT

1. Minn. Rule pt. 7874.0100, subp. 4, has been modified to delete the language referring to the filing of separate recapitulations for each full card simulcast whether the simulcast occurs at the racetrack or at a teleracing facility. This modification is made to conform the rule to the withdrawal of all the parts of the rule involving pari-mutuel betting at teleracing facilities rather than at the racetrack. Under the modified rule, separate recapitulations must be filed but only for full card simulcasting that occurs on the premises of a licensed racetrack.

2. Minn. Rule pt. 7877.0155, subp. E, items (1) and (2) have been modified to delete the references to Class E licensees. As with the modification discussed above, this change was made to conform the rule to the withdrawal of those portions of the rule involving Class E (Teleracing) licenses.

3. Minn. Rule pt. 7878.0110, subp. 1 has been modified to delete the reference to Class E licensees. This change was made for the reasons discussed above.

4. The rule, as modified, is not substantially different than the rule as originally published. The modified rule affects no classes of persons who 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 Notice of Intent to Adopt the Rule. Indeed, the modifications involve only the deletion of language rather than the insertion of different language. Therefore, the modification is needed and reasonable.

CONCLUSION

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as governing Pari-mutuel betting is adopted this 3rd day of January, 1992, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes, section 240.23 (1990 and 1991 Supp.).

RICHARD KRUEGER, Director
Minnesota Racing Commission

DEPARTMENT: Office of the Attorney General STATE OF MINNESOT

OFFICE MEMORANDU

DATE: December 31, 1991

TO: Linda F. Close
Deputy Attorney General

FROM: Mary Jo Murray
Special Assistant
Attorney General

PHONE: 296-3258

SUBJECT: Racing Commission Rules on Simulcast Pari-Mutuel Betting

On December 20, 1991, the Attorney General's Office received the Rules for Teleracing and Simulcast from the Minnesota Racing Commission for review. Review commenced on December 30, 1991 and must be completed by January 3, 1992.

I have reviewed the Rules as Proposed and Rules as Adopted and see the following complications. First, the Minnesota Constitution (Article X, Section 8) permits the Legislature to authorize "on-track pari-mutuel betting on horse racing in a manner prescribed by law." The Constitution does not authorize off-track betting; this implies that off-track betting is prohibited. However, there is an argument that you do not need to authorize off-track betting with a Constitutional amendment. Finally, the question still exists as to whether off-track betting would be considered a prohibited "lottery." (To the best of Ken Raschke's recollection, in an issue which Jim Schoessler handled, our office took the position on Indian gambling that off-track simulcast betting was prohibited.)

Next, both the statute and the rules permit issuance of a Class E license (a simulcast facility) to locations out of state. While the statute (Minn. Stat. §240.13 subd. 6 (Supp. 1991) requires compliance with the Interstate Horse Racing Act of 1978, 15 USC §§3001 et seq., the question remains as to how the statute and rules would be enforced out of state. For example, Part 7871 requires a complaint window at each Class E facility and the presence of a "teleracing manager" whose duty it is to "ensure that the laws and rules governing pari-mutuel wagering are observed at the teleracing facility."

The statute and rules also contemplate that there will be "receiving" teleracing facilities in Minnesota. Minn. Stat. §240.13 subd. 5 (a)(3) (Supp. 1991) and Part 7869.0100, subp. 30a. Thus, a race broadcast in California could be "received" at a Class E facility in Minnesota, bets could be placed on the California race, and except for the Interstate Horse Racing Act, Minnesota laws and rules could not apply. The US Constitution specifically limits states' regulation of commerce to internal commerce.

While the affirmative action program in Part 7870.0510 is thorough, the Statement of Need and Reasonableness does not explain the basis upon which the

program was created. The program addresses economically disadvantaged small businesses, racial minorities, women and the handicapped, but applies different "goals" for each group in terms of contracting, subcontracting, and hiring quota goals. No justification is found in the SONAR for doing so, and without such justification it is impossible to tell if the program is consistent with recent affirmative action program decisions of the US Supreme Court. (There is also one minor glitch in that the legislation allows rules for Class A, B and D facilities and the Rules proposed a plan for Class A, B, D and E facilities.)

Minnesota Racing Commission

Proposed Permanent Rules Relating to Teleracing and Simulcast

Rules as Proposed

7869.0100 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

Subp. 6a. **Alternative facility.** "Alternative facility" means a facility licensed by a state racing or gaming authority that uses a totalizator for pari-mutuel wagering on horse races.

[For text of subps 7 to 13, see M.R.]

Subp. 13a. **Commingled (common) pool.** "Commingled (common) pool" means a pool merged electronically with those at a host racetrack or alternative facility that serves as a racetrack for the purpose of commingled pools such that payoffs at the licensed facility within this state are calculated on the total combined pari-mutuel pool of the host racetrack and all those facilities to which it broadcasts.

[For text of subps 14 to 18, see M.R.]

Subp. 19. [See repealer.]

[For text of subps 20 to 29, see M.R.]

Subp. 30. **Grounds.** "Grounds" mean the entire area used by the association to conduct a race meeting or simulcasting, including the track, grandstand, stables, concession areas, ~~and~~ parking facilities, and teleracing facility including its parking area.

Subp. 30a. **Guest or receiving racetrack.** "Guest or receiving racetrack" means a class B licensed racetrack within the state which receives broadcasts by television of races ~~by television~~ run from a licensed racetrack outside of this state.

[For text of subps 31 and 32, see M.R.]

Subp. 32a. **Host or sending racetrack.** "Host or sending racetrack" means a licensed racetrack located outside of this state which broadcasts its races by television to a licensed racetrack within this state.

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[For text of subp 33, see M.R.]

Subp. 33a. [See repealer.]

[For test of subps 34 to 47, see M.R.]

Subp. 47a. **Presiding official.** "Presiding official" means an official of the commission appointed by the director of pari-mutuel racing, presiding over ~~races conducted on approved televised racing days~~ simulcasting.

[For text of subps 48 to 51, see M.R.]

Subp. 51a. **Racing day.** "Racing day" means a day assigned by the commission on which live racing is conducted. ~~Racing day includes a televised racing day.~~

[For text of subps 52 to 56, see M.R.]

Subp. 57. ~~**Simulcast**~~ **Simulcasting.** "~~Simulcast~~ Simulcasting" means ~~a~~ the televised ~~race transmitted or received by an association on a racing day when~~ display for pari-mutuel wagering ~~is~~ purposes, of one or more horse races conducted at another location where the televised display occurs simultaneously with the race being televised.

[For text of subps 58 to 65, see M.R.]

Subp. 65a. [See repealer.]

[For text of subp 66 to 69, see M.R.]

7870.0180 IDENTIFICATION OF APPLICANT FOR CLASS B AND E LICENSE.

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

7870.0190 APPLICANT'S AFFIDAVIT.

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

A. That application is made for a Class B or E license to sponsor and manage live horse racing or simulcasting on which pari-mutuel betting is conducted.

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[For text of items B to J, see M.R.]

7870.0200 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class B or E license must disclose:

[For text of items A to I, see M.R.]

7870.0210 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class B or E license must make its best effort, as defined in part 7870.0030, item E, to disclose whether the applicant ~~or~~, any individual or other entity identified pursuant to part 7870.0200 or 7870.0270, item B or C, or with respect to Class E racing only, whether any lessor of the premises within which the teleracing facility will be located, has:

[For text of items A to H, see M.R.]

7870.0220 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT FOR CLASS B FACILITY.

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

[For text of items A to P, see M.R.]

7870.0221 DISCLOSURE FOR CLASS E FACILITY.

Subpart 1. **Development disclosures.** An application for a Class E license must disclose with regard to development of its teleracing facility:

A. the total cost of construction or renovation 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, including a description of work areas for commission members, officers, employees, and agents;

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(5) interim financing;

(6) permanent financing; and

(7) organization, administrative, accounting, and legal.

C. documentation of fixed costs;

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

E. schematic drawings;

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

(1) architect or engineer;

(2) project engineer;

(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel; and

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

Subp. 2. **Additional disclosures.** An application for a Class E license must disclose with respect to the facility at which it will sponsor and manage simulcasting:

A. the address of the location;

B. the name, address, and telephone number of the owner of the real estate upon which the building will be situated;

C. a copy of the lease, purchase option, or purchase agreement for the location;

D. a pro forma financial statement projecting attendance, handle, and revenue at the location;

E. a statement of the projected cost of operation of the location;

F. a statement of the sources of funds used to construct or renovate the location, including a copy of the loan commitment letter, loan documents or other documents setting forth the terms relating to the financing of the location, and a

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certification that the licensed corporation's state and local tax obligations are not in arrears;

G. a statement of the projected revenue and taxes to be paid to the state and local government;

H. the anticipated impact on attendance, handle, and purse structure at licensed facilities conducting live racing in this state;

I. the areas from which the applicant expects to attract patrons to the location;

J. the population of the area within 35 air miles of the location;

K. the owner and description of other businesses or uses to be conducted at the location;

L. the number of floors, total square footage, and seating capacity of the facility;

M. a description of the dining accommodations and concession areas to be contained in the facility, including the types of food and beverages to be available, the seating capacity, and a description of the kitchen areas;

N. the number and location of fire escapes and emergency exits at the facility;

O. the number of restrooms to be contained in the facility;

P. a description of the general demeanor of the facility, including its decor and lighting, the type of seating to be provided, and the areas of the facility where patrons can handicap races;

Q. a description of the exterior of the facility;

R. the architectural or engineering drawings of the facility;

S. a description of the heating, air conditioning, smoke removal, and climate control equipment, and smoke and fire detectors to be used in the facility;

T. the provisions made to assure that the facility is accessible to the physically handicapped;

U. a description of the parking areas to be provided

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at the facility, including the name, address, and telephone number of the owner of the parking facilities; a copy of the lease agreements for parking; the number of parking spaces to be provided; the charge to be imposed for parking; and a description of traffic control to be provided;

V. copies of contracts relating to, and a complete description of, the pari-mutuel or totalizator equipment to be used in the facility and a statement describing the compatibility of that equipment with the equipment being used at the primary racetrack of the licensed corporation and the equipment in use at the other primary racetracks which will be transmitting their races to the facility;

W. copies of contracts relating to, and a description of, the equipment to be used for receiving transmissions of races and race-related information;

X. the name, address, and telephone number of persons supplying equipment to the facility;

Y. a description of the procedures to be used to resolve patron complaints at the facility;

Z. a description of the security plan for the facility;

AA. a copy of insurance policies applicable to the facility;

BB. a statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the facility; and

CC. a copy of building, fire, occupancy, health, and sanitation or other permits required by the state or a county, township, or municipality in which the facility is situated.

7870.0240 DISCLOSURE OF FINANCIAL RESOURCES.

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

[For text of items A to C, see M.R.]

7870.0250 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class B or E license must disclose with

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regard to its financial plan financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B or E 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:

[For text of items A to D, see M.R.]

An applicant must also disclose an accountant's review report of the financial projections.

7870.0260 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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

[For text of subitems (1) to (3), see M.R.]

[For text of item B, see M.R.]

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

7870.0270 DISCLOSURE OF MANAGEMENT.

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

[For text of items A to D, see M.R.]

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

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[For text of subitems (1) and (2), see M.R.]

(3) specific plans to discover persons at the horse racing or teleracing 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;

[For text of subitems (4) to (6), see M.R.]

[For text of items F and G, see M.R.]

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

[For text of items I to M, see M.R.]

7870.0280 DISCLOSURE OF PUBLIC SERVICE.

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

7870.0290 DISCLOSURE OF ECONOMIC IMPACT.

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

[For text of items A to C, see M.R.]

7870.0300 DISCLOSURE OF PUBLIC SUPPORT AND OPPOSITION.

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

7870.0310 EFFECTS ON COMPETITION.

An applicant for a Class B or E license must disclose the effects of its sponsorship and management of horse racing or simulcasting on competitors within the horse racing and pari-mutuel industry.

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7870.0320 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0330 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class B or E license the applicant must make its best effort, as defined in part 7870.0030, item E, to include the following with respect to each individual identified pursuant to part 7870.0200 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0270, item B or C:

[For text of items A and B, see M.R.]

7870.0340 CLASS B AND E LICENSE CRITERIA.

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

[For text of items A and B, see M.R.]

C. the quality of physical improvements and equipment applicant will use, including as applicable to a Class B or E facility:

[For text of subitems (1) to (14), see M.R.]

D. financial ability to sponsor and manage pari-mutuel horse racing or simulcasting successfully, including:

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[For text of subitems (1) to (7), see M.R.]

[For text of item E, see M.R.]

F. management ability of the applicant, including:

[For text of subitems (1) and (2), see M.R.]

(3) plans for human and animal health and safety, as applicable;

[For text of subitems (4) to (11), see M.R.]

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

[For text of items H and I, see M.R.]

J. effects on competition, including:

(1) number, nature, and relative location of other Class B or E licenses;

[For text of subitems (2) and (3), see M.R.]

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

7870.0350 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION DISCLOSURES.

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

[For text of items A to D, see M.R.]

7870.0360 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION SUBMISSION.

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

[For text of items A and B, see M.R.]

7870.0370 INVESTIGATION FEE FOR CLASS A ~~AND~~, B, AND E LICENSES.

An applicant for a Class A ~~or~~, B, or E license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10,000 to cover the costs of the

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

7870.0380 CLARIFICATION OF CLASS A ~~AND~~, B, AND E LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class A ~~and~~, B, and E 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.

7870.0390 CHANGES IN CLASS A ~~AND~~, B, AND E LICENSE APPLICATIONS.

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

7870.0400 DEADLINES FOR SUBMISSION OF CLASS A ~~AND~~, B, AND E LICENSE APPLICATIONS.

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

A. Applications for a Class A license to own and a Class B license to operate a racetrack or a Class E license to operate a teleracing facility in the seven-county metropolitan area may be submitted at any time by filing the application with the commission at its administrative offices.

B. Applications for Class A licenses to own and Class B licenses to operate racetracks or a Class E license to operate a teleracing facility outside the seven-county metropolitan area

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may be submitted at any time. If the commission determines that applications will be submitted for Class A licenses to own and class B licenses to operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications.

C. Notwithstanding items A and B, applications for Class B licenses must be submitted at least 60 days before the date on which the applicant proposes to commence horse races and applications for Class E licenses must be submitted at least 60 days before the date on which the applicant proposes to commence simulcasting.

7870.0410 ORAL PRESENTATION BY APPLICANT FOR A CLASS A ~~OR~~, B, OR E LICENSE.

The commission must provide an applicant for a Class A ~~or~~, B, or E 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.

7870.0420 PAYMENT OF CLASS A ~~AND~~, B, AND E LICENSE FEES.

A Class A ~~or~~, B, or E license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

[For text of item A, see M.R.]

B. a fee for a Class B license equal to $100 for each live racing day and $50 for each ~~televised-racing~~ day on which simulcasting is sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds the number of actual days of racing sponsored and managed by the licensee; and

C. an annual nonrefundable fee of $1,000 for a Class

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E license.

7870.0430 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION INFORMATION.

False or misleading information in a Class A ~~or~~, B, or E 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.

7870.0450 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

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

7870.0470 SECURITY MODIFICATIONS.

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

7870.0500 CONTRACT APPROVAL.

Subpart 1. **Contracts and subcontracts subject to prior commission approval.** Contracts entered into, renewed, or extended by Class A, B, ~~and~~ D, and E licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, ~~and~~ D, and E licensees must submit as soon as practicable to the commission the name and the address of the contractor or subcontractor, amount and duration of the contract or subcontract, and a

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description of the good or service provided. The commission shall determine whether the contract or subcontract may affect the integrity of pari-mutuel racing, and the commission shall notify the licensee whether the commission intends to review and approve or disapprove the contract or subcontract. In making a determination that a contract or subcontract may affect the integrity of racing, the commission shall consider the amount and duration; the extent to which the contractor or subcontractor will be on the premises of the licensee; the relationship of the contract or subcontract to security; opportunity for contact between the contractor or subcontractor and horses, horsepersons, or patrons; opportunity for the contractor or subcontractor to influence the management and conduct of pari-mutuel racing; contact with admission, pari-mutuel, concession, or purse money; and whether the commission has reason to believe that the contractor or subcontractor is incompetent, financially irresponsible, or not of good character. If notified of the commission's intention to review and approve or disapprove a contract or subcontract, the licensee shall promptly submit to the commission copies of any written contracts or subcontracts as well as any documentation, records, or information the commission may request with regard to the contract. If the commission notifies a licensee of the commission's intention to review and approve or disapprove a contract or subcontract, the contract or subcontract is not valid, nor is either of the parties bound by the contract until it has been approved by the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

[For text of subps 2 to 5, see M.R.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. [See repealer.]

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7870.0510 AFFIRMATIVE ACTION.

Subpart 1. **Economic opportunities for disadvantaged and emerging small business.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for disadvantaged and emerging small businesses:

A. a minimum goal of ten percent for construction subcontract and material suppliers with disadvantaged and emerging small business enterprises during construction of the facility, and a labor and employment goal of ten percent for disadvantaged and emerging small business in on-site construction jobs;

B. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction; and

C. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction.

Subp. 2. **Economic opportunities for racial minorities.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for racial minorities:

A. a minimum goal of ten percent for hiring racial minorities in all categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

B. a minimum goal of making available up to ten percent of available equity ownership to racial minorities.

Subp. 3. **Economic opportunities for women.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic

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opportunities for women:

A. a minimum goal of 51.4 percent for hiring women in all job categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

B. a minimum goal of making available up to ten percent of the available equity ownership to women.

Subp. 4. **Economic opportunities for disabled.** Class A, B, D, and E licensees are required, to the extent feasible, to establish reasonable goals to assist in providing economic opportunities for disabled individuals. These affirmative action goals must be set with respect to the Class A, B, D, and E licensee's construction subcontracts/material suppliers during facility construction, on-site construction jobs, postconstruction labor force, postconstruction vendor, supplier and other contracts, and available equity ownership opportunities.

Subp. 5. **Compliance reports.** Class A, B, D, and E licensee's are required to file quarterly reports with the commission demonstrating compliance with the requirements of this part on forms provided by the commission.

Subp. 6. **Definitions.** For the purpose of this part, the following words have the meanings given them.

A. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

B. "Good faith effort" means a reasonable effort to accomplish goals and timetables.

C. "Disadvantaged and emerging small business" means a business located within the state of Minnesota which employs 25 employees or less, has not had gross sales in excess of $6,000,000 over the past three years, and has been in business

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at least one year.

D. "Racial minority" means:

(1) Blacks, or persons having origins in any of the Black African racial groups not of Hispanic origin;

(2) Hispanics, or persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

(3) Asian and Pacific Islanders, or persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and

(4) American or Alaskan natives, or persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

7871.0005 APPLICATION FOR SIMULCASTING.

Subpart 1. **Submission of request for simulcasting.** A Class B or E licensee may apply for simulcasting no later than 30 days before the requested commencement of simulcasting. Each request for simulcasting must include an original and 15 copies of the following:

A. a signed request for simulcasting;

B. the dates requested, breeds of horses, types of races, number of races per program, and a list of potential host racetracks; and

C. any other documentation the licensee deems necessary to ensure a complete understanding of the request.

Subp. 2. **Approval of simulcast request.** When considering a request for simulcasting, the commission must consider the success and integrity of racing; the public health, safety and welfare; and public interest, necessity, and convenience, as well as the following factors:

A. the integrity of the licensee and the host racetracks and/or any alternative facility;

B. the financial strength of the licensee and the

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host racetracks and/or any alternative facility;

C. past compliance of the licensee and the host racetracks and/or any alternative facility with all laws, rules, and orders regarding pari-mutuel horse racing;

D. the licensee's market, including area, population, and demographics;

E. the impact of the simulcasting on the economic viability of the racetrack, including attendance and pari-mutuel handle; and

F. the sentiment of horsepersons.

Subp. 3. **Commission action.** The commission shall approve, deny, or give its qualified approval to a request for simulcasting within 30 days after the filing of the request.

Subp. 4. **Variations in simulcasting previously approved by the commission.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations in any previously approved request for simulcasting provided the variations meet the criteria in subpart 2.

7871.0010 APPLICATION FOR PARI-MUTUEL POOLS FOR SIMULCASTING.

Subpart 1. **Submission of pari-mutuel requests.** A class B or E licensee may apply for approval of pari-mutuel pools including rules governing calculation of payoffs, disposition of unclaimed tickets, pools offered based on the number of entries, prevention and failure to start, and scratches in effect at the host racetrack by submitting an original and 15 copies of the following:

[For text of item A, see M.R.]

B. a copy of the administrative rules for pari-mutuel pools in the states in which the host racetracks are located; and

C. ~~a detailed statement of how the request meets each of the criteria in part 7871.0020, subpart 2; and~~

~~B.~~ any other documentation the commission considers necessary to ensure a complete understanding of the request.

Subp. 2. [See repealer.]

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Subp. 2a. **Disposition of requests.** The commission shall approve, deny, or give its qualified approval to an application for pari-mutuel pools within 30 days after the filing of the application.

[For text of subp 3, see M.R.]

Subp. 4. **Submission of contracts.** A copy of the fully executed contracts between the licensee and the host racetracks and any alternative facility must be submitted prior to the commencement of ~~televised-racing-days~~ simulcasting from ~~the respective~~ each host ~~racetracks~~ racetrack.

7871.0020 APPROVAL OF PARI-MUTUEL POOLS ~~ON-TELEVISED-RACING-DAYS~~ FOR SIMULCASTING.

Subpart 1. [See repealer.]

Subp. 2. **Basis for approving pari-mutuel pools.** When considering a request for approval of pari-mutuel pools for ~~televised-racing-days~~ simulcasting, the commission must consider the success and integrity of racing; the public health, safety, and welfare; public interest, necessity, and convenience~~;-as well-as-the-following-factors:~~.

~~A.--the-types-of-betting-and-number-and-placement-of multiple-pools-in-the-racing-program-at-the-host-racetracks;~~

~~B.--the-integrity-of-the-licensee-and-the-host racetrack;~~

~~C.--the-financial-strength-of-the-licensee-and-the host-racetrack;~~

~~D.--the-ability-of-the-licensee-and-the-host-racetrack to-operate-a-racetrack-and-conduct-horse-racing,-including licensee's-facilities,-systems,-policymakers,-managers,-and personnel;~~

~~E.--past-compliance-of-the-licensee-and-the-host racetrack-with-all-laws,-rules,-and-orders-regarding-pari-mutuel horse-racing;~~

~~F.--the-licensee's-market,-including-area,-population, and-demographics;~~

~~G.--the-performance-of-the-licensee-and-host-racetrack~~

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~~with-previously-approved-pari-mutuel-pools;~~

~~H.--the-impact-approving-the-pari-mutuel-pool-will have-on-the-economic-viability-of-the-racetrack,-including attendance-and-pari-mutuel-handle;~~

~~I.--the-quantity-and-quality-of-economic-activity-and employment-generated;~~

~~J.--state-tax-revenues-from-racing-and-related economic-activity;~~

~~K.--the-entertainment-and-recreation-opportunities-for Minnesota-citizens;~~

~~L.--the-variety-of-racing;~~

~~M.--the-quality-of-racing;~~

~~N.--the-availability-and-quality-of-horses;~~

~~O.--the-development-of-horse-racing;~~

~~P.--the-quality-of-racetrack-facilities;~~

~~Q.--security;~~

~~R.--purses;~~

~~S.--benefits-to-Minnesota-breeders-and-horse-owners;~~

~~T.--competition-among-racetracks-and-with-other providers-of-entertainment-and-recreation-as-well-as-its effects;~~

~~U.--the-social-effects;~~

~~V.--community-and-government-support;~~

~~W.--sentiment-of-horsepersons,-and~~

~~X.--any-other-factors-related-to-pari-mutuel-pools which-the-commission-considers-crucial-to-its-decision-making-as long-as-the-same-factors-are-considered-with-regard-to-all requests.~~

Subp. 3. **Director of pari-mutuel racing.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations and changes in pari-mutuel pools and the placement of pools in the racing program if requested by the licensee and if all changes meet are consistent with the criteria contained in subpart 2.

7871.0030 PARI-MUTUEL BETTING.

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Subpart 1. **Minimum return.** ~~On-a-televised-racing-day~~ For simulcasting approved by the commission, the minimum return on each winning wager shall be that amount which is in effect at the host track or alternative facility. The share of liability for insufficient money in the net pool may be as agreed to by the licensee and the host racetrack or alternative facility.

Subp. 2. **Commingling of funds.** With the prior approval of the commission, ~~the~~ a Class B or E licensee may commingle ~~the amounts-bet-at-the-licensed-racetrack-on-a-televised-racing-day with-the-pari-mutuel~~ pools ~~at-the-host-racetrack~~. If the ~~pari-mutuel~~ pools are commingled, ~~the~~ wagering at the licensed racetrack and each teleracing facility must be on tabulating equipment ~~capable-of-issuing~~ that issues pari-mutuel tickets and ~~be~~ is electronically linked ~~with-the-equipment-at the-host-racetrack~~ to the totalizator at the Class A facility.

Subp. 3. **Information window.** Each association shall provide at least one information or complaint window at the licensed racetrack and at each teleracing facility where complaints may be made by members of the public. A current set of all Minnesota commission rules and all administrative rules of the state in which the host racetrack is located regarding pari-mutuel wagering shall be available for public inspection at all times when the facility is open to the public.

Subp. 4. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 5. **Simulcasting to locations outside the state.** A licensee may, with the approval of the commission, transmit telecasts of races the licensee conducts for wagering purposes to a location outside the state. The commission may allow the licensee to commingle its wagering pools with the wagering pools at a facility located outside of this state.

7871.0080 TIP SHEETS.

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Subpart 1. **Number of tip sheets.** Should ~~the~~ a Class B or E licensee elect to allow the availability of tip sheets, not less than two independently handicapped tip sheets shall be available at a racetrack and each teleracing facility. Each ~~handicapper~~ tip sheet must ~~sign-and-deliver-the-sheet~~ be delivered at least one hour before post time for the first race to the ~~presiding-official-at-the-licensee's-racetrack~~ commission in a manner and place as prescribed by the commission.

Subp. 2. **Previous day's sheet to be posted.** The previous race day's tip sheets and their outcome must be displayed in a conspicuous place within the grandstand area of the racetrack and within each teleracing facility for inspection by patrons.

Subp. 3. **Tip sheet vendors must be licensed.** All persons holding a tip sheet concession at the racetrack and each teleracing facility must be approved and licensed as a vendor by the commission.

7871.0100 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack ~~and all-other-racetracks~~ licensed by the commission, including the impact on the pari-mutuel handle.

Subp. 2. **Requirements.** The association must meet the ~~following~~ requirements ~~prior-to~~ in items A to D before conducting telephone account wagering:

[For text of items A to D, see M.R.]

Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

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(2) deposit with the association no less than $100 in cash or by ~~certified~~ check ~~or~~, money order, or credit card; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

~~D.--Actual-race-results-may-not-be-divulged-to telephone-account-customers-during-racing-hours;-however, account-balances-may-be-given.~~

[For text of subps 4 and 5, see M.R.]

7871.0110 DISTRIBUTION OF PURSE MONEY.

Subpart 1. **Purse amounts.** Pursuant to Minnesota Statutes, section 240.13, subdivision 6~~5~~, ~~paragraph-(d),-an-amount-equal to-25-percent-of-22-percent-of-the~~ all amounts required to be withheld from all pari-mutuel pools must be allocated for purses by an association conducting ~~televised-horse-racing~~ simulcasting.

Subp. 2. **Escrow accounts.** Outside of the racing season, all money withheld for purses by an association pursuant to subpart 1 must be placed in interest-bearing escrow accounts and set aside for purse monies in the next racing meeting for the breed involved.

7871.0115 TELERACING MUTUEL MANAGER.

Subpart 1. **Requirement.** The Class E licensee must, with the approval of the commission, designate a teleracing mutuel manager at each teleracing facility.

Subp. 2. **Duties.** The teleracing mutuel manager shall:

A. supervise the pari-mutuel operations at the teleracing facility and provide reports as requested by the commission's director of pari-mutuels and/or pari-mutuel auditor for regulatory purposes;

B. (1) send to and receive communications from the mutuel manager of the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager; (2) send to and receive communications from the presiding official at the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager;

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C. oversee the operation of the equipment used to commingle the pools at the teleracing facility with the pools at the Class B racetrack and suspend wagering at the teleracing facility when instructed by a presiding official if the money wagered is not being transmitted to the pari-mutuel pools at the Class B racetrack; and

D. ensure that laws and rules governing pari-mutuel wagering are observed at the teleracing facility.

7871.0120 ~~APPOINTMENT OF~~ PRESIDING OFFICIAL.

Subpart 1. **Requirement.** All ~~races on which pari-mutuel betting is conducted on televised racing days~~ simulcasting must be presided over by ~~an~~ at least one official of the commission appointed by the director of pari-mutuel racing. During the racing season, the director may appoint one or more of the stewards to act as the presiding official. The association must reimburse the commission for each presiding official's compensation.

Subp. 2. **Communication with stewards.** A Class B or E licensee conducting ~~approved televised racing days~~ simulcasting must provide ~~the presiding official with~~ telephone communication ~~with the stewards at the host racetrack throughout the racing program each day~~ between the licensed racetrack, the host racetrack, and any alternative facility.

Subp. 3. **Communication with teleracing facilities.** A Class E licensee must designate a pari-mutuel manager at each teleracing facility for the purpose of communicating with the presiding officials at all times simulcasting is conducted.

7871.0130 AUTHORITY AND DUTIES OF PRESIDING OFFICIAL.

Subpart 1. **Authority.** ~~The~~ A presiding official shall exercise immediate supervision, control, and regulation of ~~racing on each televised racing day~~ simulcasting on behalf of the commission and shall be responsible only to the commission. The powers of ~~the~~ a presiding official include:

A. the authority over all persons, licensed or unlicensed, on ~~association~~ the grounds during ~~a televised racing~~

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~~day~~ simulcasting regarding all matters relating to racing;

B. the authority to suspend~~,~~ ~~according to applicable law,~~ a Class C licensee for up to 90 days and/or impose a fine of up to $2,000 according to the schedule of fines in part 7897.0130;

C. the authority to eject or exclude according to applicable law, from ~~association~~ the grounds, or any part thereof, licensed or unlicensed persons for violations of law or rule;

D. the authority to interpret and enforce commission rules and determine all questions pertaining to racing and wagering matters in conformity with applicable law and ~~the "customs of the turf"~~ rule; and

E. the authority to request and receive assistance from commission employees, racing officials, track security, and federal, state, or local police in the investigation of possible violations of law or rule.

Subp. 2. **Duties.** In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of ~~race meetings~~ simulcasting, and without limiting the authority of ~~the~~ a presiding official to perform those and all other duties listed in this part, ~~the~~ a presiding official shall have the following specific duties and responsibilities:

[For text of item A, see M.R.]

B. To ~~lock~~ ensure that all pari-mutuel betting machines ~~not~~ are locked no later than the start of a race.

C. To maintain daily reports of actions taken and observations made during the conduct of ~~each day's racing program~~ simulcasting. The report must contain the name of the track, the date, weather and track conditions, claims, inquiries and objections, and any unusual circumstances or conditions. The reports must be signed by ~~the~~ a presiding official and filed with the commission within 24 hours.

[For text of item D, see M.R.]

E. Within seven days after the conclusion of a race

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meeting, ~~the~~ a presiding official must submit to the commission a written report containing ~~their~~ observations and comments concerning the conduct of the race meeting and the condition of the ~~association~~ grounds and any appropriate ~~recommendation~~ recommendations for improvement.

7871.0140 DISCIPLINARY AND APPEAL PROCEDURES.

In the event ~~the~~ a presiding official has reasonable cause to believe that a Class C licensee has committed an act or engaged in conduct in violation of statute or the rules of the commission or which ~~in the opinion of the presiding official~~ otherwise adversely affects the integrity of horse racing ~~and~~ or pari-mutuel wagering, the procedures ~~contained~~ in Minnesota Rules, part 7897.0150, must be adhered to.

7871.0160 EMERGENCY PROCEDURES.

Subpart 1. **Interruption of the audio or visual satellite signal from the host racetrack.** In the event of an interruption of the audio or visual satellite signal from the host racetrack, the Class B racetrack's mutuel manager must immediately:

A. notify the host track of the loss of the signal;

B. establish a telephone linkup with the host track announcer to the public address system at the Class B racetrack. Wagering may be accepted on the balance of the program and subsequent programs; and

C. establish a telephone linkup with the host track announcer to the public address system at a teleracing facility upon notification from the teleracing facility that the audio or visual signal has been interrupted. The teleracing facility may continue to accept wagering on the balance of the program and subsequent programs.

Subp. 2. **Computer interface interruption.**

A. Between Class B facility and host racetrack:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the host racetrack, the Class B racetrack's mutuel manager must notify the totalizator representatives at the host racetrack and

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request additional time prior to the start of the race to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the host racetrack shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the following procedure:

(a) the Class B racetrack's totalizator operator must inform the host racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send that information via a facsimile machine to the host racetrack's totalizator operator;

(b) the stewards at the host racetrack and a presiding official at the Class B racetrack must be notified when the procedure has been completed in order to declare the race official; and

(c) the Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the stewards were notified, and for what time period prices were delayed; and

(iv) a worksheet from the host racetrack signed by their totalizator representative, the host racetrack's mutuel manager, and the state representative from the host racetrack's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

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(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate basis (no commingling) or manually merged on a commingled pools basis.

B. Between Class B racetrack and alternative facility:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the alternative facility, the Class B racetrack's mutuels manager must notify the totalizator representatives at the alternative facility and request additional time to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the alternative facility shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the following procedures:

(a) The Class B racetrack's totalizator operator must inform the alternative facility's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send the information via a facsimile machine to the alternative facility's totalizator operator;

(b) A presiding official at the Class B racetrack must be notified when the procedure has been completed in order to calculate the official prices;

(c) The Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

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(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the alternative facility was notified, and for what time period prices were delayed; and

(iv) a worksheet from the alternative facility signed by their totalizator representative, the alternative facility's mutuel manager, and the state representative from the alternative facility's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs prior to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate basis (no commingling) or manually merged on a commingled pools basis.

Subp. 3. **Wagering data transfer interruption at teleracing facility.**

A. In the event the teleracing facility fails to transfer its wagering data to the Class B racetrack, the teleracing facility's mutuel manager must contact the Class B racetrack's totalizator representative to allow for a retransmission of the data.

B. If a second data transfer fails, the Class B racetrack's totalizator representative shall notify a presiding official that the transfer has failed and that if time permits the pools must be merged manually. A manual merge shall be accomplished by the following procedure.

(1) The teleracing facility mutuel manager must inform the Class B racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the

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total dollars on losing wagers in the pool. The teleracing facility's mutuel manager shall send that information via a facsimile machine to the totalizator operator at the Class B facility.

(2) A presiding official at the Class B facility and the designated person at the teleracing facility must be notified when the procedure has been completed to calculate the official prices.

(3) The Class B licensee's totalizator representative must prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(a) a copy of the pool print report prior to the failure of the transfer of data;

(b) a copy of the final pools print report;

(c) a brief statement as to where the failure occurred, when a presiding official was notified, and for what time period prices were delayed; and

(d) a worksheet from the Class B racetrack signed by its totalizator representative showing total dollars wagered in each pool and the final prices.

C. In the event time does not permit a manual merge, the amounts wagered at the teleracing facility on that race shall be refunded.

D. The teleracing facility may continue to accept wagering on the balance of the program on a manually merged basis with the Class B racetrack upon permission of a presiding official at the Class B racetrack. If permission is not granted, all wagers on the current race and advance wagering must be refunded.

E. Any wager on subsequent programs from the Class B racetrack prior to the reestablishment of the transfer of wagering data from the teleracing facility to the Class B facility must be canceled.

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Subp. 4. **Complete totalizator failure at Class B racetrack.**

A. In the event the Class B racetrack's totalizator fails, all money wagered on the race in which the totalizator failed and all advance wagers must be refunded. Any wagering on the balance of the program or subsequent programs may not be accepted until the totalizator is operational to the satisfaction of a presiding official.

B. The host racetrack's mutuel manager must be notified of the failure and all wagers at the Class B racetrack on the race in which the failure occurred and all advance wagers shall be taken out of the pools at the host racetrack.

C. The Class B facility's mutuel manager shall notify all teleracing facility mutuel managers of the totalizator failure and instruct them to refund all current and advance race wagers.

Subp. 5. **Complete totalizator failure at the host racetrack.**

A. In the event the host racetrack's totalizator fails, the Class B racetrack may refund amounts wagered, or will instruct the Class B racetrack's totalizator representative to extract the amount wagered from the Class B facility into the commingled pools for the race during which the system failure occurred and any advance wagers made on the balance of the program, for the purpose of calculating separate pools on the amounts wagered at the Class B racetrack.

B. The Class B racetrack may continue to accept wagers on the balance of the program on a separate pool basis, may reestablish commingled pool wagering if the host racetrack's totalizator failure has been corrected, or may refund the amounts wagered.

C. The Class B mutuel manager shall notify and instruct teleracing facility mutuel managers to follow the appropriate procedures under item A.

7873.0110 APPROVAL OF PARI-MUTUEL POOLS.

[For text of subps 1 and 2, see M.R.]

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Subp. 3. **Live racing days; director of pari-mutuel racing authority.** The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve variation and changes in the pari-mutuel pools previously approved by the commission, placement of pools in the program, and simulcasts requested by the licensee that meet the criteria in subpart 2. The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve changes in the placement of pari-mutuel pools in the program, the addition of approved pari-mutuel pools to the program, and changes in simulcasting requests by the licensee that meet the criteria in subpart 2. Before approving a change in the pick six, pick seven, twin trifecta, and super-tri wagering pools, the director of pari-mutuel racing or the commission's director of pari-mutuels must consult with the commission's executive committee.

7873.0120 PARI-MUTUEL BETTING.

Subpart 1. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 2. [See repealer.]

7873.0190 PICK SIX.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick six.** In the event one or ~~more~~ two of the races comprising the pick six ~~is~~ are canceled for any reason, or in the event one or ~~more~~ two of the races comprising the pick six is declared as no contest by the stewards, ~~75~~ 100 percent of the current program's net pari-mutuel pool ~~shall-not-be-distributed-but-shall-be-retained-by-the-association-as-distributable-amounts-and-shall-be-carried-over-and-included-in-the-pick-six-pari-mutuel-pool-for-the-next-succeeding-racing-date-as-an-additional-net-amount-to-be-distributed.--The-remaining-25-percent~~ shall be distributed

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among the holders of pick six tickets which correctly designate the most official winners of the remaining races comprising the pick six. The cumulative net pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of ~~all six~~ three or more races comprising the pick six pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick six on that day. One hundred percent of the remaining amount in the pick six pari-mutuel pool shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0198 PICK SEVEN.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick seven.** In the event ~~one~~ three or ~~more~~ fewer of the races comprising the pick seven is canceled for any reason, or in the event ~~one~~ three or ~~more~~ fewer of the races comprising the pick seven is declared as no contest by the stewards, ~~75~~ 100 percent of the current program's net pari-mutuel pool ~~shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed. The remaining 25~~ percent shall be distributed among the holders of pick seven tickets which correctly designate the most official winners of the remaining races comprising the pick seven. The cumulative pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of ~~all seven~~ four or more races comprising the pick seven pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick seven on that day. One

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hundred percent of the remaining amount in the pick seven pari-mutuel pool shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0400 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack ~~and all other racetracks~~ licensed by the commission, including the impact on the pari-mutuel handle.

[For text of subp 2, see M.R.]

Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

(2) deposit with the association no less than $100 in cash or by ~~certified~~ check ~~or~~, money order, or credit card; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

~~D. Actual race results may not be divulged to telephone account customers during racing hours; however, account balances may be given.~~

[For text of subps 4 and 5, see M.R.]

7874.0100 GENERAL PROVISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Payment of unredeemed tickets.** After reporting to the commission, pursuant to Minnesota Statutes, section 240.13, and not later than 100 days after the end of a race

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meeting, an association must remit to the commission an amount equal to the total value of unredeemed tickets from the race meeting in the same manner as in subpart 2. For the purpose of this subpart, three race meetings are defined:

A. the period during which live racing occurs at the racetrack, in season;

B. the period during which no live racing occurs at the racetrack, off-season; and

C. the period beginning in either item A or B and ending in the other period.

Subp. 4. **Recapitulation.** On each day that deposits are made by the association, a report must be filed with the commission containing the following recapitulation:

[For text of items A to D, see M.R.]

E. ~~commission's~~ state's share of breakage; and

[For text of item F, see M.R.]

Separate recapitulations must be filed for each full card simulcast, whether at the racetrack or a teleracing facility.

7875.0100 FACILITIES.

Subpart 1. **Scope.** The purpose of this chapter is to define criteria for facilities for Class B and E licensees, as applicable.

Subp. 1a. **Facilities.** Each association must include a receiving barn, detention facility, paddock, room for jockeys and drivers, lighting, stabling, restrooms, medical facilities, racing officials' space, viewing room, commission office and parking space, space for the Bureau of Criminal Apprehension, and complaint desk. The facilities must meet the needs of patrons, officials, horsepersons, other persons on the premises, and horses.

[For text of subps 2 to 5, see M.R.]

7875.0200 EQUIPMENT.

Subpart 1. **Scope.** The purpose of this chapter is to define criteria for equipment for Class B and E licensees, as applicable.

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Subp. 1a. **Equipment.** Each association must include equipment, devices, or apparatus necessary to start, time, film or tape, and photograph the finish of every race. Equipment necessary to view photographs, films, and tapes of each race must be provided. Each association must include pari-mutuel equipment, devices, or apparatus necessary to sell and cash tickets and calculate and display odds. An association also must include adequate internal communications equipment. Each Class E licensee must provide reports and/or telecommunications equipment at the facility necessary to transmit information requested by the commission for regulatory purposes.

[For text of subps 2 to 9, see M.R.]

7877.0100 GENERAL REQUIREMENTS.

Subpart 1. **Scope.** Except as otherwise provided by rule, any person whose work, in whole or in part, is conducted at a licensed racetrack or teleracing facility shall first obtain a Class C license from the commission.

[For text of subp 2, see M.R.]

7877.0110 PROCEDURE FOR OBTAINING CLASS C LICENSE.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Racing officials.** Each association shall submit to the commission for its approval or disapproval the names of all persons whom the association has selected as racing officials, and other employees whose duties relate to the actual running of races. The list shall include, where applicable, the following racing officials:

[For text of items A to K, see M.R.]

L. mutuels manager or teleracing mutuels manager;

[For text of items M to V, see M.R.]

The list of racing officials' names shall be submitted to the commission in writing at least 30 days prior to the opening of each race meeting.

The association shall be responsible for filing a complete application for a Class C license with respect to each nominee who has not been previously licensed by the commission as a

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racing official.

The commission may request any person whose name is proposed as a racing official to submit to a physical examination and to forward the results of said examination to the commission. The request shall be made only where there is a reasonable basis for suggesting that the applicant's physical condition would hinder or prevent him or her from performing the duties of a racing official.

The commission shall act on the association's list of officials at a meeting of the commission. If commission staff recommends disapproval of an official, the association shall be notified of that recommendation in advance of the commission's meeting.

Under no circumstances shall an identifier, placing judge, or patrol judge be approved by the commission unless he or she has satisfactorily passed an optical examination within 90 days prior to approval evidencing 20-20 vision (corrected) and the ability to distinguish colors.

7877.0155 CONDITIONS PRECEDENT TO LICENSING.

Acceptance of a Class C license, including a temporary or emergency license, shall mean that the licensee consents and agrees to the following conditions:

[For text of items A to D, see M.R.]

E. The licensee will submit to inspections and searches as hereinafter provided:

(1) When investigating for violations of law or rules upon the grounds of an association, the commission or the stewards may designate the Minnesota ~~Bureau of Criminal Apprehension~~ Department of Public Safety, Gambling Enforcement Division or another appropriate law enforcement agency as having authority to conduct searches of any Class C licensee, or any employee or agent of a Class A, B, ~~or~~ D, or E licensee under the commission's jurisdiction. This authority shall extend to searches and inspections of persons and personal effects in and about ~~racetrack~~ grounds.

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(2) Each applicant for a Class C license and each employee or agent of a Class A ~~or Class~~, B, or E licensee consents to such searches and inspections, and waives all claims or possible actions for damages that he or she believes he or she may have suffered in connection with any such search or inspection.

[For text of items F to H, see M.R.]

7878.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointing authority.** "Appointing authority" means the holder of a Class A, ~~Class~~ B, ~~or Class~~ D, or E license issued by the commission.

[For text of subps 3 to 7, see M.R.]

Subp. 7a. **Division.** "Division" means the Division of Gambling Enforcement in the state Department of Public Safety.

[For text of subps 8 to 10, see M.R.]

Subp. 11. **Security officer.** "Security officer" means a person whose principal duty is the protection of persons or property at a racetrack or teleracing facility licensed by the commission.

7878.0110 MINIMUM SELECTION STANDARDS.

Subpart 1. **Applicant must meet selection standards.** A person eligible to be licensed by the commission as a security officer must be an employee of a Class A, ~~Class~~ B, ~~or Class~~ D, or E licensee and shall meet the following minimum selection standards prior to being appointed a security officer. The appointing authority may certify that the applicant has already completed certain of these standards and provide documentation to that effect pursuant to subpart 2. In all cases, the security officer must:

[For text of items A to D, see M.R.]

E. provide fingerprint cards to the commission~~, with duplicate cards provided to the BCA~~;

[For text of items F to H, see M.R.]

[For text of subp 2, see M.R.]

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7878.0160 SECURITY COOPERATION.

Subpart 1. **Security officers must cooperate with law enforcement agencies.** Class A, ~~class~~ B, ~~and class~~ D, and E licensees and all security officers must cooperate fully with federal, state, and local law enforcement agencies with jurisdiction to enforce criminal laws at horse racing facilities, and must report promptly all crimes suspected, investigated, or prevented at a licensed racetrack to the ~~BCA~~ Division of Gambling Enforcement. All security, injury, and incident reports with regard to a Class E facility must be available for inspection by the commission.

[For text of subp 2, see M.R.]

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointment and approval of stewards.** The following procedures must be observed in the appointment of stewards:

[For text of item A, see M.R.]

B. In the event a steward becomes ill, resigns, or is unable to serve for any reason, the remaining stewards shall nominate a temporary steward to the commission for approval. In emergencies, the ~~executive secretary~~ director of pari-mutuel racing may approve appointment of a temporary steward.

7897.0100 PROHIBITED ACTS.

Subpart 1. **Scope.** The following activities are considered prohibited acts when applicable to Class A, B, C, D, or E licensees.

[For text of subps 2 to 19, see M.R.]

7897.0130 SCHEDULE OF FINES.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Amount of fines.** The fine for a serious violation of law or rule shall be $500 to $5,000. The fine for other violations shall not exceed $499. The commission may impose a fine in excess of $5,000 but no more than $200,000

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against a Class A, B, ~~or~~ D, or E licensee as necessary to enforce parts 7870.0430, 7870.0450 to 7870.0470, or 7870.0500.

[For text of subp 6, see M.R.]

REPEALER. Minnesota Rules, parts 7869.0100, subparts 19, 33a, and 65a; 7870.0500, subparts 6, 7, 8, 9, and 10; 7871.0010, subpart 2; 7871.0020, subpart 1; 7871.0070; 7871.0090; 7871.0150; 7873.0120, subpart 2; and 7873.0300, are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Teleracing and Simulcast

AGENCY: Minnesota Racing Commission

MINNESOTA RULES: Chapters 7869; 7870; 7871; 7873; 7874; 7875; 7877; 7878; 7879; and 7897

The attached rules are approved for publication in the State Register

Paul M. Marinac
Assistant Deputy Revisor

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

102 STATE CAPITOL
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RECEIVED
MN RACING COMMISSION
NOV 21 1991
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November 19, 1991

Mr. Richard G. Krueger
Director, MN Racing Commission
7825 Washington Ave. South, #800
Bloomington, MN 55439

Dear Mr. Krueger:

I am writing to comment on the Racing Commission's recently-proposed rules to allow betting on horse-races by telephone using credit cards. For the reasons outlined below, I strongly urge you not to adopt the rule allowing telephone credit card betting.

Under the proposed rule, a person could open a "telephone wagering account" by making an initial deposit of $100 using a credit card or certified check. Thereafter, that person can simply place a wager by calling the track and giving her or his "code name and number." Minn. R. pts. 7873.0400, subp. 3(B); 7871.0100, subp. 3(B) (1991).

I have several concerns about this proposal. First is the legal issue of whether telephone wagering is permissible under the Minnesota Constitution. In a 1991 memorandum to Representative Tom Osthoff, I concluded that Minnesota courts would likely decide that "off-track pari-mutuel betting on horse races violates the Minnesota Constitution." From a legal standpoint, I believe telephone account wagering is indistinguishable from off-track pari-mutuel betting. Accordingly, it is my view that telephone account wagering is violative of Minnesota's Constitution and, if challenged, would more likely than not be declared unconstitutional.

Of equal importance as the legal question is the policy question: whether telephone account wagering, especially by credit card, serves the public interest. The rules under which the Commission operates explicitly recognize the requirement that any form of gambling only be allowed if it serves the public interest. Minn. R. pts. 7873.0400, subp. 1; 7871.0100, subp. 1 (1991). In the rush to ensure the profitability of horse-racing and other forms of gambling, I fear we are losing sight of this most fundamental requirement.

Credit card gambling presents a host of problems. The most obvious problem is that it encourages people to gamble on credit. Without much imagination, one can picture the worst, especially during this recession -- a person, alone at home; without a job; bills piling up; and no relief in sight. In desperation, the person grabs the "free" credit card that just arrived in the mail, calls up the track and drops a few thousand dollars in borrowed funds.

And, what about the compulsive gambler who gambles almost every day? One can easily envision gambling bills steadily piling higher as that person "maxes out" the endless number of credit cards available to consumers.

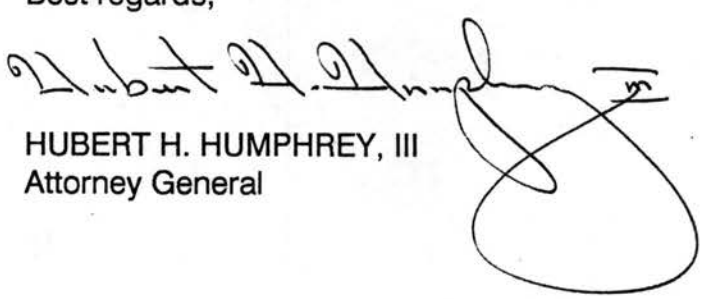
With each proposal that makes gambling easier, more convenient and closer to home -- at least initially -- we increase the chances of impulsive, reckless behavior. This behavior not only hurts the gambler, it hurts our society.

I recognize the significant financial obstacles that Canterbury Downs has faced in the past and continues to face. I further recognize the substantial benefits that horce racing has brought to the state. But, we must also recognize that the profitability of the gambling industry is not an end in itself.

Proponents of expanded betting on horse-races may argue that these changes are necessary to ensure the economic viability of the track. Gambling, however, is different from other businesses. The public allowed it to come into existence only to the extent that it directly serves the public interest. We must not lose sight of that fundamental requirement.

Encouraging people to borrow money to bet on horses is wrong. Any threat that the racing track might otherwise fail does not make it right. Minnesota has to draw the line on permissible forms of betting. I, accordingly, urge the Racing Commission to reject the proposed new rules allowing telephone betting with credit cards.

Best regards,



HUBERT H. HUMPHREY, III
Attorney General

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WRITER'S DIRECT DIAL NUMBER: 223-6430

March 27, 1991

Paul Mangiamele
General Manager
Canterbury Downs
1100 Canterbury Road
Shakopee, MN 55379

Dear Mr. Mangiamele:

I received the materials you sent me regarding your legislative proposal for off-track parimutuel wagering. I reviewed the opinions of University of Minnesota Law School professors Daniel Farber and Ferdinand Schoettle. Both opinions concluded that off-track parimutuel wagering in Minnesota would be constitutional. I also considered a 1989 Attorney General opinion which reached a contrary conclusion. After reviewing the relevant statutory and constitutional provisions, I have concluded that off-track parimutuel wagering would be constitutional for the following reasons:

First, off-track parimutuel wagering does not constitute a lottery. The opinions of Professors Farber and Schoettle both contain extensive historical reviews of lotteries and state prohibitions against them. The majority of courts considering the issue have concluded that constitutional bans on lotteries do not prohibit parimutuel betting. The Minnesota court strongly supports a "plain meaning" approach to constitutional interpretation. The plain meaning of a lottery does not encompass parimutuel betting.

Second, I agree with Professors Farber and Schoettle that Article X, Section 8 of the Minnesota Constitution does not prohibit off-track parimutuel betting. Specifically, Article X, Section 8 provides that the "legislature may authorize on-track

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parimutuel betting on horses in a manner prescribed by law." Professor Schoettle makes a persuasive argument that a state's legislative powers are limited only by express grants to the federal government under the U.S. Constitution or express limitations of power in the state's constitution. Minnesota has adopted this position, holding that the legislative power is practically absolute in the absence of a constitutional limitation. George Benz Sons, Inc. v. Ericson, 227 Minn. 1, 34 N.W.2d 725 (1948); State v. City of Mankato, 117 Minn. 458, 136 N.W. 264 (1912). Professor Schoettle concludes that the grant of power in Article X, Section 8 allowing on-track parimutuel betting was not constitutionally necessary and does not in any way limit the authority of the Minnesota legislature to authorize off-track parimutuel betting.

In addition, the maxim of expressio unius ("the expression of one thing excludes others") does not apply with the same force to constitutions as to statutes. Reed v. Bjorson, 191 Minn. 254, 253 N.W. 102 (1934); State ex rel. Putman v. Holm, 172 Minn. 162, 215 N.W. 200 (1927). Thus, the Article X, Section 8 reference to on-track parimutuel betting does not necessarily prohibit off-track parimutuel wagering. Nothing in Minnesota's constitution therefore limits the legislature's authority to authorize off-track parimutuel betting.

The Attorney General opinion concludes otherwise, reasoning that the inclusion of the words "on-track" in the constitutional amendment plainly limits parimutuel wagering to racetrack premises. The opinion also notes, however, that contrary arguments are reasonable and that predicting how a court would decide this issue is difficult.

In conclusion, although the constitutionality of off-track parimutuel wagering is subject to different interpretations, my opinion is that legislation authorizing such wagering would be constitutional.

Very truly yours,

Peter S. Popovich

Peter S. Popovich

PSP:mm

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DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : April 24, 1991

TO : THE HONORABLE TOM OSTHOFF
Chairman of the House General Legislation,
Veteran's Affairs and Gaming Committee

FROM : HUBERT H. HUMPHREY, III
Attorney General

PHONE : 297-4272

SUBJECT : **OFF-TRACK PARI-MUTUEL BETTING**

This memorandum is in reply to your recent letter in which you seek our opinion concerning whether the Minnesota Constitution would permit legislation authorizing off-track pari-mutuel betting on horse races. We have reviewed available authorities on the issue of off-track pari-mutuel betting and offer the following analysis for your consideration.

As a general rule, the legislature possesses all legislative power not withheld or forbidden by the state or federal constitutions. *Federal Distillers, Inc. v. State*, 304 Minn. 28, 38, 229 N.W.2d 144, 154, appeal dismissed, 423 U.S. 908 (1975). Thus, in analyzing the constitutionality of off-track betting, the constitution must be reviewed to determine if a prohibition against this form of gambling exists. Minn. Const. art. XIII, § 5, states:

> The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state.

It has long been recognized in Minnesota that the three essential elements of a lottery are consideration, prize and chance. See *State v. Stern*, 201 Minn. 139, 275 N.W. 626 (1937). However, the Minnesota courts have never specifically addressed the scope of the constitutional prohibition against lotteries. It is, therefore, not possible to predict with any degree of certainty whether a court would hold that a lottery for purposes of the Minnesota Constitution includes off-track pari-mutuel betting.

In a 1982 memorandum, Assistant Attorney General Kenneth E. Raschke analyzed whether pari-mutuel betting would constitute a lottery within the meaning of the Minnesota Constitution. The memorandum noted that the majority of decisions from other jurisdictions have held that pari-mutuel betting is not a lottery. However, as is discussed in the memorandum, in the absence of definitive Minnesota cases on the subject, it is by no means assured that a Minnesota court would align itself with the majority view on this issue. After that memorandum was written, the Constitution was amended to specifically authorize on-track pari-mutuel betting on horse races. The following is a brief discussion of the 1982 constitutional amendment and the effect it may have on the constitutionality of off-track pari-mutuel betting.

Prior to 1982, the Minnesota Constitution was silent with regard to pari-mutuel wagering on horse races. In 1982, the legislature adopted a proposed constitutional amendment which was ultimately ratified by a vote of the electorate. The 1982 constitutional amendment provides:

> The legislature may authorize on-track pari-mutuel betting on horse racing in a manner prescribed by law.

Minn. Const. art. X, sec. 8.

Without question, the language of the 1982 amendment permits the legislature to authorize on-track pari-mutuel betting on horse races. The more difficult question however, is whether the inclusion of the words "on-track" in the language of the amendment precludes the legislature from authorizing off-track pari-mutuel betting on horse races.

If a Minnesota court were to conclude that pari-mutuel betting is not a lottery within the meaning of the constitutional prohibition, the court could conclude that the 1982 constitutional amendment authorizing on-track pari-mutuel betting on horse races was unnecessary. Given that the amendment was phrased as a positive grant of authority rather than as a specific restriction on the legislature's inherent power, a court may conclude that the 1982 amendment was superfluous, because the legislature had the inherent authority to authorize pari-mutuel betting without the amendment. By accepting such argument, a court could determine that any form of pari-mutuel betting, whether on-track or off-track, is constitutionally permitted in Minnesota.

However, such a conclusion would conflict with the well-settled rule that no portion of a constitution should be considered superfluous. *Butler Taconite v. Roemer*, 282 N.W.2d 867 (Minn. 1979). Application of this rule would require the Court to give meaning and effect to the 1982 amendment in its entirety, including the words "on-track."

The Minnesota Supreme Court has held that the expression of one thing in the Constitution implies the exclusion of another. *Cooke v. Iverson*, 108 Minn. 388, 122 N.W. 251 (1909); *State ex rel. Putman v. Holm*, 172 Minn. 162, 215 N.W. 200 (1927); *Reed v. Bjornson*, 191 Minn. 254, 253 N.W. 102 (1934). Although this rule has been applied with less force to the interpretation of a constitutional provision than to a statute, if the constitutional language is expressed in such positive affirmative terms as to plainly imply the negative of what is not mentioned, it will be considered as a restriction on the power of the legislature. *Reed v. Bjornson*, 191 Minn. 254, 269, 253 N.W. 102, 109 (1934). A court may well conclude that specific inclusion of the words "on-track" in the amendment plainly implies an intention to prohibit off-track pari-mutuel betting on horse races.

In any analysis of the 1982 constitutional amendment, a court would likely look to the intent of the legislature and the voters in adopting the amendment. Courts in Minnesota have long held that in interpreting the language of the State Constitution, it is necessary to give effect to the intention of the legislature and the will of the people in adopting the constitutional provision in question. *Village of McKinley v. Waldor*, 284 Minn. 394, 170 N.W.2d 430 (1969).

In trying to ascertain legislative intent, the Minnesota Supreme Court has recognized that the legislative exposition of a constitutional provision, following closely upon its adoption, may be supposed to result from the views prevailing at the time the provision was drafted. *Jude v. Erdahl*, 207 Minn. 200, 207 N.W.2d 715 (1973). The court could find support, in subsequent legislation, for the view that the legislature, in adopting the constitutional amendment, intended to prohibit off-track betting. Minnesota Statutes chapter 240 was adopted in the session immediately following the approval of the amendment. Several provisions of that chapter effectively preclude off-track betting. For example, Minn. Stat. § 240.13 (1983) authorizes Class B and Class D licensees to conduct "pari-mutuel betting on the results of races run at the licensed racetrack, and on other races as authorized by the Commission under subdivision 6."

Subdivision 6 of section 240.13 permits a class B or D licensee "to conduct on the premises of the licensed racetrack pari-mutuel betting on horse races run in other states and broadcast to television on the premises. (Emphasis added)."[1/] Finally, Minn. Stat. § 240.25, subd. 2 (1983) prohibits any person from placing or accepting a bet off the premises of a licensed racetrack for delivery to a licensed racetrack. Violation of Section 240.25, subdivision 2 is a felony.[2/]

Moreover, a 1983 memorandum to the newly-formed Racing Commission from Representative Richard Kostohryz, chief house author of the racing legislation, indicates that off-track betting was not an intended result of the 1982 amendment. In a section of the memo devoted to televised racing, Representative Kostohryz states "any attempt to provide a large number of televised races in a given day would create questions of constitutionality as the constitutional amendment clearly authorized 'on-track' betting only . . . ."

In interpreting an amendment to the constitution, the Supreme Court has also attempted to determine what the voters intended when voting on the amendment. The intent of the voters may be discerned by determining what the voters understood the language of the amendment to mean when they adopted the proposed amendment. *State v. Amdahl*, 264 Minn. 350, 119 N.W.2d 169 (1962). A constitutional provision must not be construed in a manner that would defeat the obvious will of the people. Id.

Newspaper articles both before and after the passage of the amendment appear to indicate a public perception that off-track betting was not permitted. See, e.g., *Minneapolis Star and Tribune*, November 4, 1982 ("The pari-mutuel amendment does not permit lotteries, off-track betting, dog races or other forms of gambling now illegal in the state"); *St. Paul Pioneer Press*, October 31, 1982 (repeated references to "on-track" betting).

1/ Licensed racetrack is defined as "racetrack at which horse racing is conducted on the premises and which holds a Class A or Class D license issued by the Commission." (Emphasis added)

2/ Section 240.25, subd. 2 was amended in 1986 to prohibit even more clearly any form of off-track betting. Violation of the subdivision is still a felony.

CONCLUSION

As discussed, our review of the relevant legal authorities indicates that arguments can be made both for and against the constitutionality of off-track pari-mutuel betting. As a result, it is difficult to predict with any degree of certainty how a court would decide the issue. However, we anticipate that a Minnesota court, if presented with the issue, would be greatly influenced by: (1) the express language of the 1982 constitutional amendment; and (2) the intention of the legislature and the voters at the time the 1982 amendment was adopted. Accordingly, we believe that a court is more likely to conclude that off-track pari-mutuel betting on horse races violates the Minnesota Constitution.

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February 8, 1991

The Honorable Hubert H. Humphrey III
Minnesota Attorney General
102 State Capitol
St. Paul, Minnesota 55155

Dear Skip:

Ross Kramer and I recently met with you regarding the horseracing industry's 1991 legislative agenda. During the course of that meeting, we promised to give you any materials that we generated regarding the bill and the legal aspects surrounding tele-racing. Enclosed please find the opinion of Professor Ferdinand P. Shoettle regarding the authority of the Minnesota legislature to authorize off-track pari-mutuel wagering without amending the state's constitution.

I won't bother to summarize the opinion other than to say that it is in basic agreement with the memorandum that I wrote three years ago and also with the opinion of Professor Daniel Farber from the University of Minnesota, which was commissioned by the HBPA within the last two years.

There is one important point regarding the actual legislation that will be introduced that Professor Schoettle does not touch upon in his opinion. That is the relationship between off-track betting and simulcasting. In our legislative proposal, we will be proposing a system wherein the satellite facility and the wagering activities that take place there are required to be completely interconnected with the totalizator computers at the racetrack itself. In essence, the fan at the satellite facility will be wagering directly into the pool at the racetrack. We feel that this fact, along with the fact that the satellite operator (licensee) will be the same as the racetrack operator, creates a situation that is well within the realm of simulcasting

and far removed from traditional notions of off-track betting. The satellite facility will be an extension of the racetrack, both in terms of operation and wagering activity. We feel that this is consistent with the activity that is presently taking place in Minnesota, which is not deemed to be off-track wagering.

We will deliver a copy of the bill to you as soon as we receive it from the Revisor's office.

Sincerely.

CHESTNUT & BROOKS, P.A.

Cort C. Holten

/nls

Enclosure

cc: Mary Magnuson ✓
Assistant Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : THE HONORABLE RICHARD J. KOSTOHRYZ
Chairman of General Legislation
for Veterans Affairs Committee

DATE: Feb. 1, 1982

FROM : KENNETH E. RASCHKE, JR.
Assistant Attorney General

PHONE: 6-6480

SUBJECT: PARI-MUTUEL BETTING

In your letter to our office you seek our opinion concerning whether an act authorizing pari-mutuel betting in Minnesota would be unconstitutional in the face of Minn. Const. art. XIII, § 5, which provides: "The legislature shall not authorize any lottery or the sale of lottery tickets."

As noted in Op. Atty. Gen. 629a, May 9, 1975, our office does not undertake to determine the constitutionality of state statutes by way of opinion. We have, however, reviewed available authorities and offer the following analysis for your study and consideration.

There is no apparent question that pari-mutuel betting is a form of gambling. It is generally conceded, however, that while all lotteries are gambling, not every form of gambling is a lottery. Rather a lottery is a particular form of gambling. In its classic form the lottery involves the determination of winners by wholly random chance, as by drawing.

It appears that there are historical reasons for the singling out of the lottery for specific constitutional mention in Minnesota and a number of other states. During the colonial period in America wide use was made of the classical, drawing-type lottery by both government and private persons to raise money. During the 19th Century opposition to lotteries grew in this country. The anti-lottery forces contended that the lottery was bad because it encouraged mass gambling and that drawings were fraudulent and on occasion never took place. Lotteries sanctioned or operated by the government or private persons during that period followed a common pattern. The sale of lottery tickets, the prizes to be offered, and the use to which the retainage was to be put by the operators received wide publicity in the community in which the lottery was to be held. Each lottery ticket to be sold was designated by a number. Numbers were randomly selected at a drawing and the winners were thereby determined. Such schemes were conducted so as to minimize to the utmost the ability of the operators to effect, and the players to predict, the outcome. Encyclopedia Britannica 1977, Lottery, V; 32 Minn. L. Rev. 531; 11 Minn. L. Rev. 380. It appears that these were then held in much lower esteem than other forms of gambling.

Accordingly, they were treated differently under the laws. In Phalen v. Commonwealth of Virginia, 8 Howard 163, 12 L. Ed. 1030, 1033 (1850), the United States Supreme Court summarized this viewpoint:

> The suppression of nuisances injurious to public health or morality is among the most important duties of government. Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the lottery infests the whole community; it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple.

Given this view it may well be argued that the framers of the Constitution did not intend a sweeping condemnation of gambling per se in drafting article XIII, § 5, but intended to focus only on the random chance lottery schemes as theretofore practiced.

There are three basic elements necessary to a lottery: prize, consideration, and chance. State v. Stearn, 275 N.W. 626 (Minn. 1937). The most recent definition of "lottery" given by the legislature is "a plan which provides for the distribution of money, property, or other reward or benefit to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected." Minn. Stat. § 609.75, subd. 1 (Supp. 1981). There is a split of authority as to whether a game that incorporates an element of skill as well as chance can qualify as a lottery. Two schools of thought have developed:

> Under the English rule, a lottery consists in the distribution of money or other property by chance, and nothing but chance, that is by doing that which is equivalent to drawing lots. If merits or skill play any part in determining the distribution, there is no lottery . . . in the United States, however, by what appears to be the weight of authority at the present day, it is not necessary that this element of chance be pure chance, but it may be accompanied by an element of calculation or even of certainty; this sufficient of chance is the dominant or controlling factor.

3 Wharton's Criminal Law & Procedure, Section 935 (Anderson Ed. 1957) (footnotes omitted).

25 E. Minnehaha Parkway
Minneapolis, Minnesota 55419
March 20, 1989

Mr. Cort C. Holten
Chestnut & Brooks
3700 Piper Jaffray Tower
Minneapolis, Minnesota 55402

Dear Mr. Holten:

At your request, I have researched the constitutional issues raised by a recent legislative proposal by Representative Joseph Quinn. My conclusions are contained in this letter.

On February 23, 1989, Representative Quinn introduced a bill to allow pari-mutuel betting at licensed televised horse racing facilities, which are defined in section 3 of the bill as facilities "at which televised simulcasts of horse races are shown and which holds a class E license issued by the commission." Section 4 of the bill defines pari-mutuel betting to mean "wagering conducted at a licensed racetrack, or wagering conducting at a licensed televised horse racing facility whose wagering system is electronically linked to a licensed racetrack and whose wagers are part of the pari-mutuel pools of the licensed racetrack."

The issue which you asked me to investigate was whether the Minnesota constitution deprives the legislature of the power to authorize pari-mutuel betting outside of race tracks. Although it is obviously impossible to predict the decision of any court with complete certainty, my considered opinion is that the constitution clearly allows such legislation, and that the Minnesota Supreme Court would so rule.

There are two relevant provisions of the Minnesota constitution: Art. XIII, sec. 5 and Art. X, sec. 8. I will discuss the applicability of the two provisions separately.

Art. XIII, sec. 5 of the constitution dates back to the 1857 constitution. As amended, it currently reads as follows:

> "The legislature shall not authorize any lottery or the sale of lottery tickets, other than authorizing a lottery and sale of lottery tickets for a lottery operated by the state."

The basic issue under this provision is whether pari-mutuel betting constitutes a "lottery."

As a matter of common usage, betting on horses is clearly not a lottery. One element of the standard legal definition of a lottery is that prizes must be distributed on the basis of chance, State v. Stern, 201 Minn. 139, 143, 275 N.W. 626 (1937); Minn. Stat. 609.75A, whereas in pari-mutuel betting the prizes are distributed on the basis of the performance of the animals and the relative forecasting skills of the gamblers. See Rohan v. Detroit Racing Ass'n, 22 N.W.2d 433, 440 (Mich. 1946). In ordinary parlance, a "lottery" is a scheme for drawing lots, or "specifically, a scheme for the distribution of prizes by chance, in which a number of tickets are sold, one or more of which draw prizes." Webster's New Twentieth Century Dictionary of the English Language 1069 (unabridged 2d ed. 1977). As one authority observes, one "element of all lotteries is the drawing ...." "Lottery," 7 New Encyclopedia Britannica 489 (15th ed. 1986). The specific reference to "lottery tickets" in Art. XIII confirms that this ordinary meaning of the word "lottery" was intended.

The history of the period in which the anti-lottery provision was adopted further confirms this understanding of the constitutional language. Lotteries were a common method of raising funds in the early 19th century, but came under attack because they were subject to fraud and corruption. See Blakey & Kurland, "The Development of the Federal Law of Gambling," 63 Cornell L. Rev. 923, 927 (1978). Lotteries were thought to pose a particular risk to public morals, quite unlike other forms of gambling. For instance, in an opinion written just a few years before the Minnesota constitution was drafted, the United States Supreme Court stated that:

> "Experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the wide-spread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community: it enters every dwelling; it reaches every class; it preys upon the hard earnings of the poor; it plunders the ignorant and simple."

Phalen v. Virginia, 49 U.S. (8 How.) 163, 168 (1850). Thus, when legislatures and constitutional conventions of the time spoke about "lotteries," they had a very specific form of gambling in mind. See Farnsley, "Gambling and the Law: The Wisconsin Experience, 1848-1980," 1980 Wis. L. Rev. 811, 854-55.

Because the word "lottery" has a restricted, well-understood meaning, the great majority of courts have concluded that the anti-lottery provisions in their state constitutions do not ban pari-mutuel betting. In a comprehensive review of the cases, an Idaho opinion noted that Arizona, Arkansas,

California, Colorado, Illinois, Kentucky, Louisiana, Michigan, New York, Oregon, Texas, and Utah had all held that pari-mutuel betting is not a lottery. See Oneida County Fair Bd. v. Smylie, 386 P.2d 374, 377-388 (1963). More recently, the Delaware Supreme Court observed that "[f]or decades, by the great weight of authority, pari-mutuel betting has been held not to be a lottery." Opinion of the Justices, 385 A.2d 695, 702 (Del. 1978). The Delaware court added that the difference between a lottery and pari-mutuel betting was as well understood in the 19th century as today, id. at 700. See also id. at 705 ["Common and ordinary understanding of the word 'lottery' ... rejects the concept of pari-mutuel betting on sporting events."] This of course continues to be the common understanding today. See Barnes v. Bailey, 706 S.W.2d 25, 30-33 (Mo. 1986)(per curiam).

There are only a handful of contrary opinions, the most recent of which is State v. Nixon, 384 N.E.2d 152 (1979), reh. den. 391 N.E.2d 822 (Ind. 1979). The Indiana court conceded that betting on horses is not in itself a type of lottery, 384 N.E.2d at 156, but argued that the pari-mutuel system converted otherwise permissible betting into a lottery. In order to effectuate what it believed to be the purpose of the anti-lottery provision, the Indiana court construed the word "lottery" to apply to any form of gambling in which "the consumers, as a group, have no chance." Id. at 159. The court's fundamental argument was that lotteries are like pari-mutuel betting in that "[u]nder either system, all that is required is a sufficient volume of play, and no player can win...." Id. at 161. This characterization of pari-mutuel betting is factually dubious. The court offered no evidence to show that a skilled and knowledgeable better cannot win in sustained play. Indeed, there are statistical studies by economists that show some possible strategies allowing a player to win in sustained play. See Thaler & Ziemba, "Anomalies: Parimutuel Betting Markets: Racetracks and Lotteries," 2 J. Economic Perspectives 161, 163-165, 171-72 (1988).

In any event, the Minnesota Supreme Court would be unlikely to follow the Indiana court's speculative journey beyond the plain language of the constitution in search of a hidden purpose or public policy. The Minnesota Supreme Court strongly supports a "plain meaning" approach to constitutional interpretation. As the court said in Kernan v. Holm, 227 Minn. 89, 91, 34 N.W.2d 327, 328 (1948), "[w]hatever may or may not have been the purpose of the legislature which proposed the amendment ... we must, as the people who voted upon it had to do, take the language of the amendment as voicing its purpose." Another opinion makes the point even more emphatically:

> "Where words used in our constitution had a clear and well-defined meaning, there is no room for

> construction. Neither the courts nor the legislature have a right to substitute for words used in the constitution having a well-defined meaning other words having a different meaning.

State v. Pett, 253 Minn. 429, 432, 92 N.W.2d 205, 207 (1958).

Thus, it seems quite unlikely that Minnesota would side with Indiana, as against the great weight of contrary authority, since the plain meaning of the word "lottery" does not encompass pari-mutuel betting. In my opinion, the court will not construe Art. XIII, sec. 5 to encompass pari-mutuel betting.

The remaining issue is whether off-track betting is impliedly banned by Art. X, sec. 8, which reads as follows:

> "The legislature may authorize on-track parimutuel betting on horse racing in a manner prescribed by law."

Two arguments could be made concerning Art. X. First, it could be argued that Art. X reflects a "practical construction" of the earlier Art. XIII as a prohibition on pari-mutuel betting, to which the passage of Art. X then created an exception. Second, it could be argued that Art. XIII did allow pari-mutuel betting, but that Art. X eliminated the prior power of the legislature to permit off-track betting. These two arguments are mutually inconsistent, and neither is persuasive.

Even assuming that later developments can modify the plain language of the constitution, the "practical construction" argument is simply historically unfounded. Art. X, sec. 8 was not based on a belief that Art. XIII banned parimutuel betting. Rather, it was prompted by uncertainty on how the Minnesota courts would construe Art. XIII. In an informal opinion letter, the Attorney General's office expressed the view that the constitutionality of an act authorizing pari-mutuel betting was unclear, and that a constitutionality amendment might be advisable to clarify the situation. After a review of the cases, the memorandum concludes as follows:

> "On balance there seems little reason for our court to broadly construe such a constitutional inhibition upon legislative policy making where the protection of personal rights and liberties from government impairment is not involved. Cf. Visina v. Freeman, 252 Minn. 177, 89 N.W. 2d 635 (1958). Given that Article XIII, § 5, mandates rather than inhibits government restriction of personal activities, there would seem good reason to confine it to its technical meaning.

> "Thus arguments that the lottery prohibition contained in Minn. Const. art. XIII, § 5, does not encompass pari-mutuel betting on races could well succeed. Such a result is by no means assured, however, as demonstrated by the recent minority view case of State v. Nixon, 384 N.E.2d 151 (Ind. 1979). If the legislature truly desires to authorize pari-mutuel betting, the safest course would appear to be to seek a properly drafted constitutional amendment in addition to providing statutory authority. If the amendment were to pass, the constitutional lottery question would become moot. If it were fail, the foregoing arguments in support of the majority rule could be made to defend the validity of the legislation."

Memorandum from Kenneth E. Raschke, Jr., Assistant Attorney General, to the Honorable Richard J. Kostohryz, February 1, 1982, p.7. Thus, the Art. X amendment was not based on a view that Art. XIII banned pari-mutuel betting as a form of lottery. Rather, it was a clarifying amendment intended to remove uncertainty and create a constitutional "safe harbor."

The only remaining argument is based on the negative implication of the language of Art. X. By allowing on-track betting, it might be suggested, Art. X by implication banned off-track betting. This argument rests on the maxim, expressio unius est exclusio alterius ("the expression of one thing excludes others"). The Minnesota Supreme Court recognizes, however, that "[t]his maxim is not of universal application and great caution is needed in its application." Northern P. Ry. v. City of Duluth, 243 Minn. 84, 88-89, 67 N.W.2d 635 (1954). Moreover, the maxim applies with even less force in the constitutional setting, see Reed v. Bjornson, 191 Minn. 254, 269, 253 N.W. 102 (1934). The ballot proposal for the amendment to Art. X asked the voters to decide whether to add an express authorization for "the legislature to authorize on-track parimutuel betting in a manner prescribed by law." Minn. Stat. ch. 518 (1982). It would be a strained implication to read a prohibition into this amendment, which on its face purported to confirm legislative power rather than restrict it.

In considering all of these arguments, we must bear in mind two basic principles of Minnesota law. One of these principles is that legislation is presumed to be constitutional. Troupe v. Sunrise Electric, Inc., 360 N.W. 2d 633, 636 (Mn. App. 1985)(Popovich, C.J.). The other is that:

> "The constitution belongs to the people. They have adopted it and they alone can amend it. Neither the Legislature nor this court has any right to bypass

the people under the guise of a liberal interpretation which in effect would amend the constitution, no matter how desirable the amendment might be."

Knapp v. O'Brien, 288 Minn. 103, 179 N.W.2d 88, 90 (Minn. 1970). In the present situation, these two principles point in the same direction: toward upholding the legislature's power to authorize off-track pari-mutuel betting.

Matters of constitutional law, whether federal or state, do not lend themselves to proof beyond a reasonable doubt. Based on the foregoing authorities, however, it is my opinion that the Minnesota courts would uphold legislation authorizing off-track betting. If I can clarify the contents of this letter or provide further assistance, please do not hesitate to contact me.

Sincerely,

Daniel A. Farber

Daniel A. Farber

DANIEL A. FARBER
Henry J. Fletcher Professor of Law
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REC'D BY
OCT 03 1989
GOVERNOR'S OFFICE

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Born July 16, 1950 (Chicago, Illinois)
Married, three children

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EDUCATION

Pre-Law School: B.A. University of Illinois, 1971 (with high honors) (philosophy, with mathematics minor); M.A. (sociology), University of Illinois, 1972

Legal Education: J.D., 1975 (summa cum laude), University of Illinois, Order of the Coif (Class Rank: 1 out of 190), Class Valedictorian, Harno Scholar, Editor-in-Chief, University of Illinois Law Review

EMPLOYMENT

Henry J. Fletcher Professor of Law, University of Minnesota, 1987-(present)

Professor of Law, University of Minnesota, 1983-1987
1983-84 Julius E. Davis Professor of Law

Visiting Professor, Stanford Law School, 1987-1988

Associate Professor of Law, University of Minnesota, 1981-1983

Assistant Professor of Law, University of Illinois, 1978-1981

Associate, Sidley & Austin (Washington D.C., office), 1977-1978

Law Clerk, Justice John Paul Stevens, United States Supreme Court, 1976-1977

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October 2, 1989

Mr. Eugene Boshey, Sr.
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Bois Forte RBC
Box 16
Nett Lake, MN 55772

Mr. James Henrickson
Chairman
Grand Portage RBC
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RE: Tribal/State Gaming Compacts

Gentlemen:

Your Reservation Business Committees received letters dated September 22, 1989 from Dorothy McClung, Chair of the Negotiating Committee for the State in the Class III Gaming Compacts being discussed. She stated that the State was willing to negotiate a compact regulating video games but all other cases of Class III gaming are precluded by the State Constitution, State statutes or public policy.

I will give you my legal analysis of some of these Class III games and my opinion as to whether they should be subject to Class III compacts pursuant to the provisions of the federal "Indian Gaming Regulatory Act", Public Law 100-497, 25 U.S.C. 2701, et seq.

The findings of Congress in the Section 2 of the I.G.R.A. were that a principal goal of Federal Indian Policy was to promote tribal economic development, tribal self sufficiency and strong tribal government and that Indian tribes gaming should be protected as a means of generating tribal revenue.

Class III gaming is defined as gaming activities that are lawful on Indian lands if operated under a tribal state compact and they are defined as gaming activities "located in a State that permits such gaming for <u>any purpose by any person, organization or entity.</u>" (Underlining supplied.)

The States' position on simulcasting horseraces to reservations

and pari-mutuel betting is apparently that it is "unconstitutional". Minnesota Statutes 240.13, et seq. provides for licensing horseracing and pari-mutuel betting. Subd. 6 of that statute permits pari-mutuel betting on televised horse races run in other states. The 1989 amendments to this statute now allow Canterbury Downs to receive televised horseraces in the winter and to allow pari-mutuel betting on said races.

Federal law defines "interstate off-track wagers" as a legal wager placed or accepted in one State with respect to the outcome of a horserace taking place in another state. An "on-track wager" means a wager with respect to the outcome of a horse race which is placed at the race track at which such horserace takes place.

It is clear that under these definitions that State law allows off-track wagers on televised horse races at Canterbury Downs. It appears that the State by an assistant attorney general is asserting that these are on-track wagers. Clearly they are off-track wagers under the federal definitions. The claim is made that tribes can't receive televised races and have pari-mutuel bets as these are off-track wagers somehow prohibited by state law.

The federal I.G.R.A. says tribes should be able to negotiate compacts over Class III gaming where the state permits such gaming for any purpose by any person, organization or entity. The State allows Canterbury Downs to receive off-track bets at its facility. The fact that the facility is used for horse races in the summer does not make these on-track bets nor is it a basis for refusing to enter into negotiations with tribes for compacts that would allow this type of gaming activity on the reservations. We all understood that safeguards to provide that the gaming be conducted fairly and honestly for both players and operators would be the subject of the negotiation.

Lotteries, card playing, and other gaming that is permitted by the State of Minnesota for any purpose by any person would also be eligible for negotiation in a State/Tribal Compact.

The Supreme Court in California v. Cabazon Band of Mission Indians, 107 S.Ct. 1083 found that since California allowed a substantial amount of gambling activity, including bingo, horseracing, card playing and promoted gambling through its state lotttery was regulating gambling not prohibiting it and that its public policy was not against gambling.

My opinion is that the State is not negotiating in good faith to conclude a compact if it refuses to negotiate other gaming activities it permits other persons, organizations and entities to engage in. That certainly includes off-track pari-mutuel betting on horesraces that are video cast, as well as lotteries ect.

Yours very truly,

Kent P. Tupper

KPT/ktb

MEMORANDUM

QUESTION: CAN THE MINNESOTA LEGISLATURE ENACT LEGISLATION AUTHORIZING HORSE RACING TELETHEATERS THAT WOULD CONDUCT PARI-MUTUEL WAGERING BEYOND THE ENCLOSURES OF A LICENSED RACE TRACK?

ANSWER: YES. 1. THE ONLY CONCEIVABLE CONSTITUTIONAL PROHIBITION TO SUCH LEGISLATION, PRIOR TO THE 1982 HORSE RACING AMENDMENT, WAS THE PROHIBITION AGAINST LOTTERIES. PARI-MUTUEL WAGERING IS NOT A LOTTERY.

2. THE PASSAGE OF THE 1982 AMENDMENT AUTHORIZING ON-TRACK PARI-MUTUEL WAGERING DOES NOT OPERATE TO DEPRIVE THE LEGISLATURE FROM ENACTING OTHER FORMS OF WAGERING.

---

1. The Constitution does not prohibit pari-mutuel wagering.

A. Pari-mutuel wagering is not a lottery.

The Minnesota constitution states that "The Legislature shall not authorize any lottery or the sale of lottery tickets."[1]

Courts in fourteen states have determined that pari-mutuel wagering on the outcome of horse racing, even though it is a form of gambling, does not constitute a lottery within constitutional or statutory prohibitions.[2] The Alabama Supreme Court, upon deciding that a bill authorizing pari-mutuel wagering did not violate the restriction that the "[t]he legislature shall have no power to authorize lotteries or gift enterprises for any purposes," stated:

> There is no question but [t]hat pari-mutuel wagering is gambling, but the Constitution does not restrict the legislature in its authority to authorize gambling. It merely says that the legislature shall not authorize a lottery.[3]

Similarly, the Minnesota Constitution, like the Alabama Constitution, prohibits only lotteries and it does not prohibit the Minnesota legislature from authorizing gambling, including pari-mutuel wagering.

In a vast majority of case law, a lottery is defined with reference to three essential elements. These are consideration, prize and chance. A lottery exists wherein a person pays consideration to receive a prize in a system wherein the winner is determined by chance. See State v. Stern, 201 Minn. 139, 275 N.W. 626 (Minn. 1937). Similarly, the definition of lottery in Minnesota Statutes centers around these three elements.

> A lottery is a plan which provides for the distribution of money, property or other reward or benefit to persons selected by chance from among participants some or all of whom have given a consideration for the chance of being selected.

Minn. Stat. 609.75A.

Courts have determined that in pari-mutuel betting the bettor's "educated guess" as to the race result constitutes the exercise of skill, or conversely does not reflect the distribution of winnings by chance. The Alabama Supreme Court stated that:

> Much was made on prior occasions when this question was before us of the fact that the odds change up until the last bet is placed on a race and hence the amount of the winning ticket is based on chance. We are not persuaded by that argument.
> * * * * "Since betting or wagering on the race does not determine or affect the result of it, I think the conclusion inevitable that wagering or betting on the result of a game of skill does not convert the game into one of chance."[4]

The above-listed courts have reasoned that the pari-mutuel bettor can, based upon his consideration of the information provided by the racing form or program and his observations, determine whether or not to bet, on which horse, and in which finishing position. While acknowledging that no future event is certain they have determined that it does not follow that every decision contingent upon future events is a lottery.

The Michigan Supreme Court determined that statutes authorizing pari-mutuel wagering were not prohibited by a constitutional provision banning lotteries and set forth the following, well-reasoned analysis in support its decision:

> In a horse race the winner is not determined by chance alone, as the condition, speed, and endurance of the horse and the skill and management of the rider are factors affecting the result of the race. The better has the opportunity to exercise his judgment and discretion in determining the horse on which to bet. The pari-mutuel method or system of betting on a horse race does not affect or determine the result of the race. The pari-mutuel machine is merely a convenient mechanical device for recording and tabulating information regarding the number and amount of bets and from this information the betting odds on the horses entered can be calculated and determined from time to time during the process of betting. The recording and tabulating of bets could be done manually by individuals, but the pari-mutuel machine is a more convenient and faster method. The fact that a better cannot determine the exact amount he may win at the time he places his bet, because the odds may change during the course of betting on a race, does not make the betting a mere game of chance, since the better can exercise his reason, judgment, and discretion in selecting the horse he thinks will win.[5]

Notwithstanding the reality that many bettors may ignore such information and trust in hunches or arcane betting systems these courts have found that that does not show that pari-mutuel betting is dependent upon the legal element of chance. Instead, they hold that while a pari-mutuel betting system must offer the opportunity to influence the likelihood of winning by the use of skill and judgment in order that it not be based upon chance, it is not necessary that every bettor avail himself of that opportunity. According to these courts, it is the character of the game and not the skill or want of skill of the individual player which determines whether the game is one of chance or skill.[6]

> [While] the bettor's winnings are limited by and dependent upon the total amounts bet and the distribution of those bets . . . . this factor [does not] vitiate the bettor's opportunity to exercise skill and judgment.
>
> * * * *
>
> While these factors operate to limit the amount which can be won by the bettor in the exercise of his skill and judgment, and while they are beyond his control and largely beyond his prediction, . . . [that does not] thereby render the betting a lottery. Regardless of the total amount and distribution of the bets, the bettor's skill in selecting winning horses influences the amount of his winnings. That skill and

the factors in question at most operate independently in determining the bettor's winnings.[7]

On the other hand, Courts in three states (Indiana, Kansas, and Nebraska) have found that pari-mutuel wagering on the outcome of horse racing does constitute a lottery.[8] These courts hold that the pari-mutuel system of wagering constitutes a lottery within their state constitutional provisions prohibiting lotteries. They reason that the pari-mutuel system is a gaming enterprise which, because of the retention of a percentage of bets, precluded players, in sustained play, from winning while providing a reasonable assurance for profit to operators. It was the unpredictability of the odds and the limited predictability of the animal's performance that led these courts to hold that the pari-mutuel system contained a sufficient degree of chance to constitute a lottery.

The recent decision of the Indiana Supreme Court that their constitutional provision prohibiting lotteries also prohibits pari-mutuel wagering sets forth the following analysis:

> "In our judgment, and notwithstanding that a degree of skill is involved in selecting the horses most likely to perform well, the unpredictability of the odds to be paid and the limited predictability of the performance of the animals combine to provide the degree of "chance"required to meet the traditional textbook definitions of the term "lottery." However, whether or not it is a lottery, in the classical sense, is immaterial. Its effects are precisely those sought to be prevented by Article XV, section 8; and, it is, therefore, a "lottery" within the meaning of that term as therein employed. * * * * Applying the word "lottery" in its literal sense would serve to proscribe but one form of commercialized gambling, while leaving those whom the proscription sought to protect exposed to the same mischief by methods identical in substance and different in form only."[9]

The Indiana court's decision is suspect on four grounds. First, it erroneously uses liberal construction to construe a constitutional provision that is plain on its face and whose language requires no interpretation. Second, it relies upon the Nebraska decision to support its interpretation of Indiana's Constitutional ban on lotteries even though Indiana's provision is much more broadly worded than Nebraska's prohibition and does not include a prohibition against "any games of chance."[10] Third, the Indiana decision totally disregards the major elements

of skill involved in a horse race, such as the fact that a human athlete is performing. Fourth, the court confuses the notion of chance. The confusion in the area of chance can be seen in the court's discussion regarding the unpredictability of the prize due to the fact that odds are always changing. In the context of the definition of a lottery, chance does not relate to how much the winner will win but, rather, the method of selecting the winner.

Minnesota clearly could not follow the Indiana decision. First, Minnesota's provision is much more broadly worded than Nebraska's and it does not include a prohibition against "any games of chance." Further, the Minnesota Supreme Court has held that where words used in the constitution have a clear and well-defined meaning, there is no room for construction, and neither the courts nor the legislature have the right to substitute for words used in the constitution having a well-defined meaning other words having a different meaning.[11]

> When the language of the Constitution is positive and free from all ambiguity, courts are not at liberty, by a resort to the refinements of legal learning, to restrict its obvious meaning. * * * * We must accept the Constitution as it reads when its language is unambiguous, for it is the mandate of the sovereign power.[12]

Practical construction cannot be adopted contrary to the plain meaning of a constitutional provision and so, it is not controlling where the language of the constitution is clear.[13] Thus, as pari-mutuel wagering is not a lottery, and the language of Minnesota's constitutional provision clearly bans only lotteries, pari-mutuel wagering was not banned by the prohibition against lotteries. Additionally, the Attorney General in various opinions has found that skill games and contests were not lotteries.[14] Considering the statutory definition of lottery and the Attorney General's opinions it is clear that as pari-mutuel wagering incorporates an element of skill it should not qualify as a lottery under Minnesota law.

Further, under the doctrine of liberal construction, a practical construction of the constitution, which has been adopted and followed by the legislature and people for many years, is entitled to receive great consideration from the courts.[15] However, this should only take place when the language of the provision in question is ambiguous. Where the language of the constitutional provision in question is clear, a contrary practical construction cannot be placed upon it.[16]

The language of the Minnesota Constitution Art. XIII, §5 is clear. It prohibits lotteries. In Minnesota, wagering activities that involve elements of skill are not lotteries.

Pari-mutuel wagering involves skill. Thus, pari-mutuel wagering is not a lottery and is not prohibited under the Minnesota Constitution.

B. Charitable gambling and bingo:

Charitable gambling and bingo have existed for years in Minnesota without an authorizing constitutional amendment. In fact, the Minnesota Supreme Court has implied that the legislature, by amending the statutory definition of lottery, permits lotteries where there is no private pecuniary gain, e.g., those lotteries operated by charitable or fraternal organizations.[17] If charitable gambling activities such as bingo are lotteries this decision has implicitly supported legislative action which is prohibited by the Constitutional ban on lotteries. There is considerable jurisdictional support for this interpretation.

Courts in several states, have found that charitable gambling operations that include activities they consider to be lotteries, such as Bingo, are banned by constitutional prohibitions against lotteries. The Michigan Supreme Court has held that "Bingo, like Beano, Keno, and Lotto, is an illegal lottery".[18] In Wisconsin the Supreme Court held in State ex rel. Trampe v. Multier, "[w]here a bingo game as conducted was a gambling game or lottery within prohibition of Constitution and statutes, it was not removed from prohibition of Constitution and statutes by reason that it was conducted for purpose of raising funds for charitable and patriotic purposes."

Many courts, in states that have found that charitable gambling constituted an illegal lottery have specifically amended their constitutions to include provisions authorizing such activities. In Nebraska the constitutional prohibition against lotteries was amended by the voters to allow lotteries, raffles, and gift enterprises which are intended as business promotions or where the proceeds are used solely for charitable or community betterment. Similarly, in South Dakota the Supreme Court held in Bayer v. Johnson,[19] that "[i]n 1970 the people of South Dakota amended Article III, Section 25 of our constitution by adding a proviso authorizing games of chance by public-spirited organizations, If it be the will of the people to license, tax and thus authorize privately operated games of chance, that likewise requires further amendment. It cannot be done by the legislature."[20] The only lotteries currently authorized to operate in Minnesota are the state-operated lotteries set forth in Question 3, which was approved in this fall's election. If pari-mutuel wagering in Minnesota is viewed as a lottery that requires constitutional authorization, then private charitable gambling and bingo also qualify as lotteries requiring constitutional authorization to operate.

2. **The 1982 amendment permitting on-track wagering does not require an additional amendment now:**

Because there is no constitutional prohibition against pari-mutuel wagering in Minnesota, the 1982 amendment to the Minnesota constitution to provide for on-track wagering was unnecessary. The amendment is said to have been sought by supporters of horse racing in Minnesota to allay concerns of race-track investors that the lottery prohibition could have been interpreted by financial institutions, the legislature, and the courts to ban pari-mutuel wagering. In 1982, the Attorney General's office was asked by a member of the legislature to give its opinion as to whether pari-mutuel betting would be defined as a lottery. The Attorney General found a split of authority. As a result, the legislature decided to seek a constitutional amendment that would specifically permit pari-mutuel betting in Minnesota.

The 1982 Constitutional Amendment authorizing pari-mutuel wagering in Minnesota provides:

> The legislature may authorize on-track parimutuel betting on horse racing in a manner prescribed by law.[21]

The question is whether or not the qualifying words "on-track" in the constitutional amendment directing the legislature to enact certain laws relating to on-track pari-mutuel wagering necessarily implies that off-track pari-mutuel wagering is now constitutionally prohibited.

State constitutions are generally construed as primarily a limitation on power as distinguished from a grant of power. Constitutional provisions do not confer powers, rather, they are limitations upon the legislature. A state legislature may enact any law which is not prohibited by the state or federal constitution.[22] Where there is a constitutional command to the legislature to enact certain laws, the question arises whether such a command impliedly prohibits legislation on the subject in other particulars, which are not commanded and would otherwise be within the legislative authority.[23].

On this question there is a split of authority. Some courts have deemed such a command an implied prohibition on further legislation.[24] Other courts, including Minnesota, have held that the powers of the legislature to deal further with the subject are not curtailed.[25]

In Curryer v. Merrill, 25 Minn. 1 (1878),[26] the Minnesota Supreme Court held that the imposition of a duty is not a limitation of power. It also stated that the constitutional mandate "to establish a general and uniform system of public schools neither prohibits nor restrains the legislature from

providing other public schools.[27] In State v. Corbett, 57 Minn. 345, 59 N.W.2d 317 (1894), the court held that before a court could declare a statute invalid it must point out a constitutional limitation which the statute "clearly transcends".[28]

The Minnesota Supreme Court, in Farreli v. Hicken, 125 Minn. 407 (1914)[29] set forth the following analysis:

> "But we must bear in mind that, as far as power of legislation is concerned, the state Constitution is an instrument of limitation, not of grant. We need not search in it for authority for this legislation. We need look in it only for prohibitions. No constitutional authority to legislate upon this subject is required. The power of the legislative authority to legislate is plenary, unless the Constitution has deprived it of that power. Lommen v. Minneapolis Gaslight Co., 65 Minn. 196, 207, 68 N.W. 53, 33 L.R.A. 437, 60 Am. St. 450; State v. City of Mankato, 117 Minn. 458, 136 N.W. 264, 41 L.R.A.(N.S.) 111."[30]

Accordingly, if a contested enactment is not prohibited by the constitution it is authorized.[31] Hence, the imposition of a duty upon the legislature in the 1982 amendment to enact legislation relating to on-track pari-mutuel wagering does not preclude the legislature from enacting legislation relating to off-track or other forms of pari-mutuel wagering, which is within its power to do.

The enactment of the 1982 amendment cannot be construed to prohibit that which it does not authorize. (i.e., off- track wagering.) The only existing general prohibition was the constitutional ban on lotteries. As pari-mutuel wagering does not constitute a lottery it was not subject to a general prohibition. Furthermore, the citizens of Minnesota have removed the general ban on lotteries. The 1982 amendment authorizing on-track betting does not ipso facto prohibit others forms of betting. Consequently, the Minnesota legislature can enact legislation authorizing teletheater simulcasting wherein pari-mutuel wagering is conducted.

1. Minnesota Constitution, Article XIII, §5, Prohibition of lotteries (to be amended by the 11-08-88 general election vote in favor of the 3rd question on the ballot: "SHALL THE MINNESOTA CONSTITUTION BE AMENDED TO PERMIT THE LEGISLATURE TO AUTHORIZE A LOTTERY OPERATED BY THE STATE.")

2. Barnes v. Bailey, 706 S.W.2d 25 (Mo.banc 1986); Opinion of the Justices, 287 Ala. 334, 251 So.2d 751 (1971); Oneida County Fair Board v. Smylie, 86 Idaho 341, 386 P.2d 374 (1963); Gandolfo v. Louisiana State Racing Comm., 227 La. 45, 78 So.2d 504 (1954); Ginsberg v. Centennial Turf Club, 126 Colo. 471, 251 P.2d 926 (1952); Longstreth v. Cook, 215 Ark. 72, 220 S.W.2d 433 (1949); Rohan v. Detroit Racing Assoc., 314 Mich. 326, 22 N.W.2d 433 (1945); People v. Postma, 69 Cal.App.2d Supp. 814, 160 P.2d 221 (1945); Engle v. State, 53 Ariz. 458, 90 P.2d 988 (1939); People v. Monroe, 349 Ill. 270, 182 N.E. 439 (1932); Multnomah County Fair Assoc. v. Langley, 140 Or. 172, 13 P.2d 354 (1932); Commonwealth v. Kentucky Jockey Club, 238 Ky. 739, 38 S.W.2d 987 (1931); Utah State Fair Assoc. v. Green, 68 Utah 251, 249 P. 1016 (1926); Reilly v. Gray, 77 Hun. 402, 28 N.Y.S. 811 (Sup.Ct. 1894).

3. Opinion of the Justices, 287 Ala. 334, 251 So.2d 751, 753 (1971).

4. Opinion of the Justices, 251 So.2d 751 at 753 (quoting, Utah State Fair Ass'n v. Green, 68 Utah 251, 249 P. 1016 (1926).

5. Rohan v. Detroit Racing Ass'n, 22 N.W.2d 433, 440 (Mich. 1946) (citations omitted).

6. See generally, State v. Nixon, 384 N.E.2d at 164 (J. DeBruler, dissent); Engle v. State, 53 Ariz. 469, 90 P.2d 993; Longstreth v. Cook,; Morrow v. State, 511 P.2d 129; Rohan v. Detroit Racing Assoc.,; People v. Monroe,; Utah Sate Fair Assoc. v. Green,; Ginsberg v. Centennial Turf Club.

7. Id.

8. State v. Nixon, 391 N.E.2d 822 (Ind. 1979); Moore v. Bissing, 178 Kan. 111, 283 P.2d 418 (1955); State ex rel. Sorensen v. Ak-Sar Ben Exposition Co., 118 Neb. 851, 226 N.W. 705 (1929); See also, Pompano Horse Club v. State, 93 Fla 415, 111 S. 801 (1929).

9. State v. Nixon, 384 N.E.2d at 161.

10. Justice Hunter's dissent to the majority opinion sets forth the following reasoning:

> "It seems quite apparent that the majority opinion has resorted to a public policy reasoning under the guise of liberal constitutional interpretation. * * * * Any citations concerning liberal construction are completely

unnecessary for the reason that the term "lottery" is well defined and was comprehended to have a very concrete and definite meaning, i.e., the most simple definition of a lottery is: a game of chance by lot only. (emphasis omitted) Thus, at the time of ratification it was so understood. * * * * [T]he term "lottery" is clearly defined, and any attempt by the courts to expand the simple definition is an invasion of the legislative prerogative." State v. Nixon, 384 N.E.2d 152 at 165-166 (Ind. 1979) (J. Hunter, dissent).

"The Nebraska case, State ex rel. Sorensen v. Ak-Sar Ben Exposition Co., (1929) 118 Neb. 851, 226 N.W. 705, cited by the majority is really of little guiding value in this matter. The Nebraska Constitution is more broadly worded than our Indiana Constitution and includes a prohibition against "any games of chance." The Nebraska Supreme Court stated that since a pari-mutuel system included the concept of a pool this necessarily (emphasis omitted) constituted a game of chance. This should have no effect on our interpretation of a lottery. . . . . [A] pooling in itself, does not constitute a lottery. A lottery has no elements of individual control over outcome. The selection of a horse within the pari-mutuel system does negate the pure chance element which is basic to a lottery." State v. Nixon, 384 N.E.2d at 166 (J. Hunter, dissent).

11. State v. Pett, 92 N.W.2d 205, 207 (1958); Kernan v. Holm, 227 Minn. 89, 34 N.W.2d 327 (1948); State v. Finnegan, 188 Minn. 54, 246 N.W. 521 (1933).

12. Cooke v. Iverson, 108 Minn. 388, 397, 122 N.W. 251, 254. (xxxx).

13. Kernan v. Holm, 227 Minn. 89, 34 N.W.2d 327 (1948) (where language of constitutional provision is clear, there is no room for application of rules of construction.

14. See, Op. Atty. Gen. 510-B, November 25, 1949; 510-B, June 13, 1951; 510-B, March 25, 1953.

15. State v. Finnegan, 188 Minn. 54, 246 N.W. 521 (1933); State v. Peterson, 159 Minn. 269, 198 N.W. 1011 (1924); See also, C. Thomas Stores Sales Sys., Inc. v. Spaeth, 209 Minn. 504, 297 N.W. 9 (1941).

16. Kernan v. Holm, 227 Minn. 89, 34 N.W.2d 327 (1948) (where language of constitutional provision is clear, there is no room for application of rules of construction).

17. See Minn. Stat. §609.75, subd. 1 (as amended 1971); State v. Finnerty, 248 N.W.2d 729 (1976) (manufacture or sale of gambling device).

18. Comp. Laws 1948, §750.372; Michigan Constitution Art. 5, §33; Society of Good Neighbors v. Van Antwerp, 324 Mich 22, 36 N.W.2d 308.

19. 349 N.W.2d 447 (S.D. 1984)

20. Bayer v. Johnson, 349 N.W.2d at 450. In Florida, Sec.7, art.X Fla.Const. (1968) reads: "Lotteries, other than the types of pari-mutuel pool authorized by law as of the effective date of this constitution, are hereby prohibited in this state." The Florida Supreme Court held that in a prior case it had determined that those activities comprehended as "pari-mutuel pools" were recognized as lotteries but those in existence and lawful under the case law or legislative statutes prior to january 7, 1969 were "grandfathered in" as exception to the prohibition. They held that "[b]ingo is similar (to pari-mutuel)." [B]ingo is (not) invalidated by the lottery provision of the Constitution of 1968 . . . it is not invalidated, being expressly saved by the language of the lottery provision regarding pari-mutuel pools, and also by the doctrine of contemporaneous enactment." Greater Loretta Improvement Association v. State ex rel. Boone, 234 So.2d 665 at 671-672 (Fla. 1970)

21. Minnesota Constitution Article X, §8.

22. See generally, Simpson, Minn. (1912) (analyze the provision in terms of whether it was intended to limit the legislature's power to act); Meighen v. Wertherill, xxx Minn. xxx (1914) (In determining the constitutionality of a legislative act, it is not the justification therefor, but the clause or provision of the constitution which prohibits its enactment that must be pointed out).

23. 16 Am.Jur 2d §109 at 456

24. 16 Am.Jur 2d §109 at 456, citing: People ex rel Mooney v. Hutchinson, 172 Ill 486, 50 NE 599; Denney v. State, 144 Ind 503, 42 NE 929; Keller v. State, 87 SW 669 (Tex Crim); State v. Gilman, 33 W.Va 146, 10 SE 283.

25. 16 Am.Jur 2d §109 at 456, citing: State ex rel. Lamar v. Jacksonville Terminal Co., 41 Fla 377, 27 So 225; Koester v. Board of County Comrs., 44 Kan 141, 24 P 65; Brown v. Commonwealth, 98 Ky 652, 34 SW 12; Curryer v. Merrill, 25 Minn 1 (1878).

26. Curryer v. Merrill, 25 Minn. at 5-7.

27. Curryer v. Merrill, 25 Minn. at 5-7. The whole question, also, of the necessity or expediency of any particular measure, with reference to this matter, is one of legislative and not judicial cognizance. In the absence of any constitutional prohibition, the whole matter of the establishment of public schools, the course of instruction to be pursued therein, how they shall be supported, upon what terms and conditions people shall be permitted to participate in the benefits they afford - in fine, all matters pertaining to their government and administration - come clearly within the range of proper legislative authority. (the question then is) [W]hether the present measure in any way conflicts with any constitutional provision inhibiting or limiting legislative power upon this subject. * * * * [I]t is certain that the imposition of a duty is not a limitation of power.

28. State v. Corbett, 57 Minn. 345, 349, 59 N.W. 317, 318, 24 L.R.A. 498. "Except where the Constitution has imposed limitations upon the legislative power, it must be considered as practically absolute; and to warrant the judiciary in declaring a statute invalid they must be able to point out some constitutional limitation which the act clearly transcends."
See also, State ex rel. Simpson v. City of Mankato, 117 Minn 458 at 464 ((1912). "We must not forget that the voice of the legislature is the voice of the sovereign people, and that, subject only to such limitations as the people have seen fit to incorporate in their Constitution, the legislature is vested with the sovereign power of the people themselves. In other words, the provisions of a state Constitution do not and cannot confer upon the legislature any powers whatever, but are mere limitations in the strict sense of that term, and the legislature has all the powers of an absolute sovereign of which it has not been divested by the Constitution. (citations omitted) * * * * The first and main question, then, for determination . . . is not whether the Constitution authorized the law . . ., but whether such act contravenes any provision thereof."

29. 125 Minn. 407 at 412 (1914).

30. Farreli v. Hicken, 125 Minn. 407 at 412 (1914)

31. Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934) (The enumeration of compulsory exemptions in Art. 9, §1 of the state constitution does not forbid making others which do not offend the uniformity clause or the federal constitution. The power to fairly exempt is inherent in the power to tax).

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Minnesota
House of
Representatives

Harry A. Sieben, Jr., Speaker

August 29, 1983

TO: Members of the Minnesota Racing Commission

FROM: Representative Dick Kostohryz

RE: Legislative Intent of the Minnesota Pari-Mutuel Racing Law

As chief House author of Minnesota's Pari-Mutuel Racing Act, I felt it would now be timely and appropriate to give you an explanation of legislative intent for several key sections of the law. This memorandum was prepared to help provide assistance to the Minnesota Racing Commission, as you begin your immense tasks, of my perspective of the legislative thought process that was used to develop and write this law.

As the bill to establish pari-mutuel racing originated in the House, it evolved from the ideas of myself and two very capable staff persons who deserve much credit for the research and bill content, John Williams from House Research and Mike Kuehn, my committee administrator. John Williams, who actually wrote the bill language, I consider to be the foremost expert in our state on gaming activities. The three of us worked as a team to develop the legislation, which has received much praise from racing authorities from around the nation. I consider John and Mike the foremost experts on this law.

We developed our ideas of what should be contained in the bill over many months of research, travel and discussion. It was redrafted several times, race track operators and other state racing commissions were contacted and the preliminary draft legislation was discussed with a wide variety of racing interest both within and outside our state. We traveled to California to meet with a cross-section of their racing industry. Copies of the draft legislation were sent for comments to other states.

Once the bill was then introduced on January 20th of this year (which was the fourth redraft of the legislation) it went through many hours of subcommittee and full committee hearings during a four month process. It probably received more legislative scrutiny than any other bill passed during the 1983 legislative session. I feel that we have

an excellent law. I now hope the Minnesota Racing Commission will follow our legislative intent and work together with the Legislature to give Minnesota citizens excellent quality racing.

My legislative staff and myself stand ready to assist the Racing Commission. Don't hesitate to contact us at any time.

Following is a listing of several key areas of the Pari-mutuel Racing Act that I feel the Minnesota Racing Commission should keep in mind with regards legislative intent as it proceeds to lay the groundwork for Minnesota's pari-mutuel racing industry..

I. Race Track Licensing (Class A License)

A statement of legislative intent now may help avoid confusion later. Many people feel that a responsibility of the Racing Commission is to determine a specific track site. The 1983 racing act did not envision site selection as a primary function of the Commission. A close reading of section six of the act shows that the Commission does not become involved in questions relating to a specific location except as part of a license application. The site of a proposed track is important within the context of section six but not as important as the fitness of the licensee. Any attempt to consider track location apart from the fitness of the licensee who would be operating at that location would run directly counter to the intent of the legislation. The Commission must avoid making any decisions on track location which would have the effect of excluding in advance any potential license applicant.

The Commission and its chairman, as well as the Governor, are to be commended for their emphasis on integrity and public confidence in the licensing process. At the same time it must be remembered that there are several other considerations to be included in the licensing decision. Among these are the applicant's financial resources, past business experience, knowledge of the horse racing industry and determination to make the track a community and regional asset.

II. Rule-making Authority

The Legislature's delegation of power to the Commission in the form of rule-making authority is a substantial one. It reflects the fact that racing regulation is a complex matter which cannot be fully handled in legislation. The rule-making process is complex, but the Commission can take some steps to keep it moving in a timely manner.

The first step should be to identify the provisions in the law which direct rule-making in specific areas such as medication, betting rules

and the rules of racing. Since the Commission's rule-making power includes not only the specified areas but, as stated in section 23, "any other aspect of horse racing or pari-mutuel betting which in (the Commission's) opinion affects the integrity of racing or the public health, welfare or safety," a preliminary inventory should be made of the rule areas which are not directly stated in the act (such as the licensing application process). The resulting product should be the working outline of the scope of the eventual rules.

When the rules' scope is decided, a further determination should be made of the key issues within each rules area. For instance, in the area of betting regulation the key issues include:

1. What types, if any, of multiple bets should be allowed?

2. Should "early bird" wagering (on-track betting on racing days before the racing program begins) be allowed?

3. How should the prohibitions against messenger services in section 25, subdivision 2 of the act be enforced?

4. Under what circumstances should licensees be allowed to place bets?

5. Under what circumstances should betting on televised races be permitted?

This listing of key issues is a recognition of the fact that a sizeable part of racing rules are non-controversial and fairly standard among the states. Early identification of the most important questions in each area will save the Commission's time and allow the rule-making process to concentrate on substantial issues.

Before the process is too far along the Commission should engage one or more rules consultants. The House Appropriations working papers show allocations for fiscal 1984 of $12,000 for a rules consultant and another $6,000 for a consultant on medication, but there would be nothing to prevent these two functions from being fulfilled by the same person. Employment of such a consultant or consultants early in the process would be of great help in assembling and drafting the non-controversial rules and formulating the substantive issues for Commission deliberation.

It is clearly the legislative intent for the consultant appropriations to be used for assistance to the Commission in the development of the specific rules of racing, not the administrative or procedural aspect of the rule-making process as outlined in the Administrative Procedures

Act. The mechanics of the rule-making process was clearly to be provided budgetarily by the Minnesota Attorney General's Office and the three administrators authorized to be employed by the Racing Commission.

One useful step might well be for the Commission to divide itself into subcommittees for rule-making purposes. A possible division could involve subcommittees on licensing and security, pari-mutuel betting, racing facilities, conduct of racing and Breeders Fund. A subcommittee system could allow for closer scrutiny of substantive issues while reducing the need for full Commission meetings.

III. Televised Races

The racing act allows betting on televised races because it is an added attraction for racing and will help give Minnesota's racing industry a broader appeal. The general expectation was that it would most likely be utilized for major racing events such as the Triple Crown races, the Hambletonian, the All-American Futurity or other races of national significance. Certainly the Legislature did not intend that betting on televised races occur on more than about one race each week.

In making decisions on televised racing the Commission should keep in mind the Legislature's intention that televised racing not become a substitute for live racing in Minnesota. Excessive use of televised racing could undermine legislative support for the entire concept and jeopardize Minnesota's breeding industry. Keep in mind that it is strictly a public relations tool and used to hype attendance and the betting handle by using the big races to attract people.

Certainly any attempt to provide a large number of televised races on a given day would create questions of constitutionality as the constitutional amendment clearly authorized "on track" betting only and to stretch this interpretation too far could lead to court challenges or tighter legislation. We are currently considering several legislative amendments to the act and this is one area that we are considering making more concise.

IV. Metropolitan and Outstate Tracks (Including County Fair Racing)

The only reference to individual tracks in the legislation is the provision for only one class A track in the metropolitan area. The legislative intent, however, goes beyond this single reference.

A glance at the working papers of the House Appropriations Committee (where the eventual appropriation was worked out) clearly shows the

expectation that county fair racing in Minnesota in fiscal 1985 would be a strong possibility. This is not a directive to the Commission to license county fairs for the 1984 fair season, since the act consistently makes all licensing discretionary with the Commission. It is, rather, evidence that the Legislature did not intend that the Commission begin its deliberations on the assumption that county fair racing not be licensed until a single Twin Cities track is operating. The fact that the working papers specifically allow for county fair racing and make no reference to a metro-area track in fiscal 1985 should show the order in which it expected licensing to occur.

Similar comments might be made on class A tracks outside the metropolitan area. The $150,000 contingency appropriation does not contain a specific restriction but it was included in the bill to provide funds to regulate any non-metro class A tracks the Commission decides to license in 1985.

The guiding assumption in both cases was that a metropolitan area track would not begin operations until 1986. This assumption was based on the time estimated to establish licensing rules, investigate license candidates, arrange financing, obtain necessary permits and infrastructure connections and complete construction. While the Legislature does not claim an infallible record for predictions its expectations were based on realistic assumptions and ought to be kept in mind when any decision is made on the order in which licenses are issued.

To make outstate Minnesota wait for racing until a track is operating in the Twin Cities area will not endear the Racing Commission to the outstate legislators or citizens. Metro and outstate proposals should be given equal opportunities to present their proposals to the Commission.

V. Types of Racing

In writing the legislation great care was taken to avoid giving any preference to any one type of racing or breed of horse. For example, when the Breeders Fund was created each breed was given its own fund to avoid using revenue from standardbred tracks to support thoroughbred breeding, and vice versa. The best way for the Commission to maintain this spirit of objectivity is to keep an open mind on the types of racing it will license, and to keep a balance if there are qualified licensees from the various breeds.

Likewise, the Legislature went along with the idea of the one track exclusively in the Twin Cities area with the intent that this track not be used by only one specific breed. I encourage the Racing Commission to include in their license process a guarantee from

whomever gets the Class A license for the metro area that this track would be used by all interested breeds who want to race in the metro area, with economic consideration of the track's profitability being assessed on a calendar year basis, not the profitability of a particular racing meet.

VI. Medication

It was the intent of the Legislature that Minnesota should adopt some of the toughest rules on the use of medications in the nation. The law states that no medication can be used on horses a minimum of 48 hours before a race. This could even be made a longer period of time if the Racing Commission decides to do so. Medications, and their effects, are some of the most complex and confusing areas in racing regulations and it was thought that some special expertise, as previously referred to, should be employed by the Racing Commission to assist you with this sensitive debatable topic.

VII. Commission Staff

The plan of the Commission to begin a national search for an executive secretary is a sound one. With the legislation setting up a part-time commission a great deal of responsibility will be delegated to the executive secretary, making this appointment one of the Commission's most important decisions. The level of responsibility envisioned by the 1983 act virtually mandates that the executive secretary have extensive first-hand experience in the conduct and/or regulations of horse racing, and such a requirement means that the successful candidate may well come from outside Minnesota. This is even more crucial in light of the fact that many of you do not possess a detailed knowledge of racing operations.

The other two administrative positions included in the appropriations budget were designed to provide staff assistance to the executive secretary. One position was envisioned to work with the Administrative Procedures Act and the rule-making process. The other position was thought to be someone who would also assist with the rule-making process, but also work as the public information officer and government and legislative liaison for the Racing Commission. It was envisioned that the office operations would be handled by a secretary/office manager who would also serve as the secretary for the Commission and by a secretary who would do the filing of occupational licenses and other office duties. The other legislatively-mandated positions would be filled, at least the first two years, by seasonal employees who have race track experience in other states.

VIII. Budget

The appropriation to the Racing Commission was based on several assumptions which have been included in the Commission's spending plan. Some of the more important assumptions are:

1. The Commission would meet approximately 24 times each year.

2. Commission members' travel expenses (excluding travel to and from meetings) would not exceed $25,000.

3. Sixty thousand dollars would be available for special counsel from the office of the Attorney General.

The intent was that part of the $60,000 appropriated to the Attorney General's Office would be for legal counsel and part would be to assist the Racing Commission with the rule-making process under the Administrative Procedures Act.

The Legislature did not write these specific figures into the law, and also allowed shifts of funds between fiscal years. This is a clear sign that it did not intend them to be unchangeable or that the Commission would have no spending flexibility. Nevertheless the Legislature did intend that Commission spending not exceed a total of $591,000 this biennium, except to meet circumstances the Legislature could not reasonably have foreseen.

As previously referred to, the $150,000 contingency fund was designed to provide additional funds to the Racing Commission only if one or more Class A tracks would be open before July 1, 1985, and additional Commission staff and testing fees would be needed. We realize that your budget is bare-boned, but the budget was designed to be financially responsible, especially in the light of the serious budget problems the state has been coping with. Incidently, any use of the contingency fund requires the approval of the Governor after consultation with the Legislative Advisory Commission.

IX. Betting Restrictions on Racing Commission Members

Section 28 of the racing act clearly prohibits members of the Commission and their employees from betting at "licensed racetracks." This clearly means that commissioners and staff cannot bet at Minnesota tracks since under the law a "licensed racetrack" is defined as a racetrack at which horse racing is conducted on the premises and which holds a Class A or Class D license that is issued by the Minnesota Racing Commission. Therefore, our commissioners are not restricted

from betting in any other state or country by our legislation. It was never the legislative intent to restrict the Racing Commission from betting elsewhere, but only at racetracks for which they are responsible for regulating and licensing.

In fact, I encourage our commissioners, if visiting another track to place a wager. It is one of the easiest ways to educate yourself about how the pari-mutuel system works. It also allows you to experience the excitement and fun that motivates track patrons to bet and discover firsthand why pari-mutuel horse racing is the number one spectator sport in the nation.

X. State Fairgrounds Racing

A recent editorial in the St. Paul Pioneer Press stated that the "authors of the constitutional amendment and the statute establishing pari-mutuels expressly opposed a fairgrounds site." This is simply not true. The legislation was purposely drafted to place neither any special conditions on the fairgrounds or to prohibit racing at their site. It was the legislative intent that if the State Agricultural Society was interested in horse racing, just like any other potential Class A licensee in the metro area, they could submit an application and proposal. We do not restrict their opportunity for competing for a Class A license.

There are a couple of other items that generally we hope the Racing Commission will consider. We strongly encourage the participation of the Racing Commission in the National Association of State Racing Commissioners. As a clearinghouse organization, the Association can keep you apprised of national trends and activities and to provide assistance on individuals working in the racing industry. Likewise, we encourage the Commission to participate in seminars and conferences that will help Minnesota gain knowledge about racing laws, regulations and practices. We just remind the Racing Commission of their limited travel budget and encourage you to attempt to get the most for your money.

Additionally, I want to remind the Racing Commission that their main responsibility is to protect the integrity of racing in Minnesota. We hear lots of discussion about the desire to have a major racetrack operating in the Twin Cities area by 1985. While this idea is commendable, I caution the Commission about moving too hastily and not taking the time to assess each step they make. Your decisions should not be made based on wanting to get a racetrack operating by 1985, but on what is in the best interest for the citizens of our state and the credibility and public confidence they will have in this new industry.

Finally, I would like to take this opportunity to invite each commissioner to come before my committee at a legislative hearing this fall to discuss your goals and aspirations you have for pari-mutuel racing in Minnesota. My committee will be the committee responsible for overseeing the Commission's work and for assessing any needed amendments to improve our racing legislation. We would like to have your ideas about the pari-mutuel law after you have had a few months to work within its framework.

Thank you for your interest in serving on our Racing Commission and for the opportunity to better familiarize you with the thought process that went into the development of our pari-mutuel betting law.

DK/rp

Sec. 26. Minnesota Statutes 1990, section 240.19, is amended to read:

240.19 **CONTRACTS.**

The commission shall by rule require that all contracts entered into by a class A, class B, ~~or~~ class D, or class E licensee for the provision of goods or services, including concessions contracts, be subject to commission approval. The rules must require that the contract include an affirmative action plan establishing goals and timetables consistent with the Minnesota Human Rights Act, chapter 363. The commission may require a contract holder to submit to it documents and records the commission deems necessary to evaluate the contract.

Sec. 27. Minnesota Statutes 1990, section 240.23, is amended to read:

240.23 **RULEMAKING AUTHORITY.**

The commission has the authority, in addition to all other rulemaking authority granted elsewhere in ~~Laws 1983,~~ this 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, standards of entry, operation of claiming races, filing and handling of objections, carrying of weights, and declaration of official results;

(b) wire communications between the premises of a licensed racetrack and any place outside the premises;

(c) information on horse races which is sold on the premises of a licensed racetrack;

(d) liability insurance which it may require of all class A, class B, ~~and~~ class D, and class E licensees;

(e) the auditing of the books and records of a licensee by an auditor employed or appointed by the commission;

(f) emergency action plans maintained by licensed racetracks and their periodic review;

(g) safety, security, and sanitation of stabling facilities at licensed racetracks;

(h) entry fees and other funds received by a licensee in the course of conducting racing which the commission determines must be placed in escrow accounts; ~~and~~

(i) the operation of teleracing facilities; and

(j) any other aspect of horse racing or pari-mutuel betting which in its opinion affects the integrity of racing or the public health, welfare, or safety.

Rules of the commission are subject to chapter 14, the Administrative Procedure Act.

Sec. 28. Minnesota Statutes 1990, section 240.25, subdivision 2, is amended to read:

Subd. 2. **OFF-TRACK BETS.** (a) No person shall:

(1) for a fee, directly or indirectly, accept anything of value from another to be transmitted or delivered for wager in any licensed pari-mutuel system of wagering on horse races, or for a fee deliver anything of value which has been received outside of the enclosure of a licensed racetrack holding a race meet licensed under this chapter or a teleracing facility, to be placed as wagers in the pari-mutuel system of wagering on horse racing within the enclosure or facility; or

(2) give anything of value to be transmitted or delivered for wager in any licensed pari-mutuel system of wagering on horse races to another who charges a fee, directly or indirectly, for the transmission or delivery.

(b) Nothing in this subdivision prohibits the conducting of pari-mutuel wagering at a licensed teleracing facility.

Sec. 29. Minnesota Statutes 1990, section 240.27, is amended to read:

240.27 **EXCLUSION OF CERTAIN PERSONS.**

Subdivision 1. **PERSONS EXCLUDED.** The commission may exclude from any and all licensed racetracks or licensed teleracing facilities in the state a person who:

(a) has been convicted of a felony under the laws of any state or the United States;

(b) has had a license suspended, revoked, or denied by the commission or by the racing authority of any other jurisdiction; or

(c) is determined by the commission, on the basis of evidence presented to it, to be a threat to the integrity of racing in Minnesota.

Subd. 2. **HEARING; APPEAL.** An order to exclude a person from any or all licensed racetracks or licensed teleracing facilities in the state must be made by the commission at a public hearing of which the person to be excluded must have at least five days' notice. If present at the hearing, the person must be permitted to show cause why the exclusion should not be ordered. An appeal of the order may be made in the same manner as other appeals under section 240.20.

Subd. 3. **NOTICE TO RACETRACKS.** Upon issuing an order excluding a person from any or all licensed racetracks or licensed teleracing facilities, the commission shall send a copy of the order to the excluded person and to all

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption
of Rules of the Minnesota Racing Commission
Rules Governing Class E (Teleracing) licenses,
Simulcasting and Pari-Mutuel Betting.

STATEMENT OF NEED AND REASONABLENESS

GENERAL

Minn. Stat. 240.03 (1991) empowers the Minnesota Racing Commission to regulate horse racing in the state to ensure that 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. 240.02-240.29 (1991) mandate or authorize the Commission to promulgate a wide variety of rules. Section 240.23 (1991) 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. Laws Minn. 1991, ch. 336 gives the Commission specific authority to promulgate rules governing simulcasting and teleracing.

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 all license applicants who construct, own and operate horseracing, including teleracing, facilities.

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

The Commission believes the proposed rules are reasonable, because they are customary in the horse racing industry. Portions of the proposed rule were borrowed from the states of

Pennsylvania and Illinois, as well as from the model rules of the Association of Racing Commissioners International. Moreover, the proposed rules are very similar to the rules promulgated for the licensing of persons to obtain Class A and B licenses to own and operate racetracks and Class D licenses for County Fair Associations to conduct pari-mutuel racing meets. Although the rule requirements are stringent, successful entrance into and participation in the industry has not in any way been deterred.

CLASS E LICENSES

Laws Minn. 1991, ch. 336 authorizes Class E licenses for the management of a teleracing facility to be issued to current holders of Class B licenses. Minn. Stat. 240.05, Subd. 1(d) and Subd. 3 clearly indicate that the Commission is not required to issue any license. Rather, Laws Minn. 1991, ch. 336 provide that the Commission may issue a Class E license to a current Class B licensee to sponsor and conduct simulcasting if the Commission 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, whether the interest is financial, administrative, policymaking or supervisory.

Further, the proposed rules require applicants for Class E 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 the racing or breeding of horses, 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 rule requires a Class E applicant to submit detailed plans and specifications for the proposed facility and grounds, as well as any improvements to existing facilities.

The proposed rule also requires a comprehensive background and financial investigation of an applicant for a Class E 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 mandates 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. The proposed rules also require submission of affidavits from those persons regarding their finances and character.

Finally, the proposed rule provides 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.

RULE-BY-RULE ANALYSIS

7869.0100. This part sets forth definitions of terms indigenous to the horse racing and pari-mutuel industry. It is necessary that the Commission define terms and phrases that have a specific meaning to those connected with the industry.

Subpart. 7 defines the term "Alternative Facility". The term is used in the statute authorizing simulcasting without definition. This subpart is necessary to adequately identify those facilities which may transmit, receive or engage in commingled wagering with a Class E licensee. The proposed language assures that the alternative facilities have the necessary equipment and be subject to state regulation.

Subpart. 15 defines the term "Commingled (Common) Pool". The term is used in the Statute authorizing simulcasting without definition. This definition is needed as it relates to the simulcasting of races to and from Class B licensed racetracks to alternative facilities or Class E (teleracing) facilities. The definition ensures that the commingling will occur subject to necessary restrictions and oversight necessary to protect the public.

The definition of "Day" in Subpart 19. has been stricken as it is no longer pertinent.

Subpart. 31 defines "grounds" and has been rewritten to encompass simulcasting and teleracing facilities within its scope. This is necessary to ensure that the Commission's broad regulatory authority extends beyond the racetrack to any Class E facility.

Subpart. 32 has been rewritten to make it clear that a Class B licensed racetrack which receives broadcasts of races by television outside of this State is known as a "Guest or Receiving" racetrack. This language also conforms the rule to the statute.

Subpart. 35 has been rewritten to make it clear that a licensed racetrack outside of this State which broadcasts its races by television to a licensed racetrack within this State is known as a "Host or Sending" racetrack. This language also conforms the rule to the statute.

The definition of "Live Racing Day", as it appeared in Subpart 33a. has been stricken as it is no longer applicable.

The definition of "Presiding Official" in Subpart 51 has been rewritten to make it clear that a presiding official is an official of the Commission who presides over simulcasting. The

duties of the presiding official are contained in part 7871.0120.

The definition of "Racing Day" in Subpart 56 has been changed to make it clear that it pertains only to days assigned by the Commission on which live horse racing is conducted.

Subpart 62. has been rewritten to make it clear that "Simulcasting" means the televised display for pari-mutuel wagering purposes, of one or more horse races conducted at another location where the televised display occurs simultaneously with the race being televised.

The definition of "Televised Racing Day" in Subpart 65a has been stricken as it no longer pertains to current racing law and rule. The references to televised racing days were repealed by the 1991 legislation.

The remainder of other changes in this chapter are the renumbering of subparts to incorporate the newly added definitions.

The proposed changes are necessary in order to provide clarification and definition to terms and phrases used throughout the rules related to horse racing, simulcasting, and pari-mutuel betting. The proposed changes are reasonable in that they place no undue burden on applicants or participants. The proposed definitions are customary in pari-mutuel betting and horse racing and have been used successfully in other jurisdictions.

7870 contains rules related to Class A, B, and E license applications and licensing criteria. The rule is necessary to provide for the adequate regulation of teleracing facilities. The rule is reasonable in that it imposes no undue burdens, and because the Commission cannot be less stringent in its regulation of Class E licensees than other areas of licensure regulated by the Commission.

7870.0180 has been amended to include references to Class E license applications. The rule is necessary to provide for the adequate regulation of teleracing facilities and the pari-mutuel betting conducted at the facilities. The rule is reasonable in that it imposes no undue burdens on the license applicant, and because the Commission cannot be less stringent in its regulation of Class E licensees than other areas of licensure regulated by the Commission.

7870.0190 has been amended to include references to Class E license applications. The rule is necessary to provide for the adequate regulation of teleracing facilities. The rule is reasonable in that it imposes no undue burdens on the license applicant, and because the Commission cannot be less stringent in its regulation of Class E licensees than other areas of licensure regulated by the Commission.

7870.0200 has been amended to include references to Class E license applications. The rule is necessary to provide for the adequate regulation of teleracing facilities. The rule is reasonable in that it imposes no undue burdens on the license applicant, and because the Commission cannot be less stringent in its regulation of Class E licensees than other areas of

licensure regulated by the Commission.

7870.0210 has been amended to include references to Class E license applications. The rule is necessary to provide for the adequate regulation of teleracing facilities. The rule is reasonable in that it imposes no undue burdens on the license applicant, and because the Commission cannot be less stringent in its regulation of Class E licensees than other areas of licensure regulated by the Commission.

7870.0220 has been amended to be specific to Class B licensees only.

7870.0221 is a new section mandating disclosure of the development process for Class E license applicants. The rule is specific to Class E licensees, and is necessary to comply with the specific information required by the statute. The section requires the license application to contain documentation on the total cost of construction or renovation of a teleracing facility, separate identification of those costs, documentation of fixed costs, the schedule for construction or renovation of the facility, schematic drawings, copies of all pertinent contracts, and documentation regarding whether the site has been acquired or leased by the applicant. In addition, this section mandates disclosure of the address of the facility; name, address and telephone number of the owner of the real estate upon which the building will be located; a copy of the lease, purchase option or purchase agreement; pro forma financial statements projecting attendance, handle and revenue; statement of the projected cost of operation of the facility; statement of sources of funds used to construct or renovate the facility inclusive of all documentation; statement of projected revenue and taxes to be paid; anticipated impact on attendance, handle, and purse structure at licensed facilities conducting live racing in the state; areas from which the applicant expects to draw patrons; population of the area within 35 air miles of the location; owner and description of other business or uses to be conducted at the location; number of floors, total square footage and seating capacity of the facility; description of dining accommodations and concession areas including types of food and beverages to be available, seating capacity, and description of the kitchen area; number and location of fire escapes and emergency exits; number of restrooms; description of the general demeanor of the facility, including decor and lighting, type of seating, and areas where patrons can handicap races; description of the exterior of the facility; architectural or engineering drawings of the facility; description of heating, air conditioning, smoke removal and climate control equipment and smoke and fire detectors; provisions for ensuring access to the physically handicapped; description of parking areas, including documentation for leased parking facilities and traffic control to be provided; copies of contracts relating to and a complete description of the totalisator equipment to be used in the facility; copies of contracts relating to, and descriptions of, equipment to be used for receiving transmissions of races and race-related information; names, addresses and telephone numbers of persons supplying equipment to the facility; a description of procedures to be used to resolve patron complaints; a description of security plans for the facility; copies of insurance policies applicable to the facility; statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the facility; copies of building, fire, occupancy, health and sanitation or other permits required by units of government. The rule is necessary in order to enable the Commission to adequately review and

decide upon a for Class E license application. The rule sets forth the minimum equipment the Commission deems necessary for a teleracing facility. To the extent possible and practicable, the equipment has required the same equipment required for a racetrack facility. The rule is reasonable in that it imposes no undue burdens, and because the Commission cannot be less stringent in its review and decision-making regarding Class E licenses than in other areas of licensure regulated by the Commission.

7870.0240 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of financial resources. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0250 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of a financial plan. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0260 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of action by other governmental agencies.. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0270 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of a management plan, personnel and position descriptions. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0280 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding plans for promotion and public education pertaining to horse racing and pari-mutuel wagering. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0290 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of the economic impact of conducting pari-mutuel wagering. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0300 has been amended to include references to Class E license applications. The

rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure of public support and opposition to its application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0310 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the applicant's effect on competition within the horse racing and pari-mutuel industry. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0320 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the identification of those who assisted in the preparation of the application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0330 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding disclosure and release of personal information of individuals making application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0340 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the criteria the Commission must consider in approving an application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0350 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the format and content of an application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0360 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding formal submission of an application to the Commission. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0370 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding submission of an application fee to the Commission along with the application. The

rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0380 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the Commission's responsibility to designate one individual to make all clarifications to an application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0390 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the requirement that no substantive changes can be made to an application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0400 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding deadlines for submission of an application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0410 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding the opportunity to make an oral presentation of the application to the Commission. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0420 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees which stipulates deadlines and amounts of license fees. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0430 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding penalties for submitting false or misleading information or omitting information in the application. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0450 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees requiring Commission appropval prior to making any alterations to a facility exceeding $10,000. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0470 has been amended to include references to Class E license applications. The rule is necessary in order to conform Class E license requirements to those of Class B licensees regarding Commission authority to order modifications of security measures at licensed facilities. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission.

7870.0500 has been amended to include references to Class E license applications and to strike subpart 6 pertaining to affirmative action issues. The rule is necessary in order to conform Class E license requirements to those of Class B licensees. The rule is reasonable in that the Commission cannot be less stringent in the regulation of Class E licensees than in other areas of licensure regulated by the Commission. The section on affirmative action issues has been deleted and moved to a "stand-alone" chapter. The change is necessary in order provide continuity in Commission rules and to allow affirmative action requirements to be applied equally to all areas of licenses issued by the Commission. The rule is reasonable in that it imposes no undue burdens and, in fact, the goals cited in the rule have been attained by the current Class B license holder.

7870.0510 is a new section dealing with affirmative action, requiring Class A, B, D and E license holders to provide economic opportunities for disadvantaged and emerging small business. For the category of disadvantaged and emerging small business it establishes goals of 10% for construction subcontract and material suppliers, and labor and employment goals of 10% for disadvantaged and emerging small businesses in on-site construction jobs. It establishes a goal of 20% of total vendor, supplier and other contracts with disadvantaged and emerging small business for the postconstruction period and a two-year window for achievement of this goal after construction. The rule requires Class A, B, D and E license holders to provide economic opportunities for racial minorities. It establishes a goal of 10% for hiring of racial minorities in all categories of the licensees workforces and requires a good faith effort to achieve this goal within two years after commencing operations. It also establishes a goal of making available up to 10% of available equity ownership to racial minorities. The rule requires Class A, B, D and E licensees to provide economic opportunities for women. It establishes a goal of 51.4% for hiring women in all categories of the licensee's workforces and requires a good faith effort to achieve this goal within two years after commencing operations. It establishes a goal of making available up to 10% of available equity ownership to women. The rule requires Class A, B, D and E licensees to provide economic opportunities for the disabled. Specifically, the rule requires the licensee to establish reasonable goals to assist in providing economic opportunities for the disabled with respect to construction subcontracts/material suppliers, on-site construction jobs, postconstruction labor force, postconstruction vendor, supplier and other contracts, and available equity ownership opportunities. The rule requires Class A, B, D and E licensees to file quarterly compliance reports with the Commission. The rule provides definitions for "Disabled Individual", "Good Faith Effort", "Disadvantaged and Emerging Small Business", and "Racial Minority". The rule is necessary to enable the Commission to effectively regulate Class A, B, D and E licensees in the area of affirmative action. The rule is reasonable in that it imposes no undue burden, is modeled after an affirmative action program in place in the city of Minneapolis, and the goals cited in the rule have been attained by the current Class

B licensee.

7871 has been renamed to delete the reference to televised racing days and to refer to "Simulcasting" only. The proposed rule on simulcasting is nearly identical to the rule promulgated in 1990 governing televised racing. By and large, only the terminology has been changed to conform to the statute and the expansion to teleracing facilities. This is necessary because the 1991 legislation authorizing simulcasting deleted all references to televised racing days as well. Under the proposed rules, all televised broadcasting of horse races, whether at the racetrack or a teleracing facility, must conform to the rules governing simulcasting.

7871.0005 (Application for Simulcasting). Subpart 1 defines the timeframe within which applicants for a Class E license must submit an application. It also specifies documentation to be included along with the request for simulcasting. The rule is necessary in order for the applicant to know the proper procedure for applying for dates and the requisite detail needed to accompany the request. The rule is reasonable in that it has been used successfully in other classes of licensure for pari-mutuel horse racing in Minnesota. The rule is necessary to remove references to "televised race day" to conform to the statute. The rule is reasonable in that it imposes no undue burden on the licensee and has been applied successfully in other areas of licensure regulated by the Commission.

Subpart 2 specifies the criteria the Commission must consider when deciding whether or not to approve simulcasting requests. The rule is necessary in order for the applicant to know the standards by which its application will be judged. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 3 establishes the timetable which the Commission must use in considering requests for simulcasting. The rule is necessary in order for the applicant to know when to file its application and it ensures that the Commission will act on the request in a timely manner. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 4 provides for variations in previously approved simulcasting requests. The rule is necessary in order to provide flexibility for making changes to programming schedules on an emergency basis. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

7871.0010 (Application for Pari-Mutuel Pools for Simulcasting.) Subpart 1 deals with the submission of pari-mutuel pool requests. It outlines what information the applicant must supply to the Commission when requesting pari-mutuel pools for simulcasting, and the information the Commission must consider in deciding whether or not to approve the requested pari-mutuel pools. The rule is necessary in order for the applicant to know how to apply for pools. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 2 is new language, exclusive to simulcasting, requiring the Commission to approve, deny or give qualified approval to the request for pools within 30 days after receipt of the application. The rule is necessary so that the applicant can know when to apply for pools, and it imposes on the Commission a requirement to act in a timely manner. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 3 allows the Commission to designate pari-mutuel pools for simulcasting. The rule is necessary to empower the Commission to mandate certain pari-mutuel pools and the procedures by which the pay-offs will be calculated. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 4 requires the licensee to submit copies of its contracts with other racetracks for simulcasting of races. The rule is necessary to allow the Commission to monitor the simulcasting, and to more effectively regulate this area of pari-mutuel racing. A review of the contracts will help the Commission ensure that the simulcasting is conducted in accordance with all laws and rules. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

7871.0020 (Approval of Pari-Mutuel Pools for Simulcasting). Subpart 1 outlines the basis for approving pari-mutuel pools by the Commission, and enumerates the indices the Commission must consider in its deliberations. The rule change is necessary to remove references to "televised race day" and to conform the rule to the statute. The rule is reasonable in that it imposes no undue burden on the licensee, and ensures that the Commission has criteria by which to approve or disapprove pari-mutuel pools for simulcasting.

Subpart 3 has been amended to allow the Commission's Director of Pari-Mutuels to approve variations and changes in pari-mutuel pools and the placement of pools in the racing program. The rule is necessary to allow for more than one Commission representative to make such decisions in the event that the Director is unavailable. The rule is reasonable in that it allows for more flexibility on the part of the Commission.

7871.0030 (Pari-Mutuel Betting). Subpart 1 has been amended to encompass the statutory language of "Alternative Facility" when dealing with minimum returns and insufficient monies in net pools. The statute permits commingled pool wagering with an alternative facility and this subpart is necessary to give effect to the statutory language. The rule is reasonable in that it allows for the same practices to be conducted with alternative facilities as with host racetracks.

Subpart 2 has been amended to allow Class B or E licensees to commingle pools with host racetracks or alternative facilities provided that the necessary equipment is in place and the commingling goes through the Class A racetrack's computer. The rule is necessary to make it easier to monitor and regulate the commingled pools by eliminating the need to be on-site at each teleracing facility. The rule is reasonable in that it has been used successfully in other

racing jurisdictions.

Subpart 3 (Information Window). This section is new language requiring Class E facilities to provide essentially the same information services to patrons at Class E facilities as are available at the racetrack. The rule is necessary for public convenience. The rule is reasonable in that it imposes no undue burden on the licensee.

Subpart 4 (Deficiencies). This section is new language requiring the association to pay deficiencies in net pari-mutuel pools. This rule is standard in the industry and is necessary to protect the wagering public. The rule is reasonable in that it has been used successfully in other racing jurisdictions.

Subpart 5 (Simulcasting to locations outside the state). This section is new and allows the licensee, with the prior approval of the Commission, to transmit telecasts of its races to locations outside the state, and allows for commingled pools on those telecasts. The rule is necessary to allow Minnesota races to be broadcast in other parts of the country, thereby promoting Minnesota racing and breeding. The rule is reasonable in that it has been used successfully in other racing jurisdictions.

7871.0080 (Tip Sheets). The rule has been amended to include Class E licensees, and allow for no less than two independently handicapped tip sheets to be available at Class E facilities. The rule is necessary to allow the public maximum independent input for handicapping purposes. The rule is reasonable in that it has been used successfully by the Minnesota Racing Commission for tip sheets at the racetrack.

Subpart 2 requires previous days' tip sheets to be posted at teleracing facilities. The rule is reasonable because it serves to protect the wagering public and inform them of independent handicappers' prior results. Review prevents collusion and cheating on the part of the tip sheet handicappers. The rule is reasonable because it has been used successfully in other racing jurisdictions.

Subpart 3 has been amended to require tip sheet vendors at Class E facilities to be licensed by the Commission. The rule is necessary to provide the Commission the opportunity to perform background investigations on tip sheet vendors and to protect the wagering public. The rule is reasonable in that it has been used successfully in other areas of licensure by the Minnesota Racing Commission.

7871.0100 (Telephone Account Wagering). Existing language in subpart 1 was amended for clarification and grammatical purposes. Subpart 3 was amended to drop the requirement for certified checks, and to allow telephone accounts to be maintained and opened with credit cards. The language under subpart 3(d) has been stricken. The rule is necessary to allow the licensee to remain competitive with other forms of legalized gambling, and to allow for race results to be divulged to telephone account customers during racing hours. The rule is reasonable because it allows greater ease for the patrons in placing wagers and learning the results of those wagers

in a prompt manner.

7871.0110 (Distribution of Purse Money). The language in subpart 1 has been amended to reflect a statutory change, and to clarify that all amounts required to be withheld from pari-mutuel pools must be allocated for purses by an association conducting simulcasting. Subpart 2 of this rule requires that outside of the racing season, all money withheld by associations for purses must be placed in interest-bearing escrow accounts and retained for purse monies for the next race meeting of the breed involved. The rule is necessary in order to conform Commission rules to the statutes, and to protect the horsemen and secure the purse monies earned by their respective breeds. The rule is reasonable in that it has been used successfully in other racing jurisdictions.

7871.0115 (Teleracing Mutuel Manager). This rule is new, and requires the Class E licensee to designate a teleracing mutuel manager at each facility. The rule outlines the duties of the manager. The rule is necessary to protect the wagering public, and to mandate that a certain designated person at each facility is on-duty at all times the facility is open to deal with patrons, the Class B facility, and the Commission. The rule is reasonable in that it was adopted from the Pennsylvania rules of racing and has been successfully used there and in other racing jurisdictions.

7871.0120 (Presiding Official). This rule has been amended to allow for the Commission's Director of Pari-Mutuel Racing to appoint one or more of the stewards to act as Presiding Officials for the purposes of simulcasting. It also requires a Class E licensee to provide telephone communication between the licensed racetrack, host racetrack and alternative facility, as well as designating a pari-mutuel manager to communicate with the presiding official at all times when simulcasting is being conducted. The rule is necessary to insure that all lines of communication remain open during simulcasting so that in the event of a problem with the satellite link, the officials may continue to monitor the live race. The rule is reasonable because it has been applied successfully in other racing jurisdictions.

7871.0130 (Authority and Duties of Presiding Official). The rule has been amended to clarify the duties of a Presiding Official, provide authority to impose fines in accordance with Commission rules, to eject or exclude persons for violations of rules, remove the reference of the phrase "customs of the turf", and to request and receive assistance from Commission employees, racing officials, track security, and federal, state and local police in the investigation of possible violations of Commission rules. The rule is necessary in order give the presiding official the same broad powers as possessed by the stewards during a live race meet and is necessary to protect the wagering public. The rule is reasonable because it has been applied successfully in other areas of licensure by the Minnesota Racing Commission.

Subpart 2 amends the language of "Duties of Presiding Official" to pertain to simulcasting, and makes minor clarifications in existing language. The rule is necessary to ensure that the duties of the Presiding Official as they relate to simulcasting are clearly defined. The rule is reasonable in that it has been imposed successfully in other racing jurisdictions.

7871.0140 (Disciplinary and Appeal Procedures). The existing language has been amended to make minor clarification changes. The rule is necessary in order to protect the wagering public and to ensure that violations of law and rule during simulcasting are handled in a fair and expeditious manner. The rule is reasonable in that it has been used successfully in other racing jurisdictions and, indeed, in other areas of licensure regulated by the Minnesota Racing Commission.

7871.0160 (Emergency Procedures). The entire existing section of rules dealing with televised racing days has been repealed and replaced with new language. However, the language is, in most respects, identical to the repealed language. The proposed language simply expands the scope of simulcasting to include teleracing facilities, alternative facilities and the problems that could occur with them. The new language was necessary in order to conform the Commission rules to the statute, and to clearly define procedures to be followed in the event of an interruption of the audio or visual signal from the host racetrack, a computer interface interruption, a wagering data transfer interruption at a teleracing facility, a complete totalisator failure at a Class B racetrack, and/or a complete totalisator failure at a host racetrack. The new language is necessary in order to clearly define procedures to be followed in each of the preceding instances. The rule is reasonable in that it provides guidance and clarification to the Class B and E licensees, and imposes no undue burden on them and has been used, at least in part, without incident during televised racing.

7873.0110 (Approval of Pari-Mutuel Pools). Subpart 3 has been amended to include the Commission's Director of Pari-Mutuels in having the authority to approve variations and changes in pari-mutuel pools and placement of pools within the program. The rule change is necessary to allow for greater flexibility on the part of the Commission in the event the Director is unavailable. The rule change is reasonable in that it imposes no undue burden on the licensee or the wagering public.

7873.0120 (Pari-Mutuel Betting). The existing rule has been amended to require the licensee to pay deficiencies in net pools for $1 as well as $2 wagers. The rule change is necessary to protect the wagering public. The rule change is reasonable in that it has been applied successfully in other areas of licensure regulated by the Minnesota Racing Commission. Subpart 2 has been stricken since this chapter now deals exclusively with live racing.

7873.0190 (Pick Six). The existing rule has been amended to provide that if one or two of the races comprising the Pick Six are canceled or one or two of the races are declared no contest, 100% of the current program's net pari-mutuel pool will be distributed among the holders of pick six tickets which correctly designate the most official winners of the remaining races comprising the pick six. It also provides that the cumulative net pool shall not be distributed, but carried over to the next consecutive racing day. The rule change is necessary in order to clarify ambiguities in the existing rule. The rule change is reasonable in that it will protect the wagering public and allow for more orderly pay outs on pick six wagers. This rule, as well as the proposed language to 7873.0198, are modeled after the Uniform Pari-Mutuel Rules adopted by the Association of Racing Commissioners International.

7873.0198 (Pick Seven). The existing rule has been amended to provide that if three or fewer of the races comprising the pick seven are canceled, or three or fewer of the races are declared no contest, 100% of the current program's net pari-mutuel pool will be distributed among holders of pick seven tickets which correctly designate the most official winners of the remaining races comprising the pick seven. It also stipulates that the cumulative net pool from previous programs shall not be distributed, but carried over to the next consecutive racing day. The change also provides that if four or more races comprising the pick seven are canceled after wagering has been accepted, a full and complete refund of the pari-mutuel tickets sold on the pick seven that day must be made. The rule change is necessary in order to clarify ambiguities in the existing rules. The rule change is reasonable in that it will protect the wagering public and allow for more orderly payouts on pick seven wagers.

7873.0300 (Simulcast Wagering). The entire section has been repealed and included in chapter 7871 which deals exclusively with simulcasting. The deletion was necessary in order to have rules which more clearly pertain to simulcast wagers and live racing wagers. The deletion is reasonable because it clarifies existing rules and makes them easier for the public and industry persons to understand.

7873.0400 (Telephone Account Wagering). Existing language in subpart 1 has been changed for the purpose of making minor clarifications and grammatical changes. Subpart 3 has been changed to allow for persons to use credit cards to open and maintain telephone wagering accounts, and to drop the requirement for a certified check to be received. The change also deletes the requirement for not divulging race results to telephone account customers during racing hours. The rule change is necessary in order to allow the licensee to remain competitive with other forms of legalized gambling. The rule change is reasonable because it imposes no undue burden on the licensee, and makes it easier for patrons to use telephone wagering accounts.

7874.0100 (Direct Deposit; Reporting Requirements, General Provisions). Subpart 3 has been changed to more clearly define the types of race meetings involved and when patrons may redeem tickets from the association or the Commission. The rule change is necessary in order to more easily serve patrons wishing to redeem tickets in light of the live meet and several simulcast programs. The rule change is reasonable in that it imposes no undue burden on the licensee, and has been used successfully in other racing jurisdictions. Subpart 4(E) has been changed to change the word "Commission" to "State". The change is necessary to more accurately define where the breakage monies go. The change is reasonable in that it imposes no undue burden on the licensee, and is merely a grammatical change. The subpart also requires that separate recapitulations be filed for each full card simulcast. The change is necessary for accurate verification by category of General and Breeders' Fund taxes. It is reasonable in that it places no undue burden on the licensee.

7875.0100 (Facilities). The scope of this chapter has been broadened to include requirements for Class E licensees. The rule is necessary to allow the Commission to regulate teleracing facilities. The rule change is reasonable in that it imposes no undue burden on the

licensee, and it has been used successfully in other jurisdictions.

7875.0200 (Equipment). New language has been added to the rule to define the scope of the rule, and to include Class E licensees in this section. Subpart 1 has been specifically changed to require a Class E licensee to provide reports and/or telecommunications equipment necessary to transmit information requested by the Commission for regulatory purposes. The rule change is necessary in order to make the requirements of this chapter inclusive of Class E licensees. The rule change is reasonable in that it imposes no undue burden on licensees, and has been used successfully in other racing jurisdictions.

7877.0100 (Class C Licenses, General Requirements). Subpart 1 has been expanded to provide that employees of Class E licensees must obtain Class C licenses from the Commission. Subpart 4 has been amended to include Teleracing Mutuels Manager under the definitions of racing officials requiring approval by the Commission. The rule change is necessary to protect the integrity of racing by insuring that all employees of teleracing facilities are licensed by the Commission, and to insure that the teleracing mutuels manager is qualified and approved by the Commission. The rule change is reasonable in that it imposes no undue burden on the licensee, and has been used successfully in other areas of licensure by the Minnesota Racing Commission.

7877.0155 (Conditions Precedent to Licensing). Section E has been amended to delete the reference to the Minnesota Bureau of Criminal Apprehension and to substitute the Minnesota Department of Public Safety, Gambling Enforcement Division. It also has been amended to include employees of Class E licensees. E(2) has been amended to include employees of Class E licensees. The rule change is necessary to allow the Commission to investigate Class E licensees and employees of Class E licensees prior to the issuance of a Class C license. The inclusion of these individuals serves to protect the public interest. The rule change is reasonable in that it imposes no undue burden on the licensee, and has been successfully applied in other areas of licensure by the Minnesota Racing Commission.

7878.0100 (Security Officers/Definitions). The rule has been amended to include Class E licensees, and to define "Division" as the Minnesota Department of Public Safety, Gambling Enforcement Division. Subpart 12 has been amended to include security officers at teleracing facilities. The rule change is necessary to provide for proper security officers at all teleracing facilities. The rule change is reasonable in that it imposes no undue burden on the licensee and has been successfully applied in other areas of licensure controlled by the Minnesota Racing Commission.

7878.0110 (Minimum Selection Standards). Subpart 1 has been amended to reflect that security officers at teleracing facilities must meet the same selection requirements as at Class B facilities. It further deletes the requirements for duplicate fingerprint cards to be furnished to the Bureau of Criminal Apprehension. The rule change is necessary in that the Commission cannot be less diligent in its regulation of security of Class E facilities than at currently licensed Class B facilities in the state. The rule change is reasonable in that it imposes no undue burden on the licensee, has been successfully applied in other areas of licensure controlled by the

Commission, and requires less paperwork in the fingerprinting of licensees.

7871.0160 (Security Cooperation). This section has been amended to include Class E licensees and to require that security, injury and incident reports regarding Class E facilities be made available for inspection by the Commission. The rule change is necessary in order to protect the public health and safety. The rule change is reasonable because it imposes no undue burden on the licensee and has been used successfully in other areas of licensure by the Minnesota Racing Commission.

7879.0100 (Qualifications and Appointment of Stewards). The section has been amended to correct an error in the title of Executive Secretary to Director of Pari-Mutuel Racing. The change is necessary to conform this rule to other rules of the Commission and the racing statutes. The change is reasonable in that it imposes no undue burdens.

7897.0100 (Prohibited Acts). Subpart 1 (Scope). This subpart has been amended to include Class E licensees. The rule change is necessary in order to insure that Class E licensees abide by all rules of the Commission. The rule change is reasonable in that it imposes no undue burden, and the Commission cannot be more lenient with one Class of license than another.

7897.0130 (Schedule of Fines). Subpart 5 (Amount of Fines) has been amended to include Class E licensees. The rule change is necessary in order to allow the Commission to impose fines on Class E licensees for infractions of Commission rules and laws. The rule change is reasonable in that it imposes no undue burden on the licensee, and has been used successfully in other areas of licensure controlled by the Commission.

REPEALER. Sections 7871.0020, S.1; 7871.0070, 7871.0090, 7871.0150, 7873.0120, S.2, and 7873.0300 are repealed as all references to televised racing days was stricken by 1991 legislation and references to simulcasting are presently included elsewhere in Commission rule.

OTHER STATUTORY REQUIREMENTS

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

The proposed amendments to the racing rules and new rules indirectly impact small businesses in that these rules may affect vendors and material suppliers in areas where teleracing facilities are located. The rule does not affect small businesses disproportionately nor does the rule prevent small businesses from participating in horse racing. The Commission considered the method to reduce the impact of the amendments and new rules on small business pursuant to Minn. Stat. 14.115, subd. 2 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. The Commission's review included evaluation of the impact of the rules not only on the racetrack but also individual owners and trainers who work at the racetrack and small business vendors

providing goods and services to the racetrack.

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 and 116.07, subd. 6 are not applicable. Section 16A.128, subd. 1 does not apply because the proposed amendments or new rules do not set any fee. Likewise, a fiscal note is not required pursuant to section 3.892 as the rule will not force any local agency or school district to incur costs.

CONCLUSION

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

RICHARD G. KRUEGER
MINNESOTA RACING COMMISSION

PAGE.

① host racetrack Article 10 §8

"alternative facility" uses a "totalizor" on-track betting (82)

"receiving racetrack" - out of state to televised at Canterbury Downs
Canterbury Downs is receiving racetrack

where does statute authorize "receiving" racetrack?
240.13 subd 5(a)(3) page 166

CLASS A FAC = (e.g. CD) racetrack.

CLASS B LICENSE = manages horse racing where betting occurs

CLASS E LICENSE = manages "televacing facility"

racing season = live horse race 1st + last of licensee in any year

240.091

4 Class E only only 1 in 7 co pre 4/1/91 (typo?)

~~Adv~~ provision for affirmative action rules 240.23 (i)
A B + D
rules = A B D + E

240.13

transmit + receive

~~aff~~

① PAGE 12 7870.0400 C: 60 DAYS prior to simulcast, submit CLASS E applicn.

② PAGE 14-16 Ⓐ CLASS E LICENSE - affr action
240.23 (i) = class A B + D only

(2) PAGE 14-16 (B) "disadvantaged + emerging small business"
undefined in law
different from 645.445
no explanation as to where from in SMA

(C) 10% construction
10%: goal hire racial minorities 2yrs eff
51.4% " " women " " "

Make 10% equity ownership avail vm
" " " " " "

"reasonable" goals for hiring disabled
"disabled" different than HRA (not as strict)
"dis + em. small 6" 25, $6M, op 1 year
"racial m"

OK ~~3. 7871.0005 apply for simulcasting 30 days before simulcast~~

3 7871.0005 (2)(F).. the "sentiment" of horsepersons ???

4. 7871.0030(3) have to have complaint window at each televising facility.
How enforce if out-of-state?

Kerry 7/1/93 memo to LC

5. 7871.0030(5) telecast to ND, Wisc- Canada?

6. Televising Manager 7871.0115.

(3)

7871.0115 Televising manager

'D' Ensure that the laws & rules governing p-m wagering are observed at the televising facility.

HOW CAN MN enforce its laws on programs from another state, and (2) how can MN ensure its laws are followed at a facility in Minot or Winnipeg?

7871.0120 Presiding Official.

Where does the presiding official sit physically? Supposing the simulcast is from Illinois to Minnesota, does PO go sit in Ill?

Who pays for all the phone stuff - the Class A, Class B or Class C licensee??

7871.0130 Whose rules apply where?

need the proposed rule

240.23

The commission has the authority in addition to all other rulemaking authority granted elsewhere in Laws 1983, Chapter 214, to promulgate rules governing (a) - (1)

MN Laws 1991, Chapter 336 (Sec. 27)
attached

end of comment period Nov 27, 1991

Notice of Intent - (11) - states rules are published in the State Reg but they are attached or no summary

SONAR 7870.0221 - they shouldn't have wasted their time just repeating the rule. weak reasoning - one sentence for alot of requirements - why are the requirements reasonable

7871.0005 subp 2 why is this criteria necessary and reasonable

7871.0010 subp 1C any other documentation pretty broad

7871.0160 - poor why reasonable why necessary to general

Minnesota Racing Commission

Adopted Permanent Rules Relating to Teleracing and Simulcast

Rules as Adopted

7869.0100 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

Subp. 6a. **Alternative facility.** "Alternative facility" means a facility licensed by a state racing or gaming authority that uses a totalizator for pari-mutuel wagering on horse races.

[For text of subps 7 to 13, see M.R.]

Subp. 13a. **Commingled (common) pool.** "Commingled (common) pool" means a pool merged electronically with those at a host racetrack or alternative facility that serves as a racetrack for the purpose of commingled pools such that payoffs at the licensed facility within this state are calculated on the total combined pari-mutuel pool of the host racetrack and all those facilities to which it broadcasts.

[For text of subps 14 to 18, see M.R.]

Subp. 19. [See repealer.]

[For text of subps 20 to 29, see M.R.]

Subp. 30. **Grounds.** "Grounds" mean the entire area used by the association to conduct a race meeting or simulcasting, including the track, grandstand, stables, concession areas, parking facilities, and teleracing facility including its parking area.

Subp. 30a. **Guest or receiving racetrack.** "Guest or receiving racetrack" means a class B licensed racetrack within the state which receives broadcasts by television of races run from a licensed racetrack outside of this state.

[For text of subps 31 and 32, see M.R.]

Subp. 32a. **Host or sending racetrack.** "Host or sending racetrack" means a licensed racetrack located outside of this state which broadcasts its races by television to a licensed racetrack within this state.

Approved by Revisor

[For text of subp 33, see M.R.]

Subp. 33a. [See repealer.]

[For test of subps 34 to 47, see M.R.]

Subp. 47a. **Presiding official.** "Presiding official" means an official of the commission appointed by the director of pari-mutuel racing, presiding over simulcasting.

[For text of subps 48 to 51, see M.R.]

Subp. 51a. **Racing day.** "Racing day" means a day assigned by the commission on which live racing is conducted.

[For text of subps 52 to 56, see M.R.]

Subp. 57. **Simulcasting.** "Simulcasting" means the televised display for pari-mutuel wagering purposes, of one or more horse races conducted at another location where the televised display occurs simultaneously with the race being televised.

[For text of subps 58 to 65, see M.R.]

Subp. 65a. [See repealer.]

[For text of subp 66 to 69, see M.R.]

7870.0180 IDENTIFICATION OF APPLICANT FOR CLASS B AND E LICENSE.

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

7870.0190 APPLICANT'S AFFIDAVIT.

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

A. That application is made for a Class B or E license to sponsor and manage live horse racing or simulcasting on which pari-mutuel betting is conducted.

[For text of items B to J, see M.R.]

7870.0200 DISCLOSURE OF OWNERSHIP AND CONTROL.

Approved
by Revisor _____

An applicant for a Class B or E license must disclose:

[For text of items A to I, see M.R.]

7870.0210 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class B or E license must make its best effort, as defined in part 7870.0030, item E, to disclose whether the applicant, any individual or other entity identified pursuant to part 7870.0200 or 7870.0270, item B or C, or with respect to Class E racing only, whether any lessor of the premises within which the teleracing facility will be located, has:

[For text of items A to H, see M.R.]

7870.0220 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT FOR CLASS B FACILITY.

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

[For text of items A to P, see M.R.]

7870.0221 DISCLOSURE FOR CLASS E FACILITY.

Subpart 1. **Development disclosures.** An application for a Class E license must disclose with regard to development of its teleracing facility:

A. the total cost of construction or renovation 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, including a description of work areas for commission members, officers, employees, and agents;

(5) interim financing;

(6) permanent financing; and

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(7) organization, administrative, accounting, and legal.

C. documentation of fixed costs;

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

E. schematic drawings;

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

(1) architect or engineer;

(2) project engineer;

(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel; and

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

Subp. 2. **Additional disclosures.** An application for a Class E license must disclose with respect to the facility at which it will sponsor and manage simulcasting:

A. the address of the location;

B. the name, address, and telephone number of the owner of the real estate upon which the building will be situated;

C. a copy of the lease, purchase option, or purchase agreement for the location;

D. a pro forma financial statement projecting attendance, handle, and revenue at the location;

E. a statement of the projected cost of operation of the location;

F. a statement of the sources of funds used to construct or renovate the location, including a copy of the loan commitment letter, loan documents or other documents setting forth the terms relating to the financing of the location, and a certification that the licensed corporation's state and local tax obligations are not in arrears;

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G. a statement of the projected revenue and taxes to be paid to the state and local government;

H. the anticipated impact on attendance, handle, and purse structure at licensed facilities conducting live racing in this state;

I. the areas from which the applicant expects to attract patrons to the location;

J. the population of the area within 35 air miles of the location;

K. the owner and description of other businesses or uses to be conducted at the location;

L. the number of floors, total square footage, and seating capacity of the facility;

M. a description of the dining accommodations and concession areas to be contained in the facility, including the types of food and beverages to be available, the seating capacity, and a description of the kitchen areas;

N. the number and location of fire escapes and emergency exits at the facility;

O. the number of restrooms to be contained in the facility;

P. a description of the general demeanor of the facility, including its decor and lighting, the type of seating to be provided, and the areas of the facility where patrons can handicap races;

Q. a description of the exterior of the facility;

R. the architectural or engineering drawings of the facility;

S. a description of the heating, air conditioning, smoke removal, and climate control equipment, and smoke and fire detectors to be used in the facility;

T. the provisions made to assure that the facility is accessible to the physically handicapped;

U. a description of the parking areas to be provided at the facility, including the name, address, and telephone number of the owner of the parking facilities; a copy of the

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lease agreements for parking; the number of parking spaces to be provided; the charge to be imposed for parking; and a description of traffic control to be provided;

V. copies of contracts relating to, and a complete description of, the pari-mutuel or totalizator equipment to be used in the facility and a statement describing the compatibility of that equipment with the equipment being used at the primary racetrack of the licensed corporation and the equipment in use at the other primary racetracks which will be transmitting their races to the facility;

W. copies of contracts relating to, and a description of, the equipment to be used for receiving transmissions of races and race-related information;

X. the name, address, and telephone number of persons supplying equipment to the facility;

Y. a description of the procedures to be used to resolve patron complaints at the facility;

Z. a description of the security plan for the facility;

AA. a copy of insurance policies applicable to the facility;

BB. a statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the facility; and

CC. a copy of building, fire, occupancy, health, and sanitation or other permits required by the state or a county, township, or municipality in which the facility is situated.

7870.0240 DISCLOSURE OF FINANCIAL RESOURCES.

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

[For text of items A to C, see M.R.]

7870.0250 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class B or E license must disclose with regard to its financial plan financial projections for any development period in each of the first or next three racing

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years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B or E 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:

[For text of items A to D, see M.R.]

An applicant must also disclose an accountant's review report of the financial projections.

7870.0260 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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

[For text of subitems (1) to (3), see M.R.]

[For text of item B, see M.R.]

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

7870.0270 DISCLOSURE OF MANAGEMENT.

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

[For text of items A to D, see M.R.]

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

[For text of subitems (1) and (2), see M.R.]

(3) specific plans to discover persons at the

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horse racing or teleracing 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;

[For text of subitems (4) to (6), see M.R.]

[For text of items F and G, see M.R.]

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

[For text of items I to M, see M.R.]

7870.0280 DISCLOSURE OF PUBLIC SERVICE.

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

7870.0290 DISCLOSURE OF ECONOMIC IMPACT.

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

[For text of items A to C, see M.R.]

7870.0300 DISCLOSURE OF PUBLIC SUPPORT AND OPPOSITION.

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

7870.0310 EFFECTS ON COMPETITION.

An applicant for a Class B or E license must disclose the effects of its sponsorship and management of horse racing or simulcasting on competitors within the horse racing and pari-mutuel industry.

7870.0320 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0330 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class B or E license the applicant must make its best effort, as defined in part 7870.0030, item E, to include the following with respect to each individual identified pursuant to part 7870.0200 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0270, item B or C:

[For text of items A and B, see M.R.]

7870.0340 CLASS B AND E LICENSE CRITERIA.

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

[For text of items A and B, see M.R.]

C. the quality of physical improvements and equipment applicant will use, including as applicable to a Class B or E facility:

[For text of subitems (1) to (14), see M.R.]

D. financial ability to sponsor and manage pari-mutuel horse racing or simulcasting successfully, including:

[For text of subitems (1) to (7), see M.R.]

[For text of item E, see M.R.]

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F. management ability of the applicant, including:

[For text of subitems (1) and (2), see M.R.]

(3) plans for human and animal health and safety, as applicable;

[For text of subitems (4) to (11), see M.R.]

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

[For text of items H and I, see M.R.]

J. effects on competition, including:

(1) number, nature, and relative location of other Class B or E licenses;

[For text of subitems (2) and (3), see M.R.]

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

7870.0350 CLASS A, B, AND E LICENSE APPLICATION DISCLOSURES.

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

[For text of items A to D, see M.R.]

7870.0360 CLASS A, B, AND E LICENSE APPLICATION SUBMISSION.

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

[For text of items A and B, see M.R.]

7870.0370 INVESTIGATION FEE FOR CLASS A, B, AND E LICENSES.

An applicant for a Class A, B, or E license must submit to the commission's designee at the time of application a certified check or bank draft to the order of the state of Minnesota in the amount of $10,000 to cover the costs of the investigation mandated by Minnesota Statutes, section 240.06, subdivision 3, or section 240.07, subdivision 2. Upon completion of the investigation, the commission must refund promptly to the applicant any amount by which the $10,000 exceeds the actual costs of investigation. If costs of the investigation exceed

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$10,000, the applicant must remit the amount of the difference by certified check or bank draft within ten days after receipt of a bill from the commission. An individual or other entity applying for Class A and B licenses simultaneously must submit only one $10,000 investigation fee.

7870.0380 CLARIFICATION OF CLASS A, B, AND E LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class A, B, and E 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.

7870.0390 CHANGES IN CLASS A, B, AND E LICENSE APPLICATIONS.

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

7870.0400 DEADLINES FOR SUBMISSION OF CLASS A, B, AND E LICENSE APPLICATIONS.

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

A. Applications for a Class A license to own and a Class B license to operate a racetrack or a Class E license to operate a teleracing facility in the seven-county metropolitan area may be submitted at any time by filing the application with the commission at its administrative offices.

B. Applications for Class A licenses to own and Class B licenses to operate racetracks or a Class E license to operate a teleracing facility outside the seven-county metropolitan area may be submitted at any time. If the commission determines that applications will be submitted for Class A licenses to own and class B licenses to operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications.

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C. Notwithstanding items A and B, applications for Class B licenses must be submitted at least 60 days before the date on which the applicant proposes to commence horse races and applications for Class E licenses must be submitted at least 60 days before the date on which the applicant proposes to commence simulcasting.

7870.0410 ORAL PRESENTATION BY APPLICANT FOR A CLASS A, B, OR E LICENSE.

The commission must provide an applicant for a Class A, B, or E 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.

7870.0420 PAYMENT OF CLASS A, B, AND E LICENSE FEES.

A Class A, B, or E license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to Minnesota Statutes, section 645.15, after issuance:

[For text of item A, see M.R.]

B. a fee for a Class B license equal to $100 for each live racing day and $50 for each day on which simulcasting is sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds the number of actual days of racing sponsored and managed by the licensee; and

C. an annual nonrefundable fee of $1,000 for a Class E license.

7870.0430 CLASS A, B, AND E LICENSE APPLICATION INFORMATION.

False or misleading information in a Class A, B, or E license application, omission of required information, or substantial deviation from representations in the application is

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cause for denial, revocation, or suspension of a license or imposition of a fine.

7870.0450 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

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

7870.0470 SECURITY MODIFICATIONS.

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

7870.0500 CONTRACT APPROVAL.

Subpart 1. **Contracts and subcontracts subject to prior commission approval.** Contracts entered into, renewed, or extended by Class A, B, D, and E licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts must include affirmative action plans establishing goals and timetables consistent with Minnesota Statutes, chapter 363. All Class A, B, D, and E licensees must submit as soon as practicable to the commission the name and the address of the contractor or subcontractor, amount and duration of the contract or subcontract, and a description of the good or service provided. The commission shall determine whether the contract or subcontract may affect the integrity of pari-mutuel racing, and the commission shall notify the licensee whether the commission intends to review and approve or disapprove the contract or subcontract. In making a determination that a contract or subcontract may affect the integrity of racing, the

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commission shall consider the amount and duration; the extent to which the contractor or subcontractor will be on the premises of the licensee; the relationship of the contract or subcontract to security; opportunity for contact between the contractor or subcontractor and horses, horsepersons, or patrons; opportunity for the contractor or subcontractor to influence the management and conduct of pari-mutuel racing; contact with admission, pari-mutuel, concession, or purse money; and whether the commission has reason to believe that the contractor or subcontractor is incompetent, financially irresponsible, or not of good character. If notified of the commission's intention to review and approve or disapprove a contract or subcontract, the licensee shall promptly submit to the commission copies of any written contracts or subcontracts as well as any documentation, records, or information the commission may request with regard to the contract. If the commission notifies a licensee of the commission's intention to review and approve or disapprove a contract or subcontract, the contract or subcontract is not valid, nor is either of the parties bound by the contract until it has been approved by the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after submission.

[For text of subps 2 to 5, see M.R.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. [See repealer.]

7870.0510 AFFIRMATIVE ACTION.

Subpart 1. **Economic opportunities for disadvantaged and emerging small business.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for disadvantaged and emerging small businesses:

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A. a minimum goal of ten percent for construction subcontract and material suppliers with disadvantaged and emerging small business enterprises during construction of the facility, and a labor and employment goal of ten percent for disadvantaged and emerging small business in on-site construction jobs;

B. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction; and

C. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction.

Subp. 2. **Economic opportunities for racial minorities.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for racial minorities:

A. a minimum goal of ten percent for hiring racial minorities in all categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

B. a minimum goal of making available up to ten percent of available equity ownership to racial minorities.

Subp. 3. **Economic opportunities for women.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for women:

A. a minimum goal of 51.4 percent for hiring women in all job categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

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B. a minimum goal of making available up to ten percent of the available equity ownership to women.

Subp. 4. **Economic opportunities for disabled.** Class A, B, D, and E licensees are required, to the extent feasible, to establish reasonable goals to assist in providing economic opportunities for disabled individuals. These affirmative action goals must be set with respect to the Class A, B, D, and E licensee's construction subcontracts/material suppliers during facility construction, on-site construction jobs, postconstruction labor force, postconstruction vendor, supplier and other contracts, and available equity ownership opportunities.

Subp. 5. **Compliance reports.** Class A, B, D, and E licensee's are required to file quarterly reports with the commission demonstrating compliance with the requirements of this part on forms provided by the commission.

Subp. 6. **Definitions.** For the purpose of this part, the following words have the meanings given them.

A. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

B. "Good faith effort" means a reasonable effort to accomplish goals and timetables.

C. "Disadvantaged and emerging small business" means a business located within the state of Minnesota which employs 25 employees or less, has not had gross sales in excess of $6,000,000 over the past three years, and has been in business at least one year.

D. "Racial minority" means:

(1) Blacks, or persons having origins in any of the Black African racial groups not of Hispanic origin;

(2) Hispanics, or persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

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(3) Asian and Pacific Islanders, or persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and

(4) American or Alaskan natives, or persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

7871.0005 APPLICATION FOR SIMULCASTING.

Subpart 1. **Submission of request for simulcasting.** A Class B or E licensee may apply for simulcasting no later than 30 days before the requested commencement of simulcasting. Each request for simulcasting must include an original and 15 copies of the following:

A. a signed request for simulcasting;

B. the dates requested, breeds of horses, types of races, number of races per program, and a list of potential host racetracks; and

C. any other documentation the licensee deems necessary to ensure a complete understanding of the request.

Subp. 2. **Approval of simulcast request.** When considering a request for simulcasting, the commission must consider the success and integrity of racing; the public health, safety and welfare; and public interest, necessity, and convenience, as well as the following factors:

A. the integrity of the licensee and the host racetracks and/or any alternative facility;

B. the financial strength of the licensee and the host racetracks and/or any alternative facility;

C. past compliance of the licensee and the host racetracks and/or any alternative facility with all laws, rules, and orders regarding pari-mutuel horse racing;

D. the licensee's market, including area, population, and demographics;

E. the impact of the simulcasting on the economic

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viability of the racetrack, including attendance and pari-mutuel handle; and

F. the sentiment of horsepersons.

Subp. 3. **Commission action.** The commission shall approve, deny, or give its qualified approval to a request for simulcasting within 30 days after the filing of the request.

Subp. 4. **Variations in simulcasting previously approved by the commission.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations in any previously approved request for simulcasting provided the variations meet the criteria in subpart 2.

7871.0010 APPLICATION FOR PARI-MUTUEL POOLS FOR SIMULCASTING.

Subpart 1. **Submission of pari-mutuel requests.** A class B or E licensee may apply for approval of pari-mutuel pools including rules governing calculation of payoffs, disposition of unclaimed tickets, pools offered based on the number of entries, prevention and failure to start, and scratches in effect at the host racetrack by submitting an original and 15 copies of the following:

[For text of item A, see M.R.]

B. a copy of the administrative rules for pari-mutuel pools in the states in which the host racetracks are located; and

C. any other documentation the commission considers necessary to ensure a complete understanding of the request.

Subp. 2. [See repealer.]

Subp. 2a. **Disposition of requests.** The commission shall approve, deny, or give its qualified approval to an application for pari-mutuel pools within 30 days after the filing of the application.

[For text of subp 3, see M.R.]

Subp. 4. **Submission of contracts.** A copy of the fully executed contracts between the licensee and the host racetracks and any alternative facility must be submitted prior to the commencement of simulcasting from each host racetrack.

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7871.0020 APPROVAL OF PARI-MUTUEL POOLS FOR SIMULCASTING.

Subpart 1. [See repealer.]

Subp. 2. **Basis for approving pari-mutuel pools.** When considering a request for approval of pari-mutuel pools for simulcasting, the commission must consider the success and integrity of racing; the public health, safety, and welfare; public interest, necessity, and convenience.

Subp. 3. **Director of pari-mutuel racing.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations and changes in pari-mutuel pools and the placement of pools in the racing program if requested by the licensee and if all changes are consistent with the criteria contained in subpart 2.

7871.0030 PARI-MUTUEL BETTING.

Subpart 1. **Minimum return.** For simulcasting approved by the commission, the minimum return on each winning wager shall be that amount which is in effect at the host track or alternative facility. The share of liability for insufficient money in the net pool may be as agreed to by the licensee and the host racetrack or alternative facility.

Subp. 2. **Commingling of funds.** With the prior approval of the commission, a Class B or E licensee may commingle pools. If the pools are commingled, wagering at the licensed racetrack and each teleracing facility must be on tabulating equipment that issues pari-mutuel tickets and is electronically linked to the totalizator at the Class A facility.

Subp. 3. **Information window.** Each association shall provide at least one information or complaint window at the licensed racetrack and at each teleracing facility where complaints may be made by members of the public. A current set of all Minnesota commission rules and all administrative rules of the state in which the host racetrack is located regarding pari-mutuel wagering shall be available for public inspection at all times when the facility is open to the public.

Subp. 4. **Deficiencies.** In the event there is insufficient

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money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 5. **Simulcasting to locations outside the state.** A licensee may, with the approval of the commission, transmit telecasts of races the licensee conducts for wagering purposes to a location outside the state. The commission may allow the licensee to commingle its wagering pools with the wagering pools at a facility located outside of this state.

7871.0080 TIP SHEETS.

Subpart 1. **Number of tip sheets.** Should a Class B or E licensee elect to allow the availability of tip sheets, not less than two independently handicapped tip sheets shall be available at a racetrack and each teleracing facility. Each tip sheet must be delivered at least one hour before post time for the first race to the commission in a manner and place as prescribed by the commission.

Subp. 2. **Previous day's sheet to be posted.** The previous race day's tip sheets and their outcome must be displayed in a conspicuous place within the grandstand area of the racetrack and within each teleracing facility for inspection by patrons.

Subp. 3. **Tip sheet vendors must be licensed.** All persons holding a tip sheet concession at the racetrack and each teleracing facility must be approved and licensed as a vendor by the commission.

7871.0100 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack licensed by the commission, including the impact on the

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pari-mutuel handle.

Subp. 2. **Requirements.** The association must meet the requirements in items A to D before conducting telephone account wagering:

[For text of items A to D, see M.R.]

Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

(2) deposit with the association no less than $100 in cash or by check, or money order, ~~or credit card~~; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

[For text of subps 4 and 5, see M.R.]

7871.0110 DISTRIBUTION OF PURSE MONEY.

Subpart 1. **Purse amounts.** Pursuant to Minnesota Statutes, section 240.13, subdivision 5, all amounts required to be withheld from all pari-mutuel pools must be allocated for purses by an association conducting simulcasting.

Subp. 2. **Escrow accounts.** Outside of the racing season, all money withheld for purses by an association pursuant to subpart 1 must be placed in interest-bearing escrow accounts and set aside for purse monies in the next racing meeting for the breed involved.

7871.0115 TELERACING MUTUEL MANAGER.

Subpart 1. **Requirement.** The Class E licensee must, with the approval of the commission, designate a teleracing mutuel manager at each teleracing facility.

Subp. 2. **Duties.** The teleracing mutuel manager shall:

A. supervise the pari-mutuel operations at the teleracing facility and provide reports as requested by the commission's director of pari-mutuels and/or pari-mutuel auditor for regulatory purposes;

B. (1) send to and receive communications from the

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mutuel manager of the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager; (2) send to and receive communications from the presiding official at the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager;

C. oversee the operation of the equipment used to commingle the pools at the teleracing facility with the pools at the Class B racetrack and suspend wagering at the teleracing facility when instructed by a presiding official if the money wagered is not being transmitted to the pari-mutuel pools at the Class B racetrack; and

D. ensure that laws and rules governing pari-mutuel wagering are observed at the teleracing facility.

7871.0120 PRESIDING OFFICIAL.

Subpart 1. **Requirement.** All simulcasting must be presided over by at least one official of the commission appointed by the director of pari-mutuel racing. During the racing season, the director may appoint one or more of the stewards to act as the presiding official. The association must reimburse the commission for each presiding official's compensation.

Subp. 2. **Communication with stewards.** A Class B or E licensee conducting simulcasting must provide telephone communication between the licensed racetrack, the host racetrack, and any alternative facility.

Subp. 3. **Communication with teleracing facilities.** A Class E licensee must designate a pari-mutuel manager at each teleracing facility for the purpose of communicating with the presiding officials at all times simulcasting is conducted.

7871.0130 AUTHORITY AND DUTIES OF PRESIDING OFFICIAL.

Subpart 1. **Authority.** A presiding official shall exercise immediate supervision, control, and regulation of simulcasting on behalf of the commission and shall be responsible only to the commission. The powers of a presiding official include:

A. the authority over all persons, licensed or unlicensed, on the grounds during simulcasting regarding all

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matters relating to racing;

B. the authority to suspend a Class C licensee for up to 90 days and/or impose a fine of up to $2,000 according to the schedule of fines in part 7897.0130;

C. the authority to eject or exclude according to applicable law, from the grounds, or any part thereof, licensed or unlicensed persons for violations of law or rule;

D. the authority to interpret and enforce commission rules and determine all questions pertaining to racing and wagering matters in conformity with applicable law and rule; and

E. the authority to request and receive assistance from commission employees, racing officials, track security, and federal, state, or local police in the investigation of possible violations of law or rule.

Subp. 2. **Duties.** In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of simulcasting, and without limiting the authority of a presiding official to perform those and all other duties listed in this part, a presiding official shall have the following specific duties and responsibilities:

[For text of item A, see M.R.]

B. To ensure that all pari-mutuel betting machines are locked no later than the start of a race.

C. To maintain daily reports of actions taken and observations made during the conduct of simulcasting. The report must contain the name of the track, the date, weather and track conditions, claims, inquiries and objections, and any unusual circumstances or conditions. The reports must be signed by a presiding official and filed with the commission within 24 hours.

[For text of item D, see M.R.]

E. Within seven days after the conclusion of a race meeting, a presiding official must submit to the commission a written report containing observations and comments concerning the conduct of the race meeting and the condition of the grounds and any appropriate recommendations for improvement.

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7871.0140 DISCIPLINARY AND APPEAL PROCEDURES.

In the event a presiding official has reasonable cause to believe that a Class C licensee has committed an act or engaged in conduct in violation of statute or the rules of the commission or which otherwise adversely affects the integrity of horse racing or pari-mutuel wagering, the procedures in Minnesota Rules, part 7897.0150, must be adhered to.

7871.0160 EMERGENCY PROCEDURES.

Subpart 1. **Interruption of the audio or visual satellite signal from the host racetrack.** In the event of an interruption of the audio or visual satellite signal from the host racetrack, the Class B racetrack's mutuel manager must immediately:

A. notify the host track of the loss of the signal;

B. establish a telephone linkup with the host track announcer to the public address system at the Class B racetrack. Wagering may be accepted on the balance of the program and subsequent programs; and

C. establish a telephone linkup with the host track announcer to the public address system at a teleracing facility upon notification from the teleracing facility that the audio or visual signal has been interrupted. The teleracing facility may continue to accept wagering on the balance of the program and subsequent programs.

Subp. 2. **Computer interface interruption.**

A. Between Class B facility and host racetrack:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the host racetrack, the Class B racetrack's mutuel manager must notify the totalizator representatives at the host racetrack and request additional time prior to the start of the race to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the host racetrack shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the

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following procedure:

(a) the Class B racetrack's totalizator operator must inform the host racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send that information via a facsimile machine to the host racetrack's totalizator operator;

(b) the stewards at the host racetrack and a presiding official at the Class B racetrack must be notified when the procedure has been completed in order to declare the race official; and

(c) the Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the stewards were notified, and for what time period prices were delayed; and

(iv) a worksheet from the host racetrack signed by their totalizator representative, the host racetrack's mutuel manager, and the state representative from the host racetrack's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate

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basis (no commingling) or manually merged on a commingled pools basis.

B. Between Class B racetrack and alternative facility:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the alternative facility, the Class B racetrack's mutuels manager must notify the totalizator representatives at the alternative facility and request additional time to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the alternative facility shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the following procedures:

(a) The Class B racetrack's totalizator operator must inform the alternative facility's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send the information via a facsimile machine to the alternative facility's totalizator operator;

(b) A presiding official at the Class B racetrack must be notified when the procedure has been completed in order to calculate the official prices;

(c) The Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the alternative facility was notified,

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and for what time period prices were delayed; and

(iv) a worksheet from the alternative facility signed by their totalizator representative, the alternative facility's mutuel manager, and the state representative from the alternative facility's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs prior to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate basis (no commingling) or manually merged on a commingled pools basis.

Subp. 3. **Wagering data transfer interruption at teleracing facility.**

A. In the event the teleracing facility fails to transfer its wagering data to the Class B racetrack, the teleracing facility's mutuel manager must contact the Class B racetrack's totalizator representative to allow for a retransmission of the data.

B. If a second data transfer fails, the Class B racetrack's totalizator representative shall notify a presiding official that the transfer has failed and that if time permits the pools must be merged manually. A manual merge shall be accomplished by the following procedure.

(1) The teleracing facility mutuel manager must inform the Class B racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on losing wagers in the pool. The teleracing facility's mutuel manager shall send that information via a facsimile machine to the totalizator operator at the Class B facility.

(2) A presiding official at the Class B facility and the designated person at the teleracing facility must be

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notified when the procedure has been completed to calculate the official prices.

(3) The Class B licensee's totalizator representative must prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(a) a copy of the pool print report prior to the failure of the transfer of data;

(b) a copy of the final pools print report;

(c) a brief statement as to where the failure occurred, when a presiding official was notified, and for what time period prices were delayed; and

(d) a worksheet from the Class B racetrack signed by its totalizator representative showing total dollars wagered in each pool and the final prices.

C. In the event time does not permit a manual merge, the amounts wagered at the teleracing facility on that race shall be refunded.

D. The teleracing facility may continue to accept wagering on the balance of the program on a manually merged basis with the Class B racetrack upon permission of a presiding official at the Class B racetrack. If permission is not granted, all wagers on the current race and advance wagering must be refunded.

E. Any wager on subsequent programs from the Class B racetrack prior to the reestablishment of the transfer of wagering data from the teleracing facility to the Class B facility must be canceled.

Subp. 4. **Complete totalizator failure at Class B racetrack.**

A. In the event the Class B racetrack's totalizator fails, all money wagered on the race in which the totalizator failed and all advance wagers must be refunded. Any wagering on the balance of the program or subsequent programs may not be accepted until the totalizator is operational to the

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satisfaction of a presiding official.

B. The host racetrack's mutuel manager must be notified of the failure and all wagers at the Class B racetrack on the race in which the failure occurred and all advance wagers shall be taken out of the pools at the host racetrack.

C. The Class B facility's mutuel manager shall notify all teleracing facility mutuel managers of the totalizator failure and instruct them to refund all current and advance race wagers.

Subp. 5. **Complete totalizator failure at the host racetrack.**

A. In the event the host racetrack's totalizator fails, the Class B racetrack may refund amounts wagered, or will instruct the Class B racetrack's totalizator representative to extract the amount wagered from the Class B facility into the commingled pools for the race during which the system failure occurred and any advance wagers made on the balance of the program, for the purpose of calculating separate pools on the amounts wagered at the Class B racetrack.

B. The Class B racetrack may continue to accept wagers on the balance of the program on a separate pool basis, may reestablish commingled pool wagering if the host racetrack's totalizator failure has been corrected, or may refund the amounts wagered.

C. The Class B mutuel manager shall notify and instruct teleracing facility mutuel managers to follow the appropriate procedures under item A.

7873.0110 APPROVAL OF PARI-MUTUEL POOLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Live racing days; director of pari-mutuel racing authority.** The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve variation and changes in the pari-mutuel pools previously approved by the commission, placement of pools in the program, and simulcasts requested by the licensee that meet the

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criteria in subpart 2. The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve changes in the placement of pari-mutuel pools in the program, the addition of approved pari-mutuel pools to the program, and changes in simulcasting requests by the licensee that meet the criteria in subpart 2. Before approving a change in the pick six, pick seven, twin trifecta, and super-tri wagering pools, the director of pari-mutuel racing or the commission's director of pari-mutuels must consult with the commission's executive committee.

7873.0120 PARI-MUTUEL BETTING.

Subpart 1. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 2. [See repealer.]

7873.0190 PICK SIX.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick six.** In the event one or two of the races comprising the pick six are canceled for any reason, or in the event one or two of the races comprising the pick six is declared as no contest by the stewards, 100 percent of the current program's net pari-mutuel pool shall be distributed among the holders of pick six tickets which correctly designate the most official winners of the remaining races comprising the pick six. The cumulative net pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of three or more races comprising the pick six pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick six on that day. One hundred percent of the remaining amount in the pick six pari-mutuel pool shall be carried over and included in the pick

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six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0198 PICK SEVEN.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick seven.** In the event three or fewer of the races comprising the pick seven is canceled for any reason, or in the event three or fewer of the races comprising the pick seven is declared as no contest by the stewards, 100 percent of the current program's net pari-mutuel pool shall be distributed among the holders of pick seven tickets which correctly designate the most official winners of the remaining races comprising the pick seven. The cumulative pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of four or more races comprising the pick seven pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick seven on that day. One hundred percent of the remaining amount in the pick seven pari-mutuel pool shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0400 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack licensed by the commission, including the impact on the pari-mutuel handle.

[For text of subp 2, see M.R.]

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Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

(2) deposit with the association no less than $100 in cash or by check, or money order, ~~or credit card~~; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

[For text of subps 4 and 5, see M.R.]

7874.0100 GENERAL PROVISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Payment of unredeemed tickets.** After reporting to the commission, pursuant to Minnesota Statutes, section 240.13, and not later than 100 days after the end of a race meeting, an association must remit to the commission an amount equal to the total value of unredeemed tickets from the race meeting in the same manner as in subpart 2. For the purpose of this subpart, three race meetings are defined:

A. the period during which live racing occurs at the racetrack, in season;

B. the period during which no live racing occurs at the racetrack, off-season; and

C. the period beginning in either item A or B and ending in the other period.

Subp. 4. **Recapitulation.** On each day that deposits are made by the association, a report must be filed with the commission containing the following recapitulation:

[For text of items A to D, see M.R.]

E. state's share of breakage; and

[For text of item F, see M.R.]

Separate recapitulations must be filed for each full card simulcast, whether at the racetrack or a teleracing facility.

7875.0100 FACILITIES.

Subpart 1. **Scope.** The purpose of this chapter is to

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define criteria for facilities for Class B and E licensees, as applicable.

Subp. 1a. **Facilities.** Each association must include a receiving barn, detention facility, paddock, room for jockeys and drivers, lighting, stabling, restrooms, medical facilities, racing officials' space, viewing room, commission office and parking space, space for the Bureau of Criminal Apprehension, and complaint desk. The facilities must meet the needs of patrons, officials, horsepersons, other persons on the premises, and horses.

[For text of subps 2 to 5, see M.R.]

7875.0200 EQUIPMENT.

Subpart 1. **Scope.** The purpose of this chapter is to define criteria for equipment for Class B and E licensees, as applicable.

Subp. 1a. **Equipment.** Each association must include equipment, devices, or apparatus necessary to start, time, film or tape, and photograph the finish of every race. Equipment necessary to view photographs, films, and tapes of each race must be provided. Each association must include pari-mutuel equipment, devices, or apparatus necessary to sell and cash tickets and calculate and display odds. An association also must include adequate internal communications equipment. Each Class E licensee must provide reports and/or telecommunications equipment at the facility necessary to transmit information requested by the commission for regulatory purposes.

[For text of subps 2 to 9, see M.R.]

7877.0100 GENERAL REQUIREMENTS.

Subpart 1. **Scope.** Except as otherwise provided by rule, any person whose work, in whole or in part, is conducted at a licensed racetrack or teleracing facility shall first obtain a Class C license from the commission.

[For text of subp 2, see M.R.]

7877.0110 PROCEDURE FOR OBTAINING CLASS C LICENSE.

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[For text of subps 1 to 3, see M.R.]

Subp. 4. **Racing officials.** Each association shall submit to the commission for its approval or disapproval the names of all persons whom the association has selected as racing officials, and other employees whose duties relate to the actual running of races. The list shall include, where applicable, the following racing officials:

[For text of items A to K, see M.R.]

L. mutuels manager or teleracing mutuels manager;

[For text of items M to V, see M.R.]

The list of racing officials' names shall be submitted to the commission in writing at least 30 days prior to the opening of each race meeting.

The association shall be responsible for filing a complete application for a Class C license with respect to each nominee who has not been previously licensed by the commission as a racing official.

The commission may request any person whose name is proposed as a racing official to submit to a physical examination and to forward the results of said examination to the commission. The request shall be made only where there is a reasonable basis for suggesting that the applicant's physical condition would hinder or prevent him or her from performing the duties of a racing official.

The commission shall act on the association's list of officials at a meeting of the commission. If commission staff recommends disapproval of an official, the association shall be notified of that recommendation in advance of the commission's meeting.

Under no circumstances shall an identifier, placing judge, or patrol judge be approved by the commission unless he or she has satisfactorily passed an optical examination within 90 days prior to approval evidencing 20-20 vision (corrected) and the ability to distinguish colors.

7877.0155 CONDITIONS PRECEDENT TO LICENSING.

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Acceptance of a Class C license, including a temporary or emergency license, shall mean that the licensee consents and agrees to the following conditions:

[For text of items A to D, see M.R.]

E. The licensee will submit to inspections and searches as hereinafter provided:

(1) When investigating for violations of law or rules upon the grounds of an association, the commission or the stewards may designate the Minnesota Department of Public Safety, Gambling Enforcement Division or another appropriate law enforcement agency as having authority to conduct searches of any Class C licensee, or any employee or agent of a Class A, B, D, or E licensee under the commission's jurisdiction. This authority shall extend to searches and inspections of persons and personal effects in and about grounds.

(2) Each applicant for a Class C license and each employee or agent of a Class A, B, or E licensee consents to such searches and inspections, and waives all claims or possible actions for damages that he or she believes he or she may have suffered in connection with any such search or inspection.

[For text of items F to H, see M.R.]

7878.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointing authority.** "Appointing authority" means the holder of a Class A, B, D, or E license issued by the commission.

[For text of subps 3 to 7, see M.R.]

Subp. 7a. **Division.** "Division" means the Division of Gambling Enforcement in the state Department of Public Safety.

[For text of subps 8 to 10, see M.R.]

Subp. 11. **Security officer.** "Security officer" means a person whose principal duty is the protection of persons or property at a racetrack or teleracing facility licensed by the commission.

7878.0110 MINIMUM SELECTION STANDARDS.

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Subpart 1. **Applicant must meet selection standards.** A person eligible to be licensed by the commission as a security officer must be an employee of a Class A, B, D, or E licensee and shall meet the following minimum selection standards prior to being appointed a security officer. The appointing authority may certify that the applicant has already completed certain of these standards and provide documentation to that effect pursuant to subpart 2. In all cases, the security officer must:

[For text of items A to D, see M.R.]

E. provide fingerprint cards to the commission;

[For text of items F to H, see M.R.]

[For text of subp 2, see M.R.]

7878.0160 SECURITY COOPERATION.

Subpart 1. **Security officers must cooperate with law enforcement agencies.** Class A, B, D, and E licensees and all security officers must cooperate fully with federal, state, and local law enforcement agencies with jurisdiction to enforce criminal laws at horse racing facilities, and must report promptly all crimes suspected, investigated, or prevented at a licensed racetrack to the Division of Gambling Enforcement. All security, injury, and incident reports with regard to a Class E facility must be available for inspection by the commission.

[For text of subp 2, see M.R.]

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointment and approval of stewards.** The following procedures must be observed in the appointment of stewards:

[For text of item A, see M.R.]

B. In the event a steward becomes ill, resigns, or is unable to serve for any reason, the remaining stewards shall nominate a temporary steward to the commission for approval. In emergencies, the director of pari-mutuel racing may approve appointment of a temporary steward.

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7897.0100 PROHIBITED ACTS.

Subpart 1. **Scope.** The following activities are considered prohibited acts when applicable to Class A, B, C, D, or E licensees.

[For text of subps 2 to 19, see M.R.]

7897.0130 SCHEDULE OF FINES.

[For text of subps 1 to 4, see M.R.]

Subp. 5. **Amount of fines.** The fine for a serious violation of law or rule shall be $500 to $5,000. The fine for other violations shall not exceed $499. The commission may impose a fine in excess of $5,000 but no more than $200,000 against a Class A, B, D, or E licensee as necessary to enforce parts 7870.0430, 7870.0450 to 7870.0470, or 7870.0500.

[For text of subp 6, see M.R.]

REPEALER. Minnesota Rules, parts 7869.0100, subparts 19, 33a, and 65a; 7870.0500, subparts 6, 7, 8, 9, and 10; 7871.0010, subpart 2; 7871.0020, subpart 1; 7871.0070; 7871.0090; 7871.0150; 7873.0120, subpart 2; and 7873.0300, are repealed.

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DEC 23 1991

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

Office of the Revisor of Statutes

Administrative Rules

TITLE: Adopted Permanent Rules Relating to Teleracing and Simulcast

AGENCY: Minnesota Racing Commission

MINNESOTA RULES: Chapters 7869; 7870; 7871; 7873; 7874; 7875; 7877; 7878; 7879; and 7897

The attached rules are approved for filing with the Secretary of State

Paul Marinac

Paul M. Marinac
Assistant Deputy Revisor

no proposed rule

MINNESOTA RACING COMMISSION
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Bloomington, Minnesota 55439
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Telephone: 612-496-7739 Fax: 612-496-7756

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Telephone: 612-496-7753 Fax: 612-496-7762

December 19, 1991

12-20-91

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

Dear Patty:

At its meeting on Thursday, December 19, 1991, the Minnesota Racing Commission formally adopted rules governing Class E (teleracing) licenses, simulcasting, and pari-mutuel betting. In accordance with that adoption, enclosed you will find the following documents:

1. Three 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 one letter received regarding the rules, and the MRC's response to that letter;

9. A copy of the Notice of Proposed Adoption of a Rule With and Without a Public Hearing;

10. A copy of the Certificate of Commission's Authorizing Resolution;

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

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 the 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

SB/
encl.

cc: Richard Krueger

Rules as Proposed

3300.0500 OPERATION PROCEDURES.

Subpart 1. **Regular program.** Youths who are at least 14 years of age but less than 22 years of age at the time ~~they are to begin employment under the program established by the act~~ of application are eligible for program ~~employment~~ participation. ~~Approximately 60~~ Ninety percent of the youths hired ~~should~~ must be from families which meet the definition for economically disadvantaged ~~as established under Public Law Number 97-300, section~~ 4 under the federal Job Training Partnership Act. ~~If there are insufficient eligible youths from economically disadvantaged families available for employment to meet this goal within an area under the jurisdiction of a contractor which has received an allocation under part 3300.0300, and the contractor certifies such insufficiency to the department and the department concurs, the criteria shall be waived with respect to the funds allocated to the area.~~ Hereinafter, this portion of the program is referred to as the "regular program."

[For text of subps 2a to 6, see M.R.]

Minnesota Racing Commission

Proposed Permanent Rules Relating to Teleracing and Simulcast

Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules With a Public Hearing if 25 or More Persons Request a Hearing With Respect to the Proposed Amendments, and Notice of Intent to Cancel Hearing on the Proposed Rules if Fewer Than 25 Persons Request a Hearing With Respect to the Proposed Rules

I. EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Racing Commission (hereinafter "Commission") hereby gives notice of its intent to adopt rules without a public hearing under the non-controversial rulemaking procedure of *Minnesota Statutes*, section 14.22 to 14.28 (1990). However, in the event 25 or more persons request a hearing with respect to the proposed amendments to the rules, thereby necessitating that one be held pursuant to *Minnesota Statutes*, section 14.25 (1990), and in order to expedite the rulemaking process should that occur, the Commission is at the same time giving notice of a hearing on the proposed rules pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1990). The hearing on the proposed rules will, of course, be cancelled if 25 or more persons do not request that a hearing be held with respect to the proposed rules. With the comment period closing on November 27, 1991, there will be 14 days before the scheduled hearing date. This 14-day period will give interested persons time to contact the Commission to find out whether the hearing will be held or cancelled.

II. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission (hereinafter "Commission") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Commission has determined that the proposed rules will be non-controversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28 (1990).

Interested persons shall have until November 27, 1991 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed to the rules by the comment. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Commission and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request **in writing** during the comment period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Commission be informed of the specific portion of the rules on which a hearing is being requested at the time that the hearing request is made. This will enable the Commission to limit the hearing, if one is held, to the specific issues of concern. A public hearing will be held if 25 or more persons submit **in writing** requests for a hearing on the proposed rules or a portion thereof by November 27, 1991. If a hearing is required, it will be held in accordance with the provisions of *Minnesota Statutes*, sections 14.14 to 14.20 (1990), and the hearing notice provided before.

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

Richard G. Krueger
Minnesota Racing Commission
Suite 201
11000 West 78th Street
Eden Prairie, Minnesota 55344

The statutory authority of the Commission to adopt the proposed rules is contained in *Minnesota Statutes*, section 240.23 (1990) and *Minnesota Laws 1991*, ch. 336.

The proposed rules will be published in the *State Register* on October 28, 1991, and a copy of the rules may be obtained from the Commission by writing to Richard G. Krueger at the address listed above.

A **STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Commission by contacting Richard G. Krueger at the address listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes*, section 14.11 (1991).

The Commission is subject to *Minnesota Statutes*, section 14.115 (1990), regarding small business considerations in rulemaking. The Commission's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2 (1990), for reducing the impact of the proposed rules on small businesses are addressed in the **STATEMENT OF NEED AND REASONABLENESS.**

Upon completion of proposed rules without a public hearing, the rules as proposed, this notice, the **STATEMENT OF NEED AND REASONABLENESS,** all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the rules as adopted should submit a written request to Richard G. Krueger at the address listed above.

III. NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING ON THE PROPOSED RULES IF 25 OR MORE PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE-CAPTIONED RULES WITHIN THE COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON DECEMBER 11, 1991, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned rule will be held pursuant to *Minnesota Statutes*, sections 14.14 to 14.20 (1990), on December 11, 1991, commencing at 9:00 a.m. until 4:30 p.m., or until all interested persons have been heard, in the First Floor Conference Room, Olympic Place, 7825 Washington Avenue South, Bloomington, Minnesota.

The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Peter Erickson. Judge Erickson can be reached at the Office of Administrative Hearings, 500 Flour Exchange Building, 310 South France Avenue, Minneapolis, Minnesota 55415, telephone number (612) 341-7615.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge. Unless a longer period, not to exceed 20 calendar days, is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. All written materials submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. Written material received during this period will be available for review at the Office of Administrative Hearings. The Commission and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rules hearing procedure is governed by *Minnesota Statutes*, section 14.14 to 14.20 (1990), and by *Minnesota Rules*, parts 1400.0200 to 1400.1200 (1991). Questions about procedure may be directed to the Administrative Law Judge.

The proposed rules will be published in the *State Register* issue of October 28, 1991, and a copy of the rules may be obtained from the Commission by writing Richard G. Krueger at the address listed above in Part II of this Notice.

The statutory authority of the Commission to adopt the proposed rules is contained in *Minnesota Statutes*, section 240.23 (1990) and *Laws Minnesota 1991*, ch. 336.

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.

The proposed rules may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore encouraged to participate in the process.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Commission. Questions regarding this requirement may be directed to the Ethical Practices Commission at 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone number (612) 296-5148.

NOTICE IS HEREBY GIVEN that a **STATEMENT OF NEED AND REASONABLENESS** is now available for review at the Commission and at the Office of Administrative Hearings. This **STATEMENT OF NEED AND REASONABLENESS** includes a summary of all the evidence which the Commission anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. The statement of need and reasonableness may be reviewed at the Commission by contacting Richard G. Krueger at the address listed above in part II of this Notice or it may be reviewed at the Office of Administrative Hearings, and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may require notification of the date on which any rules were adopted and filed with the Secretary of State. The Notice must be mailed on the same day that the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Commission at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under *Minnesota Statutes*, section 14.11 (1990).

The Commission is subject to *Minnesota Statutes*, section 14.115 (1990), regarding small business considerations in rulemaking. The Commission's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2 (1990), for reducing the impact of the proposed rules on small businesses are addressed in the statement of need and reasonableness.

IV. NOTICE OF INTENT TO CANCEL THE HEARING WITH RESPECT TO THE RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED WITH RESPECT TO THE PROPOSED RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether a hearing noticed in Part III above will be held, please contact Richard G. Krueger at the address listed above in part II of the Notice before November 15, 1991, and provide your name, address, and telephone number. You will be notified after November 27, 1991, if the hearing has been cancelled. You may also call Mr. Krueger at (612) 341-7555 after November 27, 1991, for oral confirmation regarding the scheduled hearing.

Dated: 9 October 1991

Richard G. Krueger
Minnesota Racing Commission

Rules as Proposed

7869.0100 DEFINITIONS.

[For text of subps 1 to 6, see M.R.]

Subp. 6a. **Alternative facility.** "Alternative facility" means a facility licensed by a state racing or gaming authority that uses a totalizator for pari-mutuel wagering on horse races.

[For text of subps 7 to 13, see M.R.]

Subp. 13a. **Commingled (common) pool.** "Commingled (common) pool" means a pool merged electronically with those at a host racetrack or alternative facility that serves as a racetrack for the purpose of commingled pools such that payoffs at the licensed facility within this state are calculated on the total combined pari-mutuel pool of the host racetrack and all those facilities to which it broadcasts.

[For text of subps 14 to 18, see M.R.]

Subp. 19. [See repealer.]

[For text of subps 20 to 29, see M.R.]

Subp. 30. **Grounds.** "Grounds" mean the entire area used by the association to conduct a race meeting or simulcasting, including the track, grandstand, stables, concession areas, ~~and~~ parking facilities, and teleracing facility including its parking area.

Subp. 30a. **Guest or receiving racetrack.** "Guest or receiving racetrack" means a class B licensed racetrack within the state which receives broadcasts by television of races ~~by television~~ run from a licensed racetrack outside of this state.

[For text of subps 31 and 32, see M.R.]

Subp. 32a. **Host or sending racetrack.** "Host or sending racetrack" means a licensed racetrack located outside of this state which broadcasts its races by television to a licensed racetrack within this state.

[For text of subp 33, see M.R.]

Subp. 33a. [See repealer.]

[For test of subps 34 to 47, see M.R.]

Subp. 47a. **Presiding official.** "Presiding official" means an official of the commission appointed by the director of pari-mutuel racing, presiding over ~~races conducted on approved televised racing days~~ simulcasting.

[For text of subps 48 to 51, see M.R.]

Subp. 51a. **Racing day.** "Racing day" means a day assigned by the commission on which live racing is conducted. ~~Racing day includes a televised racing day.~~

[For text of subps 52 to 56, see M.R.]

Subp. 57. ~~**Simulcast**~~ **Simulcasting.** "~~Simulcast~~ Simulcasting" means ~~a~~ the televised ~~race transmitted or received by an association on a racing day when~~ display for pari-mutuel wagering ~~is~~ purposes, of one or more horse races conducted at another location where the televised display occurs simultaneously with the race being televised.

[For text of subps 58 to 65, see M.R.]

Subp. 65a. [See repealer.]

[For text of subp 66 to 69, see M.R.]

7870.0180 IDENTIFICATION OF APPLICANT FOR CLASS B AND E LICENSE.

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

7870.0190 APPLICANT'S AFFIDAVIT.

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

A. That application is made for a Class B or E license to sponsor and manage live horse racing or simulcasting on which pari-mutuel betting is conducted.

[For text of items B to J, see M.R.]

7870.0200 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class B or E license must disclose:

[For text of items A to I, see M.R.]

7870.0210 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class B or E license must make its best effort, as defined in part 7870.0030, item E, to disclose whether the applicant ~~or~~, any individual or other entity identified pursuant to part 7870.0200 or 7870.0270, item B or C, or with respect to Class E racing only, whether any lessor of the premises within which the teleracing facility will be located, has:

[For text of items A to H, see M.R.]

7870.0220 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT FOR CLASS B FACILITY.

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

[For text of items A to P, see M.R.]

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7870.0221 DISCLOSURE FOR CLASS E FACILITY.

Subpart 1. **Development disclosures.** An application for a Class E license must disclose with regard to development of its teleracing facility:

A. the total cost of construction or renovation 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, including a description of work areas for commission members, officers, employees, and agents;

(5) interim financing;

(6) permanent financing; and

(7) organization, administrative, accounting, and legal.

C. documentation of fixed costs;

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

E. schematic drawings;

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

(1) architect or engineer;

(2) project engineer;

(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel; and

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

Subp. 2. **Additional disclosures.** An application for a Class E license must disclose with respect to the facility at which it will sponsor and manage simulcasting:

A. the address of the location;

B. the name, address, and telephone number of the owner of the real estate upon which the building will be situated;

C. a copy of the lease, purchase option, or purchase agreement for the location;

D. a pro forma financial statement projecting attendance, handle, and revenue at the location;

E. a statement of the projected cost of operation of the location;

F. a statement of the sources of funds used to construct or renovate the location, including a copy of the loan commitment letter, loan documents or other documents setting forth the terms relating to the financing of the location, and a certification that the licensed corporation's state and local tax obligations are not in arrears;

G. a statement of the projected revenue and taxes to be paid to the state and local government;

H. the anticipated impact on attendance, handle, and purse structure at licensed facilities conducting live racing in this state;

I. the areas from which the applicant expects to attract patrons to the location;

J. the population of the area within 35 air miles of the location;

K. the owner and description of other businesses or uses to be conducted at the location;

L. the number of floors, total square footage, and seating capacity of the facility;

M. a description of the dining accommodations and concession areas to be contained in the facility, including the types of food and beverages to be available, the seating capacity, and a description of the kitchen areas;

N. the number and location of fire escapes and emergency exits at the facility;

O. the number of restrooms to be contained in the facility;

P. a description of the general demeanor of the facility, including its decor and lighting, the type of seating to be provided, and the areas of the facility where patrons can handicap races;

Q. a description of the exterior of the facility;

R. the architectural or engineering drawings of the facility;

S. a description of the heating, air conditioning, smoke removal, and climate control equipment, and smoke and fire detectors to be used in the facility;

T. the provisions made to assure that the facility is accessible to the physically handicapped;

U. a description of the parking areas to be provided at the facility, including the name, address, and telephone number of the owner of the parking facilities; a copy of the lease agreements for parking; the number of parking spaces to be provided; the charge to be imposed for parking; and a description of traffic control to be provided;

V. copies of contracts relating to, and a complete description of, the pari-mutuel or totalizator equipment to be used in the facility and a statement describing the compatibility of that equipment with the equipment being used at the primary racetrack of the licensed corporation and the equipment in use at the other primary racetracks which will be transmitting their races to the facility;

W. copies of contracts relating to, and a description of, the equipment to be used for receiving transmissions of races and race-related information;

X. the name, address, and telephone number of persons supplying equipment to the facility;

Y. a description of the procedures to be used to resolve patron complaints at the facility;

Z. a description of the security plan for the facility;

AA. a copy of insurance policies applicable to the facility;

BB. a statement indicating whether the applicant has entered into an agreement for the simulcasting of races to the facility; and

CC. a copy of building, fire, occupancy, health, and sanitation or other permits required by the state or a county, township, or municipality in which the facility is situated.

7870.0240 DISCLOSURE OF FINANCIAL RESOURCES.

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

[For text of items A to C, see M.R.]

7870.0250 DISCLOSURE OF FINANCIAL PLAN.

An applicant for a Class B or E license must disclose with regard to its financial plan financial projections for any development period in each of the first or next three racing years, with separate schedules based upon the number of racing days and types of pari-mutuel betting the applicant requires to break even and the optimum number of racing and types of betting applicant seeks each year. The commission will utilize financial projections in deciding whether to issue Class B or E 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:

[For text of items A to D, see M.R.]

An applicant must also disclose an accountant's review report of the financial projections.

7870.0260 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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

[For text of subitems (1) to (3), see M.R.]

[For text of item B, see M.R.]

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

7870.0270 DISCLOSURE OF MANAGEMENT.

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

[For text of items A to D, see M.R.]

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

[For text of subitems (1) and (2), see M.R.]

(3) specific plans to discover persons at the horse racing or teleracing 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;

[For text of subitems (4) to (6), see M.R.]

[For text of items F and G, see M.R.]

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

[For text of items I to M, see M.R.]

7870.0280 DISCLOSURE OF PUBLIC SERVICE.

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

7870.0290 DISCLOSURE OF ECONOMIC IMPACT.

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

[For text of items A to C, see M.R.]

7870.0300 DISCLOSURE OF PUBLIC SUPPORT AND OPPOSITION.

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

7870.0310 EFFECTS ON COMPETITION.

An applicant for a Class B or E license must disclose the effects of its sponsorship and management of horse racing or simulcasting on competitors within the horse racing and pari-mutuel industry.

7870.0320 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

7870.0330 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class B or E license the applicant must make its best effort, as defined in part 7870.0030, item E, to include the following with respect to each individual identified pursuant to part 7870.0200 as an applicant, partner, director, officer, other policymaker or holder of a direct or indirect record or beneficial ownership interest or other voting interest or control of five percent or more in the applicant and each individual identified pursuant to part 7870.0270, item B or C:

[For text of items A and B, see M.R.]

7870.0340 CLASS B AND E LICENSE CRITERIA.

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

[For text of items A and B, see M.R.]

C. the quality of physical improvements and equipment applicant will use, including as applicable to a Class B or E facility:

[For text of subitems (1) to (14), see M.R.]

D. financial ability to sponsor and manage pari-mutuel horse racing or simulcasting successfully, including:

[For text of subitems (1) to (7), see M.R.]

[For text of item E, see M.R.]

F. management ability of the applicant, including:

[For text of subitems (1) and (2), see M.R.]

(3) plans for human and animal health and safety, as applicable;

[For text of subitems (4) to (11), see M.R.]

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

[For text of items H and I, see M.R.]

J. effects on competition, including:

(1) number, nature, and relative location of other Class B or E licenses;

[For text of subitems (2) and (3), see M.R.]

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

7870.0350 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION DISCLOSURES.

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

[For text of items A to D, see M.R.]

7870.0360 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION SUBMISSION.

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

[For text of items A and B, see M.R.]

7870.0370 INVESTIGATION FEE FOR CLASS A ~~AND~~, B, AND E LICENSES.

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

7870.0380 CLARIFICATION OF CLASS A ~~AND~~, B, AND E LICENSE APPLICATION REQUIREMENTS.

The commission must designate an individual who will clarify Class A ~~and~~, B, and E 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.

7870.0390 CHANGES IN CLASS A ~~AND~~, B, AND E LICENSE APPLICATIONS.

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

7870.0400 DEADLINES FOR SUBMISSION OF CLASS A ~~AND~~, B, AND E LICENSE APPLICATIONS.

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

A. Applications for a Class A license to own and a Class B license to operate a racetrack or a Class E license to operate a teleracing facility in the seven-county metropolitan area may be submitted at any time by filing the application with the commission at its administrative offices.

B. Applications for Class A licenses to own and Class B licenses to operate racetracks or a Class E license to operate a

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teleracing facility outside the seven-county metropolitan area may be submitted at any time. If the commission determines that applications will be submitted for Class A licenses to own and class B licenses to operate racetracks outside the seven-county metropolitan area which will compete significantly with each other, the commission must establish a deadline for submission of applications.

C. Notwithstanding items A and B, applications for Class B licenses must be submitted at least 60 days before the date on which the applicant proposes to commence horse races and applications for Class E licenses must be submitted at least 60 days before the date on which the applicant proposes to commence simulcasting.

7870.0410 ORAL PRESENTATION BY APPLICANT FOR A CLASS A ~~OR~~, B, OR E LICENSE.

The commission must provide an applicant for a Class A ~~or~~, B, or E 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.

7870.0420 PAYMENT OF CLASS A ~~AND~~, B, AND E LICENSE FEES.

A Class A ~~or~~, B, or E license does not become effective until the commission receives a certified check or bank draft to the order of the state of Minnesota in the amount of the license fee as follows and is void if the license fee is not received within ten days, as computed pursuant to *Minnesota Statutes*, section 645.15, after issuance:

[For text of item A, see M.R.]

B. a fee for a Class B license equal to $100 for each live racing day and $50 for each ~~televised racing~~ day on which simulcasting is sought in the license application. The commission must refund promptly to the licensee any amount by which the fee paid exceeds the number of actual days of racing sponsored and managed by the licensee; and

C. an annual nonrefundable fee of $1,000 for a Class E license.

7870.0430 CLASS A ~~AND~~, B, AND E LICENSE APPLICATION INFORMATION.

False or misleading information in a Class A ~~or~~, B, or E 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.

7870.0450 CONSTRUCTION, EXPANSION, EXTENSION, ALTERATION, OR REMODELING OF FACILITIES.

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

7870.0470 SECURITY MODIFICATIONS.

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

7870.0500 CONTRACT APPROVAL.

Subpart 1. **Contracts and subcontracts subject to prior commission approval.** Contracts entered into, renewed, or extended by Class A, B, ~~and~~ D, and E licensees and their contractors for goods and services are subject to prior approval by the commission. Contracts must include affirmative action plans establishing goals and timetables consistent with *Minnesota Statutes*, chapter 363. All Class A, B, ~~and~~ D, and E licensees must submit as soon as practicable to the commission the name and the address of the contractor or subcontractor, amount and duration of the contract or subcontract, and a description of the good or service provided. The commission shall determine whether the contract or subcontract may affect the integrity of pari-mutuel racing, and the commission shall notify the licensee whether the commission intends to review and approve or disapprove the contract or subcontract. In making a determination that a contract or subcontract may affect the integrity of racing, the commission shall consider the amount and duration; the extent to which the contractor or subcontractor will be on the premises of the licensee; the relationship of the contract or subcontract to security; opportunity for contact between the contractor or subcontractor and horses, horsepersons, or patrons; opportunity for the contractor or subcontractor to influence the management and conduct of pari-mutuel racing; contact with admission, pari-mutuel, concession, or purse money; and whether the commission has reason to believe that the contractor or subcontractor is incompetent, financially irresponsible, or not of good character. If notified of the commission's intention to review and approve or disapprove a contract or subcontract, the licensee shall promptly submit to the commission copies of any written contracts or subcontracts as well as any documentation, records, or information the commission may request with regard to the contract. If the commission notifies a licensee of the commission's intention to review and approve or disapprove a contract or subcontract, the contract or subcontract is not valid, nor is either of the parties bound by the contract until it has been approved by the commission. The commission shall approve or disapprove contracts and subcontracts within 30 days, as computed pursuant to *Minnesota Statutes*, section 645.15, after submission.

[For text of subps 2 to 5, see M.R.]

Subp. 6. [See repealer.]

Subp. 7. [See repealer.]

Subp. 8. [See repealer.]

Subp. 9. [See repealer.]

Subp. 10. [See repealer.]

7870.0510 AFFIRMATIVE ACTION.

Subpart 1. **Economic opportunities for disadvantaged and emerging small business.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for disadvantaged and emerging small businesses:

A. a minimum goal of ten percent for construction subcontract and material suppliers with disadvantaged and emerging small business enterprises during construction of the facility, and a labor and employment goal of ten percent for disadvantaged and emerging small business in on-site construction jobs;

B. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction; and

C. a minimum goal of 20 percent of its total vendor, supplier, and other contracts with disadvantaged and emerging small businesses for the postconstruction period within two years after completion of the initial construction.

Subp. 2. **Economic opportunities for racial minorities.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for racial minorities:

A. a minimum goal of ten percent for hiring racial minorities in all categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

B. a minimum goal of making available up to ten percent of available equity ownership to racial minorities.

Subp. 3. **Economic opportunities for women.** Class A, B, D, and E licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for women:

A. a minimum goal of 51.4 percent for hiring women in all job categories of the licensee's workforce, including clerical, laborers, officials and managers, professionals, technicians, and salesworkers, and make a good faith effort to achieve this goal within two years of commencing racing operations; and

B. a minimum goal of making available up to ten percent of the available equity ownership to women.

Subp. 4. **Economic opportunities for disabled.** Class A, B, D, and E licensees are required, to the extent feasible, to establish reasonable goals to assist in providing economic opportunities for disabled individuals. These affirmative action goals must be set with respect to the Class A, B, D, and E licensee's construction subcontracts/material suppliers during facility construction, on-site construction jobs, postconstruction labor force, postconstruction vendor, supplier and other contracts, and available equity ownership opportunities.

Subp. 5. **Compliance reports.** Class A, B, D, and E licensee's are required to file quarterly reports with the commission demonstrating compliance with the requirements of this part on forms provided by the commission.

Subp. 6. **Definitions.** For the purpose of this part, the following words have the meanings given them.

A. "Disabled individual" means a person who has a physical or mental impairment which substantially limits one or more major life activity; it does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others.

B. "Good faith effort" means a reasonable effort to accomplish goals and timetables.

C. "Disadvantaged and emerging small business" means a business located within the state of Minnesota which employs 25 employees or less, has not had gross sales in excess of $6,000,000 over the past three years, and has been in business at least one year.

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D. "Racial minority" means:

(1) Blacks, or persons having origins in any of the Black African racial groups not of Hispanic origin;

(2) Hispanics, or persons of Mexican, Puerto Rican, Cuban, Central American, South American, or other Spanish culture or origin, regardless of race;

(3) Asian and Pacific Islanders, or persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands; and

(4) American or Alaskan natives, or persons having origins in any of the original people of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

7871.0005 APPLICATION FOR SIMULCASTING.

Subpart 1. **Submission of request for simulcasting.** A Class B or E licensee may apply for simulcasting no later than 30 days before the requested commencement of simulcasting. Each request for simulcasting must include an original and 15 copies of the following:

A. a signed request for simulcasting;

B. the dates requested, breeds of horses, types of races, number of races per program, and a list of potential host racetracks; and

C. any other documentation the licensee deems necessary to ensure a complete understanding of the request.

Subp. 2. **Approval of simulcast request.** When considering a request for simulcasting, the commission must consider the success and integrity of racing; the public health, safety and welfare; and public interest, necessity, and convenience, as well as the following factors:

A. the integrity of the licensee and the host racetracks and/or any alternative facility;

B. the financial strength of the licensee and the host racetracks and/or any alternative facility;

C. past compliance of the licensee and the host racetracks and/or any alternative facility with all laws, rules, and orders regarding pari-mutuel horse racing;

D. the licensee's market, including area, population, and demographics;

E. the impact of the simulcasting on the economic viability of the racetrack, including attendance and pari-mutuel handle; and

F. the sentiment of horsepersons.

Subp. 3. **Commission action.** The commission shall approve, deny, or give its qualified approval to a request for simulcasting within 30 days after the filing of the request.

Subp. 4. **Variations in simulcasting previously approved by the commission.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations in any previously approved request for simulcasting provided the variations meet the criteria in subpart 2.

7871.0010 APPLICATION FOR PARI-MUTUEL POOLS FOR SIMULCASTING.

Subpart 1. **Submission of pari-mutuel requests.** A class B or E licensee may apply for approval of pari-mutuel pools including rules governing calculation of payoffs, disposition of unclaimed tickets, pools offered based on the number of entries, prevention and failure to start, and scratches in effect at the host racetrack by submitting an original and 15 copies of the following:

[For text of item A, see M.R.]

B. a copy of the administrative rules for pari-mutuel pools in the states in which the host racetracks are located; and

C. ~~a detailed statement of how the request meets each of the criteria in part 7871.0020, subpart 2; and~~

~~D.~~ any other documentation the commission considers necessary to ensure a complete understanding of the request.

Subp. 2. [See repealer.]

Subp. 2a. **Disposition of requests.** The commission shall approve, deny, or give its qualified approval to an application for pari-mutuel pools within 30 days after the filing of the application.

[For text of subp 3, see M.R.]

Subp. 4. **Submission of contracts.** A copy of the fully executed contracts between the licensee and the host racetracks and any alternative facility must be submitted prior to the commencement of ~~televised racing days~~ simulcasting from ~~the respective~~ each host ~~racetracks~~ racetrack.

7871.0020 APPROVAL OF PARI-MUTUEL POOLS ~~ON TELEVISED RACING DAYS~~ FOR SIMULCASTING.

Subpart 1. [See repealer.]

Subp. 2. **Basis for approving pari-mutuel pools.** When considering a request for approval of pari-mutuel pools for ~~televised racing days~~ simulcasting, the commission must consider the success and integrity of racing; the public health, safety, and welfare; public interest, necessity, and convenience~~; as well as the following factors:~~.

~~A. the types of betting and number and placement of multiple pools in the racing program at the host racetracks;~~

~~B. the integrity of the licensee and the host racetrack;~~

~~C. the financial strength of the licensee and the host racetrack;~~

~~D. the ability of the licensee and the host racetrack to operate a racetrack and conduct horse racing, including licensee's facilities, systems, policymakers, managers, and personnel;~~

~~E. past compliance of the licensee and the host racetrack with all laws, rules, and orders regarding pari-mutuel horse racing;~~

~~F. the licensee's market, including area, population, and demographics;~~

~~G. the performance of the licensee and host racetrack with previously approved pari-mutuel pools;~~

~~H. the impact approving the pari-mutuel pool will have on the economic viability of the racetrack, including attendance and pari-mutuel handle;~~

~~I. the quantity and quality of economic activity and employment generated;~~

~~J. state tax revenues from racing and related economic activity;~~

~~K. the entertainment and recreation opportunities for Minnesota citizens;~~

~~L. the variety of racing;~~

~~M. the quality of racing;~~

~~N. the availability and quality of horses;~~

~~O. the development of horse racing;~~

~~P. the quality of racetrack facilities;~~

~~Q. security;~~

~~R. purses;~~

~~S. benefits to Minnesota breeders and horse owners;~~

~~T. competition among racetracks and with other providers of entertainment and recreation as well as its effects;~~

~~U. the social effects;~~

~~V. community and government support;~~

~~W. sentiment of horsepersons; and~~

~~X. any other factors related to pari-mutuel pools which the commission considers crucial to its decision-making as long as the same factors are considered with regard to all requests.~~

Subp. 3. **Director of pari-mutuel racing.** The director of pari-mutuel racing or the commission's director of pari-mutuels may approve variations and changes in pari-mutuel pools and the placement of pools in the racing program if requested by the licensee and if all changes ~~meet~~ are consistent with the criteria contained in subpart 2.

7871.0030 PARI-MUTUEL BETTING.

Subpart 1. **Minimum return.** ~~On a televised racing day~~ For simulcasting approved by the commission, the minimum return on each winning wager shall be that amount which is in effect at the host track or alternative facility. The share of liability for insufficient money in the net pool may be as agreed to by the licensee and the host racetrack or alternative facility.

Subp. 2. **Commingling of funds.** With the prior approval of the commission, ~~the~~ a Class B or E licensee may commingle ~~the amounts bet at the licensed racetrack on a televised racing day with the pari-mutuel~~ pools ~~at the host racetrack~~. If the ~~pari-mutuel~~

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pools are commingled, ~~the~~ wagering at the licensed racetrack and each teleracing facility must be on tabulating equipment ~~capable of issuing~~ that issues pari-mutuel tickets and ~~be~~ is electronically linked ~~with the equipment at the host racetrack~~ to the totalizator at the Class A facility.

Subp. 3. **Information window.** Each association shall provide at least one information or complaint window at the licensed racetrack and at each teleracing facility where complaints may be made by members of the public. A current set of all Minnesota commission rules and all administrative rules of the state in which the host racetrack is located regarding pari-mutuel wagering shall be available for public inspection at all times when the facility is open to the public.

Subp. 4. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 5. **Simulcasting to locations outside the state.** A licensee may, with the approval of the commission, transmit telecasts of races the licensee conducts for wagering purposes to a location outside the state. The commission may allow the licensee to commingle its wagering pools with the wagering pools at a facility located outside of this state.

7871.0080 TIP SHEETS.

Subpart 1. **Number of tip sheets.** Should ~~the~~ a Class B or E licensee elect to allow the availability of tip sheets, not less than two independently handicapped tip sheets shall be available at a racetrack and each teleracing facility. Each ~~handicapper~~ tip sheet must ~~sign and deliver the sheet~~ be delivered at least one hour before post time for the first race to the ~~presiding official at the licensee's racetrack~~ commission in a manner and place as prescribed by the commission.

Subp. 2. **Previous day's sheet to be posted.** The previous race day's tip sheets and their outcome must be displayed in a conspicuous place within the grandstand area of the racetrack and within each teleracing facility for inspection by patrons.

Subp. 3. **Tip sheet vendors must be licensed.** All persons holding a tip sheet concession at the racetrack and each teleracing facility must be approved and licensed as a vendor by the commission.

7871.0100 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack ~~and all other racetracks~~ licensed by the commission, including the impact on the pari-mutuel handle.

Subp. 2. **Requirements.** The association must meet the ~~following~~ requirements ~~prior to~~ in items A to D before conducting telephone account wagering:

[For text of items A to D, see M.R.]

Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

(2) deposit with the association no less than $100 in cash or by ~~certified~~ check ~~or~~, money order, or credit card; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

~~D. Actual race results may not be divulged to telephone account customers during racing hours; however, account balances may be given.~~

[For text of subps 4 and 5, see M.R.]

7871.0110 DISTRIBUTION OF PURSE MONEY.

Subpart 1. **Purse amounts.** Pursuant to *Minnesota Statutes*, section 240.13, subdivision ~~6~~5, ~~paragraph (d), an amount equal to 25 percent of 22 percent of the~~ all amounts required to be withheld from all pari-mutuel pools must be allocated for purses by an association conducting ~~televised horse racing~~ simulcasting.

Subp. 2. **Escrow accounts.** Outside of the racing season, all money withheld for purses by an association pursuant to subpart 1 must be placed in interest-bearing escrow accounts and set aside for purse monies in the next racing meeting for the breed involved.

7871.0115 TELERACING MUTUEL MANAGER.

Subpart 1. **Requirement.** The Class E licensee must, with the approval of the commission, designate a teleracing mutuel manager at each teleracing facility.

Subp. 2. **Duties.** The teleracing mutuel manager shall:

A. supervise the pari-mutuel operations at the teleracing facility and provide reports as requested by the commission's director of pari-mutuels and/or pari-mutuel auditor for regulatory purposes;

B. (1) send to and receive communications from the mutuel manager of the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager; (2) send to and receive communications from the presiding official at the Class B facility conducting or receiving races upon which patrons of the teleracing facility may wager;

C. oversee the operation of the equipment used to commingle the pools at the teleracing facility with the pools at the Class B racetrack and suspend wagering at the teleracing facility when instructed by a presiding official if the money wagered is not being transmitted to the pari-mutuel pools at the Class B racetrack; and

D. ensure that laws and rules governing pari-mutuel wagering are observed at the teleracing facility.

7871.0120 ~~APPOINTMENT OF~~ PRESIDING OFFICIAL.

Subpart 1. **Requirement.** All ~~races on which pari-mutuel betting is conducted on televised racing days~~ simulcasting must be presided over by ~~an~~ at least one official of the commission appointed by the director of pari-mutuel racing. During the racing season, the director may appoint one or more of the stewards to act as the presiding official. The association must reimburse the commission for each presiding official's compensation.

Subp. 2. **Communication with stewards.** A Class B or E licensee conducting ~~approved televised racing days~~ simulcasting must provide ~~the presiding official with~~ telephone communication ~~with the stewards at the host racetrack throughout the racing program each day~~ between the licensed racetrack, the host racetrack, and any alternative facility.

Subp. 3. **Communication with teleracing facilities.** A Class E licensee must designate a pari-mutuel manager at each teleracing facility for the purpose of communicating with the presiding officials at all times simulcasting is conducted.

7871.0130 AUTHORITY AND DUTIES OF PRESIDING OFFICIAL.

Subpart 1. **Authority.** ~~The~~ A presiding official shall exercise immediate supervision, control, and regulation of ~~racing on each televised racing day~~ simulcasting on behalf of the commission and shall be responsible only to the commission. The powers of ~~the~~ a presiding official include:

A. the authority over all persons, licensed or unlicensed, on ~~association~~ the grounds during ~~a televised racing day~~ simulcasting regarding all matters relating to racing;

B. the authority to suspend~~, according to applicable law,~~ a Class C licensee for up to 90 days and/or impose a fine of up to $2,000 according to the schedule of fines in part 7897.0130;

C. the authority to eject or exclude according to applicable law, from ~~association~~ the grounds, or any part thereof, licensed or unlicensed persons for violations of law or rule;

D. the authority to interpret and enforce commission rules and determine all questions pertaining to racing and wagering matters in conformity with applicable law and ~~the "customs of the turf"~~ rule; and

E. the authority to request and receive assistance from commission employees, racing officials, track security, and federal, state, or local police in the investigation of possible violations of law or rule.

Subp. 2. **Duties.** In addition to the duties and responsibilities necessary and pertinent to general supervision, control, and regulation of ~~race meetings~~ simulcasting, and without limiting the authority of ~~the~~ a presiding official to perform those and all other duties listed in this part, ~~the~~ a presiding official shall have the following specific duties and responsibilities:

[For text of item A, see M.R.]

B. To ~~lock~~ ensure that all pari-mutuel betting machines ~~not~~ are locked no later than the start of a race.

C. To maintain daily reports of actions taken and observations made during the conduct of ~~each day's racing program~~ simulcasting. The report must contain the name of the track, the date, weather and track conditions, claims, inquiries and objections, and any unusual circumstances or conditions. The reports must be signed by ~~the~~ a presiding official and filed with the commission within 24 hours.

[For text of item D, see M.R.]

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E. Within seven days after the conclusion of a race meeting, ~~the~~ a presiding official must submit to the commission a written report containing ~~their~~ observations and comments concerning the conduct of the race meeting and the condition of the ~~association~~ grounds and any appropriate ~~recommendation~~ recommendations for improvement.

7871.0140 DISCIPLINARY AND APPEAL PROCEDURES.

In the event ~~the~~ a presiding official has reasonable cause to believe that a Class C licensee has committed an act or engaged in conduct in violation of statute or the rules of the commission or which ~~in the opinion of the presiding official~~ otherwise adversely affects the integrity of horse racing ~~and~~ or pari-mutuel wagering, the procedures ~~contained~~ in *Minnesota Rules*, part 7897.0150, must be adhered to.

7871.0160 EMERGENCY PROCEDURES.

Subpart 1. **Interruption of the audio or visual satellite signal from the host racetrack.** In the event of an interruption of the audio or visual satellite signal from the host racetrack, the Class B racetrack's mutuel manager must immediately:

A. notify the host track of the loss of the signal;

B. establish a telephone linkup with the host track announcer to the public address system at the Class B racetrack. Wagering may be accepted on the balance of the program and subsequent programs; and

C. establish a telephone linkup with the host track announcer to the public address system at a teleracing facility upon notification from the teleracing facility that the audio or visual signal has been interrupted. The teleracing facility may continue to accept wagering on the balance of the program and subsequent programs.

Subp. 2. **Computer interface interruption.**

A. Between Class B facility and host racetrack:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the host racetrack, the Class B racetrack's mutuel manager must notify the totalizator representatives at the host racetrack and request additional time prior to the start of the race to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the host racetrack shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the following procedure:

(a) the Class B racetrack's totalizator operator must inform the host racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send that information via a facsimile machine to the host racetrack's totalizator operator;

(b) the stewards at the host racetrack and a presiding official at the Class B racetrack must be notified when the procedure has been completed in order to declare the race official; and

(c) the Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the stewards were notified, and for what time period prices were delayed; and

(iv) a worksheet from the host racetrack signed by their totalizator representative, the host racetrack's mutuel manager, and the state representative from the host racetrack's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate basis (no commingling) or manually merged on a commingled pools basis.

B. Between Class B racetrack and alternative facility:

(1) In the event the Class B racetrack's totalizator fails to transfer the data to the totalizator at the alternative facility, the Class B racetrack's mutuels manager must notify the totalizator representatives at the alternative facility and request additional time to allow for a retransmission of the data.

(2) If a second data transfer fails, the totalizator representatives at the alternative facility shall notify a presiding official that the transfer has failed and that the pools must be merged manually. A manual merge shall be accomplished by the following procedures:

(a) The Class B racetrack's totalizator operator must inform the alternative facility's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The Class B racetrack's totalizator operator shall send the information via a facsimile machine to the alternative facility's totalizator operator;

(b) A presiding official at the Class B racetrack must be notified when the procedure has been completed in order to calculate the official prices;

(c) The Class B licensee's totalizator representative shall prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(i) a copy of the pool print report prior to the failure of the transfer of data;

(ii) a copy of the final pools print report;

(iii) a brief statement as to where the failure occurred, when the alternative facility was notified, and for what time period prices were delayed; and

(iv) a worksheet from the alternative facility signed by their totalizator representative, the alternative facility's mutuel manager, and the state representative from the alternative facility's state racing or gaming authority showing total dollars wagered in each pool and the final prices.

(3) The Class B racetrack may continue to accept wagering on the balance of the program on a separate or manually merged commingled pool basis.

(4) Any wager on subsequent programs prior to reestablishment of computer interface may either be canceled and advance wagers refunded, the pools calculated on a separate basis (no commingling) or manually merged on a commingled pools basis.

Subp. 3. **Wagering data transfer interruption at teleracing facility.**

A. In the event the teleracing facility fails to transfer its wagering data to the Class B racetrack, the teleracing facility's mutuel manager must contact the Class B racetrack's totalizator representative to allow for a retransmission of the data.

B. If a second data transfer fails, the Class B racetrack's totalizator representative shall notify a presiding official that the transfer has failed and that if time permits the pools must be merged manually. A manual merge shall be accomplished by the following procedure.

(1) The teleracing facility mutuel manager must inform the Class B racetrack's totalizator operator of the total amount in the pool, the total dollars on winning wagers, and the total dollars on losing wagers in the pool. The teleracing facility's mutuel manager shall send that information via a facsimile machine to the totalizator operator at the Class B facility.

(2) A presiding official at the Class B facility and the designated person at the teleracing facility must be notified when the procedure has been completed to calculate the official prices.

(3) The Class B licensee's totalizator representative must prepare and submit a report to a presiding official and the commission's director of pari-mutuels indicating that the transfer of data could not be completed electronically and that the pools were merged manually. The report shall also include the following:

(a) a copy of the pool print report prior to the failure of the transfer of data;

(b) a copy of the final pools print report;

(c) a brief statement as to where the failure occurred, when a presiding official was notified, and for what time period prices were delayed; and

(d) a worksheet from the Class B racetrack signed by its totalizator representative showing total dollars wagered in each pool and the final prices.

C. In the event time does not permit a manual merge, the amounts wagered at the teleracing facility on that race shall be refunded.

D. The teleracing facility may continue to accept wagering on the balance of the program on a manually merged basis with the Class B racetrack upon permission of a presiding official at the Class B racetrack. If permission is not granted, all wagers on the current race and advance wagering must be refunded.

E. Any wager on subsequent programs from the Class B racetrack prior to the reestablishment of the transfer of wagering data from the teleracing facility to the Class B facility must be canceled.

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Subp. 4. **Complete totalizator failure at Class B racetrack.**

A. In the event the Class B racetrack's totalizator fails, all money wagered on the race in which the totalizator failed and all advance wagers must be refunded. Any wagering on the balance of the program or subsequent programs may not be accepted until the totalizator is operational to the satisfaction of a presiding official.

B. The host racetrack's mutuel manager must be notified of the failure and all wagers at the Class B racetrack on the race in which the failure occurred and all advance wagers shall be taken out of the pools at the host racetrack.

C. The Class B facility's mutuel manager shall notify all teleracing facility mutuel managers of the totalizator failure and instruct them to refund all current and advance race wagers.

Subp. 5. **Complete totalizator failure at the host racetrack.**

A. In the event the host racetrack's totalizator fails, the Class B racetrack may refund amounts wagered, or will instruct the Class B racetrack's totalizator representative to extract the amount wagered from the Class B facility into the commingled pools for the race during which the system failure occurred and any advance wagers made on the balance of the program, for the purpose of calculating separate pools on the amounts wagered at the Class B racetrack.

B. The Class B racetrack may continue to accept wagers on the balance of the program on a separate pool basis, may reestablish commingled pool wagering if the host racetrack's totalizator failure has been corrected, or may refund the amounts wagered.

C. The Class B mutuel manager shall notify and instruct teleracing facility mutuel managers to follow the appropriate procedures under item A.

7873.0110 APPROVAL OF PARI-MUTUEL POOLS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Live racing days; director of pari-mutuel racing authority.** The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve variation and changes in the pari-mutuel pools previously approved by the commission, placement of pools in the program, and simulcasts requested by the licensee that meet the criteria in subpart 2. The director of pari-mutuel racing or the commission's director of pari-mutuels is delegated the authority to approve changes in the placement of pari-mutuel pools in the program, the addition of approved pari-mutuel pools to the program, and changes in simulcasting requests by the licensee that meet the criteria in subpart 2. Before approving a change in the pick six, pick seven, twin trifecta, and super-tri wagering pools, the director of pari-mutuel racing or the commission's director of pari-mutuels must consult with the commission's executive committee.

7873.0120 PARI-MUTUEL BETTING.

Subpart 1. **Deficiencies.** In the event there is insufficient money available in a net pari-mutuel pool to return $2.10 on each winning $2 wager or $1.05 on each winning $1 wager, the association conducting the pari-mutuel betting shall pay the deficiency from its share of the pool.

Subp. 2. [See repealer.]

7873.0190 PICK SIX.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick six.** In the event one or ~~more~~ two of the races comprising the pick six ~~is~~ are canceled for any reason, or in the event one or ~~more~~ two of the races comprising the pick six is declared as no contest by the stewards, ~~75~~ 100 percent of the current program's net pari-mutuel pool ~~shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed. The remaining 25 percent~~ shall be distributed among the holders of pick six tickets which correctly designate the most official winners of the remaining races comprising the pick six. The cumulative net pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of ~~all six~~ three or more races comprising the pick six pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick six on that day. One hundred percent of the remaining amount in the pick six pari-mutuel pool shall be carried over and included in the pick six pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0198 PICK SEVEN.

[For text of subps 1 to 8, see M.R.]

Subp. 9. **Cancellation of race comprising pick seven.** In the event ~~one~~ three or ~~more~~ fewer of the races comprising the pick seven is canceled for any reason, or in the event ~~one~~ three or ~~more~~ fewer of the races comprising the pick seven is declared as no contest

by the stewards. ~~75~~ 100 percent of the current program's net pari-mutuel pool ~~shall not be distributed but shall be retained by the association as distributable amounts and shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed. The remaining 25 percent~~ shall be distributed among the holders of pick seven tickets which correctly designate the most official winners of the remaining races comprising the pick seven. The cumulative pool from previous programs shall not be distributed in this case and will be carried over to the next consecutive race day. In the event of the cancellation of ~~all seven~~ four or more races comprising the pick seven pool after wagering has been accepted on that day, a full and complete refund must be made of the pari-mutuel tickets sold on the pick seven on that day. One hundred percent of the remaining amount in the pick seven pari-mutuel pool shall be carried over and included in the pick seven pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed.

[For text of subps 10 and 11, see M.R.]

7873.0400 TELEPHONE ACCOUNT WAGERING.

Subpart 1. **Request.** Upon written request of a Class B or Class D licensee, the commission may approve telephone account wagering to be conducted on the premises of a licensed racetrack. The request must show how the telephone account wagering system will promote the success and integrity of racing, public interest, necessity, and convenience; and the impact on the economic viability of the applicant racetrack ~~and all other racetracks~~ licensed by the commission, including the impact on the pari-mutuel handle.

[For text of subp 2, see M.R.]

Subp. 3. **Conduct of telephone account wagering.** Telephone account wagering shall be conducted in the following manner:

A. A person desiring to open a telephone wagering account must:

[For text of subitem (1), see M.R.]

(2) deposit with the association no less than $100 in cash or by ~~certified~~ check ~~or~~, money order, or credit card; and

[For text of subitem (3), see M.R.]

[For text of items B and C, see M.R.]

~~D. Actual race results may not be divulged to telephone account customers during racing hours; however, account balances may be given.~~

[For text of subps 4 and 5, see M.R.]

7874.0100 GENERAL PROVISIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. **Payment of unredeemed tickets.** After reporting to the commission, pursuant to *Minnesota Statutes*, section 240.13, and not later than 100 days after the end of a race meeting, an association must remit to the commission an amount equal to the total value of unredeemed tickets from the race meeting in the same manner as in subpart 2. For the purpose of this subpart, three race meetings are defined:

A. the period during which live racing occurs at the racetrack, in season;

B. the period during which no live racing occurs at the racetrack, off-season; and

C. the period beginning in either item A or B and ending in the other period.

Subp. 4. **Recapitulation.** On each day that deposits are made by the association, a report must be filed with the commission containing the following recapitulation:

[For text of items A to D, see M.R.]

E. ~~commission's~~ state's share of breakage; and

[For text of item F, see M.R.]

Separate recapitulations must be filed for each full card simulcast, whether at the racetrack or a teleracing facility.

7875.0100 FACILITIES.

Subpart 1. **Scope.** The purpose of this chapter is to define criteria for facilities for Class B and E licensees, as applicable.

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.

Subp. 1a. **Facilities.** Each association must include a receiving barn, detention facility, paddock, room for jockeys and drivers, lighting, stabling, restrooms, medical facilities, racing officials' space, viewing room, commission office and parking space, space for the Bureau of Criminal Apprehension, and complaint desk. The facilities must meet the needs of patrons, officials, horsepersons, other persons on the premises, and horses.

[For text of subps 2 to 5, see M.R.]

7875.0200 EQUIPMENT.

Subpart 1. **Scope.** The purpose of this chapter is to define criteria for equipment for Class B and E licensees, as applicable.

Subp. 1a. **Equipment.** Each association must include equipment, devices, or apparatus necessary to start, time, film or tape, and photograph the finish of every race. Equipment necessary to view photographs, films, and tapes of each race must be provided. Each association must include pari-mutuel equipment, devices, or apparatus necessary to sell and cash tickets and calculate and display odds. An association also must include adequate internal communications equipment. Each Class E licensee must provide reports and/or telecommunications equipment at the facility necessary to transmit information requested by the commission for regulatory purposes.

[For text of subps 2 to 9, see M.R.]

7877.0100 GENERAL REQUIREMENTS.

Subpart 1. **Scope.** Except as otherwise provided by rule, any person whose work, in whole or in part, is conducted at a licensed racetrack or teleracing facility shall first obtain a Class C license from the commission.

[For text of subp 2, see M.R.]

7877.0110 PROCEDURE FOR OBTAINING CLASS C LICENSE.

[For text of subps 1 to 3, see M.R.]

Subp. 4. **Racing officials.** Each association shall submit to the commission for its approval or disapproval the names of all persons whom the association has selected as racing officials, and other employees whose duties relate to the actual running of races. The list shall include, where applicable, the following racing officials:

[For text of items A to K, see M.R.]

L. mutuels manager or teleracing mutuels manager;

[For text of items M to V, see M.R.]

The list of racing officials' names shall be submitted to the commission in writing at least 30 days prior to the opening of each race meeting.

The association shall be responsible for filing a complete application for a Class C license with respect to each nominee who has not been previously licensed by the commission as a racing official.

The commission may request any person whose name is proposed as a racing official to submit to a physical examination and to forward the results of said examination to the commission. The request shall be made only where there is a reasonable basis for suggesting that the applicant's physical condition would hinder or prevent him or her from performing the duties of a racing official.

The commission shall act on the association's list of officials at a meeting of the commission. If commission staff recommends disapproval of an official, the association shall be notified of that recommendation in advance of the commission's meeting.

Under no circumstances shall an identifier, placing judge, or patrol judge be approved by the commission unless he or she has satisfactorily passed an optical examination within 90 days prior to approval evidencing 20-20 vision (corrected) and the ability to distinguish colors.

7877.0155 CONDITIONS PRECEDENT TO LICENSING.

Acceptance of a Class C license, including a temporary or emergency license, shall mean that the licensee consents and agrees to the following conditions:

[For text of items A to D, see M.R.]

E. The licensee will submit to inspections and searches as hereinafter provided:

(1) When investigating for violations of law or rules upon the grounds of an association, the commission or the stewards may designate the Minnesota ~~Bureau of Criminal Apprehension~~ Department of Public Safety, Gambling Enforcement Division or another appropriate law enforcement agency as having authority to conduct searches of any Class C licensee, or any employee or agent of a Class A, B, ~~or~~ D, or E licensee under the commission's jurisdiction. This authority shall extend to searches and inspections of persons and personal effects in and about ~~racetrack~~ grounds.

(2) Each applicant for a Class C license and each employee or agent of a Class A ~~or Class~~, B, or E licensee consents to such searches and inspections, and waives all claims or possible actions for damages that he or she believes he or she may have suffered in connection with any such search or inspection.

[For text of items F to H, see M.R.]

7878.0100 DEFINITIONS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointing authority.** "Appointing authority" means the holder of a Class A, ~~Class~~ B, ~~or Class~~ D, or E license issued by the commission.

[For text of subps 3 to 7, see M.R.]

Subp. 7a. **Division.** "Division" means the Division of Gambling Enforcement in the state Department of Public Safety.

[For text of subps 8 to 10, see M.R.]

Subp. 11. **Security officer.** "Security officer" means a person whose principal duty is the protection of persons or property at a racetrack or teleracing facility licensed by the commission.

7878.0110 MINIMUM SELECTION STANDARDS.

Subpart 1. **Applicant must meet selection standards.** A person eligible to be licensed by the commission as a security officer must be an employee of a Class A, ~~Class~~ B, ~~or Class~~ D, or E licensee and shall meet the following minimum selection standards prior to being appointed a security officer. The appointing authority may certify that the applicant has already completed certain of these standards and provide documentation to that effect pursuant to subpart 2. In all cases, the security officer must:

[For text of items A to D, see M.R.]

E. provide fingerprint cards to the commission~~, with duplicate cards provided to the BCA~~;

[For text of items F to H, see M.R.]

[For text of subp 2, see M.R.]

7878.0160 SECURITY COOPERATION.

Subpart 1. **Security officers must cooperate with law enforcement agencies.** Class A, ~~Class~~ B, ~~and Class~~ D, and E licensees and all security officers must cooperate fully with federal, state, and local law enforcement agencies with jurisdiction to enforce criminal laws at horse racing facilities, and must report promptly all crimes suspected, investigated, or prevented at a licensed racetrack to the ~~BCA~~ Division of Gambling Enforcement. All security, injury, and incident reports with regard to a Class E facility must be available for inspection by the commission.

[For text of subp 2, see M.R.]

7879.0100 QUALIFICATIONS AND APPOINTMENT OF STEWARDS.

[For text of subpart 1, see M.R.]

Subp. 2. **Appointment and approval of stewards.** The following procedures must be observed in the appointment of stewards:

[For text of item A, see M.R.]

B. In the event a steward becomes ill, resigns, or is unable to serve for any reason, the remaining stewards shall nominate a temporary steward to the commission for approval. In emergencies, the ~~executive secretary~~ director of pari-mutuel racing may approve appointment of a temporary steward.

7897.0100 PROHIBITED ACTS.

Subpart 1. **Scope.** The following activities are considered prohibited acts when applicable to Class A, B, C, D, or E licensees.

[For text of subps 2 to 19, see M.R.]

7897.0130 SCHEDULE OF FINES.

[For text of subps 1 to 4, see M.R.]

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.

Subp. 5. **Amount of fines.** The fine for a serious violation of law or rule shall be $500 to $5,000. The fine for other violations shall not exceed $499. The commission may impose a fine in excess of $5,000 but no more than $200,000 against a Class A, B, ~~or~~ D, or E licensee as necessary to enforce parts 7870.0430, 7870.0450 to 7870.0470, or 7870.0500.

[For text of subp 6, see M.R.]

REPEALER. *Minnesota Rules*, parts 7869.0100, subparts 19, 33a, and 65a; 7870.0500, subparts 6, 7, 8, 9, and 10; 7871.0010, subpart 2; 7871.0020, subpart 1; 7871.0070; 7871.0090; 7871.0150; 7873.0120, subpart 2; and 7873.0300, are repealed.

Secretary of State

Proposed Permanent Rules Relating to Elections; Redistricting

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Secretary of State intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 204B.14, subdivision 4.

All persons have 30 days in which to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules 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 in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Secretary of State will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

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

Joseph Mansky
Director, Election Division
180 State Office Building
St. Paul, MN 55155
(612) 296-2805

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

A copy of the proposed rules are attached to this notice.

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

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to the 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 matter to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to the Secretary of State.

Dated: 11 October 1991

Joseph Mansky
Director, Election Division

Rules as Proposed (all new material)

8255.0010 ALTERNATE DATES FOR COMPLETION OF LOCAL REDISTRICTING.

If the adoption of the legislative redistricting plan or the resolution of any court challenge to the legislative redistricting plan occurs less than 19 weeks before the state primary, in a year ending in two, the following schedule for reestablishment of precinct boundaries and election districts must be followed:

A. Precincts must be reestablished no later than four weeks after the adoption of the legislative plan.

B. Wards must be redistricted no later than four weeks after the adoption of the legislative plan.

C. Local government election districts must be redistricted no later than six weeks after adoption of the legislative plan.

CERTIFICATE OF THE

MINNESOTA RACING COMMISSION

RESOLUTION ADOPTING THE RULE

I, Richard Pemberton, 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 19th day of December, 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 governing the issuance of Class E (teleracing facility) Licenses, Simulcasting and Pari-Mutuel Betting is approved and adopted, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes 240.23 (1990 and 1991 Supp.)
>
> RESOLVED, that Richard Krueger, Director of Minnesota Racing Commission, is hereby 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 19th day of December, 1991.

RICHARD PEMBERTON
Chair

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of the Rule of the Minnesota Racing Commission Governing the Issuance of Class E (Teleracing Facility) Licenses, Simulcasting and Pari-Mutuel Betting.

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

(1) Notice of the Minnesota Racing Commission intent to adopt the above-entitled rule with a public hearing, or in the alternative, if less than 25 persons requested a public hearing, without a public hearing, was published in the State Register on October 28, 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 October 24, 1991. (2) The statement of need and reasonableness was prepared before the Commission authorized publication of the notice of intent to adopt a rule and before the Notice was mailed to all persons on the rulemaking mailing list, published in the State Register and made available to the public.

(3) No requests for a public hearing on the rule were received by the agency. (4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking.

(7) One comment on the rule was received by the agency and was 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. 7871.0100, subp. 3, item A(2) and 7873.0400, subp. 3, item A(2) have been modified to delete the language allowing a horseracing patron to open a telephone wagering account with a credit card. The proposed deletion is made after considering the comment of the Attorney General and the concerns of other public officials who questioned the policy of allowing the use of a credit card to open a telephone wagering account.

2. The rule, as modified, is not substantially different than the rule as originally published. The modified rule affects no classes of persons who 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 Notice of Intent to Adopt the Rule. Therefore, the modification is needed and reasonable.

CONCLUSION

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

NOW, THEREFORE, IT IS ORDERED that the rule identified as governing Class E (teleracing) is adopted this 19th day of December, 1991, pursuant to authority vested in the Minnesota Racing Commission by Minnesota Statutes, section 240.23 (1990 and 1991 Supp.).

RICHARD KRUEGER, Director
Minnesota Racing Commission

STATE OF MINNESOTA

MINNESOTA RACING COMMISSION

In the Matter of the Proposed Adoption of Rules Governing Class E (teleracing facility) Licenses, Simulcasting and Pari-Mutuel Betting.

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: Dec 19, 1991.

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

CERTIFICATE OF AUTHORIZING RESOLUTION

I hereby certify that I am the chair of the Minnesota Racing Commission, an agency 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 2nd day of October, 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

RESOLVED, that Richard G. Krueger, Director of Pari-mutuel Racing, is hereby granted the authority and directed to:

(a) sign and give Notice of the Commission's intent to adopt a rule without a public hearing governing the issuance of Class E (teleracing facility) licenses, simulcasting and pari-mutuel betting to all persons who have registered their names with the Commission for that purpose and publish the Notice and the rule in the State Register and perform any and all acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Commission to make in order to obtain the Revisor's certification as required by Minnesota Statutes, § 14.07, subd. 2 (1990);

(b) sign an Order for Hearing and Notice of Hearing for the proposed adoption of a rule with a public hearing governing the issuance of Class E (teleracing facility) licenses, simulcasting and pari-mutuel betting and give notice of the hearing to all persons who have registered their names with the Commission for that purpose and publish the Notice and the rule in the State register and perform any and all acts incidental thereto;

(c) in the event 25 or more persons request a public hearing on the proposed adoption of the rule, to call a hearing for the purpose of promulgating said rules, as well as perform any and all acts incidental thereto, including acting as the Commission's representative at the hearing;

(d) in the event that 25 or more persons do not request a public hearing, to cancel the hearing and to give notice of the cancellations to all persons who request to be so notified.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 2nd day of October, 1991.



RICHARD PEMBERTON
Minnesota Racing Commission

MINNESOTA RACING COMMISSION

Proposed Rules Governing the Issuance of Class E (Teleracing Facility) Licenses, Simulcasting and Pari-Mutuel Betting

ORDER FOR HEARING

It is hereby ordered that a hearing on the above-captioned rule shall be held on December 11, 1991 commencing at 9:00 AM until 4:30 PM, or until all interested persons have been heard, in the First Floor Conference Room, Olympic Place, 7825 Washington Avenue South, Bloomington, Minnesota.

Notice of the hearing shall be given to all persons who have registered with the Minnesota Racing Commission for the purpose of receiving such notice and the Notice shall be published in the State Register.

Dated: 10/9/91

RICHARD G. KRUEGER
EXECUTIVE DIRECTOR
MINNESOTA RACING COMMISSION

MINNESOTA RACING COMMISSION

Proposed Rules Governing the Issuance of Class E (Teleracing Facility) Licenses, Simulcasting and Pari-Mutuel Betting

Notice of Intent to Adopt Rules Without a Public Hearing, Notice of Intent to Adopt Rules With a Public Hearing if 25 or More Persons Request a Hearing With Respect to the Proposed Amendments, and Notice of Intent to Cancel Hearing on the Proposed Rules if Fewer Than 25 Persons Request a Hearing With Respect to the Proposed Rules.

1. EXPLANATION OF ALTERNATIVE NOTICES.

(1) The Minnesota Racing Commission (hereinafter "Commission") hereby gives notice of its intent to adopt rules without a public hearing under the non-controversial rulemaking procedure of Minnesota Statutes, section 14.22 to 14.28 (1990). (4) However, in the event 25 or more persons request a hearing with respect to the proposed amendments to the rules, thereby necessitating that one be held pursuant to Minnesota Statutes, section 14.25 (1990), and in order to expedite the rulemaking process should that occur, the Commission is at the same time giving notice of a hearing on the proposed rules pursuant to Minnesota Statutes, sections 14.131 to 14.20 (1990). The hearing on the proposed rules will, of course, be cancelled if 25 or more persons do not request that a hearing be held with respect to the proposed rules. With the comment period closing on November 27, 1991, there will be 14 days before the scheduled hearing date. This 14-day period will give interested persons time to contact the Commission to find out whether the hearing will be held or cancelled.

II. NOTICE OF INTENT TO REPEAL AND ADOPT RULES WITHOUT A PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission (hereinafter "Commission") proposes to adopt the above-captioned rules without a public hearing unless 25 or more persons submit written requests for a public hearing with respect to the proposed rules. The Commission has determined that the proposed rules will be non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28 (1990).

(2) Interested persons shall have until November 27, 1991 to submit comments in support of or in opposition to the proposed rules. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed to the rules by the comment. (3) The proposed rules may be modified if the modifications are supported by the data and views submitted to the Commission and do not result in a

substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the comment period that a hearing be held on the proposed rules. Any person requesting a hearing should state his or her name, address, and telephone number, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any changes they want made to the proposed rules. If a person desires that a hearing be held on only a portion of the proposed rules, it is requested that the Commission be informed of the specific portion of the rules on which a hearing is being requested at the time that the hearing request is made. This will enable the Commission to limit the hearing, if one is held, to the specific issues of concern. A public hearing wil be held if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof by November 27, 1991. If a hearing is required, it will be held in accordance with the provisions of Minnesota Statutes, sections 14.14 to 14.20 (1990), and the hearing notice in Part III below.

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

RICHARD G. KRUEGER
MINNESOTA RACING COMMISSION
SUITE 201
11000 WEST 78TH STREET
EDEN PRAIRIE, MINNESOTA 55344

The statutory authority of the Commission to adopt the proposed rules is contained in Minnesota Statutes, section 240.23 (1990) and Minn. Laws 1991, ch. 336.

The proposed rules will be published in the State Register on October 28, 1991, and a copy of the rules may be obtained from the Commission by writing to Richard G. Krueger at the address listed above. no summary not attachment

A statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed changes has been prepared and may be obtained from the Commission by contacting Richard G. Krueger at the address listed above.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have an impact on agricultural land; therefore, no further information need be provided under Minnesota Statutes, section 14.11 (1991).

The Commission is subject to Minnesota Statutes, section 14.115 (1990), regarding small business considerations in rulemaking. The Commission's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2 (1990), for reducing the impact of the proposed rules on small businesses are addressed in the statement of need and reasonableness.

(9) Upon completion of proposed rules without a public hearing, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, the rules as adopted, and a statement explaining any differences between the rules as proposed and adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the rules as adopted should submit a written request to Richard G. Krueger at the address listed above.

III. NOTICE OF INTENT TO ADOPT RULES WITH A PUBLIC HEARING ON THE PROPOSED RULES IF 25 OR MORE PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES.

PLEASE NOTE THAT IF 25 OR MORE PERSONS SUBMIT WRITTEN REQUESTS FOR A PUBLIC HEARING WITH RESPECT TO THE ABOVE-CAPTIONED RULES WITHIN THE COMMENT PERIOD PURSUANT TO THE NOTICE GIVEN IN PART II ABOVE, A HEARING WILL BE HELD ON DECEMBER 11, 1991, IN ACCORDANCE WITH THE FOLLOWING NOTICE OF PUBLIC HEARING.

NOTICE IS HEREBY GIVEN that a public hearing in the above-captioned rule will be held pursuant to Minnesota Statutes, sections 14.14 to 14.20 (1990), on December 11, 1991, commencing at 9:00 AM until 4:30 PM, or until all interested persons have been heard, in the First Floor Conference Room, Olympic Place, 7825 Washington Avenue South, Bloomington, Minnesota.

The hearing will continue, if necessary, at additional times and places as determined during the hearing by the Administrative Law Judge. The Administrative Law Judge assigned to conduct the hearing is Peter Erickson. Judge Erickson can be reached at the Office of Administrative Hearings, 500 Flour Exchange Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, telephone number (612) 341-7606.

All interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. Such persons may present their views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should be pertinent to the matter at hand. Written material not submitted at the time of the hearing which is to be included in the hearing record may be mailed to the Administrative Law Judge. Unless a longer period, not to exceed 20 calendar days, is ordered by the Administrative Law Judge at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. All written materials submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 PM on the due date. Written material received during this period will be available for review at the Office of Administrative Hearings. The Commission and interested persons may respond in writing within three business days after the submission period ends to any new information submitted. No additional evidence may be submitted during the three-day period. This rules hearing procedure is governed by Minnesota Statutes, section 14.14

to 14.20 (1990), and by Minnesota Rules, parts 1400.0200 to 1400.1200 (1991). Questions about procedure may be directed to the Administrative Law Judge.

The proposed rules will be published in the State Register issue of October 28, 1991, and a copy of the rules may be obtained from the Commission by writing Richard G. Krueger at the address listed above in Part II of this Notice.

The statutory authority of the Commission to adopt the proposed rules is contained in Minnesota Statutes, section 240.23 (1990) and Laws Minn. 1991, ch. 336.

The proposed rules may be modified as a result of the rule hearing process. Those who are potentially affected in any manner by the substance of the proposed rules are therefore encouraged to participate in the process.

Minnesota Statutes, chapter 10A, requires each lobbyist to register with the State Ethical Practices Commission. Questions regarding this requirement may be directed to the Ethical Practices Commission at 625 North Robert Street, St. Paul, Minnesota 55101-2520, telephone number (612) 296-5148.

NOTICE IS HEREBY GIVEN that a statement of need and reasonableness is now available for review at the Commission and at the Office of Administrative Hearings. This statement of need and reasonableness includes a summary of all the evidence which the Commission anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. The statement of need and reasonableness may be reviewed at the Commission by contacting Richard G. Krueger at the address listed above in part II of this Notice or it may be reviewed at the Office of Administrative Hearings, and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

PLEASE NOTE that any person may request notification of the date on which the Administrative Law Judge's report will be available, after which date the Commission may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may require notification of the date on which any rules were adopted and filed with the Secretary of State. The Notice must be mailed on the same day that the rules are filed. If you want to be so notified, you may so indicate at the hearing or send a request in writing to the Commission at any time prior to the filing of the rules with the Secretary of State.

Promulgation of the proposed rules will not result in the expenditure of public monies by local public bodies nor have any impact on agricultural land; therefore, no further information need be provided under Minnesota Statutes, section 14.11 (1990).

The Commission is subject to Minnesota Statutes, section 14.115 (1990), regarding small business considerations in rulemaking. The Commission's evaluation of the applicability of the

methods contained in Minnesota Statutes, section 14.115, subdivision 2 (1990), for reducing the impact of the proposed rules on small businesses are addressed in the statement of need and reasonableness.

IV. NOTICE OF INTENT TO CANCEL THE HEARING WITH RESPECT TO THE RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES.

PLEASE NOTE THAT THE HEARING, NOTICE OF WHICH IS GIVEN IN PART III ABOVE, WILL BE CANCELLED WITH RESPECT TO THE PROPOSED RULES IF FEWER THAN 25 PERSONS REQUEST A HEARING WITH RESPECT TO THE PROPOSED RULES IN RESPONSE TO THE NOTICE GIVEN IN PART II ABOVE.

To be informed whether a hearing noticed in Part III above will be held, please contact Richard G. Krueger at the address listed above in part II of the Notice before November 15, 1991, and provide your name, address, and telephone number. You will be notified after November 27, 1991, if the hearing has been cancelled. You may also call Mr. Krueger at (612) 341-7555 after November 27, 1991, for oral confirmation regarding the scheduled hearing.

Dated: October 9, 1991

RICHARD G. KRUEGER
MINNESOTA RACING COMMISSION

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE
MINNESOTA RACING COMMISSION
GOVERNING CLASS E (TELERACING FACILITY)
LICENSES, SIMULCASTING, AND PARI-MUTUEL BETTING.

AFFIDAVIT OF ADDITIONAL NOTICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

RICHARD G. KRUEGER, UNDER OATH, STATES THAT:

NOTICE OF THE PROPOSED RULES WAS GIVEN ON OCTOBER 24, 1991 TO THE FOLLOWING ORGANIZATIONS WHO ARE NOT PRESENTLY ON THE RACING COMMISSION'S MAILING LIST FOR THE PURPOSE OF RECEIVING NOTICE OF THE PROPOSED ADOPTION OF RULES.

MINNESOTA THOROUGHBRED ASSOCIATION
MINNESOTA QUARTER HORSE RACING ASSOCIATION
HORSEMENS' BENEVOLENT & PROTECTIVE ASSOCIATION
MINNESOTA HARNESS RACING, INC.

STATE OF MINNESOTA

RICHARD G. KRUEGER
EXECUTIVE DIRECTOR

Subscribed and Sworn to Before Me
This 24th Day of October, 1991.

NOTARY PUBLIC

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

STATE OF MINNESOTA
MINNESOTA RACING COMMISSION

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA RACING COMMISSION GOVERNING CLASS E (TELERACING FACILITY) LICENSES, SIMULCASTING AND PARI-MUTUEL BETTING

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 24TH DAY OF OCTOBER, 1991.

THAT ON THE 24TH DAY OF OCTOBER, 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 24th Day of October, 1991.

Sharon A. Brigsley
NOTARY PUBLIC

SHARON A. BRIGSLEY
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Oct. 23, 1995

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****
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BILLY ADLER
BOX 99
CHALLIS, ID 83226

AQHA RACING DEPT.
DOUG RAY
P.O. BOX 200
AMARILLO, TX 79168

ASSN FOR ADV OF SPORTS POTENTIAL
EQUINE DIVISION
185 DOE RUN ROAD
UNIONVILLE, PA 19375

AUTOTOTE LTD
MARY JANOWSKI
100 BELLEVUE RD BOX 6009
NEWARK, DE 19714

RON BANKS
JOCKEY'S GUILD, INC.
12809 N. 15TH AVE.
PHOENIX, AZ 85029

STEVE BELTON
150 S. 5TH ST #2300
MPLS, MN 55402

JERRY BLATZ
7900 XERXES AVE. S. SUITE 960
BLOOMINGTON, MN 55431

KEVIN CONARD
P.O. BOX 2003
STILLWATER, MN 55082

BURT DAHLBERG
523 S. 8TH ST
MPLS, MN 55404

****
****
****
****
****

AMERICAN HORSE RACING FEDERATION
JAMES P. HEFFERNAN
1700 K ST. NW SUITE 300
WASHINGTON,, DC 20006

ABABIAN JOCKEY CLUB
SHAREI GUETSCHOW, DIR. OF RACING
12000 ZUNI STREET
WESTMINSTER, CO 80234

ASSOCIATION OF RACING COMMISSIONERS
KENTUCKY HORSE PARK
4067 IRON WORKS PIKE
LEXINGTON, KY 40511

BACKSTRETCH MAGAZINE
19899 W. NINE MILE ROAD
SOUTHFIELD, MI 48075

LORETTA BEAUDOIN
1322 STIKNEY AVE.
S. ST. PAUL, MN 55075

WENDY BENSON
2112 MEETING ST.
WAYZATA, MN 55391

JOHN BROEKER
BROEKER, GEER, FLETCHER, & LAFOND
8500 NORMANDALE LAKE BLVD, #1510
BLOOMINGTON, MN 55437

CAROL CONNOLLY
504 SELBY AVENUE
ST. PAUL, MN 55102

PETER DAHLEN
NATIONAL PRACTICE INST
330 2ND AVE. S. #770
MPLS, MN 55401

1301 ELSTON AVE.
CHICAGO, IL 60622

10 Lake Drive
Hightstown, NJ 08520

DAILY RACING FORM
DON FLEMING
170 S. BIMINI PL.
LOS ANGELES, CA 90004

ROBERT L. DECKER
CFO, LADBROKE RACING CORP.
28001 SCHOOLCRAFT ROAD
LIVONIA, MI 48150

JIM DRUCK
3200 PIPER TOWER
MINNEAPOLIS, MN 55402

GARY FRAKES
P.O. BOX 126
LUVERNE, MN 56156

DONALD FRAZIER
STATE STEWARD
CANTERBURY DOWNS
SHAKOPEE, MN 55379

CLYDE FUEHRER
MN HBPA
CANTERBURY DOWNS P.O. BOX 508
SHAKOPEE, MN 55379

GAMBLING ENFORCEMENT
TOM BROWNELL
1600 UNIVERSITY AVE. #205
ST. PAUL, MN 55104

GAMING COMMISSIONER
DEPT. OF GAMING
1711 W. CO. RD. B #300
ROSEVILLE, MN 55113

MARLYS GOEBEL
7010 KEATS AVE. S.
COTTAGE GROVE, MN 55016

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MN HBPA
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SHAKOPEE, MN 55379

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2932 JERSEY AVE. N.
MPLS, MN 55427

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2000 PIPER JAFFRAY TOWER
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MPLS, MN 55402

HARNESS HORSEMEN INTERNATIONAL
525 HIGHWAY 33
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ENGLISHTOWN, NJ 07726

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WADENA, MN 56482

GERRY HERRINGER
1731 INNSBRUCK PKWY
MPLS, MN 55421

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B. C. A.
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ST. PAUL, MN 55104

TOM HILL
RR. 1
MEDFORD, MN 55049

HAROLD HITZMAN
35955 FALCON AVE
NORTH BRANCH, MN 55056

CORT HOLTEN
CHESTNUT & BROOKS
222 S. 9TH ST.
MPLS, MN 55402

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DEAN HOFFMAN
750 MICHIGAN AVENUE
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ALBERT LEA, MN 56007

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GRAND RAPIDS, MN 55744

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DEPARTMENT OF FINANCE
658 CEDAR ST. SUITE 400
ST. PAUL, MN 55155

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P.O. BOX 439
BOVEY, MN 55709

KMSP TV
KEITH BROWN
6975 YORK AVE. S.
MPLS, MN 55435

PAUL & BOBBI KNAPPER
PO BOX 516
WATERTOWN, MN 55388

Office of the Legislative Auditor
Claudia Gudvangen
1st Floor - Vet Svcs. Building
St. Paul, MN 55155

Legislative Reference Library
Zona DeWitt
645 State Office Building
St. Paul, MN 55155

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STILLWATER, MN 55082

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ST. PAUL, MN 55101

BRUCE MALKERSON
POPHAM HAIK
3300 PIPER JAFFRAY TOWER
MPLS, MN 55402

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DAN WILLIAMS
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111 IMPERIAL DRIVE
WEST ST. PAUL, MN 55118

KAREN METZEN
111 IMPERIAL DRIVE
#307
W. ST. PAUL, MN 55118

MINNESOTA THOROUGHBRED JOURNAL
1600 W. LAKE STREET #130
MPLS, MN 55408

DAN MJOLSNESS
ROUTE 2
RED WING, MN 55066

MN ARABIAN HORSE ASSN

Susan Molstad

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PLYMOUTH, MN 55446

Ladysmith, WI 54848

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DAYTON, MN 55327

MPLS STAR TRIBUNE
ARNIE ROBBINS
425 PORTLAND AVE
MPLS, MN 55488

C. MICHAEL NEIMEYER
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1201 HARMON AVE.
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#1
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CARIN OFFERMAN
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STEPHEN A. PALMER
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110 W. RAILWAY ST. P.O. BOX 385
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LEONARD STREET & DIENARD
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R.R. 1, BOX 129
ROYALTON, MN 56373

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ROCHESTER, MN 55904

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[illegible]

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1254 DODD ROAD
MENDOTA HEIGHTS, MN 55118

DEPARTMENT : ATTORNEY GENERAL-Bremer Tower

STATE OF MINNESOTA

Office Memorandum

DATE : April 23, 1992

TO : **MARY JO MURRAY**
Special Assistant
Attorney General

FROM : **JOE NEWTON**
Special Assistant
Attorney General

PHONE : 296-1408

SUBJECT : Approval of the proposed adoption of the rules of the Minnesota Racing Commission relating to amendments to existing rules.

Mary Jo:

I am forwarding to you the cover letter from Sharon Beighley, office manager at the Minnesota Racing Commission, along with the necessary documents for approval of the above-referenced rules. Should you have any questions or require any further information, please contact me.

I would also appreciate it if you could contact me regarding your availability or the availability of someone from your division to meet with myself and Carol Connolly who is a member of the Minnesota Racing Commission and Chair of the Affirmative Action Committee. As I believe you are aware, there are some problems in getting the affirmative action rules of the Minnesota Racing Commission approved and Commissioner Connolly has requested that we meet regarding any changes or amendments necessary in order for the rules to be approved. Commissioner Connolly, Linda Close and Mary Magnuson have met before regarding this issue and I believe there are some problems with the Commission's understanding of the requirements for the affirmative action rules. As I understand, the rules were submitted for approval but withdrawn by the Minnesota Racing Commission and must be resubmitted on or before May 26, 1992 in order to avoid republication. Please contact me at your earliest convenience so that we may discuss the matter at more length and perhaps set up a meeting date. Thank you.

EJN/psar3
Enclosures

Contacted Joe N.
We can't meet w/him- lack of conflict
referred him to Linda C
& Charlie W.