

**ND RACING COMMISSION  
Gunner laCour, Director  
9:00 A.M., December 8, 2014**

Administrative Rules Committee  
Legislative Assembly  
Rough Rider Room, State Capitol  
Representative Bill Devlin, Chairman

The North Dakota Racing Commission began the administrative rules process in February of 2014 to make amendments to administrative rules 69.5-01-05, 69.5-01-07, and 69.5-01-09 governing the licensure of multiple horse owners, equine medication, and qualifying foals under the North Dakota Breeders' Fund, respectively.

Before discussing the administrative rules changes, I would like to begin by providing a little background on these and future changes the Racing Commission will propose. Up to this point my appearances before you have been primarily an effort to complete rule changes initiated by my predecessor. However, with the lone exception of the Breeders Fund changes I will present today, this appearance and those in the near future will focus on updating the Racing Commission Rules to modern standards. In today's presentation you will see our attempt to remedy just a few of the outdated rules which pose immediate problems for the Commission. Additionally, the

Commission is currently working on an overhaul of its flat racing and account deposit wagering rules with the support of our model rules body the Association of Racing Commissioners International or ARCI as they are commonly known. The Commission recognizes that a regulatory body can only be as effective as the rules that govern it. With the relatively small changes proposed today and the significant revisions we will present in the future, the Commission seeks to establish and maintain a position at the forefront of racing regulation.

First, I would like to begin by discussing the revisions to the Breeders Fund in administrative rule 69.5-01-09-01. The new language proposed by the Commission represents long running administrative practice rather than any significant change to the rules. In 2003 a legal opinion by the Attorney General required the Commission to more stringently enforce its registration rules which were interpreted to require a broodmare be registered in the Breeders Fund as a broodmare (as opposed to a foal) prior to foaling. This was clearly the intent of our current rules and was a practical necessity for the purpose of proper record keeping and tracking. This also supports any review of the qualifications of a ND registered foal which are dependent upon the

broodmare being in the state at specific times and can only be verified prior to and just after the foal's birth. However, a horseman contested the legality of this practice and ultimately brought his complaint before an Administrative Law Judge in the matter of *Melissa Peach and Randy Schwartz*. The ALJ's opinion sided with the horsemen, finding that there was no explicit requirement for the broodmare to be registered as a broodmare before the foal was born. Since that time the Breeders Fund administrator has been required to allow the registration of foals before the broodmare.

With this proposed revision the Commission will implement the initial intent of the rule and to return to its former practice. Requiring prior registration of broodmares will facilitate not only increased efficiency in Breeders Fund administration, but will support better enforcement of the Breeders Fund eligibility for foals. Additionally, I have been informed by the breed fund administrator that nearly all individuals comply with the rule change already as a matter of regular business. Therefore, the expected impact on the horsemen is extremely limited at best.

As discussed previously, the remaining two administrative rule changes that have been proposed by the Commission are taken directly from our

model rules body, the Association of Racing Commissioners International. These rules represent best practices in the equine industry and are the result of input from many participating jurisdictions of which North Dakota is one. When adopting ARCI model rules, jurisdictions can be assured that they represent the industry's most comprehensive and efficient regulatory methods.

With regard to the licensure of multiple owners of horses pursuant to administrative rule 69.5-01-05, the currently enacted rules of the Racing Commission are cumbersome and antiquated compared to those provided by ARCI. While the new rules proposed are significantly shorter in length, they are no less effective. They take the best aspects of our former rules and condense them into easily understandable requirements which apply uniformly to all multiple ownership situations, supporting not only increased compliance, but also more efficient enforcement.

In a state where multiple ownerships are infrequent, those few the Commission does see are often between family members with very little formal paperwork. This new set of rules provides the race meet officials with the latitude to deal with any kind of situation ranging from family ownership

to the largest owners syndicates, while mandating full disclosure of interests and holding all participants fully accountable for the accuracy of the information they provide. This concise set of rules, while also effective for larger jurisdictions, will have a net benefit for a jurisdiction such as North Dakota with much less complex ownership structures.

The final change proposed by the Commission is the adoption of the ARCI Model Medication Rules under administrative rule 69.5-01-07-18. This rule change is potentially one of the most important actions in the history of the Commission. Currently, the racing industry is in a state of upheaval over the lack of uniform medication policies and enforcement in many jurisdictions. In racing there is no single governing body, rather each state has promulgated its own rules including those related to equine medication. As you might expect, this has led to wildly different requirements as horsemen travel state to state as well as leading to instances where states fail to keep pace with the new drugs entering the industry. North Dakota has been no exception. With our limited budget and race days, historically we have been significantly behind the curve on addressing equine medication, though I

would note that the implementation of these rules by variance over the past two years has been largely a success.

With animal welfare taking center stage, North Dakota has been, and can continue to be, a leader on this issue. While we are no doubt one of the smallest racing jurisdictions, with the adoption of the proposed rules we will become one of only six jurisdictions to have fully implemented the ARCI uniform medication policy (only four had done so when our rule change process began). With the current focus in the industry on adoption of the uniform medication policies, we can lend our voice to those pushing for reform.

By adopting these rules, North Dakota racing will also receive something more valuable than good press; specifically a set of fully researched rules representing the best science the industry has to offer. These rules not only directly benefit the Commission by supporting our regulation of equine welfare, but also the horsemen of North Dakota who will be provided with a clear set of rules detailing what drugs may and may not be used on a horse based on their legitimacy as a therapeutic substance. Furthermore, for those substances which have a legitimate therapeutic use, the rules provide

clear guidelines with regard to how and when a substance may be administered.

Ultimately, this rule change balances the interests of all parties involved so that each is protected in their own way. Our equine athletes deserve to be treated humanely. The public deserves to see fair competition. The horsemen deserve a set of rules that are clear, easy to follow and allows them to treat their competitors fairly. Accordingly, these medication rules represent an important step in further developing the safety and credibility of horse racing in North Dakota.

The rule change process began on February 28, 2014 when the Racing Commission Director presented the foregoing administrative rule changes to the Commission. The Racing Commission authorized the Director to draft the appropriate amendments.

On June 4, 2014 the Racing Commission contacted the ND Newspaper Association requesting them to publish an Abbreviated Notice of Intent to Adopt and Amend Administrative Rules. The North Dakota Newspaper Association was paid \$1,536.57 to publish the notice. A Full Notice of Intent to Adopt and Amend Administrative Rules and the proposed rules and

amendments were also sent to John Walstad of the Legislative Council on June 3, 2014.

The public hearing was conducted in the North Dakota Racing Commission Offices on July 8, 2014. No member of the public attended the meeting. No comments, either oral or written, were received at the meeting.

As stated in the public hearing notice, written comments could be made to the Racing Commission until July 18, 2014. There were no written comments by the public. There were no oral concerns, objections, or complaints submitted by the public for the Racing Commission's consideration with regard to the rule change.

The proposed rule change did not result from statutory changes made by the Legislative Assembly nor is it related to any federal statute or regulation.

Neither the Governor nor a member of the Legislative Assembly has filed a written request for a regulatory analysis and the rule is not expected to have an impact on the regulated community in excess of \$50,000; therefore, a regulatory analysis was not completed.



A small entity regulatory analysis and small entity economic impact statement was completed and is attached.

A fiscal note was completed and is attached.

A constitutional takings assessment was not required for this requested rule change.

The adopting of this rule was not an emergency and the administrative rule process was followed.

## SMALL ENTITY REGULATORY ANALYSIS

1. Establishing less stringent compliance or reporting requirements.
  - a. RCI Model Medication Rules
    - i. Less stringent medication rules have been shown to be ineffectual in jurisdictions throughout the United States. These rules were developed as a baseline to combat the growing problem of misuse of medication administered to horses.
  - b. Breeders Fund Rule
    - i. Failure to clarify this rule would result in allowing brood mares to be registered any time after foaling. This would result in the Commission's inability to confirm that a broodmare was in the state prior to foaling as required by Administrative Rule 69.5-01-09-01(3).
  - c. Multiple Owners' License
    - i. The change to this rule reduces the reporting requirements for licenses to be issued to multiple owners of a single horse.
2. Establishing less stringent schedules or deadlines for compliance or reporting requirements.
  - a. All Rules
    - i. Not applicable as there are no schedules or deadlines.
3. Consolidating or simplifying compliance or reporting requirements.
  - a. RCI Model Medication Rules
    - i. The requirements of this rule have been thoroughly vetted by numerous rulemaking and testing organizations to insure they are as clear and accurate as possible. They are also user friendly, clearly proscribing what medication may and may not be used and at what levels. The requirements established herein are generally considered the minimum necessary to effectively regulate racing medication.
  - b. Breeders Fund Rule
    - i. This rule clarifies current practice, therefore simplifying the process for participating individuals.
  - c. Multiple Owners' License
    - i. This rule is intended to consolidate and simplify the reporting requirements for licensing multiple owners of a single horse.
4. Establishing performance standards that replace design or operational standards in the proposed rule.
  - a. All Rules
    - i. Not applicable as there are no performance standards that may be replaced by design or operational standards.
5. Exempting small entities from all or part of the proposed rule.
  - a. RCI Model Medication Rules
    - i. The effective administration of medication policy would be undermined by any such exemption as monitoring medication under two or more separate regimes would be extremely onerous.
  - b. Breeders Fund Rule
    - i. The effective administration of the Breeders Fund would be undermined by any such exemption as this would provide some breeders with a significant advantage over others and would create recording difficulties.
  - c. Multiple Owners' License
    - i. This rule would actually simplify the process to a point where any small business should easily be able to comply.

## SMALL ENTITY ECONOMIC IMPACT STATEMENT

1. Small entities that may be subject to the proposed rule.
  - a. RCI Model Medication Rules
    - i. Horse farms and breeding operations, training stables, and veterinary practices.
  - b. Breed Fund Rule
    - i. Horse farms and breeding operations and training stables.
  - c. Multiple Owners' License
    - i. Horse farms and breeding operations.
2. The administrative or other costs required for small entities to comply with the proposed rule.
  - a. RCI Model Medication Rules
    - i. None.
  - b. Breed Fund Rule
    - i. None.
  - c. Multiple Owners' License
    - i. This rule should reduce the cost of compliance to any business.
3. The probable cost and benefit to private persons and consumers who may be affected by the proposed rule.
  - a. RCI Model Medication Rules
    - i. No cost. The benefit will be that any consumer or private person wagering on North Dakota racing will be assured that such racing is as fair as possible and conducted in accordance with the highest industry standards.
  - b. Breed Fund Rule
    - i. No cost. Horsemen will benefit from the clarified procedures.
  - c. Multiple Owners' License
    - i. No cost. Horsemen will benefit from the reduced reporting.
4. The probable effect of the rules on state revenues.
  - a. RCI Model Medication Rules
    - i. There may be a small increase due to fines resulting from violation of the rules. However, the horsemen have used these rules for several years with minimal violations; therefore, it is unlikely that these rules would result in any significant state revenues.
  - b. Breed Fund Rule
    - i. No effect on state revenues.
  - c. Multiple Owners' License
    - i. No effect on state revenues.
5. Whether there are any less intrusive or less costly methods of achieving the proposed rule's purpose.
  - a. RCI Model Medication Rules
    - i. There are currently no other proposed medication rules with the efficacy of the RCI Model Medication Rules. These rules are designed to only intrude as necessary to effectively regulate racing medication.
  - b. Breed Fund Rule
    - i. The rule is neither intrusive nor costly.
  - c. Multiple Owners' License
    - i. The rule is neither intrusive nor costly.