

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Proposed Exempt
Rules of the Minnesota Racing
Commission Governing Horse Racing,
Minnesota Rules, Chapter 7876

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.386
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Perry Wilson upon the application of the Minnesota Racing Commission (Commission) for a legal review under Minn. Stat. § 14.386 (2014).

On April 8, 2016 the Commission filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.386 and Minn. R. 1400.2400 (2015).

Based upon a review of the written submissions by the Commission, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY DETERMINED THAT:

1. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
2. According to Minn. Stat. § 240.23, the Commission has the statutory authority to adopt these proposed rules using the exempt rulemaking process.

IT IS HEREBY ORDERED THAT:

The adopted rules are **APPROVED**.

Dated: May 4, 2016

A handwritten signature in black ink, appearing to read "Perry M. Wilson", is written over a horizontal line.

PERRY WILSON
Administrative Law Judge

MEMORANDUM

The Commission proposes to enact a rule governing the steps it will take at its horseracing tracks in the event certain infectious diseases are found in horses at a racetrack in the United States.¹ The Commission has promulgated this rule under Minn. Stat. § 14.388, subd. 1(1), which permits a state agency to make rules when it finds good cause to believe that “the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to: 1. address a serious and immediate threat to the public health, safety, or welfare.”

The Commission found that:

Equine herpes virus (EHV-1) has become a serious health issue in several racetracks and horse training centers throughout the United States, with horses showing signs of and/or dying from the neurological form of the disease. The Commission recognizes that racehorses routine (sic.) travel between racetracks and may come into contact with EHV-1 and spread the disease, which is highly contagious and that EHV-1 presents a serious and immediate threat to public health, safety or welfare.²

The Commission has supplemented the administrative record with two newspaper articles describing the outbreak of EHV-1 at two racetracks in the United States.³ In each outbreak, horses died as a result of the disease.⁴ The proposed rule therefore satisfies the seriousness and immediacy requirements of the statute.⁵

The record supports the Commission’s finding of good cause to take steps to address a serious and immediate threat to public health, safety, or welfare under Minn. Stat. § 14.388, subd. 1(1). The health and welfare of racehorses is within the purview of the public health, safety and welfare language of the statute because the public has a compelling interest in the good health of animals to which the public may be exposed. The language of section 14.388, subdivision 1(1) is not limited to immediate threats to the health and welfare of human beings.

In addition to a finding of good cause under subdivision 1, section 14.388, subdivision 2 requires the agency to provide notice of its intent to adopt the rule to persons who have registered with the agency pursuant to Minn. Stat. § 14.14, subd. 1a, and include: (1) the proposed rule, amendment, or repeal; (2) an explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and (3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

¹ Resubmitted Rule, April 25, 2016.

² Order Adopting Rules, filed May 3, 2016.

³ Letter from Patricia Sifferle dated April 20, 2016 and attachments. The articles are dated April 8 and 19, 2016.

⁴ *Id.*

⁵ See *Jewish Community Action v. Commissioner of Public Safety*, 657 N.W.2d 604, 608-09 (Minn. Ct. App. 2003)

The record shows that the Commission has satisfied the notice requirements of Minn. Stat. § 14.388, subd. 2.

No public comments have been filed with regard to the Commission's proposed rule.

The determination of whether the Commission's rule has been legally proposed is governed by Minn. R. 1400.2400, subp. 3, which states that in reviewing a filing the Administrative Law Judge must decide whether the rule meets the standards of part 1400.2100, Items A and D to G. Those standards of review provide as follows:

A rule must be disapproved by the judge or chief judge if the rule:

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.36, subdivision 3, paragraph (d);

. . .

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency's powers to another agency, person or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law. . . .

After a careful review of the rule and the administrative record, the Administrative Law Judge concludes that the rule does not raise any legality concerns.

P. M. W.