

CHAPTER 7870
MINNESOTA RACING COMMISSION
LICENSURE

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CLASS A LICENSE

7870.0010 IDENTIFICATION OF APPLICANT FOR CLASS A LICENSE.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0020 APPLICANT'S AFFIDAVIT.

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

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

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

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

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

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

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

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

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

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

J. The date.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0030 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class A license must disclose:

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

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

C. If the applicant is a corporation:

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

(2) The jurisdiction and date of incorporation.

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

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

(5) The general nature of the applicant's business.

(6) Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission.

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

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

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

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

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

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

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

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

(1) The applicant's full name and any trade names currently used by the applicant.

(2) The jurisdiction of organization of the applicant.

(3) The date the applicant commenced doing business in Minnesota.

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

(5) The general nature of the applicant's business.

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

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

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0040 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class A 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 7870.0030 or 7870.0100, item B or C has:

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0050 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. A description of access of the facility to public transportation, specifics of the type of transportation and schedules, road maps of area indicating pickup and dropoff points.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0060 DISCLOSURE OF DEVELOPMENT PROCESS.

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

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

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

(1) facility design;

(2) land acquisition;

(3) site preparation;

(4) improvements and equipment, separately identifying the costs of part 7870.0050, items D to O and other categories of improvements and equipment;

(5) interim financing;

(6) permanent financing;

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

C. documentation of fixed costs;

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

E. schematic drawings;

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

(1) architect or other design professional;

(2) project engineer;

(3) construction engineer;

(4) contractors and subcontractors; and

(5) equipment procurement personnel;

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0070 DISCLOSURE OF FINANCIAL RESOURCES.

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

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0080 DISCLOSURE OF FINANCIAL PLAN.

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

A. the following assumptions and support for them:

- (1) average daily attendance;
- (2) average daily per capita handle and average bet;
- (3) retainage;
- (4) admissions to track, including ticket prices and free admissions;
- (5) parking volume, fees, and revenues;
- (6) concessions, gift shop, and program sales;
- (7) cost of purses;
- (8) pari-mutuel expense;
- (9) state taxes;
- (10) real estate taxes;
- (11) breeder fund;
- (12) payroll;
- (13) operating supplies and services;
- (14) utilities;
- (15) repairs and maintenance;
- (16) insurance;
- (17) travel expense;
- (18) membership expense;
- (19) security expense;

- (20) legal and audit expense;
- (21) debt service; and
- (22) federal taxes;

B. the following profit and loss elements:

- (1) total revenue, including projected revenues from retainage and breakage, admissions, parking, and concessions, gift, and program operations;
- (2) total operating expenses, including anticipated expenses for:
 - (a) purses;
 - (b) pari-mutuel;
 - (c) sales tax;
 - (d) breakage to state;
 - (e) real estate tax;
 - (f) admissions tax;
 - (g) breeder fund;
 - (h) special assessments;
 - (i) cost of concession goods, gifts, and programs;
 - (j) advertising and promotion;
 - (k) payroll;
 - (l) operating supplies and service;
 - (m) maintenance and repairs;
 - (n) insurance;
 - (o) security;
 - (p) legal and audit; and
 - (q) federal and state income taxes; and
- (3) nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of method used, and equipment depreciation and identification of method used;

C. projected cash flow, including assessment of:

- (1) income, including equity contributions, debt contributions, interest income, operating revenue; and
- (2) disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense; and

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

- (1) current, fixed, and other noncurrent assets;
- (2) current and long-term liabilities; and
- (3) capital accounts;

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0090 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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

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

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

(1) A description of the approval, unit of government, date, and documentation.

(2) Whether public hearings were held. If they were, the applicant must disclose when and where the hearings were conducted. If they were not held, the applicant must disclose why they were not held.

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

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

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

F. Whether an environmental impact statement is required for applicant's facility. If so, the applicant must disclose its status and the governmental unit with jurisdiction, and provide a copy of any statement.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0100 DISCLOSURE OF MANAGEMENT.

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

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

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

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

(2) current residence and business addresses and telephone numbers;

bers;

(3) qualifications and experience in the following areas:

(a) general business;

(b) real estate development;

(c) construction;

(d) marketing, promotion, and advertising;

(e) finance and accounting;

(f) horse racing;

(g) pari-mutuel betting;

(h) security; and

(i) human and animal health and safety; and

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

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

(1) full name;

- (2) current address and telephone number;
- (3) nature of services;
- (4) qualifications and experience;
- (5) description of terms and conditions of any contractor's agreement, and a copy of the agreement;

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

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

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

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

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

(4) description of video monitoring equipment and its use;

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

(6) coordination of security with law enforcement agencies;

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

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

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

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

J. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; and a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0110 DISCLOSURE OF PUBLIC SERVICE.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0120 DISCLOSURE OF IMPACT OF FACILITY.

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

A. economic impact, including:

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

- (2) purchases of goods and services and specifics as to money amounts and types of purchases;
- (3) public and private investment; and
- (4) tax revenues generated;
- B. ecological impact;
- C. impact on energy conservation and development of alternative energy sources; and
- D. social impact.

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0130 DISCLOSURE OF PUBLIC SUPPORT AND OPPOSITION.

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

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0140 EFFECTS ON COMPETITION.

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

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0150 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0160 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class A 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 7870.0030 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 7870.0100, item B or C:

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0170 CLASS A LICENSE CRITERIA.

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

A. the integrity of the applicant, its partners, directors, officers, policy-makers, managers, and holders of ownership or other voting interests or control, including:

- (1) criminal record;
- (2) involvement in litigation over business practices;
- (3) involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;
- (4) involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;
- (5) involvement in bankruptcy proceedings;
- (6) failure to satisfy judgments, orders, or decrees;
- (7) delinquency in filing of tax reports or remitting taxes; and
- (8) any other indices related to integrity which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

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

C. the quality of physical improvements and equipment in applicant's facility, including:

- (1) racetrack or tracks;
- (2) stabling;
- (3) grandstand;
- (4) detention barn;
- (5) paddock;
- (6) jockeys' and drivers' quarters;
- (7) pari-mutuel tote;
- (8) parking;
- (9) access by road and public transportation;
- (10) perimeter fence;
- (11) other security improvements and equipment;
- (12) starting, timing, photo finish, and photo-patrol or video equipment;
- (13) commission work areas; and
- (14) any other indices related to quality which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

D. imminence of completion of facility;

E. financial ability to develop, own, and operate a pari-mutuel horse racing facility successfully, including:

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- (1) ownership and control structure;
- (2) amounts and reliability of development costs;
- (3) certainty of site acquisition or lease;
- (4) current financial condition;
- (5) sources of equity and debt funds, amounts, terms and conditions and certainty of commitment;
- (6) provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues or other financial adversity;
- (7) feasibility of financial plan; and
- (8) any other indices related to financial ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

F. status of governmental actions required by the applicant's facility, including:

- (1) necessary road improvements;
- (2) necessary public utility improvements;
- (3) required governmental approvals for development, ownership, and operation of the facility;
- (4) acceptance of any required environmental assessment and preparation of any required environmental impact statement; and
- (5) any other indices related to status of governmental actions which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

G. management ability of the applicant, including:

- (1) qualifications of managers, consultants, and other contractors to develop, own, and operate a pari-mutuel horse racing facility;
- (2) security plan;
- (3) plans for human and animal health and safety;
- (4) marketing, promotion, and advertising plans;
- (5) concessions plan;
- (6) plan for training personnel;
- (7) equal employment and affirmative action plans; and
- (8) any other indices related to management ability which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

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

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

J. impact of facility, including:

- (1) economic impact, including employment created, purchases of goods and services, public and private investment and taxes generated;
- (2) ecological impact;
- (3) impact on energy conservation and development of alternative energy sources;
- (4) social impact;
- (5) costs of public improvements; and
- (6) any other indices related to impact which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

K. extent of public support and opposition; and

L. effects on competition, including:

- (1) number, nature, and relative location of other Class A licenses;
- (2) minimum and optimum number of racing days sought by the applicant; and
- (3) any other indices of the impact of competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

CLASS B LICENSE

7870.0180 IDENTIFICATION OF APPLICANT FOR CLASS B LICENSE.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0190 APPLICANT'S AFFIDAVIT.

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

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

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

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

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

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

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

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

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

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

J. The date.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0200 DISCLOSURE OF OWNERSHIP AND CONTROL.

An applicant for a Class B license must disclose:

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

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

C. If the applicant is a corporation:

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

(2) Jurisdiction and date of incorporation.

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

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

(5) The general nature of the applicant's business.

(6) Whether the applicant is publicly held as defined by the rules and regulations of the Securities and Exchange Commission.

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

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

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

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

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

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

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

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

(1) The applicant's full name and any trade names currently used by the applicant.

(2) Jurisdiction of organization of the applicant.

(3) Date the applicant commenced doing business in Minnesota.

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

(5) The general nature of the applicant's business.

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

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

E. If a nonindividual record or beneficial holder of an ownership or other voting interest of five percent or more in the applicant is identified pursuant to item C, subitem (9) or (10) or item D, subitem (6) or (7), the applicant must make its best effort, as defined in part 7870.0030, item E, to disclose the information required by those clauses as to record or beneficial holders of an ownership or other voting interest of five percent or more in that nonindividual holder. The disclosure required by those clauses must be repeated, in turn, until all indirect individual record and beneficial holders of ownership or other voting interests in the applicant are so identified.

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0210 DISCLOSURE OF CHARACTER INFORMATION.

An applicant for a Class B 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 has:

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

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

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

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0220 DISCLOSURE OF IMPROVEMENTS AND EQUIPMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

P. A description of access of the facility to public transportation; specifics of types of transportation and schedules; and a road map of area indicating pickup and drop-off points.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0230 DISCLOSURE OF AUTHORIZATION TO USE HORSE RACING FACILITY.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0240 DISCLOSURE OF FINANCIAL RESOURCES.

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

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: 8 SR 1823

7870.0250 DISCLOSURE OF FINANCIAL PLAN.

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

A. the following assumptions and support for them:

- (1) average daily attendance;
- (2) average daily per capita handle and average bet;
- (3) retainage;
- (4) admissions to track, including ticket prices and free admissions;
- (5) parking volume, fees, and revenues;
- (6) concessions, gift shop, and program sales;
- (7) cost of purses;
- (8) pari-mutuel expense;
- (9) state taxes;
- (10) real estate taxes;
- (11) breeder fund;
- (12) payroll;
- (13) operating supplies and services;
- (14) utilities;
- (15) repairs and maintenance;
- (16) insurance;
- (17) travel expense;

- (18) membership expense;
- (19) security expense;
- (20) legal and audit expense;
- (21) debt service; and
- (22) federal taxes;

B. the following profit and loss elements:

- (1) total revenue, including projected revenues from retainage and breakage, admissions, parking, and concessions, gift, and program operations;
- (2) total operating expenses, including anticipated expenses for:
 - (a) purses;
 - (b) pari-mutuel;
 - (c) sales tax;
 - (d) breakage to state;
 - (e) real estate tax;
 - (f) admissions tax;
 - (g) breeder fund;
 - (h) special assessments;
 - (i) cost of concession goods, gifts, and programs;
 - (j) advertising and promotion;
 - (k) payroll;
 - (l) operating supplies and service;
 - (m) maintenance and repairs;
 - (n) insurance;
 - (o) security;
 - (p) legal and audit; and
 - (q) federal and state income taxes;
- (3) nonoperating expenses, including anticipated expenses for debt service, facility depreciation and identification of the method used, and equipment depreciation and identification of the method used;

C. projected cash flow, including assessment of:

- (1) income, including equity contributions, debt contributions, interest income, operating revenue; and
- (2) disbursements, including land, improvements, equipment, debt service, operating expense, organizational expense; and

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0260 DISCLOSURE OF GOVERNMENTAL ACTIONS.

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

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

- (1) A description of the approval, unit of government and date, and documentation.
- (2) Whether public hearings were held. If they were, the applicant

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0270 DISCLOSURE OF MANAGEMENT.

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

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

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

- (1) legal name, aliases, and previous names;
- (2) current residence and business addresses and telephone numbers;

(3) qualifications and experience in the following areas:

- (a) general business;
- (b) marketing, promotion, and advertising;
- (c) finance and accounting;
- (d) horse racing;
- (e) pari-mutuel betting;
- (f) security;
- (g) human and animal health and safety; and

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

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

- (1) full name;
- (2) current address and telephone number;
- (3) nature of services;
- (4) qualifications and experience; and
- (5) description of terms and conditions of any contractor's agreement, and a copy of the agreement;

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

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

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

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

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

(4) a description of video monitoring equipment and its use;

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

(6) coordination of security with law enforcement agencies;

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

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

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

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

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

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

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

M. a description of plans for compliance with all laws pertaining to discrimination, equal employment, and affirmative action; policies regarding recruitment, use, and advancement of minorities; policies with respect to minority contracting; a copy of Equal Employment Opportunity Statement and Policy of the applicant dated and signed by chief executive officer; a copy of Affirmative Action Policy and Procedures dated and signed; and identification of the affirmative action officer, including name, title, address, and telephone number.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0280 DISCLOSURE OF PUBLIC SERVICE.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0290 DISCLOSURE OF ECONOMIC IMPACT.

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

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

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

C. tax revenues generated.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

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7870.0300 DISCLOSURE OF PUBLIC SUPPORT AND OPPOSITION.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0310 EFFECTS ON COMPETITION.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0320 DISCLOSURE OF ASSISTANCE IN PREPARATION OF APPLICATION.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0330 PERSONAL INFORMATION AND AUTHORIZATION FOR RELEASE.

In an application for a Class B 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:

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0340 CLASS B LICENSE CRITERIA.

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

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A. the integrity of the applicant, its partners, directors, officers, policy-makers, managers, and holders of ownership or other voting interests or control, including:

- (1) criminal records;
- (2) involvement in litigation over business practices;
- (3) involvement in disciplinary actions over a business license or permit or refusal to renew a license or permit;
- (4) involvement in proceedings in which unfair labor practices, discrimination, or government regulation of horse racing or gambling was an issue;
- (5) involvement in bankruptcy proceedings;
- (6) failure to satisfy judgments, orders, or decrees;
- (7) delinquency in filing of tax reports or remitting taxes;
- (8) any other indices related to integrity which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

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

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

- (1) racetrack or tracks;
- (2) stabling;
- (3) grandstand;
- (4) detention barn;
- (5) paddock;
- (6) jockeys' and drivers' quarters and equipment;
- (7) pari-mutuel tote;
- (8) parking;
- (9) access by road and public transportation;
- (10) perimeter fence;
- (11) other security improvements and equipment;
- (12) starting, timing, photo finish, and photo-patrol or video equipment;
- (13) commission work areas; and
- (14) any other indices related to quality which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

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

- (1) ownership and control structure;
- (2) terms and conditions of the applicant's authorization to use facility;
- (3) current financial condition;
- (4) sources of equity and debt funds, amounts, terms and conditions, and certainty of commitment;
- (5) provision for cost overruns, nonreceipt of expected equity or debt funds, failure to achieve projected revenues, or other financial adversity;
- (6) feasibility of the financial plan;
- (7) any other indices related to financial ability which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants;

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

F. management ability of the applicant, including:

- (1) qualifications of managers, consultants, and other contractors to manage pari-mutuel horse racing;
- (2) security plan;
- (3) plans for human and animal health and safety;
- (4) marketing, promotion, and advertising plans;
- (5) plan for conducting horse racing;
- (6) plan for purses;
- (7) plan for pari-mutuel betting;
- (8) concessions plan;
- (9) plan for personnel training;
- (10) equal employment and affirmative action plans; and
- (11) any other indices related to management which the commission deems crucial to its decision making as long as the same indices are considered with regard to all applicants;

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

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

I. extent of public support and opposition; and

J. effects on competition, including:

- (1) number, nature, and relative location of other Class B licenses;
- (2) minimum and optimum number of racing days sought by the applicant; and
- (3) any other indices related to effects on competition which the commission deems crucial to decision making as long as the same indices are considered with regard to all applicants.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

CLASS A AND B LICENSES

7870.0350 CLASS A AND B LICENSE APPLICATION DISCLOSURES.

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

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

B. Make its best effort, as defined in part 7870.0030, item E, to provide all information required to be disclosed.

C. Provide only information relevant to disclosures requested by the commission.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0360 CLASS A AND B LICENSE APPLICATION SUBMISSION.

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0370 INVESTIGATION FEE FOR CLASS A AND B LICENSES.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0380 CLARIFICATION OF CLASS A AND B LICENSE APPLICATION REQUIREMENTS.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0390 CHANGES IN CLASS A AND B LICENSE APPLICATIONS.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

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

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

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

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

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

The commission must provide an applicant for a Class A or B license an opportunity to make an oral presentation of its application to the commission before the commission decides whether to issue a license. This 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.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0420 PAYMENT OF CLASS A AND B LICENSE FEES.

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

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

B. a fee for a Class B license equal to \$100 for each live racing day and \$50 for each televised racing day 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.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823; 14 SR 1419*

7870.0430 CLASS A AND B LICENSE APPLICATION INFORMATION.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0439 STRIKES AND LOCKOUTS.

A licensee constructing a horse racing facility must enter into a no-strike, no-lockout agreement with the statewide labor organization which represents the largest number of construction employees in Minnesota.

Statutory Authority: *MS s 240.23*

History: *9 SR 2527*

7870.0440 DELAY IN COMPLETION OF RACETRACK FACILITY.

Failure of a Class A licensee to complete substantially the construction of its racetrack facility and installation of equipment within 30 days, as computed pursuant to Minnesota Statutes, section 645.15, after the completion date stated in its license application is cause for revocation or suspension of the license, and the commission may impose a penalty of \$1,000 on the licensee for each day of delay. The penalty does not apply if and to the extent the licensee proves that the delay arose out of causes beyond the control and without the fault or negligence of the licensee, its contractors and subcontractors. Such causes may include, but

are not restricted to, acts of God or enemies of the United States, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the delay must be beyond the control and without fault or negligence of the licensee, its contractors and subcontractors. If the cause of delay is the default of a contractor or subcontractor and if the licensee proves the default arose out of causes beyond the control of the licensee, its contractors and subcontractors, the above penalty may not be imposed for the delay unless the supplies or services to be furnished by contractor or subcontractor were obtainable from other sources in sufficient time to permit the licensee to meet the completion date.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

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

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0460 SECURITY.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0470 SECURITY MODIFICATIONS.

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

Statutory Authority: *MS s 240.23*

History: *8 SR 1823*

7870.0480 MEDICAL SERVICES.

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

- A. a fully equipped first aid room with at least two beds;
- B. a licensed physician and registered nurse on duty in the first aid room on all days during which horse racing is conducted; and
- C. an ambulance for humans with necessary equipment and staff whenever the facility is open for racing or exercising horses.

Statutory Authority: *MS s 240.23*

History: *8 SR 1823; 11 SR 2201*

7870.0490 CARE OF HORSES.

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

- A. an individual box stall for each horse;

B. a fence surrounding the stabling facilities;

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

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

E. a horse ambulance available for the safe and expedient removal of crippled animals. The ambulance must be equipped with a screen for use when an animal must be euthanized in view of the public, a winch to lift dead or injured animals onto the ambulance, and a removable floor or any other devices which enable a dead or injured horse to be loaded. Whenever the racetrack facility is open for racing or exercising horses, the ambulance must be tended by a driver who is capable of assisting in the safe and expedient removal of injured animals from the racetrack surface.

Statutory Authority: *MS s 240.23; 240.24*

History: *8 SR 1823; 13 SR 38*

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 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 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.

Subp. 2. Waiver of review. The commission, by application of the criteria in subpart 1 to contract information received, may determine that contracts and subcontracts of certain types, amounts, or durations will not affect the integrity of pari-mutuel racing and need not be reviewed. If the commission so concludes, it shall give written notice to affected licensees of the types, amounts, or durations of contracts and subcontracts which will not be reviewed and affected licensees need not thereafter submit the information required in subpart 1 for those contracts or subcontracts. The commission, at any time, may by written notice to affected licensees, rescind its decision not to review contracts and subcontracts

of certain types, amounts, or durations and require submission of the information required in subpart 1 if it determines that the integrity of pari-mutuel racing is affected.

Subp. 3. Information required. If the commission notifies a licensee of its intention to review and approve or disapprove a contract or subcontract, and the contract or subcontract is in an amount more than \$50,000 or of a duration longer than 30 days, a Class A, B, or D licensee also must submit to the commission:

A. The name, address, and telephone number of the contractor or subcontractor.

B. The name, address, date of birth, in the case of individuals, and social security number, if provided, of every director, officer, general partner, or other policymaker and holder of a direct or indirect record or beneficial ownership or other voting interest or control, whether absolute or contingent, of five percent or more in the contractor or subcontractor and the nature and extent of such interest or control. If a nonindividual holds more than a 25 percent interest or control of a contractor or subcontractor, the disclosure required by this item must be made of policymakers and holders of interests or control of ten percent or more in that entity.

C. A description of any contract, agreement, or understanding entered into by an individual or other entity identified in item B with regard to performance of the contract or subcontract or its benefits.

D. Descriptions of the most recent five contracts or subcontracts performed or being performed, date, and for whom.

E. Claims of delay or failure in meeting tax, financial, or other obligations, including bankruptcy proceedings, and any other litigation or administrative proceedings in which the contractor or subcontractor was a party during the past five years.

F. The signature, name, address, and title of an individual providing the information. The licensee must make its best effort to notify the commission promptly of any change in the information required by items A, B, C, E, and F before performance is completed.

Subp. 4. Basis for commission approval. The commission shall approve the contract or subcontract if it determines that approval will not adversely affect racing or the public interest, is in accordance with applicable laws and rules, and will not adversely affect the public health, safety, and welfare. In making that determination, the commission must consider the contractor or subcontractor's competence, experience, reputation, record of law abidance, and financial responsibility.

Subp. 5. Rescission of approval. The commission, after notice and an opportunity to be heard, may rescind its approval of a contract or subcontract during its performance if the commission determines that the contractor or subcontractor no longer meets the criteria in subpart 4.

Subp. 6. Economic opportunities for racial minorities. Class A and B licensees are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for racial minorities:

A. establish a minimum goal of ten percent for construction subcontracts/material suppliers with minority business enterprises during construction of the facility, and establish a labor and employment goal of ten percent for racial minorities in on-site construction jobs;

B. establish a minimum goal of ten percent for hiring racial minorities in all job categories of the licensee's postconstruction 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;

C. establish a minimum goal of 15 percent of its total vendor, supplier,

and other contracts with minority business enterprises for the postconstruction period, and achieve this goal within two years after completion of the initial construction; and

D. establish a minimum goal of making available up to ten percent of the available equity ownership to racial minorities.

Subp. 7. Economic opportunities for women. Class A and B licensees also are required, to the extent feasible, to establish the following goals to assist in providing economic opportunities for women:

A. establish a minimum goal of four percent for construction subcontracts/material suppliers with women business enterprises during construction of the facility, and establish a labor and employment goal of four percent for women in on-site construction jobs;

B. establish a minimum goal of 51.4 percent for hiring women in all job categories of all the licensee's postconstruction 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;

C. establish a minimum goal of 15 percent of its total vendor, supplier, or other contracts with women business enterprises for the postconstruction period, and make a good faith effort to achieve this goal within two years after completion of the initial construction; and

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

Subp. 8. Economic opportunities for disabled. Class A and B 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 and B licensees' 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. 9. Compliance reports. Class A and B licensees are required to file quarterly reports with the commission demonstrating compliance with the requirements of this part on forms provided by the commission.

Subp. 10. Definitions. For the purpose of this part, the following words have the following meaning:

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. "Minority business enterprise" is a business owned and controlled by minority individuals (1) which is at least 51 percent owned by one or more minority individuals or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority individuals, and (2) whose management and daily business operations are controlled by one or more of such individuals.

D. "Owned and controlled" means a business with at least 51 percent of the economic beneficial interest, at least 51 percent of the voting interest, and whose management and daily business operation are legitimately held by a person (or persons in any combination) who is a racial minority or woman.

E. "Racial minority" means:

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

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

(3) Asian and Pacific Islander, persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; and

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

F. "Women-owned business enterprise" is a business owned and controlled by women (1) which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more of such individuals.

Statutory Authority: *MS s 240.19; 240.23*

History: *9 SR 2527*