

## The Mileage Rule: Can't Live With It, Can't Live Without It

Although USEF has made some dramatic movements in its application of the “Mileage Rule,” it seems like the success of the Wellington Masters has increased the volume on the cry for “getting rid” of the Mileage Rule. It seems like every time I turn around, I hear yet another person clamoring for an end to the Mileage Rule. “Let there be a free market! What is more American than competition within the market? Death to the Mileage Rule!”

I understand the frustrations many have with the Mileage Rule and it does, after all, seem like a terribly “anti-American” restraint on trade. So, why do we have it? Let me answer that question for you.

### Why we can't live without it

The Mileage Rule cannot die. Like a mystical force in popular fiction, the Mileage Rule is the immortal beast that cannot be destroyed. Many shall embark on the quest for its destruction, only to be stymied by a powerful and invisible force that is.... The law.

Yes, there is a law. Congress passed it, and it is called the Ted Stevens Amateur Sports Act. This law says that a national governing body of amateur sport (“NGB”) – USEF, in the case of equestrian sport – MUST (and I repeat MUST) do certain things to govern the sport. And one of those things USEF must do is control competition scheduling. The “Mileage Rule” is USEF’s version of how it will fulfill that Congressional mandate.

“But it seems like such an anti-American restraint on trade!” Yes, yes it does. But guess what? It was meant to be that way. This issue was litigated in the courts not that long ago, and indeed a federal appeals court came right out and approved the scheme created by the Amateur Sports Act to give NGB’s “monolithic” authority over the sports they govern. Not only that, the appeals court explained that the whole point of the law was to make NGB’s immune from the anti-trust laws.

The upshot is that the courts won’t even take a second look at the Mileage Rule – warts and all – because given such “monolithic” authority by Congress, USEF can adopt whatever rules or policies it wants to further the Congressional mandate.

But don’t put your swords and shields away just yet.

### Achilles’ heel

If you think that the concept behind the Mileage Rule is flawed, there is an argument to be made that USEF can fulfill its Congressional mandate *a different way*. I am not just talking about changing the name of the rule and calling it something else. What I am saying is that there is nothing in the Amateur Sports Act that requires a NGB to control the national competition calendar with reference to mileage.



What the law requires is that a NGB shall “minimize, through coordination with other amateur sports organizations, conflicts in the scheduling of all practices and competitions.” I don’t see the word “mileage” or “miles” in there anywhere. Do you?

By the way, the law also requires a NGB to “keep amateur athletes informed of policy matters and reasonably reflect the views of the athletes in its policy decisions.” So what you think is supposed to matter.

Be careful what you wish for.

Do away with the Mileage Rule and there is going to have to be something to take its place. The Amateur Sports Act does not actually speak to an important legal principle that requires organizations like USEF to have “articulable” standards. So it is both good and bad that if USEF trashes the Mileage Rule in favor of some other system of minimizing competition scheduling conflicts, that it is going to have to *explain* what standards it will apply and how it will apply those standards in a way that is relatively even-handed and easy to understand. This is in theory, of course, because I have already explained how a federal appeals court has basically said USEF can do whatever it wants --- if the Mileage Rule isn’t subject to court scrutiny, any rule that takes its place is going to basically enjoy the same immunity. So just keep in the back of your head that scrapping the Mileage Rule might land us with a handbook of unwieldy size that is so complicated that no one will be able to understand competition licensing policies.

Is there another way to slay the beast? I think so.

We can all understand “miles.” We can all understand the idea that if you have too many competitions in close proximity to one another, there is a risk of diluting competition to the point of eliminating it. The concern of the Amateur Sports Act is to prevent over-dilution; it does not speak to over-saturation. And the problem in Florida during the winter months is over-saturation.

Considered this way, the problem in Wellington during the winter months is unique and, accordingly, a “Snowbird Exception” to the Mileage Rule is justifiable.

It could be that coming up with a working definition of a “Snowbird Exception” would pave the way for an exception of broader application. I also think that many of the recent changes to the Mileage Rule and the internal policies governing USEF’s competition licensing go a long way to creating a more flexible approach to solving the “Florida problem.”

But for those who want to kill off the Mileage Rule once and for all? That’s not going to happen. If you want more change than what has already transpired, and you appreciate that USEF’s hands are to some degree tied by a Congressional mandate, the best case scenario is for people to put their heads together and come up with an acceptable alternative.

But a “free market” – that’s not happening.

