

Finding of Emergency (pursuant to Government Code section 11346.1(b)(2))

The California Horse Racing Board (Board) finds that an emergency exists that requires the implementation of these emergency regulations for the immediate preservation of the public peace, health, safety, or general welfare, within the meaning of Government Code section 11346.1.

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to OAL, OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

Upon submission of the proposed emergency to OAL, the Board confirms that it has complied with the requirement to provide notice of proposed rulemaking action pursuant to Government Code section 11346.1(a)(2) as described above.

Facts Demonstrating the Existence of an Emergency and Need for Immediate Action

In March 2019, pursuant to Board Rule 1844.1¹, Suspension of Authorized Medication, the Board responded to an industry initiative for zero tolerance in the use of race day medications and authorized the suspension of the administration of eleven (11) medications previously authorized under Board Rule 1844, Authorized Medication, for administration to horses entered to race. The suspension was for all thoroughbred horses participating at Santa Anita Park (SA) and Golden Gate Fields (GGF). In April 2019, the Board extended the suspension to all post-race samples collected at all California race tracks. Board Rule 1844.1 subsection (d), however, provides that a suspension of authorization to administer a drug, substance or medication to a horse entered to race shall not exceed twelve months. The suspension of the eleven medications for SA and GGF fields will expire in March 2020 and all other racetracks in April 2020.

In June 2019, the Board approved language for amendments to rules 1843.5, Medication, Drugs, and Other Substances Permitted After Entry in a Race, and 1844, Authorized Medication. The purpose of the proposed amendments was to codify the suspension of race day medications that occurred in March and April 2019. The notice of proposal to amend the regulations was published by OAL on January 3, 2020. A public hearing for the adoption of the regulations will be held at the Board's regular meeting on February 20, 2020. The Board has determined that if the completed rulemaking file is delivered to the OAL within two weeks of the hearing for adoption, and an approval is received after

¹ The drug substances prohibited under the suspension are: Phenylbutazone; Flunixin; Ketoprofen; Betamethasone; Dexamethasone; Diclofenac; Firocoxib; Methylprednisolone; Prednisolone; Triamcinolone Acetonide; and Isoflupredone.

OAL's statutory review period, there will occur a lapse in the suspension of the eleven medications before the completed rulemaking becomes effective. OAL has a statutory review period of 30 working days to make an approval determination before sending the approved rulemaking file to the Secretary of State for filing. The suspension under Board Rule 1844.1 is effective through March 2020, so even with an effective upon filing date, the proposed amendments to Board Rules 1843.5 and 1844 will not become effective until after the April 2019 suspension of medications under Board Rule 1844.1 has lapsed. Once the suspension of these eleven medications lapses, trainers and veterinarians will be able to administer the drugs to horses entered to race. The administration of these suspended substances has dangerous consequences as the drugs have the ability to mask warning signs of injuries that lead to catastrophic breakdowns in racehorses. The Board has concluded that the lapse will directly create an emergency situation for horse racing in California.

The suspended drug substances are anti-inflammatory and many of them have pain-eliminating effects. Board Rule 1846, Racing Soundness Examination, provides that every horse entered to race shall be subject to a veterinary examination for racing soundness and health on race day. The racing soundness examination gives the official veterinarian or racing veterinarian an opportunity to inspect a horse's physiological health while at rest and in motion before determining that the horse is sound for racing. Anti-inflammatory medications reduce visible signs of potential musculoskeletal injuries by reducing swelling around affected areas. This effect, combined with the pain-masking effect of many anti-inflammatory drug substances, makes spotting existing injuries more difficult and could lead to the official veterinarian or racing veterinarian overlooking an existing or potential injury, or underappreciating the severity of said injury. If a horse with an existing injury is misdiagnosed as sound for racing and allowed to run, the likelihood of a catastrophic breakdown is greatly heightened. If a horse suffers a catastrophic breakdown while running a race, the injuries sustained could not only be fatal for the horse, but also will jeopardize the safety of the jockey riding the horse as well as the health and safety of other horses and riders participating in the race.

The California racing industry is experiencing increased public scrutiny after a cluster of horse fatalities in 2019. In 2019 over 30 equine fatalities occurred at SA, many due to fatal musculoskeletal injuries in horses that could potentially have showed signs of pre-existing injury had they not been running on the currently suspended medications. These high-profile deaths lead to a public outcry and an image crisis in the California racing industry, prompting immediate action to move to a ban on all race-day medications. The April 2019 drug suspensions were an effort, in line with the industry's initiative, to begin eliminating administration of medications on race day, not only for safety of the equine and human athletes, but also to begin repairing the image of the racing industry in the eyes of the public. The racing industry is reliant on public good will, which can translate into increased economic activity via pari-mutuel wagering and the continued prosperity of the industry. The banning of these eleven anti-inflammatory and pain-masking medications is key to assuring the public that the official veterinarian and racing veterinarians have a clear and unadulterated picture of the horse's health while

conducting the racing soundness examination, and that the horses running a race are not racing while at a heightened risk of injury from a miss-diagnosis.

Due to the impending lapse in the suspension of the eleven medications, the Board will be unable to enforce a ban on these anti-inflammatory and pain-masking substances for the duration of the interim from March 2020 until the amendments to Board Rules 1843.5 and 1844 become effective. Accordingly, trainers and veterinarians will be able to administer substances that make a robust determination of racing soundness by the official or racing veterinarian during the racing soundness examination more difficult, thereby increasing the likelihood of a catastrophic breakdown because of a miss-diagnosis of racing soundness.

Authority and Reference Citations (pursuant to Gov Code 11346.5(a)(2))

The Board, pursuant to the authority granted by Business and Professions Code (BPC) sections 19440, 19562, 19580, 19581, and 19582, in order to implement, interpret and make specific BPC sections 19580, 19581, and 19582, and Penal Code section 337 f, g, and h, proposes to amend Title 4 California Code of Regulations (CCR) sections 1843.5 and 1844.

Informative Digest (pursuant to Gov Code 11346.5(a)(3))

The proposed emergency amendment to Board Rule 1843.5 will modify subsection (a) to change the definition of “entered.” Rule 1843.5 currently states a horse is deemed “entered” in a race 48 hours before post time of the running of the race. This definition of “entered” has been used in Board Rule 1843.5 because past practice was to draw (close) entries 48 hours before the race. However, industry practice has changed, which makes the subsection outdated, and necessitates the amendment. Most races are now drawn at least 72 hours before the race date, and some are drawn five days before the race. The proposed amendment to subsection 1843.5(a) provides that a horse is deemed “entered” at midnight the day entries close for the race. The new definition of “entered” will provide horsemen with consistency and clarity while still providing for a period in which an entered horse can only be administered medications, drugs and other substances permitted under the Board’s rules and regulations. Subsection 1843.5(a) has also been changed to state that the definition of “entered” applies to article 15. The change is necessary for purposes of clarity, as the subsection currently applies the definition of “entered” to Board Rule 1843.5.

Subsection 1843.5(b) has been modified to provide that only water, hay and grain may be provided to the horse until post time. Feed supplements may no longer be administered to a horse after it is deemed entered to race. The change is necessary to ensure that unauthorized substances are not fed to horses accidentally. The trainer may not be fully informed as to the contents of a feed supplement, so it is possible to inadvertently administer a forbidden substance via contaminants of feed and supplements. The proposed amendment will return the feeding regimen for horses entered to race to the time honored “hay, oats and water.” The proposed change in the

definition of “entered” under Board Rule 1843.5 will provide at least 72 hours (3 days) for any prohibited substances in feed supplements to be eliminated while the horse is on water, hay, and grain. The amended subsection 1843.5(b) is consistent with the industry’s initiative for zero tolerance regarding the use of race day medications and will aid in ensuring that horses entered to race will run free from the influence of unauthorized substances.

Subsection 1843.5(c) has been modified for purposes of consistency to state that drugs, medications or other substances shall not be administered to a horse after it is deemed entered to race. The subsection currently states the substances may not be administered to a horse within 48 hours of the post time of the race in which it is entered. However, the proposed amendment to Board Rule 1843.5 changes the definition of “entered,” no longer using the 48-hour period, which necessitates the change to subsection 1843.5(c).

Subsection 1843.5(e) has been modified to provide that only injectable vitamins may be administered to a horse by injection until 24 hours before the post time of the race in which the horse is entered. Electrolyte solutions and amino acid solutions will no longer be allowed. The change is consistent with the industry’s goal of minimizing the number of drugs and substances that may be administered pre-race and is necessary to eliminate a “grey area” faced with horses entered to race. A trainer may use a potent alkalizing agent that can be claimed to be an “electrolyte.” The alkalizing agent would act to keep lactic acid² from building up in the horse, which would give the horse a slight advantage in a race by helping with endurance.

Subsection 1843.5(g) currently allows for the administration of the nonsteroidal anti-inflammatory drugs (NSAIDs) phenylbutazone, flunixin and ketoprofen to a horse until 24 hours before the post time of the race in which it is entered. The industry uses NSAIDs for their pain-eliminating and anti-inflammatory properties; managing conditions such as colic, pneumonia and orthopedic pain in horses. The most commonly used NSAIDs are phenylbutazone, flunixin, and ketoprofen. However, there is some concern that the presence of these drug substances can interfere with the veterinarian’s ability to properly evaluate a horse on race day as they can mask underlying physiological problems associated with the horse’s legs, feet, or joints. A horse that does not feel pain will run as if it would without its underlying problems, which may exacerbate any pre-existing conditions, and make the horse prone to further injury when worked to the same extent as a healthy horse. The proposed amendment removes phenylbutazone, flunixin, and ketoprofen as substances that can be administered to a horse until 24 hours of the post time of the race in which it is entered. The amendment will mean there will be no allowed level for any NSAID in official test samples. The change is consistent with the proposed amendment of Board Rule 1844 which disallows the use of NSAIDs in horses entered to race.

² During an intense exercise session or a race, metabolic by products including lactic acid, ammonia and heat accumulate in the horse’s muscles. It is believed that excessive lactic acid is a cause of muscle fatigue.

Subsection 1843.5(h) has been amended for the purposes of consistency to provide that furosemide is the only substance that can be administered under Board Rule 1845, Authorized Bleeder Medication. The current subsection (h)(2) is not necessary as under Board Rule 1845, no bleeder medication other than furosemide is authorized. A new subsection 1843.5(h)(2) states that only water may be used to wash the horse's mouth out on race day. This is consistent with the amended subsection 1843.5(b), which provides that the horse may only have water, hay and grain up until post time. Like feed supplements, the contents of a commercial mouth wash may result in an unintended positive test result.

All other changes to Board Rule 1843.5 are for the purposes of grammar, clarity, and renumbering.

The proposed amendment to Board Rule 1844 will delete the current subsections 1844(c) through 1844(d), which allow the administration of NSAIDs to horses entered to race. Phenylbutazone, flunixin, ketoprofen, or their metabolites or analogues may no longer be present in post-race test samples. The change is consistent with the proposed amendment of Board Rule 1843.5, which disallows the use of NSAIDs in horses entered to race. It is also consistent with the Thoroughbred Owners of California (TOC) and Stronach Group (TSG) agreement³ which states there will be no authorized threshold for NSAIDs for horses racing at SA and GGF.

Subsection 1844(e) has been renumbered and is now subsection 1844(c).

Subsection 1844(f) has been renumbered and is now subsection (d). The new subsection 1844(d) has been amended to remove eight drug substances that could be present in official blood test samples. The drugs are: Betamethasone; Dexamethasone; Diclofenac; Firocoxib; Methylprednisolone; Prednisolone; Triamcinolone Acetonide; and Isoflupredone. The drugs are anti-inflammatory. Their potential to mask an injury has been a concern since so many fatal musculoskeletal injuries in horses show signs of pre-existing injury that was missed or under appreciated. The removal of the drugs moves California in line with international racing where the drugs are not authorized. In addition, the removal of the drugs is consistent with the TOC and TSG agreement which states there will be no authorized threshold for the drug substances.

All other changes to Board Rule 1844 are for the purposes of grammar, clarity, and renumbering.

The proposed emergency regulations do not differ substantially from an existing comparable federal regulation or statute.

The Board finds that the broad objective of the proposed emergency regulation is to protect racehorses from risk of injury by ensuring that medications that mask signs of

³ The aforementioned March 2019 agreement suspending the eleven drug substances at SA and GGF was an agreement between the TOC, the California horsemen's organization, and TSG, which owns SA and GGF.

preexisting injury or other signs of racing unsoundness are disallowed for administration to racehorses. The anticipated benefits of this regulation are that racehorses receiving these prohibited medications will not be permitted to race in California, protecting both the horse and rider from potential injury due to a catastrophic breakdown in a horse that is allowed to run because of a miss-diagnosis of racing soundness because potential preexisting injuries were masked by the effects of these substances. Additionally, the Board anticipates that the emergency regulation would benefit the horse racing industry by preventing negative perceptions of horse racing and outcry from the public caused by a lapse in the suspension of these eleven drug substances.

The proposed emergency regulations are not inconsistent or incompatible with existing state regulations.

Statutory Requirements Specific to Agency (pursuant to Gov Code 11346.5(a)(4))

There are no other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

Local Mandate Determination (pursuant to Gov Code 11346.5(a)(5))

The proposed regulations impose no mandates on local agencies or school districts, or mandates which require reimbursement of costs or savings pursuant to Government Code sections 17500 – 17630.

Fiscal Impact Statements of Cost or Savings for the Following (pursuant to Gov Code 11346.5(a)(6))

- Cost to any local agency or school district that is required to be reimburse: None
- Cost or savings to any state agency: None
- Cost or savings in federal funding to the state: None
- Other nondiscretionary cost or savings imposed on local agencies: None

CALIFORNIA HORSE RACING BOARD
TITLE 4., CALIFORNIA CODE OF REGULATIONS
ARTICLE 15. VETERINARY PRACTICES
PROPOSED AMENDMENT OF
RULE 1843.5. MEDICATION, DRUGS AND OTHER SUBSTANCES PERMITTED
AFTER ENTRY IN A RACE

1843.5. Medication, Drugs and Other Substances Permitted After Entry in a Race.

(a) In this ~~rule~~ article a horse is deemed "entered" in a race ~~48 hours before post time of the running of the race~~ at midnight the day entries close for the race.

(b) ~~Water, and feed, including hay, and grain, and feed supplements that do not contain prohibited drugs~~ may be provided to the horse up until post time.

(c) Drugs, medications or any other substances shall not be administered by any means to a horse after it is deemed enter to race ~~within 48 hours of the post time of the race in which the horse is entered~~ except:

(1) Topical medications, (such as antiseptics, ointments, salves, leg rubs, leg paints, hoof dressings, liniments and antiphlogistics) which do not contain anesthetics or other prohibited drugs.

(d) Any drug, medication or any other substance found in a test sample taken from a horse which is not authorized under this rule shall be deemed a prohibited drug substance.

(e) Any of the following substances may be administered by injection until 24 hours before the post time of the race in which the horse is entered:

(1) Injectable Vitamins;

~~(2) Electrolyte Solutions;~~

~~(3) Amino Acid Solutions;~~

~~(4)~~(2) Tetanus Antitoxin or Tetanus Toxoid, if the horse has sustained a wound.

(f) Approved anti-ulcer medications may be administered until 24 hours before the post time of the race in which the horse is entered. A list of approved anti-ulcer medications, and route of administration, shall be posted at each racetrack in the office of the official veterinarian.

~~(g) One of the following non-steroidal anti-inflammatory medications may be administered until 24 hours before the post time of the race in which the horse is entered under Rule 1844 of this division:~~

~~(1) Phenylbutazone;~~

~~(2) Flunixin;~~

~~(3) Ketoprofen.~~

~~(g~~h~~)~~ In addition to the substances named in subsection (c)(1), any of the following substances may be administered under Rule 1845 of this division within 24 hours of the post time of the race in which the horse is entered:

~~(1) Furosemide;~~

~~(2) Other Authorized Bleeder Medication.~~

~~(2) Only water may be used to wash the horse's mouth on race day.~~

~~(h~~i~~)~~ Drugs, medications or any other substances may not be administered to a horse by injection, via nasogastric tube (stomach tubing) or any other means after the horse is entered to race, except under these regulations.

Authority: Sections 19580, 19581 and 19582,
Business and Professions Code.

Reference: Sections 19580, 19581 and 19582,
Business and Professions Code;
Section 337 f, g and h, Penal Code.

CALIFORNIA HORSE RACING BOARD
TITLE 4., CALIFORNIA CODE OF REGULATIONS
ARTICLE 15. VETERINARY PRACTICES
PROPOSED AMENDMENT OF
RULE 1844. AUTHORIZED MEDICATION

1844. Authorized Medication.

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

(a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.

(b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.

~~(c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances:~~

~~(1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum.~~

~~(2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum.~~

~~(3) Ketoprofen in a dosage amount that the test sample shall contain not more than 2 nanograms of the drug substance per milliliter of blood plasma or serum.~~

~~(4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.~~

~~(d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.~~

(e~~c~~) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels:

- (1) Acepromazine; 10 nanograms per milliliter
- (2) Mepivacaine; 10 nanograms per milliliter
- (3) Albuterol; 1 nanograms per milliliter
- (4) Procaine; 25 nanograms per milliliter
- (5) Salicylates; 750 micrograms per milliliter
- (6) Detomidine; 2 nanograms per milliliter
- (7) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.
- (8) Boldenone; 15 nanograms per milliliter in males other than geldings.
- (9) Testosterone; 20 nanograms per milliliter in geldings.
- (A) Testosterone at any level in males other than geldings is not a violation of this regulation.
- (10) Testosterone; 55 nanograms per milliliter in fillies or mares (unless in foal)

(11) Butorphanol 300 nanograms per milliliter

(fd) Official blood test samples may contain the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels in serum or plasma:

~~(1) Bethamethasone; 10 picograms per milliliter~~

(12) Dantrolene; 100 picograms per milliliter

~~(23) Detomidine; 1 nanogram per milliliter~~

~~(4) Dexamethasone; 5 picograms per milliliter~~

~~(5) Diclofenac; 5 nanograms per milliliter~~

(36) Dimethylsulfoxide (DMSO); 10 micrograms per milliliter

~~(7) Firocoxib; 20 nanograms per milliliter~~

(48) Lidocaine; 20 picograms per milliliter

(59) Methocarbamol; 1 nanogram per milliliter

~~(10) Methylprednisolone; 100 picograms per milliliter~~

(644) Glycopyrrolate; 3 picograms per milliliter

~~(12) Prednisolone; 1 nanogram per milliliter~~

~~(13) Triamcinolone Acetonide; 100 picograms per milliliter~~

(744) Xylazine; 200 picograms per milliliter

~~(815) Butorphanol; 2 nanograms per milliliter~~

~~(16) Isoflupredone; 100 picograms per milliliter~~

(917) Cetirizine; 6 nanograms per milliliter

(1048) Cimetidine; 400 nanograms per milliliter

(1149) Guaifenesin; 12 nanograms per milliliter

~~(1220)~~ Omeprazole; 10 nanograms per milliliter

~~(1324)~~ Ranitidine; 40 nanograms per milliliter

~~(eg)~~ Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection ~~(ec)~~(1) to (5) and ~~(ec)~~(7) to (10).

~~(fh)~~ Procaine, following administration of procaine penicillin, is an authorized medication provided:

(1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter.

(2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division,

(3) procaine penicillin was not administered after entry to race,

(4) the horse was under surveillance for a minimum of six hours prior to racing.

~~(gt)~~ All expenses related to surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse.

Authority: Sections 19440 and 19562,
Business and Professions Code.

Reference: Sections 19580 and 19581,
Business and Professions Code.

**STATEMENT OF MAILING
NOTICE OF PROPOSED EMERGENCY ACTION
(Section 50 of Title I of the California Code of Regulations)**

The California Horse Racing Board (Board) has complied with the provisions of Government Code Section 11346.1(a)(2) regarding the mailing of notice of proposed emergency action for the addition of Rule 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race, and Rule 1844, Authorized Medication. The notice of proposed action was mailed on February 11th, 2020, at least 5 working days prior to submission of the proposed emergency action to the Office of Administrative Law. Notices were mailed to every person who filed requests for notice of regulatory actions with the California Horse Racing Board; mailed to a representative number of small business enterprises or their representatives who have been identified as being affected by the proposed action; mailed to interested parties and published in the form and manner prescribed by the California Horse Racing Board.