

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



NOTICE OF EMERGENCY RULEMAKING ACTION
READOPTION OF EMERGENCY REGULATION TO PERMIT THE BOARD TO SUSPEND A
LICENSE TO CONDUCT A RACE MEETING IN INSTANCES WHERE THE HEALTH OR SAFETY
OF THE HORSE OR RIDER IS ENDANGERED
(TITLE 4, SECTION 1435)

NOTICE DATE: February 6, 2020

Pursuant to the requirements of Government Code Section 11346.1(a)(2), the California Horse Racing Board (CHRB/Board) is providing notice of proposed emergency regulatory action. The CHRB proposes to readopt the emergency regulation adding Title 4 of the California Code of Regulations (CCR), section 1435, Suspension of License to Conduct a Race Meeting. This action is taken pursuant to Government Code Section 11346.1(h).

The Emergency Regulation allows the Board to immediately suspend a license to conduct a race meeting or impose restrictions when the safety of the horse or rider is endangered. Additionally, the Emergency Regulation provides a process by which the licensee is notified prior to such action taking place and is provided the opportunity to be heard before the Board suspends the racing license or imposes restrictions.

These Emergency Regulations became effective on August 29, 2019, and will expire on February 25, 2020, unless the CHRB readopts the Emergency Regulations for an additional 90 days. This will allow the Emergency Regulations to remain in effect while the CHRB finalizes a separate rulemaking to certify and make permanent the Emergency Regulations. As discussed in the following section of this notice, substantial progress has been made in preparing the file to be published in the California Regulatory Notice Register.

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, 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 the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code Section 11349.6.

Concurrent Rulemaking Action to Certify and Make Permanent the Emergency Regulations

Pursuant to Government Code Section 11346.1(h), the CHRB initiated a separate rulemaking action to certify and make permanent the Emergency Regulations in compliance with Government Code Section 11346.1(e) (the Certification Rulemaking). The Board approved the regulatory action at its November 21, 2019 meeting and directed staff to prepare the regulatory file for filing with the Office of Administrative Law. Staff completed the regulatory packet and it is in its final review stages with the California Business, Consumer Services and Housing Agency. It is anticipated that the review will be completed and filed with the Office of Administrative Law by February 18, 2020. The CHRB anticipates it will hold a public hearing on the Certification Rulemaking at its regularly scheduled Board Meeting on April 22, 2020.

For convenience, the original Finding of Emergency Notice, posted on July 19, 2019, is reproduced below.

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

Notice Date: July 19, 2019

The California Horse Racing Board (CHRB or Board) finds that an emergency exists that requires the implementation of this emergency regulation 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, 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 the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

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

During the winter meet at the Santa Anita Race Track, thirty thoroughbred horses suffered catastrophic breakdowns and were euthanized. These breakdowns happened between December 26, 2018 and June 23, 2019. Throughout this period of time, the California Horse Racing Board was involved in monitoring the race meet and investigating the fatalities. Unfortunately, while the investigations were pending, the Board was unable to take action to suspend racing in the wake of these deaths. As a result, Senate Bill 469 was introduced which expands the Board's ability suspend a license to conduct a horse race meeting when necessary to protect the health and safety of either the horse or rider. SB 469 was signed into law by California Governor Gavin Newsom on June 24, 2019 and became effective immediately. This authority is now codified in California Business and Professions code section 19481.7.

Business and Professions code section 19481.7(d) requires the Board to adopt emergency regulations to implement the authority provided by the new law. This requirement has created an emergency situation, whereby the Board will be unable to utilize the authority provided by 19481.7 until emergency regulations are passed. Horse racing continues throughout the year. Presently, thoroughbred racing is occurring in both northern California at county fairgrounds and in southern California, at the Del Mar Race Track. Additionally, Quarter Horse racing is occurring at the Los Alamitos Race Course in Cypress, California. As the Board continues to monitor and regulate these race meets, it is imperative that the Board have the authority provided by section

19481.7 to act in the event immediate intervention is necessary to protect the health and safety of either horse or rider.

Authority and Reference Citations (pursuant to California Government Code Section 11346.5(a)(2))

The CHRB, pursuant to the authority granted by Business and Professions Code sections 19481.7, 19440 and 19460, in order to implement, interpret and make specific the provisions of Business and Professions Code section 19481.7, proposes to add 4 CCR section 1435, Suspension of License to Conduct a Race Meeting.

Informative Digest (pursuant to California Government Code Section 11346.5(a)(3))

The California Horse Racing Board is vested with the existing authority to grant race meet licenses in the state of California. The Board additionally has the authority to enforce compliance with existing regulations by imposing penalties against the license. The proposed emergency addition of Rule 1435 will establish that the Board may, upon petition, issue an order immediately suspending a license to conduct a race meeting or imposing restrictions.

Subsection (b)(1) establishes that the petition shall include documents in support of the petition which demonstrate to the satisfaction of the Board that permitting the licensee to continue to engage in the licensed activity or permitting the licensee to continue to engage in the licensed activity without restrictions would endanger the health and safety of the horses or riders that are present at the race meeting. This is necessary to ensure that the petition is supported with evidence that describes or identifies the dangerous condition or activity.

Subsection (b)(2) provides instances where the health or safety of the horse or rider may be endangered. Instances where this may exist can include, an above-average number of injuries to horses and/or riders participating in the race meeting, a condition existing within the inclosure that is likely to endanger the health and safety of the horse or rider, or for any other reason the Board finds the health or safety of the horse or rider is endangered. This subsection is necessary to delineate the clear instances where the Board may act to ensure the health and safety of the horse or rider, while still preserving the Board's flexibility to respond to unforeseen conditions that may endanger the health or safety of the horse or rider as they come up.

Subsection (c)(1) provides that notice shall be given at least 24 hours before a hearing on the petition to suspend or restrict a license. Subsection (c)(2) provides that notice shall be given in writing and may be provided by electronic service, mail, facsimile or electronic mail. Finally subsection (c)(3) indicates that notice shall be given to the licensee, its designee, or any officer or director associated with the licensee. This is necessary to ensure the licensee is aware of the potential action the Board could take on the license and clarifies the manner in which the Board can provide that notice. The 24 hour notice requirement is necessary to provide the licensee with sufficient notice while still allowing the Board to address the matter effecting the health and welfare of the horse or rider promptly.

Subsection (d)(1) provides the rights of the licensee at the hearing on the petition. These rights include being represented by counsel, having a record made of the proceedings, having the ability to present written evidence in the form of relevant declarations, affidavits and

documents and presenting oral argument. This section is necessary to establish the due process rights afforded to the licensee at the hearing on the petition.

Subsection (e) provides that the Board shall issue a decision on the petition for suspension order or license restriction order within five business days following submission of the matter. This is necessary to establish a timeline for the Board to take action to ensure the situation is addressed promptly. The five day requirement is necessary to allow sufficient time for the Board to deliberate, prepare and issue a decision on the petition.

Subsection (f) provides that the Board shall review any decision to suspend a racing license or impose license restrictions within 10 calendar days of that decision. This is necessary to provide the Board the ability review the prior action and determine whether additional action needs to be taken or if the matter effecting the health and safety of the horse or rider has been addressed. Additionally, this requirement is mandated by California Business and Professions Code section 19481.7.

Subsection (g)(1) provides the rights of the licensee at the review hearing. These rights include being represented by counsel, having a record made of the proceedings, having the ability to present written evidence in the form of relevant declarations, affidavits and documents and presenting oral argument. This section is necessary to establish the due process rights afforded to the licensee at the review hearing.

Subsection (h) provides that any suspension order or license restriction order shall remain in effect until the Board determines that the matters jeopardizing the health and safety of the horse or rider have been adequately addressed. This section is necessary to clarify the Board's power to continue a suspension or restriction order until the race meet is safe to resume and the matters effecting the health and safety have been addressed.

Subsection (i) provides that as a condition of lifting a suspension order or license restriction order, the Board may require a licensee to comply with additional safety standards or other requirements as it deems necessary or desirable for the best interests of horse racing and the purposes of this chapter. This section is necessary to clarify the Board's power to impose restrictions on a license that facilitate the continuance of a safe race meet for both the horse or rider.

Subsection (j) provides that failure to comply with a suspension order or license restriction order issued pursuant to subdivision (b)(1) shall constitute a separate cause for disciplinary action against any licensee. This section is necessary to clarify that any licensee who continues to engage in an activity while their license is suspended or who engages in activity which has been restricted by the Board, is subject to additional and separate disciplinary action by the Board.

Subsection (k) states that the orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law. This section is necessary to clarify that other relief provide by law is still available.

Finally, subsection (l) provides that a petition for an order suspending a license to conduct a racing meeting or imposing license restrictions may be filed by the Executive Director or their designee, or Equine Medical Director of the Board. This section is necessary to clarify who can bring a petition before the Board. The Executive Director or the Equine Medical Director

are the most appropriate individuals to have this authority because of their responsibility to the Board to advise on the safety of both horse and rider.

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

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

The proposed emergency regulation will benefit the horse and rider. By implementing the authority under Business and Professions Code section 19481.7, the Board will be able to take immediate action when necessary to protect the health and safety of either the horse or rider.

Statutory Requirements Specific to Agency (pursuant to California Government Code Section 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 California Government Code Section 11346.5(a)(5))

These 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 California Government Code Section 11346.5(a)(6))

- Cost to any local agency or school district that is required to be reimbursed: 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 2. RACING ASSOCIATION
PROPOSED ADDITION OF
RULE 1435 SUSPENSION OF LICENSE TO CONDUCT A RACE MEETING

1435. Suspension of License to Conduct a Race Meeting.

(a) When taking any action against a licensed racing association to suspend racing or impose conditions pursuant to Business and Professions Code section 19481.7, the following procedures shall be followed:

(b)(1) The Board may, upon the filing of a written petition, issue an order suspending a license to conduct a racing meeting or imposing license restrictions. The petition shall include a declaration or declarations that demonstrate, to the satisfaction of the Board, that permitting the licensee to continue to engage in the licensed activity, or permitting the licensee to continue in the licensed activity without restrictions, would endanger the health and safety of the horses or riders that are present at the racing meeting.

(2) For purposes of this section, the health and safety of horses or riders may be endangered when:

- (A) An above-average number of injuries to horses and/or riders participating in the race meeting have occurred. The Board shall have discretion to determine the period of time used to measure whether an above-average number of injuries have occurred when compared with historic data.
- (B) A condition exists within the inclosure that is likely to endanger the health and safety of the horses or riders that are present at the racing meeting.
- (C) For any other reason the Board finds the health and safety of horses or riders is endangered.

(c)(1) The licensed racing association shall be given at least 24 hours' notice of the hearing on the petition for a suspension or license restriction order. The notice shall include the petition and declarations submitted to the Board in support of the petition.

(2) Notice shall be given in writing, and may be provided by personal service, mail, facsimile transmission or electronic mail.

(3) Notice shall be given to either the licensee, its designee, or any officer or director associated with the licensee.

(d)(1) At the hearing on the petition for a suspension order or license restriction order, the licensee may:

(A) Be represented by counsel.

(B) Have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of any reasonable charges associated with the record.

(C) Present written evidence in the form of relevant declarations, affidavits, and documents.

(D) Present oral argument.

(e) The Board shall issue a decision on the petition for suspension order or license restriction order within five business days following submission of the matter.

(f) The Board shall review any decision to suspend a racing license or impose license restrictions within 10 calendar days of that decision.

(g)(1) At the hearing to review a decision by the Board under this section, the licensee may:

(A) Be represented by counsel.

(B) Have a record made of the proceedings, copies of which may be obtained by the licensee upon payment of any reasonable charges associated with the record.

(C) Present written evidence in the form of relevant declarations, affidavits, and documents.

(D) Present oral argument.

(h) Any suspension order or license restriction order shall remain in effect until the Board, at a meeting, determines that the matters jeopardizing the health and safety of the horses or riders that are present at the racing meeting have been adequately addressed.

(i) As a condition of lifting a suspension order or license restriction order, the Board may require a licensee to comply with additional safety standards or other requirements as it deems necessary or desirable for the best interests of horse racing and the purposes of this division.

(j) Failure to comply with a suspension order or license restriction order issued pursuant to subdivision (b)(1) shall constitute a separate cause for disciplinary action against any licensee.

(k) The orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive or other relief provided in any other provision of law.

(l) A petition for an order suspending a license to conduct a racing meeting or imposing license restrictions may be filed by the Executive Director or their designee, or by the Equine Medical Director of the Board.

Authority Cited: Sections 19481.7, 19440, and 19460, Business and Professions Code. Reference: Sections 19481.7, 19440, and 19460, Business and Professions Code.