

CALIFORNIA HORSE RACING BOARD - RULES NOTICED TO THE PUBLIC:

NOTE: Government Code section 11340.85 requires the Board to post all notices, initial statement of reasons and texts of rules noticed to the public **until 15 days after the proposed regulations are filed with the Secretary of State by the Office of Administrative Law.**

CALIFORNIA HORSE RACING BOARD TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND RULE 1663, ENTRY OF CLAIMED HORSE

The California Horse Racing Board (Board) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1663, Entry of Claimed Horse, to provide that if a horse is entered in a claiming race within 25 days of being claimed: 1) A horse that won the claiming race from which it was claimed shall start in a claiming race for at least 25 percent more than the price at which it was claimed, and 2) A horse that did not win the claiming race from which it was claimed shall start at a price equal to, or greater than, the price at which it was claimed. The proposed amendment will also delete the current subsections 1663(b) and (b)(1).

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 26, 2012**, or as soon after that as business before the Board will permit, at the **Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on April 23, 2012**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022

E-mail: HaroldC@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions Code. Reference: Section 19562, Business and Professions Code.

Business and Professions Code sections 19420 and 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific section 19562, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in this state where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include, but not be limited to: adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this state.

A claiming race is a race in which any of the horses entered may be purchased (claimed) out of the race by any person who is eligible to claim a horse at that meeting. Eligible persons are licensed horse owners or persons who hold "horse owner by open claim" certificates. To claim a horse, the interested party must ensure sufficient funds are on deposit with the paymaster of purses at the track where the horse is to be claimed. In addition, the interested party must properly complete a claim form that has to be dropped into the claiming box within a specified time. The moment the gate opens the person who has claimed the horse becomes its owner. However, if the horse wins the race or earns money, the money goes to the owner who entered it in the race. If more than one person has put in a claim for the same horse, they "shake" for it (draw lots). The person who wins the shake becomes the owner.

The Board proposes to amend Rule 1663 to modify the conditions under which a horse claimed in a claiming race may start in another claiming race within 25 days of the original claim. Rule 1663 currently states that any horse that starts in a claiming race within 25 days of being claimed shall run for a price that is at least 25 percent more than the price at which it was claimed. The required 25 percent increase in the claiming price within 25 days of being claimed is known as "jail time". This is because not all claimed horses are capable of running in a higher level race, so they are often kept in the barn until the 25-day period is ended. Some form of this prohibition is in effect in most horseracing jurisdictions. The proposed amendment would add a new subsection 1663(b) and (b)(1) to provide that if a claimed horse is entered in a claiming race within 25 days of being claimed, and it won the race from which it was claimed, it shall start for at least 25 percent more than the amount for which it was claimed. This will have the effect of requiring only winning claimed horses to run in a subsequent claiming race (within 25 days of being claimed) for an amount greater than the price at which they were claimed. This will release all other claimed horses to run in accordance with a new subsection 1663(b)(2), which provides that a horse that did not win the claiming race from which it was claimed shall start in another claiming race within 25 days of the date it was claimed for the same amount at which it was claimed, or more. This means that within 25 days of being claimed, the horse does not have to run back at an increased price, and

may start in a claiming race for at least the same price at which it was previously claimed. At the end of the 25 day jail time, all claimed horses may be entered in a claiming race for any price. This is current practice, and it will continue as such.

The Board believes the proposed amendment to Rule 1663 will encourage trainers to run claimed horses back sooner, rather than leaving the horses in barns for weeks at a time. Many trainers currently wait-out the 25 day period because they do not believe the horses they claimed would be able to compete in a higher level claiming race. The proposed amendment may help racing associations by increasing the number of horses available to race, which will increase the fields (number of horses in a race) and provide more wagering opportunities. In turn, the entire industry would benefit because increased wagering opportunities result in a larger handle, which provides income to the tracks and horsemen in the form of commissions and purses. (The handle is the total amount wagered on a race, a portion of which is reserved by statute for track commissions and purses).

The proposed amendment will delete the current subsection 1663(b) because the industry believes the 60-day jail time is unnecessary and burdensome. The Board agreed with the industry and has temporarily suspended the subsection by applying the provisions of Board Rule 1406, Suspension of Rule. In addition, the current subsection 1663(b)(1) has been deleted, as the proposed elimination of the current subsection 1663(b) eliminates the need for the California Fair Circuit to be considered one race meeting for the purposes of claiming. This will allow horsemen to freely move horses claimed in California to other states for racing purposes.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. By amending Rule 1663 the Board will honor its commitment to the continued economic health and well being of California's horseracing industry. It is anticipated that the amendment of Rule 1663 will free trainers and owners to enter claimed horses in upcoming claiming races that are equal in value to the race from which they were claimed, rather than having to withhold such horses until the traditional 25-day jail time has lapsed. The benefit of running horses back sooner is that racing associations will have fewer problems filling races. Full races result in more wagering activity from California residents and out-of-state horseracing fans. Increased wagering translates to higher purses and commissions. The ability to run back a claimed horse within 25-days of the claim will encourage trainers to keep such horses in California, which will benefit the entire industry. A healthy horseracing industry benefits the communities in which California racetracks are located, and promotes agriculture and breeding of horses in this State.

Consistency with existing state regulations: The Board does not believe that the proposed regulation is inconsistent or incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment to Rule 1663 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1663 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

This regulation will have a positive effect on the economic health of California's horseracing industry by allowing claimed horses to run-back in claiming races of equal or greater value as soon as the trainer or owner believes the horse is ready to compete. This will help the industry fill claiming races, and potentially increase commissions and purses.

Effect on small businesses: none. The proposal to amend Rule 1663 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1663 states the conditions under which a horse claimed out of a claiming race may start in a subsequent race, and may be run back in a claiming race or run out-of-state. The regulation also provides the conditions under which a claimed horse may be removed from the grounds of the racing association where it was claimed.

RESULTS OF ECONOMIC IMPACT ANALYSIS

The results of the Board's Economic Impact Assessment as required by Government Code section 11346.3(b) are as follows:

There will be no impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California. However, the proposed regulation will have a positive effect on the economic health of California's horseracing industry by allowing claimed horses to run-back in claiming races of equal or greater value as soon as the trainer or owner believes the horse is ready to compete. This will help the industry fill claiming races, and potentially increase commissions and purses in some instances.

There will be no benefits to the health and welfare of California residents, worker safety, and the state's environment.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
E-mail: HaroldC@chr.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden, Regulation Analyst
Telephone: (916) 274-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available

to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its website. The rulemaking file consists of the notice, the proposed text of the regulations and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 7. CLAIMING RACES
PROPOSED AMENDMENT OF
RULE 1663, ENTRY OF CLAIMED HORSE

1663. Entry of Claimed Horse.

(a) A horse claimed out of a claiming race is eligible to race at any racing association in California immediately after being claimed.

(b) If a claimed horse is entered in a claiming race within 25 days of being claimed:

(1) The horse that won the claiming race from which it was claimed shall start for at least 25 percent more is not eligible to start in a claiming race for 25 days after the date of the claim for less than 25% more than the amount for which it was claimed.

(2) A horse that did not win the claiming race from which it was claimed shall start for at least the same amount for which it was claimed.

~~(b) A horse claimed out of a claiming race is not eligible to race in any State other than California until 60 days after the close of the meeting from where it was claimed except in a stakes race.~~

~~(1) For the purposes of this rule, the California Fair Circuit shall be considered one meeting.~~

(c) A claimed horse may be removed from the grounds of the association where it was claimed for non-racing purposes.

(d) The provisions of subsection (a) of this rule do not apply to standardbred horses.

Authority: Sections 19420, and 19440,
Business and Professions Code.

Reference: Sections 19562,
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND
RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

The California Horse Racing Board (Board/CHRB) proposes to amend the regulation described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1843.3, Penalties for Medication Violations, to change the time periods associated with penalty guidelines for Category "B" Penalties. The time period for second offense Category "B" violations will change from 365 days to two years and for third offense Category "B" violations the time period will change from 365 days to five years.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 26, 2012**, or as soon after that as business before the Board will permit, at the **D Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on April 23, 2012**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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California Horse Racing Board
1010 Hurley Way, Suite 300
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Telephone (916) 263-6397
Fax: (916) 263-6042
E-Mail: HaroldC@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: 19461, 19580, 19581 and 19582, Business and Professions Code, and section 11425.50, Government Code.

Business and Professions Code sections 19440, 19461 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19461, 19580, 19581 and 19582, Business and Professions Code, and section 11425.50, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19461 states every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. Business and Professions Code section 19580 provides the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines and penalties shall include, at a minimum, the provisions set forth in this article. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and the composition thereof. Business and Professions Code section 19582 states violations of section 19581, as determined by the Board are punishable as set forth in regulations adopted by the Board. The Board may classify violations of section 19581 based on each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime. The Board may provide for the suspension of a license for not more than three years, except as provided in subdivision (b), or a monetary penalty of not more than one hundred thousand dollars, or both, and disqualification from purses, for a violation of section 19581. The actual amount of the monetary penalty imposed pursuant to this paragraph shall be determined only after due consideration has been given to all the facts, circumstances, acts, and intent of the licensee, and shall not be solely based on the trainer-insurer rule, as established in section 1843 and 1887 of Title 4 of the California Code of Regulations. The punishment for second and subsequent violations of section 19581 shall be greater than the punishment for a first violation of section 19581 with respect to each class of prohibited drug substances, unless the administrative law judge, in findings of fact and conclusions of law filed with the Board, concludes that a deviation from this general rule is justified. A third violation of section 19581 during the lifetime of the licensee, determined by the Board to be at a class I or class II level, may result in the permanent revocation of the person's license. The administrative law judge shall, after consideration of the circumstances surrounding a violation specified in paragraph (1), file a decision with the Board that includes findings of fact and conclusions of law. Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the license during any period of its suspension or revocation. The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions. Business and Professions Code section 19461 provides that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. All proceedings to revoke a license shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. Government Code section 11425.50 states the decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

The Board proposes to amend Rule 1843.3 to change the time periods for Category “B” medication violations in cases of an owner’s or trainer’s second and third offense. The Rule currently provides for increased penalties if a second offense occurs within 365 days of a first offense, or a third offense occurs within 365 days of a second offense. The Board believes it is necessary to lengthen the period of time within which licensees may receive increased penalties for second and third Category “B” medication violations because it is possible to have multiple violations over a long period of time, and still only receive a minimum 30-day suspension under the Category “B” first offense. This is because there is only a 365-day period in which a subsequent Class “B” violation may result in an increased penalty. The proposed amendment to Rule 1843.3 will allow the Board to give appropriate penalties for repeat offenders by increasing the time period between offenses. The current 365-day period for a second Category “B” offense will be changed to two years, and the current 365-day period for a third offense will be changed to five years. The proposed increase in penalty time periods between violations does not mean persons with second or third offenses will automatically receive harsher penalties. Rule 1843.3(a) requires the Board of Stewards, the hearing officer or the administrative law judge to consider mitigating circumstances, as well as the penalties set forth in the regulation. If the hearing officer determines there are mitigating circumstances, deviation from the penalty guidelines may be appropriate, including lesser or no penalty. Lengthening the periods of time associated with second and third Category “B” medication violations simply provides the Board with more flexibility in considering the appropriate penalties for licensees who display a pattern of medication violations over time. The Board’s proposal to amend Rule 1843.3 is also in line with the recommendation of the Racing Medication and Testing Consortium (RMTC) recommendations. In August 2011 the RMTC board of directors adopted a recommendation to change the current 365-day period for Category “B” prohibited drugs to within two years in any jurisdiction for a second violation and within a five-year period in any jurisdiction for a third violation. The RMTC consists of 25 racing industry stakeholders and organizations that represent thoroughbred, standardbred, American Quarter Horse and Arabian racing. The organization works to develop and promote uniform rules, policies and testing standards at the national level. While the RMTC’s recommendations are not binding, the CHRB endorses the uniformity of regulations that seek to ensure the integrity of racing and the health and welfare of racehorses and participants, as well as the interests of the racing public.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

Business and Professions Code section 19440 states that jurisdiction and supervision over meetings in this state where horse races with wagering on their results are held or conducted, or over all persons or things having to do with the operation of such meetings, is vested in the CHRB. The principal responsibilities of the Board include adopting rules and regulations for the protection of the public and the control of horseracing and pari-mutuel wagering, as well as administration and enforcement of all laws, rules and regulations affecting horseracing and pari-mutuel wagering. The proposed amendment of Rule 1843.3 will change the time periods associated with penalty guidelines for Category “B” Penalties. The time period for second offense Category “B” violations will change from 365 days to three years and for third offense Category “B” violations the time period will change from 365 days to five years. These changes will have several benefits for California’s horseracing industry. Lengthening the time periods under which repeat offenders may receive enhanced penalties for Class “B” medication violations promotes fairness in that licensees who may have one or two Class “B” violations during their entire career will not face the same penalties as a licensee who has a history of multiple drug violations over the space of a couple years. In addition, enhanced periods of suspension may act as a deterrent, which would level the playing field for the wagering public. The proposed amendment to Rule 1843.3 would also promote worker safety for jockeys, grooms and stable employees who work closely with horses.

Consistency with Existing State Regulations: The Board does not believe that the proposed regulation is inconsistent or incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1843.3 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1843.3 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Lengthening the time periods under which repeat offenders may receive enhanced penalties for Class “B” medication violations promotes fairness in that licensees who may have one or two Class “B” violations during their entire career will not face the same penalties as a licensee who has a history of multiple drug violations over the space of a couple years. In addition, enhanced periods of suspension may act as a deterrent, which would level the playing field for the wagering public. The proposed amendment to Rule 1843.3 would also promote worker safety for jockeys, grooms and stable employees who work closely with horses. This regulation will have act as a deterrent to those who might attempt to gain an advantage by the unauthorized use of medication and drug substances. The economic success of horseracing is dependent on its ability to ensure the integrity of the sport.

Effect on small businesses: none. The proposal to amend Rule 1843.3 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610. Rule 1843.3 provides penalty guidelines for violations due to the presence of a drug substance in an official test sample.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the regulation, if any, and other information upon which the rulemaking is based should be directed to:

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California Horse Racing Board
1010 Hurley Way, Suite 300
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Telephone: (916) 263-6397
E-mail: haroldc@chr.ca.gov

If the person named above is not available, interested parties may contact:

Andrea Ogden,
Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above.

The Board will accept written comments on the modified regulation for 15 days after the date on which it is made available.

AVAILABILITY OF STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulations in their current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

CALIFORNIA HORSE RACING BOARD
TITLE 4, CALIFORNIA CODE OF REGULATIONS
ARTICLE 15, VETERINARY PRACTICES
PROPOSED AMENDMENT OF
RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

1843.3. Penalties for Medication Violations.

(a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum.

(b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

- (1) The past record of the licensee regarding violations of Business and Professions Code section 19581;
- (2) The potential of the drug(s) to influence a horse's racing performance;
- (3) The legal availability of the drug;
- (4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;
- (5) The steps taken by the trainer to safeguard the horse;
- (6) The steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer;

(A) For the purpose of this regulation “unaffiliated trainer” means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred.

(7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors;

(8) The purse of the race;

(9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division;

(10) Whether there was any suspicious wagering pattern on the race;

(11) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

(c) For the purpose of this regulation, the Board shall consider the classification of a drug substance as referred to in Rule 1843.2 of this division and the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification, (1/08), which is hereby incorporated by reference, if a determination is made that an official test sample from a horse contained:

(1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this division, or

(2) Any drug substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in the article.

(d) Penalties for violation of each classification level are as follows:

CATEGORY “A” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category A penalty are as follows:

LICENSED TRAINER:		
1st offense	2nd LIFETIME offense	3rd LIFETIME offense
<ul style="list-style-type: none"> ◦ Minimum one - year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension. <p>AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$10,000 or 10% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$25,000 or 25% of purse (greater of the two). <p>AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Board for any further action deemed necessary by the Board. 	<ul style="list-style-type: none"> ◦ Minimum two-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension. <p>AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$20,000 or 25% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$50,000 or 50% of purse (greater of the two). <p>AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Board for any further action deemed necessary by the Board. 	<ul style="list-style-type: none"> ◦ Minimum three -year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of permanent license revocation. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$25,000 or 50% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 or 100% of purse (greater of the two). <p>AND</p> <ul style="list-style-type: none"> ◦ May be referred to the Board for any further action deemed necessary by the Board.
LICENSED OWNER:		
1st offense	2nd LIFETIME offense in owner’s stable	3rd LIFETIME offense in owner’s stable
<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse may be placed on the veterinarian’s list for up to 90 days and must pass a Board - approved examination pursuant to Rule 1846 before becoming eligible to be entered. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1. 	<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall-be placed on the veterinarian’s list for up to 120 days and must pass a Board - approved examination pursuant to Rule 1846 before becoming eligible to be entered. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1. 	<ul style="list-style-type: none"> ◦ Disqualification of horse, loss of purse and absent mitigating circumstances, minimum fine of \$10,000. The presence of aggravating factors could be used to impose a maximum fine of \$50,000. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Horse shall be placed on the veterinarian’s list for up to 180 days and must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered. <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1. <p>AND</p> <ul style="list-style-type: none"> ◦ Referral to the Board with a recommendation of a suspension of owners license for a minimum of 90 days.

CATEGORY “B” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category B penalty are as follows:

LICENSED TRAINER:		
1st offense	2nd offense (365-day period <u>two years.</u>)	3rd offense (365-day period <u>five years</u>)
<ul style="list-style-type: none"> ◦ Minimum 30 -day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension. AND/OR ◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000. 	<ul style="list-style-type: none"> ◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension. AND/OR ◦ Minimum fine of \$1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$20,000. 	<ul style="list-style-type: none"> ◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension. AND/OR ◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$50,000 or 10% of purse (greater of the two). AND ◦ May be referred to the Board for any further action deemed necessary by the Board.
LICENSED OWNER:		
1st offense	2nd offense in stable (365-day period <u>two years.</u>)	3rd offense in stable (365-day period <u>five years.</u>)
<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. AND ◦ Horse must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered. AND ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1. 	<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. AND ◦ Horse must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered. AND ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1. 	<ul style="list-style-type: none"> ◦ Disqualification of horse, loss of purse and absent mitigating circumstances minimum fine of \$5,000. The presence of aggravating factors could be used to impose a maximum fine of \$20,000. AND ◦ Horse shall be placed on the veterinarian’s list for up to 45 days and must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered. AND ◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.

CATEGORY “B” PENALTIES FOR RULE 1843.6 TOTAL CARBON DIOXIDE (TCO₂) TESTING

Penalties for violations due to exceeding permitted levels of TCO₂ as defined in Rule 1843.6 are as set forth below. All concentrations are for measurements in serum or plasma.

LICENSED TRAINER:		
1st offense TCO₂ (> 37.0mm/l/-<39mm/l)	2nd offense TCO₂ (> 37.0mm/l/-<39mm/l)	3rd offense TCO₂ (> 37.0mm/l/-<39mm/l)
<ul style="list-style-type: none"> ◦ Up to a 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$1,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$5,000. 	<ul style="list-style-type: none"> ◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 120-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000. 	<ul style="list-style-type: none"> ◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$5,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$15,000.
LICENSED OWNER:		
1st offense TCO₂ (> 37.0mm/l/-<39mm/l)	2nd offense TCO₂ (> 37.0mm/l/-<39mm/l)	3rd offense TCO₂ (> 37.0mm/l/-<39mm/l)
<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. 	<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. 	<ul style="list-style-type: none"> ◦ Disqualification of horse, loss of purse and in the absence of mitigating circumstances, \$2,500 fine.
LICENSED TRAINER:		
1st offense TCO₂ (≥ 39.0mm/l)	2nd offense TCO₂ (≥ 39.0mm/l)	3rd offense TCO₂ (≥ 39.0mm/l)
<ul style="list-style-type: none"> ◦ Minimum 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000. 	<ul style="list-style-type: none"> ◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$5,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$15,000. 	<ul style="list-style-type: none"> ◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 365-day suspension. <p style="text-align: center;">AND/OR</p> <ul style="list-style-type: none"> ◦ Minimum fine of \$10,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$25,000.
LICENSED OWNER:		
1st offense TCO₂ (≥ 39.0mm/l)	2nd offense TCO₂ (≥ 39.0mm/l)	3rd offense TCO₂ (≥ 39.0mm/l)
<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. 	<ul style="list-style-type: none"> ◦ Disqualification of horse and loss of purse. 	<ul style="list-style-type: none"> ◦ Disqualification of horse, loss of purse and a fine ranging from a minimum of \$5,000, up to a maximum of \$20,000.

CATEGORY “C” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category C penalty and for the presence of more than one non-steroidal anti-inflammatory (NSAID) in a plasma/serum sample, as defined in Rule 1844 of this division, and furosemide as defined in Rule 1845 of this division in an official test sample are as set forth below. All concentrations are for measurements in serum or plasma.

LICENSED TRAINER:		
1st offense	2nd offense (365-day period)	3rd offense (365-day period)
<ul style="list-style-type: none">◦ Minimum fine of \$500 to a maximum fine of \$1,000 absent mitigating circumstances.	<ul style="list-style-type: none">◦ Minimum fine of \$1,000 to a maximum fine of \$2,500, and up to a 15 - day suspension absent mitigating circumstances.	<ul style="list-style-type: none">◦ Minimum fine of \$2,500 and up to a 30 - day suspension absent mitigating circumstances

CATEGORY “C” PENALTIES FOR RULE 1844, AUTHORIZED MEDICATION (C) (1), (2), (3)

Penalties for violations due to overages for permitted non-steroidal anti-inflammatory drug substances (NSAIDs) as defined in Rule 1844 (c) (1), (2) and (3) of this division. All concentrations are for measurements in serum or plasma.

The official veterinarian shall consult with the treating veterinarian in all violations of 1844 (c). With permission of the official veterinarian the trainer may elect to pay the minimum fine in lieu of a stewards’ hearing. If the trainer has not had an 1844 (c) violation within the previous three years, the official veterinarian or the board of stewards may issue a warning in lieu of a fine for violations of 1844 (c)(1), phenylbutazone, provided the reported level is below 5.1 mcg/ml.

LICENSED TRAINER:	Phenylbutazone (5.1-<10.0mcg/ml) Flunixin (20 100 ng/ml) Ketoprofen (11-49 ng/ml)	Phenylbutazone (5.1-<10.0mcg/ml) Flunixin (20 100 ng/ml) Ketoprofen (11-49 ng/ml)
1st offense	2nd offense (365-day period)	3rd offense (365-day period)
◦ Minimum fine of \$500 to a maximum fine of \$1,000.	◦ Minimum fine of \$1,000 to a maximum fine of \$2,500.	◦ Minimum fine of \$2,500 to a maximum fine of \$5,000.
LICENSED OWNER:	Phenylbutazone (5.1-<10.0mcg/ml) Flunixin (20 100 ng/ml) Ketoprofen (11-49 ng/ml)	Phenylbutazone (5.1-<10.0mcg/ml) Flunixin (20 100 ng/ml) Ketoprofen (11-49 ng/ml)
1st offense	2nd offense (365-day period)	3rd offense (365-day period)
No penalty administered.	No penalty administered.	No penalty administered.
LICENSED TRAINER:	Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)	Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)
1st offense	2nd offense (365-day period)	3rd offense (365-day period)
◦ Minimum fine of \$1,000 to a maximum fine of \$2,500.	◦ Minimum fine of \$2,500 to a maximum fine of \$5,000.	◦ Minimum fine of \$5,000 to a maximum fine of \$10,000.
LICENSED OWNER:	Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)	Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)
1st offense	2nd offense (365-day period)	3rd offense (365-day period)
◦ Horse must pass Board-approved examination pursuant to Rule 1846 before being eligible to run.	◦ Disqualification of horse and loss of purse. If same horse, placed on veterinarian’s list for up to 45-days, must pass Board-approved examination pursuant to Rule 1846 before being eligible to run.	◦ Disqualification of horse and loss of purse. Minimum \$5,000 fine. If same horse, placed on veterinarian’s list for 60 days, must pass Board-approved examination pursuant to Rule 1846 before being eligible to run

(e) Violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category “D” penalty, may result in a written warning for a first offense to the licensed trainer and owner. A Category “D” penalty for a first offense may result in a written warning or fine that will remain on the licensee’s record for a period of two years. After the two year period, if

the licensee has had no further violations of CHRB Rule 1843, the Category “D” penalty will be expunged from the licensee’s record for penalty purposes.

CATEGORY “D” PENALTIES

1 ST offense (365 day period)	2 nd offense (365 day period)	3 rd offense (365 day period)
Minimum of an official written warning to a maximum fine of \$250.	Minimum of a \$250 fine to a maximum fine of \$500.	Minimum of a \$500 fine to a maximum fine of \$750.

CATEGORY “D” PENALTIES FOR RULE 1844(C)(1) VIOLATIONS

Phenylbutazone 2.1ug/ml to 5.0 ug/ml		
1 st offense (365 day period)	2 nd offense (365 day period)	3 rd offense (365 day period)
Minimum of an official written warning to a maximum fine of \$250.	Minimum of a \$250 fine to a maximum fine of \$500.	Minimum of a \$500 fine to a maximum fine of \$750.

(f) Any drug or its metabolite or analogue thereof found to be present in an official test sample that is not classified in Rule 1843.2 of this division shall be classified as a Class 1 substance and a Category “A” penalty until classified by the Board.

(g) The administration of a drug substance to a race horse must be documented by the treating veterinarian through the process described in Rule 1842 of this division.

(h) Any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer and his presence may be required at any and all hearings relative to the case.

(1) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category “A” shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action.

(2) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category “B” or “C” may be referred to the CVMB for consideration of further disciplinary action upon the recommendation of the Equine Medical Director, the board of stewards or hearing officers.

(i) A licensee who is suspended, or whose license is revoked, because of a medication violation is not able to benefit financially during the period of suspension or revocation. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(j) For the purpose of this regulation “licensed family members” means any person who holds an occupational license issued by the CHRB and who is related to the suspended licensee, or the licensee whose license is revoked, by blood, or by marriage or domestic partnership, or who is related by blood to the spouse or domestic partner of such licensee.

(l) For the purpose of this regulation, licensed trainers suspended 60 days or more, or whose license is revoked, shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, during the period of suspension, or revocation, such trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment, tack, office equipment, and any other property.

Authority: Sections 19440, 19461 and 19580,
Business and Professions Code.

Reference: Sections 19461, 19580, 19581 and 19582,
Business and Professions Code.

Section 11425.50,
Government Code.