

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 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. The proposed amendment will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category “D” penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category “C” penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation as it would be cumbersome, unduly expensive or otherwise impractical to publish the document in the CCR.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, August 25, 2016**, or as soon after that as business before the Board will permit, at the **Del Mar Simulcast Facility, 2260 Jimmy Durante Boulevard, Del Mar, 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 representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on August 22, 2016**. 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) 263-6026
Fax: (916) 263-6022
E-mail: haroldc@chr.ca.gov

AUTHORITY AND REFERENCE

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

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 proposed amendment to Rule 1843.3 will modify subsection 1843.3(a) to provide clarity regarding the concept that deviation from the penalties set forth in the regulation is appropriate where the facts of the case warrant such deviation. The subsection currently states that aggravating factors "may increase the penalties *beyond the minimum*." The Board has determined that the statement may be construed to imply that unless there are intervening negative factors, the minimum penalty is routinely awarded; this is not the case. The penalty categories under Rule 1843.3 provide a range of penalties which are applied on a case-by-case basis. To provide clarity, subsection 1843.3(a) has been modified to state that a "greater penalty" is appropriate if there are aggravating factors.

Subsection 1843.3(b) provides a partial list of mitigating circumstances and aggravating factors which must be considered in reaching a decision on a penalty. To provide clarity regarding items that must be considered, subsection 1843.3(b)(2) has been modified to include the amount of the drug present (in the official test sample). The amount present may be an indication of both the effect the drug would have on the horse and when it was administered. Subsection 1843.3(b)(3) has been modified for purposes of clarity to include whether the drug was prescribed to the horse by a CHRB licensed veterinarian. It is important that trainers consult with CHRB licensed veterinarians as they are expected to know withdrawal times for appropriate drugs. Consulting with a CHRB licensed veterinarian, versus a veterinarian who is not familiar with CHRB medication regulations, may be considered a mitigating factor. Subsection 1843.3(b)(9) has been modified for purposes of clarity to include whether the drug present in the official test sample was documented through the process described in Rule 1842, Veterinarian Report, which requires written documentation of treatments provided to horses within the inclosure. Subsection

1843.3(b)(11) was modified for purposes of clarity to add “CHRB” so that it may be understood the subsection is referring to a “CHRB licensed veterinarian.” As with subsection 1843.3(b)(2), it is important that trainers consult with CHRB licensed veterinarians because they are expected to know withdrawal times for appropriate drugs.

Subsection 1843.3(c) has been modified to add the latest publication date of the California Horse Racing Board (CHRB) Penalty Listing By Classification (Revised 04/15), which is incorporated by reference in Rule 1843.3, as it would be cumbersome, unduly expensive or otherwise impractical to publish the document in the CCR. The Penalty Listing by Classification was modified in April 2015. The change is necessary so that persons wishing to view the incorporated document will know which version to access.

The charts for Category “B” and “C” penalties have been modified to add the words “time period” and “within” in reference to second and third offenses; the Category “B” penalty chart also changed “years” to the singular “year.” The category “D” penalty chart has had “within” added to first through third offenses. The changes were necessary for purposes of clarity, so that it may be understood that a subsequent violation must occur within a specified time period for it to be considered a second or third offense.

Subsection 1843.3(d), under the heading: Category “C” Penalties for Rule 1844, Authorized Medication (c)(1), (2), (3), has been modified to eliminate the ability of the official veterinarian to grant permission for trainers to pay the minimum fine in lieu of a stewards’ hearing. Nor may the official veterinarian issue a warning in lieu of a fine for violation of 1844(c)(1) if the phenylbutazone level is below 5.1 mcg/ml. The changes are necessary as the Board has determined that reaching settlements regarding medication violations is within the purview of the stewards who hold hearings regarding such matters. Additionally, the phenylbutazone levels for Category “C” violations have been changed to include the levels found in the Category “D” penalties for Rule 1844(c)(1) violations. Ketoprofen levels have also been changed. The changes bring Rule 1843.3 in line with the Association of Racing Commissioners International (ARCI) model rules of racing. The ARCI is a national horse racing organization composed of the governmental regulators of horse racing in the United States, Canada, Mexico Jamaica and Trinidad-Tobago. The ARCI developed its Model Rules of Racing to set standards and best practices in horseracing, and to ensure the quality of drug testing programs and the security of the wagering system. California’s adoption of the ARCI Model Rule guidelines will promote uniformity in the various states’ horse racing regulations. All other changes to subsection 1843.3(d), under the heading: Category “C” Penalties for Rule 1844, Authorized Medication (c)(1), (2), (3) are for purposes of clarity and consistency.

Subsection 1843.3(e) has been modified to eliminate Category “D” penalties for Rule 1844(c)(1) violations. Such violations will instead be Category “C” violations. Trainers who have not had an 1844(c) violation within the previous three years may still receive a warning instead of a fine. In addition, the phenylbutazone levels for Category “C” violations have been changed to include the levels found in the Category “D” penalties for Rule 1844(c)(1) violations. The changes bring Rule 1843.3 in line with the ARCI model rules of racing.

Medication violations are classified as either A, B, C or D violations, with Category “A” violations being the most egregious. Category “A” violations involve drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Category “D” violations are considered the least egregious violations, and involve overages of therapeutic medications that would be expected to have less potential to affect performance. Within each class of medication

violation there is the potential for a first, second or third offense – if such offenses occur within 365 days of each other. For example, in January a trainer may have a first offense Category “D” violation. In May of the same year, the trainer may have another Category “D” violation, which is considered a second offense. With each offense, the trainer’s possible penalties increase. The fine for a first offense Category “D” violation is a minimum of an official written warning to a maximum fine of \$250. The fine for a second offense Category “D” violation is a minimum fine of \$250 to a maximum fine of \$500. Currently, Rule 1843.3(b) requires that the licensee’s past record regarding violations of Business and Professions Code section 19581, which addresses medication violations, must be considered. If the licensee is found to have a Category “D” violation, but has recently had a more serious Category A, B, or C medication violation, the more serious Category A, B or C violation will be viewed as an aggravating circumstance and may result in a greater Category “D” penalty. For example, the trainer with a first offense Category “D” medication violation may receive the maximum \$250 fine versus a written official warning because he or she has had a prior Category “C” medication violation within a period of 365 days.

The Board has determined that rather than considering a Category A, B, or C medication violation that has occurred within a 365 day period of the current offense an “aggravating” factor, it would consider such violations a “prior offense.” The change will allow the party that determines the penalty to look at the licensee’s pattern of medication violations within a 365 day period and count an earlier, more egregious violation as a prior offense. The prior offense will move the possible penalties to the next level. If the licensee is found to have a first offense Category “D” violation, but within a 365 day period has had a more serious Category A, B, or C medication violation, the more serious Category A, B or C violation will be viewed as a prior offense, and the Category “D” violation would become a second offense for purposes of determining the Category “D” penalty. A new subsection 1843.3(f) provides that if a licensee has received a penalty for a Category A, B, or C medication violation, and within a period of 365 days has a subsequent lesser violation, the earlier violation shall count as a “prior violation” for the purposes of determining the penalty for the subsequent lesser violation.

A new subsection 1843.3(g) provides that if a licensee has received a penalty for a Category B, C or D medication violation, and within a 365 day period has a subsequent greater violation, for instance a Category “D” violation followed by a Category “C” violation, the earlier – lesser violation shall count as an aggravating factor for the purposes of determining the penalty for the subsequent greater violation. Subsection 1843.3(g) is necessary to provide clarity regarding how the Board wishes parties determining medication penalties to consider the licensee’s pattern of medication violations within a 365 day period. Under subsection 1843.3(f), a history of more egregious violations shall be viewed as prior offenses when considering penalties for subsequent lesser violations. Under the new subsection 1843.3(g), a history of lesser violations shall be viewed as aggravating factors when considering penalties for subsequent medication violation of a more serious nature.

Subsection 1843.3(k) currently provides that a licensee who is suspended because of a medication violation shall not benefit financially during the period of suspension, and shall not transfer his or her horses to a licensed family member. Subsection 1843.3(k) has been modified to state that licensees who have been suspended more than 30 days may not transfer their horses to any other licensee who has been an employee of the suspended licensee within the previous year. This provision is intended to ensure that the suspended trainer does not transfer his or her horses to any person who has had a relationship with the suspended trainer, including recent employment. The Board has determined that a suspended licensee is less likely to benefit financially if his or her horses are transferred to an unaffiliated trainer. The provision is applied to persons whose license has been suspended for more than 30 days as such

suspensions of license would be for medication violations that would result in the more serious Category “A” and “B” penalties.

References to revocation of license have been removed from subsection 1843.3(k) and moved to a new subsection 1843.3(k)(1). Revocation of license may occur after a third lifetime Category “A” medication violation, and would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of the drug substances the Board classifies as Category “A” are Drug Enforcement Agency (DEA) schedule II substances. The Board determined it was necessary to place revocation of license in a separate paragraph for purposes of clarity.

To receive a 60-day or greater suspension of license under Rule 1843.3, one must be found to have committed a Category “A” or “B” medication violation. The Category “A” medication violation would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Category “B” medication violations generally involve drugs that may or may not have an accepted medical use in the racing horse, but the pharmacology of which suggests less potential than Category “A” drug substances to affect performance. In either case, Category “A” or “B” medication violations are serious offenses. The intent of the 60-day, or greater, suspension is to prevent the licensee from participating in, and profiting from the sport of horse racing. Subsection 1843.3(1)(1) currently states that licensed trainers suspended 60 days or more shall be banned from all inclosures under the jurisdiction of the Board, and that during the period of suspension the trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment and other property. The subsection has been modified to require that the trainer also remove his or her colors. A trainer’s colors are unique. To be used in horseracing, the colors must be registered with the Jockey Club, which is the breed registry for thoroughbred horses in the United States. During the race, the jockey’s colors identify the stable that employs the rider. The Board has determined that it is necessary to add the trainer’s colors to subsection 1843.3(1)(1) to ensure that all vestiges of the trainer’s business operations are removed from the inclosure. References to revocation of license have been removed from subsection 1843.3(1)(1) and moved to a new subsection 1843.3(1)(2). Revocation of license may occur after a third lifetime Category “A” medication violation, and would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of the drug substances the Board classifies as Category “A” are Drug Enforcement Agency (DEA) schedule II substances. Trainers whose license is revoked must remove all vestiges of their business operations from the inclosure. The Board determined it was necessary to place revocation of license in a separate paragraph for purposes of clarity.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1843.3 makes clarifying changes to subsections 1843.3(a), (b)(9), (b)(11), and (d), and will modify subsections 1843.3(b)(2) and (b)(3) to clarify what constitutes mitigating circumstances and aggravating factors, which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will update the latest publication date for the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification (Revised 04/15), which is incorporated by reference into the regulation. The proposed amendment to Rule 1843.3 eliminates the Category “D” penalties for phenylbutazone. All such medication violations shall be Category “C”

violations. A new subsection 1843.3(f) provides that if a licensee receives a penalty for a Category A, B or C medication violation and within a period of 365 days has a subsequent lesser violation, the earlier violation shall count as a “prior violation” for penalty purposes. A new subsection 1843.3(g) provides that if a licensee receives a penalty for a Category B, C or D violation, and within a period of 365 days has a subsequent greater violation, the earlier violation shall count as an aggravating factor for penalty purposes. Subsection 1843.3(k) has been modified to state a licensee who is suspended for more than 30 days because of a medication violation shall not transfer horses to any other licensee who has been an employee of the suspended licensee within the previous year. A new subsection 1843.3(k)(1) provides that a licensee whose license is revoked because of a medication violation shall not benefit financially following the revocation, including ensuring that horses are not transferred to licensed family members or to any other licensee who has been an employee of the licensee whose license is revoked within the previous year. A new subsection 1843.3(k)(2) provides that the trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB, and shall forfeit all assigned stall space and shall remove from the inclosure all signage, equipment and any other property.

The proposed amendment to Rule 1843.3 is necessary to ensure the integrity of horseracing and the protection of the public. The modifications to the regulation will provide greater clarity regarding the consequences of violating the Board’s medication regulations. The proposed amendment to Rule 1843.3 will promote the health and welfare of race horses and licensees by removing those with the most egregious medication violation from the inclosure.

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendment, the Board has conducted an evaluation for any related regulations and has determined that Rule 1843.3 is the only regulation dealing with classification of drug substances and penalties for medication violations with regards to California horse racing. Therefore the proposed regulation is neither inconsistent nor 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 to 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.

FORMS OR DOCUMENTS INCORPORATED BY REFERENCE

The form "California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15)" was incorporated by reference in Rule 1843.3.

RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed amendment to 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. The proposed amendment to Rule 1843.3 impacts individuals who violate the Board's medication regulations. In making the determination that the proposed amendment to Rule 1843.3 will not have an adverse economic impact, the Board looked at the number of licensees who might be affected, and compared it to the total number of persons who hold CHRB occupational licenses. The individuals impacted are licensed horse trainers, horse owners, veterinarians, and an occasional individual holding another class of CHRB licensee. There are currently 9,020 individuals who hold CHRB owner's licenses, 640 CHRB licensed trainers and 137 licensed veterinarians. In fiscal year 2013/2014, the CHRB issued penalties for medication violations to 128 licensees. In fiscal year 2014/2015, the CHRB issued penalties for medication violations to 94 licensees. Penalties for medication violations act as deterrents, as is demonstrated by the low percentage of licensees who have been found to have violated the Board's medication regulations. The proposed amendment to Rule 1843.3 promotes the health and safety of race horses, which is jeopardized if they workout or race when they are not sound due to the unauthorized administration of medications or drug substances. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Sound, healthy horses results in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact on the industry.

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.

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:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6026
Fax: (916) 263-6022
E-Mail: haroldc@chrb.ca.gov

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

Andrea Ogden, Manager
Policy and Regulations
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 of these documents, or any of the information upon which the proposed rulemaking is based on, 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 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 regulation. 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 web site. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS

RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category "D" penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category "C" penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation, as it would be cumbersome, unduly expensive or otherwise impractical to publish the document in the CCR.

PROBLEM

The penalty categories contained in Rule 1843.3 are closely aligned with those of the Association of Racing Commissioners International (ARCI) model rules of racing. The ARCI is a national horse racing organization composed of the governmental regulators of horse racing in the United States, Canada, Mexico, Jamaica and Trinidad-Tobago. The ARCI developed its Model Rules of Racing to set standards and best practices in horseracing, and to ensure the quality of drug testing programs and the security of the wagering system. California's adoption of the ARCI Model Rule guidelines promotes uniformity in the various states' horse racing regulations and ensures that California's regulations are in agreement with other racing jurisdictions nationwide. The uniformity of regulations between the various racing jurisdictions provides clarity for horsemen and equine veterinary practitioners. When the ARCI updates its model rules of racing it becomes necessary for the Board to amend one or more of its regulations. The proposed amendment to Rule 1843.3 will make changes to various penalty categories to bring Rule

1843.3 in line with the ARCI model rules of racing. Other changes to the text of the regulation are for purposes of clarity and consistency.

NECESSITY

The proposed amendment to Rule 1843.3 will modify subsection 1843.3(a) to provide clarity regarding the concept that deviation from the penalties set forth in the regulation is appropriate where the facts of the case warrant such deviation. The subsection currently states that aggravating factors “may increase the penalties *beyond the minimum.*” The Board has determined that the statement may be construed to imply that unless there are intervening negative factors, the minimum penalty is routinely awarded; this is not the case. The penalty categories under Rule 1843.3 provide a range of penalties which are applied on a case-by-case basis. To provide clarity, subsection 1843.3(a) has been modified to state that a “greater penalty” is appropriate if there are aggravating factors.

Subsection 1843.3(b) provides a partial list of mitigating circumstances and aggravating factors which must be considered in reaching a decision on a penalty. To provide clarity regarding items that must be considered, subsection 1843.3(b)(2) has been modified to include the amount of the drug present (in the official test sample). The amount present may be an indication of both the effect the drug would have on the horse and when it was administered. Subsection 1843.3(b)(3) has been modified for purposes of clarity to include whether the drug was prescribed to the horse by a CHRB licensed veterinarian. It is important that trainers consult with CHRB licensed veterinarians as they are expected to know withdrawal times for appropriate drugs. Consulting with a CHRB licensed veterinarian, versus a veterinarian who is not familiar with CHRB medication regulations, may be considered a mitigating factor. Subsection 1843.3(b)(9) has been modified for purposes of clarity to include whether the drug present in the official test sample was documented through the process described in Rule 1842, Veterinarian Report, which requires written documentation of treatments provided to horses within the inclosure. Subsection 1843.3(b)(11) was modified for purposes of clarity to add “CHRB” so that it may be understood the subsection is referring to a “CHRB licensed veterinarian.” As with subsection 1843.3(b)(2), it is important that trainers consult with CHRB licensed veterinarians because they are expected to know withdrawal times for appropriate drugs.

Subsection 1843.3(c) has been modified to add the latest publication date of the California Horse Racing Board (CHRB) Penalty Listing By Classification (Revised 04/15), which is incorporated by reference in Rule 1843.3, as it would be cumbersome, unduly expensive or otherwise impractical to publish the document in the CCR. The Penalty Listing By Classification was modified in April 2015. The change is necessary so that persons wishing to view the incorporated document will know which version to access.

The charts for Category “B” and “C” penalties have been modified to add the words “time period” and “within” in reference to second and third offenses. The category “D” penalty chart has had “within” added to first through third offenses. The changes were necessary for purposes of clarity, so that it may be understood that a subsequent violation must occur within a specified time period for it to be considered a second or third offense.

Subsection 1843.3(d), under the heading: Category “C” Penalties for Rule 1844, Authorized Medication (c)(1), (2), (3), has been modified to eliminate the ability of the official veterinarian to grant permission

for trainers to pay the minimum fine in lieu of a stewards' hearing. Nor may the official veterinarian issue a warning in lieu of a fine for violation of 1844(c)(1) if the phenylbutazone level is below 5.1 mcg/ml. The changes are necessary as the Board has determined that reaching settlements regarding medication violations is within the purview of the stewards who hold hearings regarding such matters. Additionally, the phenylbutazone levels for Category "C" violations have been changed to include the levels found in the Category "D" penalties for Rule 1844(c)(1) violations. Ketoprofen levels have also been changed. The changes bring Rule 1843.3 in line with the Association of Racing Commissioners International (ARCI) model rules of racing. The ARCI is a national horse racing organization composed of the governmental regulators of horse racing in the United States, Canada, Mexico, Jamaica and Trinidad-Tobago. The ARCI developed its Model Rules of Racing to set standards and best practices in horseracing, and to ensure the quality of drug testing programs and the security of the wagering system. California's adoption of the ARCI Model Rule guidelines will promote uniformity in the various states' horse racing regulations. All other changes to subsection 1843.3(d), under the heading: Category "C" Penalties for Rule 1844, Authorized Medication (c)(1), (2), (3) are for purposes of clarity and consistency.

Subsection 1843.3(e) has been modified to eliminate Category "D" penalties for Rule 1844(c)(1) violations. Such violations will instead be Category "C" violations. Trainers who have not had an 1844(c) violation within the previous three years may still receive a warning instead of a fine. In addition, the phenylbutazone levels for Category "C" violations have been changed to include the levels found in the Category "D" penalties for Rule 1844(c)(1) violations. The changes bring Rule 1843.3 in line with the Association of Racing Commissioners International (ARCI) model rules of racing.

Medication violations are classified as either A, B, C or D violations, with Category "A" violations being the most egregious. Category "A" violations involve drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Category "D" violations are considered the least egregious violations, and involve overages of therapeutic medications that would be expected to have less potential to affect performance. Within each class of medication violation there is the potential for a first, second or third offense – if such offenses occur within 365 days of each other. For example, in January a trainer may have a first offense Category "D" violation. In May of the same year, the trainer may have another Category "D" violation, which is considered a second offense. With each offense, the trainer's possible penalties increase. The fine for a first offense Category "D" violation is a minimum of an official written warning to a maximum fine of \$250. The fine for a second offense Category "D" violation is a minimum fine of \$250 to a maximum fine of \$500. Currently, Rule 1843.3(b) requires that the licensee's past record regarding violations of Business and Professions Code section 19581, which addresses medication violations, must be considered. If the licensee is found to have a Category "D" violation, but has recently had a more serious Category A, B, or C medication violation, the more serious Category A, B or C violation will be viewed as an aggravating circumstance and may result in a greater Category "D" penalty. For example, the trainer with a first offense Category "D" medication violation may receive the maximum \$250 fine versus a written official warning because he or she has had a prior Category "C" medication violation within a period of 365 days.

The Board has determined that rather than considering a Category A, B, or C medication violation that has occurred within a 365 day period of the current offense an "aggravating" factor, it would consider such violations a "prior offense." The change will allow the party that determines the penalty to look at the licensee's pattern of medication violations within a 365 day period and count an earlier, more egregious violation as a prior offense. The prior offense will move the possible penalties to the next level. If the licensee is found to have a first offense Category "D" violation, but within a 365 day period has had

a more serious Category A, B, or C medication violation, the more serious Category A, B or C violation will be viewed as a prior offense, and the Category “D” violation would become a second offense for purposes of determining the Category “D” penalty. A new subsection 1843.3(f) provides that if a licensee has received a penalty for a Category A, B, or C medication violation, and within a period of 365 days has a subsequent lesser violation, the earlier violation shall count as a “prior violation” for the purposes of determining the penalty for the subsequent lesser violation.

A new subsection 1843.3(g) provides that if a licensee has received a penalty for a Category B, C or D medication violation, and within a 365 day period has a subsequent greater violation, for instance a Category “D” violation followed by a Category “C” violation, the earlier – lesser violation shall count as an aggravating factor for the purposes of determining the penalty for the subsequent greater violation. Subsection 1843.3(g) is necessary to provide clarity regarding how the Board wishes parties determining medication penalties to consider the licensee’s pattern of medication violations within a 365 day period. Under subsection 1843.3(f), a history of more egregious violations shall be viewed as prior offenses when considering penalties for subsequent lesser violations. Under the new subsection 1843.3(g), a history of lesser violations shall be viewed as aggravating factors when considering penalties for subsequent medication violation of a more serious nature.

Subsection 1843.3(k) currently provides that a licensee who is suspended because of a medication violation shall not benefit financially during the period of suspension, and shall not transfer his or her horses to a licensed family member. Subsection 1843.3(k) has been modified to state that licensees who have been suspended more than 30 days may not transfer their horses to any other licensee who has been an employee of the suspended licensee within the previous year. This provision is intended to ensure that the suspended trainer does not transfer his or her horses to any person who has had a relationship with the suspended trainer, including recent employment. The Board has determined that a suspended licensee is less likely to benefit financially if his or her horses are transferred to an unaffiliated trainer. The provision is applied to persons whose license has been suspended for more than 30 days as such suspensions of license would be for medication violations that would result in the more serious Category “A” and “B” penalties.

References to revocation of license have been removed from subsection 1843.3(k) and moved to a new subsection 1843.3(k)(1). Revocation of license may occur after a third lifetime Category “A” medication violation, and would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of the drug substances the Board classifies as Category “A” are Drug Enforcement Agency (DEA) schedule II substances. The Board determined it was necessary to place revocation of license in a separate paragraph for purposes of clarity.

To receive a 60-day or greater suspension of license under Rule 1843.3, one must be found to have committed a Category “A” or “B” medication violation. The Category “A” medication violation would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Category “B” medication violations generally involve drugs that may or may not have an accepted medical use in the racing horse, but the pharmacology of which suggests less potential than Category “A” drug substances to affect performance. In either case, Category “A” or “B” medication violations are serious offenses. The intent of the 60-day, or greater, suspension is to prevent the licensee from participating in, and profiting from the sport of horse racing. Subsection 1843.3(1)(1) currently states that licensed trainers suspended 60 days or more shall be

banned from all inclosures under the jurisdiction of the Board, and that during the period of suspension the trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment and other property. The subsection has been modified to require that the trainer also remove his or her colors. A trainer's colors are unique. To be used in horseracing, the colors must be registered with the Jockey Club, which is the breed registry for thoroughbred horses in the United States. During the race, the jockey's colors identify the stable that employs the rider. The Board has determined that it is necessary to add the trainer's colors to subsection 1843.3(1)(1) to ensure that all vestiges of the trainer's business operations are removed from the inclosure.

References to revocation of license have been removed from subsection 1843.3(1)(1) and moved to a new subsection 1843.3(1)(2). Revocation of license may occur after a third lifetime Category "A" medication violation, and would involve stimulant and depressant drugs that have the highest potential to affect performance and that have no generally accepted medical use in the racing horse. Many of the drug substances the Board classifies as Category "A" are Drug Enforcement Agency (DEA) schedule II substances. Trainers whose license is revoked must remove all vestiges of their business operations from the inclosure. The Board determined it was necessary to place revocation of license in a separate paragraph for purposes of clarity.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1843.3 is necessary to ensure the integrity of horseracing and the protection of the public. The modifications to the regulations will provide greater clarity regarding the consequences of violating the Board's medication regulations. The proposed amendment to Rule 1843.3 will promote the health and welfare of race horses and licensees by removing those with the most egregious medication violation from the inclosure. The proposed amendment to Rule 1843.3 promotes the health and safety of race horses, which is jeopardized if they workout or race when they are not sound due to the unauthorized administration of medications or drug substances. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Sound, healthy horses results in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact on the industry.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS OR DOCUMENTS

The Board relied on the Association of Racing Commissioners International's Model Rules of Racing, Version 6.1, approved by ARCI Board of Directors July 16, 2015, in proposing the amendment of Rule 1843.3.

ECONOMIC IMPACT ASSESSMENT

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

- The proposed regulation will not impact the creation or elimination of jobs within the State of California.
- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

- The proposed regulation will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulation will benefit California by promoting the safety and welfare of horse and rider and will not benefit the State's environment.

The Board has made the 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 proposed amendment to Rule 1843.3 impacts individuals who violate the Board's medication regulations. In making the determination that the proposed amendment to Rule 1843.3 will not have an adverse economic impact, the Board looked at the number of licensees who might be affected, and compared it to the total number of persons who hold CHRB occupational licenses. The individuals impacted are licensed horse trainers, horse owners, veterinarians, and an occasional individual holding another class of CHRB licensee. There are currently 9,020 individuals who hold CHRB owner's licenses, 640 CHRB licensed trainers and 137 licensed veterinarians. In fiscal year 2013/2014, the CHRB issued penalties for medication violations to 128 licensees. In fiscal year 2014/2015, the CHRB issued penalties for medication violations to 94 licensees. Penalties for medication violations act as deterrents, as is demonstrated by the low percentage of licensees who have been found to have violated the Board's medication regulations.

The amendment of Rule 1843.3 will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category "D" penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category "C" penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (revised 04/15), which is incorporated by reference into the regulation. The updates to the CHRB Penalty Categories Listing by Classification include spelling corrections, reclassification of drug substances, and the addition of drug substances.

PURPOSE

The proposed amendment will bring various penalty categories of Rule 1843.3 in line with the ARCI model rules of racing. The proposed amendment will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category "D" penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such

phenylbutazone violations would be Category “C” penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more that 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation.

THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1843.3 will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category “D” penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category “C” penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more that 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation. The proposed regulation will only affect licensees who are found to be in violation of the Board’s medication regulations, and as such only has an effect on horseracing and not any other type of California business. Therefore, the Board has determined that this regulatory action will not have a significant impact on the creation or elimination of jobs in the State of California.

THE CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1843.3 will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category “D” penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category “C” penalties. The proposed amendment will add new subsections

1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation. The proposed regulation will only affect licensees who are found to be in violation of the Board's medication regulations, and as such only has an effect on horseracing and not any other type of California business. Therefore, the Board has determined this regulatory action will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

THE EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1843.3 will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category "D" penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category "C" penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation. The proposed regulation will only affect licensees who are found to be in violation of the Board's medication regulations, and as such only has an effect on horseracing and not any other type of California businesses. Therefore, the Board has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business in the State of California.

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT

The proposed amendment to Rule 1843.3 will modify subsections 1843.3(b)(2) and (b)(3) to update the list of mitigating circumstances and aggravating factors which must be considered by the board of stewards, the hearing officer or the administrative law judge when determining penalties for medication violations. The proposed amendment to Rule 1843.3 will also eliminate the Category “D” penalties for phenylbutazone violations at the 2.1 mcg/ml to 5.0 mcg/ml level. Instead, such phenylbutazone violations would be Category “C” penalties. The proposed amendment will add new subsections 1843.3(f) and 1843.3(g) to cause medication violations that occur within a specified time period to count as either a prior offense, or as an aggravating factor with regards to the determination of penalties for subsequent violations. Subsection 1843.3(k) has been amended to prohibit licensees whose period of suspension is for more than 30 days from transferring their horses to any other licensee who has been an employee within the previous year. A new subsection 1843.3(k)(1) has been added to provide that a licensee whose license has been revoked shall not transfer his or her horses to licensed family members or to any other licensee who has been an employee within the previous year. The proposed amendment will also add a new subsection 1843.3(l)(2) to provide that a trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. The proposed amendment to Rule 1843.3 will update the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 04/15), which is incorporated by reference into the regulation. The proposed amendment to Rule 1843.3 will benefit the health and welfare of California horsemen by helping to ensure the health and safety of horses participating in California horseracing meetings. The regulation does not benefit the state’s environment.

ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR BUSINESSES

The Board has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to 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.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed amendment to Rule 1843.3 was discussed at the October 22, 2014 Medication and Track Safety Committee meeting, the January 14, 2015 Medication and Track Safety Committee meeting, the May 27, 2015 Medication and Track Safety Committee meeting, the August 19, 2015 Medication and Track Safety Committee meeting and the October 22, 2015 Regular Board meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meetings. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments which offer any alternative proposal.

California Horse Racing Board
July 8, 2016

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 15. VETERINARY PRACTICES
PROPOSED AMENDMENT OF
RULE 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 for which a greater penalty is appropriate ~~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 and the amount of the drug present;

(3) The legal availability of the drug and whether the drug was prescribed to the horse by a California Horse Racing Board (CHRB) licensed veterinarian;

(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 and documented 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 CHRB licensed veterinarian.

(c) ~~For the purpose of this regulation, the~~ 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, (Revised 4/15 4/08), 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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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 style="text-align: center;">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> <p>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> <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 style="text-align: center;">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 (<u>within two years time period</u>)	3rd offense (<u>within five years time period</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 (<u>within two years time period</u>)	3rd offense in stable (<u>within five years time period</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 (<u>within</u> 365-day period)	3rd offense (<u>within</u> 365-day period)
◦ Minimum fine of \$500 to a maximum fine of \$1,000 absent mitigating circumstances.	◦ Minimum fine of \$1,000 to a maximum fine of \$2,500, and up to a 15 - day suspension absent mitigating circumstances.	◦ 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 (<u>2</u> 5.1 -< <u>5</u> 10.0 mcg/ml) Flunixin (<u>20</u> -< <u>100</u> ng/ml) Ketoprofen (<u>2</u> 11 -< <u>50</u> 49 ng/ml)	Phenylbutazone (<u>2</u> 5.1 -< <u>5</u> 10.0 mcg/ml) Flunixin (<u>20</u> -< <u>100</u> ng/ml) Ketoprofen (<u>2</u> 11 -< <u>50</u> 49 ng/ml)
1st offense	2nd offense (within 365-day period)	3rd offense (within 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 (<u>2</u> 5.1 -< <u>5</u> 10.0 mcg/ml) Flunixin (<u>20</u> -< <u>100</u> ng/ml) Ketoprofen (<u>2</u> 11 -< <u>50</u> 49 ng/ml)	Phenylbutazone (<u>2</u> 5.1 -< <u>5</u> 10.0 mcg/ml) Flunixin (<u>20</u> -< <u>100</u> ng/ml) Ketoprofen (<u>2</u> 11 -< <u>50</u> 49 ng/ml)
1st offense	2nd offense (within 365-day period)	3rd offense (within 365-day period)
No penalty administered.	No penalty administered.	No penalty administered.
LICENSED TRAINER:	Phenylbutazone (<u>≥</u> 10.0 mcg/ml) Flunixin (<u>≥</u> 100 ng/ml) Ketoprofen (<u>≥</u> 50 ng/ml)	Phenylbutazone (<u>≥</u> 10.0 mcg/ml) Flunixin (<u>≥</u> 100 ng/ml) Ketoprofen (<u>≥</u> 50 ng/ml)
1st offense	2nd offense (within 365-day period)	3rd offense (within 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 (<u>≥</u> 5 10.0 mcg/ml) Flunixin (<u>≥</u> 100 ng/ml) Ketoprofen (<u>≥</u> 50 ng/ml)	Phenylbutazone (<u>≥</u> 5 10.0 mcg/ml) Flunixin (<u>≥</u> 100 ng/ml) Ketoprofen (<u>≥</u> 50 ng/ml)
1st offense	2nd offense (within 365-day period)	3rd offense (within 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 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 (<u>within</u> 365 day period)	2 nd offense (<u>within</u> 365 day period)	3 rd offense (<u>within</u> 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

<u>Phenylbutazone 2.1ug/ml to 5.0 ug/ml</u>		
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) If a licensee has received a penalty for a Class A, B or C medication violation, and within a 365 day period has a subsequent lesser violation (e.g. an A violation followed by a B violation), the earlier violation shall count as a “prior violation” for the purposes of determining the penalty for the subsequent lesser violation.

(g) If a licensee has received a penalty for a Class B, C or D medication violation, and within a 365 day period has a subsequent greater violation (e.g. a D violation followed by a C violation), the earlier violation shall count as an aggravating factor for the purposes of determining the penalty for the subsequent greater violation.

(fh) 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.

(gi) 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.

(hj) 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.

(k) 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 or, for any licensee whose suspension is for more than 30 days, to any other licensee who has been an employee of the suspended licensee within the previous year.

(1) A licensee whose license is revoked because of a medication violation is not able to benefit financially following the revocation of his or her license. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members or to any other licensee who has been an employee of the licensee whose license is revoked within the previous year.

(j) ~~For the purpose of this regulation~~ “Licensed 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.

(1) ~~For the purpose of this regulation,~~ Licensed 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, colors, advertisements, training-related equipment, tack, office equipment, and any other property.

(2) A trainer whose license is revoked shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, such trainer shall forfeit all assigned stall space and shall remove from the inclosures

all signage, colors, 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.