

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 ADD
RULE 1435, SUSPENSION OF LICENSE TO CONDUCT A RACE MEETING

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

PROPOSED REGULATORY ACTION

The Board proposes to add Rule 1435, Suspension of License to Conduct a Race Meeting, to implement a procedure for the Board to follow in suspending a license to conduct a race meeting license when necessary to protect the health and safety of the horse or rider.

The proposed addition of Rule 1435 will establish that the Board may, upon petition, issue an order suspending a license to conduct a race meeting or imposing restrictions. The petition shall include documents in support of the petition. Prior to the hearing on the petition, the Board shall notify the licensee in writing at least 24 hours before the hearing. At the hearing, the licensee will have the opportunity to be represented by counsel, present written evidence and make oral argument. A recording of the proceedings will be made. The Board will have five days following the hearing to issue a decision. Any decision to suspend a license or impose restrictions shall be reviewed by the Board within 10 calendar days. During the review, the licensee will be afforded the same rights as the initial hearing. Finally, any suspension issued by the Board shall remain in effect until the Board determines that the matters jeopardizing the health and safety of the horse or rider at the race meeting have been adequately addressed.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 21, 2020**, or as soon after that as business before the Board will permit, at the **Department of Consumer Affairs' 1st Floor Hearing Room at 1625 N Market Blvd, Sacramento, 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 **11:59 p.m. on May 4, 2020**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Robert Brodnik, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6025
Fax: (916) 263-6022
E-Mail: rjbrodnik@chrb.ca.gov

AUTHORITY AND REFERENCE

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

Business and Professions Code sections 19481.7, 19440 and 19460 authorizes the Board to adopt the proposed regulations, which would implement, interpret or make specific sections 19481.7 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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

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

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

Subsection (c)(1) provides that notice shall be given at least 24 hours before a hearing on the petition to suspend or restrict a license. Subsection (c)(2) provides that notice shall be given in writing and may be provided by electronic service, mail, facsimile or electronic mail. Finally subsection (c)(3) indicates that notice shall be given to the licensee, its designee, or any officer or director associated with the licensee. This is necessary to ensure the licensee is aware of the potential action the Board

could take on the license and clarifies the manner in which the Board can provide that notice. The 24 hour notice requirement is necessary to provide the licensee with sufficient notice while still allowing the Board to address the matter effecting the health and welfare of the horse or rider promptly.

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

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

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

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

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

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

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

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

Finally, subsection (l) provides that a petition for an order suspending a license to conduct a racing meeting or imposing license restrictions may be filed by the Executive Director or their designee, or Equine Medical Director of the Board. This section is necessary to clarify who can bring a petition before the Board. The Executive Director or the Equine Medical Director are the most appropriate individuals to have this authority because of their responsibility to the Board to advise on the safety or both horse and rider.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The broad objective of the proposed addition of Rules 1435 is to codify a procedure whereby the Board can take action against a licensed racing association in instances where the health and safety of the horse or rider may be endangered.

During the winter meet last year at the Santa Anita Race Track, thirty thoroughbred horses suffered catastrophic breakdowns and were euthanized. These breakdowns happened between December 26, 2018 and June 23, 2019. Throughout this period of time, the California Horse Racing Board was involved in monitoring the race meet and investigating the fatalities. Unfortunately, while the investigations were pending, the Board was unable to take action to suspend racing in the wake of these deaths. As a result, Senate Bill 469 was introduced which expands the Board's ability suspend a license to conduct a horse race meeting when necessary to protect the health and safety of either the horse or rider. SB 469 was signed into law by California Governor Gavin Newsom on June 24, 2019 and became effective immediately. This authority is now codified in California Business and Professions code section 19481.7. Business and Professions code section 19481.7(d) required the Board to adopt emergency regulations to implement the authority provided by the new law. The Board did so on August 22, 2019.

The proposed addition of Rule 1435 will make permanent the emergency regulation that was adopted by the Board in August of 2019. The anticipated benefit of this proposed addition will be the added authority of the Board to act quickly when the health or safety of the horse or rider is endangered. Accordingly, this addition will benefit the health, safety and welfare of horses, licensees, and the wagering public.

CONSISTENCY EVALUATION

During the process of developing this regulation, the Board has conducted a search of any similar regulations on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 addition of Rules 1435 will not have a significant statewide adverse economic impact directly affecting businesses 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: none.

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.

RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed addition of Rule 1435 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 addition of Rule 1435 will codify a procedure whereby the Board can take action against a licensed racing association in instances where the health and safety of the horse or rider may be endangered. This will not only serve to protect equine and human athletes, but will also enhance the integrity of the sport by allowing the Board to act when the health or safety of the rider is endangered. This proposal will not benefit the state's environment or worker safety.

Effect on small businesses: none. The proposal to add Rule 1435 will not affect small businesses because horse racing associations in California are not classified as small businesses 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:

Robert Brodnik
Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6025
E-mail: rjbrodnik@chr.ca.gov

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

Amanda Drummond
Policy and Regulation Manager
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6033
E-Mail: amdummond@chr.ca.gov

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 Robert Brodnik, 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 regulations. Requests for copies of any modified regulation should be sent to the attention of Robert Brodnik 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 THE FINAL STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Robert Brodник 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.