

CALIFORNIA HORSE RACING BOARD
FINAL STATEMENT OF REASONS

SUBJECT MATTER OF PROPOSED REGULATIONS / SECTION AFFECTED

Claimed Horse Health Record, Cal. Code Regs., Tit. 4, §1660.1

BACKGROUND

On September 20, 2019, the California Horse Racing Board (CHRB or Board) issued a Notice of Proposed Rulemaking and initiated the 45-day public comment period to establish procedures by which medical information of a claimed horse will be transferred electronically to the new attending veterinarian upon purchase in a claiming race. The CHRB held a public hearing on November 21, 2019 in Del Mar, California. Based on review of the oral and written comments received, the CHRB determined that some sufficiently related changes to the proposed regulations were necessary to clarify certain sections and provisions and to further ensure adequate medical information of a claimed horse is transferred upon sale. Pursuant to Government Code section 11346.8, subdivision (c) and section 44 of Title 1 of the California Code of Regulations, the CHRB made substantial and sufficiently related changes to the proposed regulations and circulated them to the public for a 15-day comment period.

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulation from that stated in the Notice of Proposed Regulatory Action.

UPDATE OF INITIAL STATEMENT OF REASONS

As authorized by Government Code section 11346.9, subdivision (d), the CHRB hereby incorporates the Initial Statement of Reasons prepared in this matter. Unless a specific basis is stated for any modification to the regulations as initially proposed, the necessity for the adoption of new regulations as set forth in the Initial Statement of Reasons continues to apply to the regulations as adopted.

All modifications from the initially proposed text of the regulations are summarized below.

MODIFICATIONS MADE AVAILABLE FOR A 15-DAY COMMENT PERIOD

§ 1660.1 Claimed Horse Health Record

The CHRB amended subsection (a) to correct a grammatical error. The word “designees” was changed to the singular “designee” for clarity and consistency.

Subsection (b) was amended to change the term “required” to “applicable” regarding which sections of the Claimed Horse Health Record form CHRB-245 the horse’s

previous CHRB-licensed veterinarian must complete. This modification was necessary to clarify that the horse's previous CHRB-licensed attending veterinarian needs only complete the sections designated for his or her completion. Other portions of the amended form must be completed by the Official Veterinarian, as is indicated on the Claimed Horse Health Record form CHRB-245.

Subsection (b) has also been modified to add the numeral "5" to the five days in which a horse's previous CHRB-licensed attending veterinarian shall submit the Claimed Horse Health Record form CHRB-245 electronically to the horse's new CHRB-licensed attending veterinarian. This change was necessary for clarity and consistency.

Subsection (b)(2) was added to clarify that the previous CHRB-licensed attending veterinarian must complete all applicable horse health record information on the Claimed Horse Health Record form CHRB-245 which occurred under his or her care. This language was added to distinguish from the health information required under subsection (b)(1), which establish a sixty (60) day threshold for reporting previous joint therapy intra-articular injections.

Subsection (c) was amended to correct a typographical error. The word "form" was previously omitted from this section. It was added here for consistency.

Subsection (c)(1) was amended to add the form number and associated date to the name of the form. This was done for clarity and consistency throughout the regulations.

Subsection (c)(1) was also amended to correct typographical and grammatical errors. Specifically, an apostrophe was added to "Veterinarian's List" and the word "fourteen" was added before the numeral "14" days in which a horse will be placed on the Veterinarian's List in the event of a medical emergency or medical necessity which requires corticosteroid treatment prior to review of the Claimed Horse Health Record. Parentheses were also added around the number "14" for clarity and consistency.

The text incorporates by reference the Claimed Horse Health Record form CHRB-245 (New 12/19) to which changes have been made, including updating the "08/19" date to "12/19" throughout the proposed regulation text and on the form to reflect the date the form was amended. The incorporated Claimed Horse Health Record form CHRB-245 (New 12/19) was amended to require a more comprehensive health record for claimed horses. Specifically, there are requirements for inserting the date of immunizations for Influenza/Equine Herpes Virus (EHV), Tetanus Toxoid (TT), West Nile Virus (WNV). Questions have also been added regarding the horse's history of de-worming, tying up, surgery, equine protozoal myelitis (EPM), exercise induced pulmonary hemorrhage (EIPH), bisphosphonates, and space has been provided to add any other pertinent medical history. The additional health history questions were added to the form in order to get a more complete health picture of claimed horses so that a veterinarian will be better informed prior to treating a horse.

LOCAL MANDATE DETERMINATION

The adoption of Rule 1660.1 does not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE ORIGINAL NOTICE PERIOD OF SEPTEMBER 20, 2019 to NOVEMBER 4, 2019.

No comments were received during the original notice period of September 20, 2019 through November 4, 2019. One comment was received after the close of the comment period but was resubmitted at the public hearing. That comment is addressed below.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE NOVEMBER 21, 2019 REGULATORY HEARING

Comment: page 98-100 of transcript: Dr. Rick Arthur, CHRB Equine Medical Director, commented that in August 2018, two options were given to the CHRB Medication, Safety and Welfare Committee to consider; the more comprehensive horse medical history or the horse's corticosteroid medical history. The Medication, Safety and Welfare Committee decided to move forward with just the corticosteroid health history reporting at that time. However, a more comprehensive health record makes more sense for the long-term health and welfare of the horse. Recommends supporting Dr. Benson's request for the more comprehensive horse health record.

Response: The Board agreed that a more comprehensive claimed horse health record would be beneficial, and the Claimed Horse Health Record Form was updated and noticed accordingly. The form was updated to include immunization dates for Influenza/Equine Herpes Virus (EHV), Tetanus Toxoid (TT), West Nile Virus (WNV); history of de-worming, tying up, surgery, equine protozoal myelitis (EPM), exercise induced pulmonary hemorrhage (EIPH), bisphosphonates, and any other pertinent medical history.

Comment: page 105 of transcript: Martha Sullivan commented that this board was set up to fail. It cannot act quickly, will not act quickly, and cannot respond to changing conditions as evidenced by proposed changes to the riding crop. This Board cannot succeed as a regulatory body.

Response: This CHRB cannot accommodate this comment because it does not provide any specificity regarding changes to the regulations.

Comment: page 105-106 of transcript: Dr. Dionne Benson of the Stronach Group commented that she is opposed to the current version of the proposed rule. Although she supports the reporting of corticosteroids, she would like to see the horse's entire health picture follow the horse.

Supplemental written comment: In a letter dated October 11, 2019, but submitted to the CHRB via email on November 11, 2019 and then again at the public hearing on November 21, 2019, Dr. Dionne Benson submitted a comment on behalf of the

Stronach Group. The comment requested that the Claimed Horse Health Record form include the following information: immunizations; deworming; history of tying up (exertional rhabdomyolysis); previous surgeries; EMP diagnosis/treatment; history of colic; administration of bisphosphonates; and other pertinent medical history that may affect the care of the horse. Transferring this information from one trainer/owner to the next trainer/owner combination is important to protect the health and welfare of horses in California. The CHRB should consider expansion of the rule to encompass all pertinent information regarding the health history of our horses.

The more comprehensive health record form that was discussed by the CHRB Medication, Safety and Welfare Committee prior to rulemaking was also submitted as part of Dr. Benson's comment.

Response to oral comment and supplemental written comment: As detailed above, the Board agreed that a more comprehensive claimed horse health record would be beneficial. The form was updated to include immunization dates for Influenza/Equine Herpes Virus (EHV), Tetanus Toxoid (TT), West Nile Virus (WNV); history of deworming, tying up, surgery, equine protozoal myelitis (EPM), exercise induced pulmonary hemorrhage (EIPH), bisphosphonates, and any other pertinent medical history as proposed by the Stronach and previously discussed by the Board's Medication, Safety and Welfare Committee. The Board agrees with the commenter that transferring a comprehensive health record with a claimed horse is beneficial to that horse's health and welfare and would provide valuable information to the attending veterinarian.

Comment: page 106-107 of transcript: Relating to the necessity of regulations, Commissioner Mitchell asked whether Santa Anita Park, as track protocol, can require a more comprehensive claimed horse health record for claiming races outside of the regulatory process.

Response: Dr. Dionne Benson responded that no, a regulation is required to implement the proposed changes of requiring the transfer of a claimed horse's health record. Santa Anita Park does not have the authority to unilaterally implement this type of change. Each California racetrack could attempt to work out an agreement with the Thoroughbred Owners of California (TOC), but the Stronach Group would prefer a rulemaking action.

From the CHRB's perspective, Dr. Benson's response supports the need for the proposed rulemaking package and a uniform protocol statewide.

Comment: page 107-108 of transcript: Dr. Rick Arthur, CHRB Equine Medical Director, comments that in relation to intra-articular corticosteroid injections, Gulfstream Park in Florida and perhaps tracks in Maryland, have already implemented similar requirements.

Response: Dr. Dionne Benson responds in the affirmative. In Florida these reporting requirements for corticosteroid injections were implemented by house rule. However, the tracks have more latitude under the law in Florida to implement such changes. Regarding Maryland, the Racing Commission passed a rule that corticosteroid records were passed to the next trainer and owner. They will be looking to have a more comprehensive health record follow the horse in all jurisdictions in which the Stronach Group has racetracks.

From the California Horse Racing Board's perspective, Dr. Benson's response to Dr. Arthur supports the need for the proposed rulemaking package and a uniform protocol statewide.

Comment: page 108-109 of transcript: Heather Hyde commented that because horse racing is funded on taxpayers' dollars and subsidies, the public should be aware of each and every horse that is bought, sold, ran, sold to slaughter, or sold for breeding. The horse racing people should be responsible for telling the public what is happening to horses from birth to death.

Response: The California Horse Racing Board cannot accommodate this comment because it does not provide any specificity regarding changes to the regulations. At the meeting, Commissioner Maas responded that horse racing is not financed by the taxpayers, but rather by gamblers who pay money to observe the races. No further response is required.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC

No written comments were received during the 15-day comment period on modifications to the proposed regulations.

ALTERNATIVES DETERMINATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the CHRB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency 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.

As an alternative, the Board discussed whether it was possible to bypass regulatory action and request the management of each racetrack in California to implement a policy requiring claimed horse health record information. It was determined that tracks in California do not have the authority to unilaterally establishing procedures by which medical information of a claimed horse will be transferred electronically to the new attending veterinarian upon purchase in a claiming race. Further, permitting a track-by-track approach may result in a lack of uniformity for these procedures throughout

California. Therefore, the Board has elected to proceed with the proposed regulations over the non-regulatory alternative.

The regulations adopted by the Board are the only regulatory provisions identified by the CHRB that accomplish the goal of establishing procedures by which medical information of a claimed horse will be transferred electronically to the new attending veterinarian upon purchase in a claiming race. Except as set forth and discussed above and in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Board's attention.