

FINAL STATEMENT OF REASONS

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

The California Horse Racing Board (Board) adopted Board Rule 1688, Use of Riding Crop, at the June 11, 2020 regular Board meeting.

UPDATE TO THE INITIAL STATEMENT OF REASONS

The Initial Statement of Reasons (ISR) was written based on a version of the proposed regulatory text that contained some incorrectly numbered subsections. That version was subsequently edited only to correct the numbering. The correctly numbered version accompanied the ISR and Notice of Proposed Action. However, the ISR was not edited to reflect the corrected numbering. Therefore, under the Necessity section of the ISR, some paragraphs mention the incorrect subsection number for the necessity statement given. Hence, the clarifications below are given.

Paragraph seven should read:

Subsection (c) has been stricken because the new subsection (b)(1) renders subsections (b)(2) through (b)(8) irrelevant to jockeys and exercise riders during training. Therefore, subsection (c) is redundant and unnecessary.

Paragraph eight should read:

Subsection 1688(d) has been renumbered for purposes of clarity and is now subsection (c). The subsection has been amended to provide the correct uses of the riding crop. The amended subsection 1688(c)(1) states that the jockey may show or waive the crop without touching the horse. During a race, a horse may lose focus or become distracted by other horses running in the race. This is especially true for younger, inexperienced horses. In these instances, showing or waiving the riding crop is a way to get the horse to pay more attention to the jockey. Subsection 1688(c)(2) provides how the jockey is to hold the riding crop (except when showing or waiving the crop). The jockey must hold the crop in an underhanded position at or below the shoulder level of the jockey. Holding the crop in this manner is consistent with the Association of Racing Commissioners International Model Rules of Racing, which are used in racing jurisdictions throughout the United States and is the rule in other racing jurisdictions such as Canada and England. The underhanded position and the inability to raise the riding crop above shoulder level is necessary to help ensure the jockey cannot use the crop with enough force to cause welts or breaks in the horse's skin. Subsections 1688(c)(3) through (c)(3)(B) provide that the jockey may tap the horse on the shoulder with the crop in a down position while having both hands holding onto the reins and touching the neck of the horse. This position is natural to the jockey and horse during the race, so requiring the jockey to have both hands holding the reins and touching the horse's neck is not unreasonable. Subsections 1688(c)(3) through (c)(3)(B) are necessary, however, to prevent the jockey from raising

the crop to even shoulder level height; all the jockey can do with the crop is tap the horse on its shoulders.

Paragraph nine should read:

A new subsection 1688(d) provides for penalties should a jockey or exercise rider use a riding crop in violation of the regulation. The subsection states that absent mitigating circumstances, the jockey or exercise rider who rides in a manner contrary to the rule shall receive a fine and shall be suspended by the stewards. The maximum fine has been set at \$1,000. The maximum fine is designed to be sufficiently punitive to encourage compliance. However, the stewards may impose a lesser fine in consideration of the severity of the violation. The stewards shall also suspend the jockey, with a minimum suspension set at three days. If the violation occurred during a trial heat¹, the suspension shall include the subsequent related stakes race². Suspension of license for a jockey means a loss of income, as he or she cannot work. A suspension for a jockey who violates Rule 1688 during a trial heat will mean that he or she also cannot participate in the related stakes race and so forfeits the related jockey riding fee. The Board has determined that the penalties provided under subsection 1688(d) are necessary to ensure that riders understand there are consequences for the unwarranted or excessive use of the riding crop.

Paragraph ten should read:

Subsection 1688(e) provides that if in the opinion of the stewards the use of a riding crop was necessary for the safety of horse and rider, the jockey or exercise rider shall not be penalized. Safety is paramount on the racetrack, and no jockey or exercise rider should be penalized for use of a riding crop to control a fractious or unmanageable horse. Jockeys weigh an average of 108 to 118 pounds and must be able to control a horse that weights up to 1,200 pounds moving at speeds up to 40 miles per hour during a race. An out-of-control horse is a danger to itself, the rider, and other horses and riders on the track.

LOCAL MANDATE DETERMINATION

The adoption of Board Rule 1688 does not impose any mandate on local agencies or school districts.

The adoption of Board Rule 1688 has no significant adverse economic impact on small business.

The adoption of Board Rule 1688 has no significant adverse economic impact on business.

¹ Trial heat: a race run in preparation for a more important race, usually held a week in advance and at a different distance.

² Stakes race: a horse race in which the purse offered consists in part of monies such as subscriptions, and entry and starting fees paid by the owners of the horses nominated to run in the race.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE ORIGINAL NOTICE PERIOD OF APRIL 3, 2020, TO MAY 18, 2020.

Written comments were received during the original notice period of April 3, 2020, through May 18, 2020.

Comment from Terence J. Meyocks, President and CEO of Jockeys' Guild:

The Jockeys' Guild believes the current rule provides for adequate regulation of the use of the riding crop, and the proposed rule is not a reasonable solution. Changes to the riding crop rule must take into consideration the impact on the industry itself. It is important to recognize the use of the riding crop for communication, control of the horse, and assurance of maximum placing.

The proposed amendment would have a serious economic impact on Thoroughbred and Quarter horse racing in California through a reduction in wagers placed on California races because jockeys would be unable to encourage horses to achieve their maximum placing, which would lead to a chain reaction resulting in a decline in horse racing in California.

The prohibition on the use of the riding crop during training, except when necessary for safety, creates a safety risk. A horse must become familiar with the use of the riding crop during training so that it is not startled when used in the middle of a race.

Limiting the use of the riding crop to two times in succession and giving the horse a chance to respond before using it again will hamper efforts to create a nationwide rule, as stakeholders in the industry have reached agreement that the use of the crop be limited to three times in succession, consistent with the current rule.

Requiring that the crop be used in an underhanded position and always at or below the jockey's shoulder level is not consistent with the Association of Racing Commissioners International (ARCI) Model Rule of Racing, as the proposal to add it to the Model Rule was rejected.

Limiting the use of the riding crop to a total of six times during a race would lead to less competitive racing. Jockeys who raced at Woodbine, which allowed for the use of the riding crop up to 15 times in the underhanded position, believed that racing under those limitations led to less competitive racing and dangerous riding.

The current rule and proposed amendment to the rule, in contrast to the Model Rule, do not require that horses be subject to inspection to look for cuts, welts, or bruises. Including this requirement in the rule would further protect horses and provide evidence that riding crops do not cause injuries.

The Jockeys' Guild believes that jockeys must be allowed to use the riding crop as a form of encouragement.

The Jockey's Guild requests any changes to the rule be made after input from people who are actually in contact with the horses. Uniformity is essential.

Response:

The Board has determined that eliminating the use of the riding crop during training, limiting its use to two times in succession and no more than six times in a race, and requiring that it be used in an underhanded position are in the best interest of horse racing in California. The Board is unaware of any studies concluding that said conditions would lead to less competitive racing, decreased wagering on California races, or increased safety risks. With all jockeys being required to follow the proposed changes regarding the use of the riding crop, the changes would not confer any advantage to a particular jockey. Also, there are methods other than using the crop by which the jockey can control and encourage the horse, such as changes in posture, shaking the reins, nudging at the withers, and vocalizations.

If a national rule is developed, the Board may consider its adoption if deemed in the best interests of horse racing in California. However, to date, the various jurisdictions across the country have been unable to agree to a national rule and no advancements have been taken. The Board did not wish to delay the implementation of this rule and further delay the safety of the racehorse when no progressive steps towards a national rule had been taken.

The Board may consider requiring that horses be subject to inspection to look for any injuries to a horse caused by use of the riding crop. However, the rule specifically addresses the use of the riding crop. Inspection requirements related to injuries may better be addressed in rules regarding veterinary practices.

The proposed amendment has been publicly noticed for 45 days, as is normally done.

Summary of comment two from Alan D. Garcia, professional jockey:

Use of the riding crop in an underhanded position leads to reckless riding and less competitive racing. Jockeys have trouble moving the riding crop from their right hand to left while keeping proper control of the reins. The loose reins lead to a horse veering, which puts other horses and jockeys at risk. Also, horses can be reluctant to switch leads in the stretch. A tap on the rear left quarter can instruct the horse to do so, but again, some jockeys are unable to switch the crop to the other hand while maintaining an underhanded position.

Response to comment two:

The Board does not agree that the use of the riding crop in an underhanded position leads to reckless riding and less competitive racing, as there are methods other than using the crop by which the jockey can control and encourage the horse. For instance, the jockey may use changes in posture, shaking the reins, nudging at the withers, and vocalizations.

Summary of comment three from Jesse Campbell, professional jockey:

Use of the riding crop in an underhanded position will increase the likelihood of accidentally hitting the side, belly, or flank of the horse because the jockey cannot reach back and make contact with the rump. This could lead to swelling, welts, or cuts.

Additionally, horse owners may leave the sport because of fear that their horses will not be competitive. Breeding programs may also be affected, as well as racetrack wagering.

Response to comment three:

The use of the riding crop in the underhanded position helps ensure that the jockey cannot use the crop with enough force to cause welts or breaks in the horse's skin. With all jockeys being required to follow the proposed changes regarding the use of the riding crop, the changes would not confer any advantage to a particular jockey. Additionally, there are other methods by which a jockey can encourage a horse, such as using changes in posture, shaking the reins, nudging at the withers, and using vocalizations. Therefore, it is not expected that the requirement would result in less competitive racing. As such, breeding programs and racetrack wagering should not be affected.

Summary of comment four from Rafael M. Hernandez, professional jockey:

Use of the riding crop in the "down" position leads to loss of control over the horse, as the jockey is unable to maintain balance when changing the crop from hand to hand. Also, the jockey cannot reach back to make contact on the rump. Instead, the crop may hit the horse's belly or flank, causing welts or cuts.

Response to comment four:

The proposed requirement that the riding crop be held in an underhanded position is necessary to help ensure the jockey cannot use the crop with enough force to cause welts or breaks in the horse's skin. Additionally, there are methods other than using the crop by which the jockey can control the horse. For instance, the jockey may use changes in posture, shaking the reins, nudging at the withers, and vocalizations.

Summary of comment five from Alan F. Balch, Executive Director, California Thoroughbred Trainers:

The proposed amendment will cause greater disparity in horse racing rules within the United States. The Board is urged to extend the comment period on the proposed amendment to provide time for various jurisdictions to reach a national consensus.

Response to comment five:

The Board strives for consistency with other jurisdictions. Furthermore, California often leads the nation in terms of the direction of regulatory actions such that other jurisdictions follow suit. If a national rule is developed, and the Board determines it would be in the best interest of horse racing to adopt it, the Board can consider amending the Board rule accordingly.

Summary of comment six from Nick Alexander, Chairman, Thoroughbred Owners of California:

It is critical that any rule be drafted in cooperation with the Jockeys' Guild and be in line with a national rule. It is requested that the Board wait 90 days for the horse racing industry to develop a uniform rule before acting on the proposed amendment.

Response to comment six:

The Board invites input both from the public and from within the horse racing industry. The Board takes comments and suggestions into consideration when making decisions regarding proposed regulatory actions. The proposed amendment was open for public comment for 45 days.

Summary of comment seven from Craig R. Fravel, Thoroughbred Safety Coalition:

A national rule for the use of the riding crop is preferable to state-by-state variations. A copy of a proposed rule agreed upon by various horse racing entities nationwide has been provided for consideration.

Response to comment seven:

The reduction in the number of times the crop may be used in succession is consistent with the industry's initiative to set reasonable basic riding crop guidelines and place restrictions on its unnecessary use. Additionally, if a national rule is developed, and the Board determines it would be in the best interest of horse racing to adopt it, the Board can consider amending the Board rule accordingly.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AFTER THE ORIGINAL NOTICE PERIOD OF APRIL 3, 2020, TO MAY 18, 2020, IN LIEU OF COMMENTERS APPEARING AT THE REGULATORY HEARING.

Summary of comment one from Heather Wilson, private citizen:

While a rider may not use the riding crop more than three times in succession, there is no limit to the total number of times it may be used in a race.

Response to comment one:

The proposed amendment will limit the use of the riding crop to no more than two times in succession and no more than six times during a race.

Summary of comment two, from Sarah Segal, Los Angeles County resident:

The question is posed as to why jockeys use the riding crop.

Response to comment two:

The use of the riding crop is at times necessary for the safety of the horse and rider. It can be used for guiding and communicating with the horse when other methods of control are ineffective.

Summary of comment three, from Edward Allred, Owner/CEO, Los Alamitos Race Course:

The Los Alamitos Race Course opposes any changes to the current regulation, as the horsemen and riders believe that further restrictions to the use of the riding crop would compromise safety.

Response to comment three:

Although the proposed amendment will place further limitations on the use of the riding crop, it will still allow for its use when necessary for the safety of the horse or rider and when necessary to control the horse. Furthermore, there are methods other than using the crop by which the jockey can control the horse, such as changes in posture, shaking the reins, nudging at the withers, and vocalizations.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE JUNE 11, 2020 REGULATORY HEARING.

Summary of comment one, from Terrence J. Meyocks, President and CEO of Jockeys' Guild, pages 187–189 of transcript:

The Jockeys' Guild requests that the adoption of the proposed regulation be postponed to allow for the horse racing industry to arrive at a national rule regarding the riding crop.

Response to comment one:

It is not necessary to postpone the adoption of the proposed regulation because the rulemaking may be withdrawn from the Office of Administrative Law if a national rule that the Board is willing to adopt is available before the rulemaking is filed with the Secretary of State. If a national rule is available after filing, the Board rule may be amended. Additionally, there is no guarantee that a national rule will be agreed upon.

Summary of comment two, from Mike Smith, Co-Chair of Jockeys' Guild, pages 190–191 of the transcript:

A national rule would help jockeys avoid unintentional rule violations, as it can be difficult to keep of track of varying rules in different jurisdictions.

Response to comment two:

If a national rule is developed, and the Board determines it would be in the best interest of horse racing to adopt it, the Board can consider amending the Board rule accordingly.

Summary of comment three, from Aaron Gryder, jockey, pages 191–193 of the transcript:

It is unfair for there to be no unified rules regarding the riding crop. It would be nearly impossible for a Quarter horse rider to control a horse properly with the riding crop in the underhanded position.

Response to comment three:

If a national rule is instituted, the Board may adopt it if deemed in the best interest of horse racing in California. The Board is unaware of any studies concluding that the use of the riding crop in an underhanded position in a Quarter horse race would lead to an increased risk for accidents. Also, there are methods other than using the crop by which the jockey can control the horse. For instance, the jockey may use changes in posture, shaking the reins, nudging at the withers, and vocalizations.

Summary of comment four, from Shane Gusman, Jockeys' Guild, pages 193–195 of the transcript:

There is concern the proposed rule may lead to safety issues.

Response to comment four:

The Board is unaware of any studies concluding that the use of the riding crop in the underhanded position leads to accidents. Additionally, there are methods other than using the crop by which the jockey can control the horse, such as changes in posture, shaking the reins, nudging at the withers, and vocalizations.

Summary of comment five, from Mindy Coleman, Jockeys' Guild, pages 195–198 of the transcript:

The use of the riding crop in the underhanded position would pose safety concerns especially for Quarter horse riders. The Jockeys' Guild requests that the adoption of the proposed amendment be postponed to allow for greater input from the horse racing industry.

Response to comment five:

The Board is unaware of any studies concluding that the use of the riding crop in the underhanded position leads to accidents. Also, there are methods other than using the crop by which the jockey can control the horse. For instance, the jockey may use changes in posture, shaking the reins, nudging at the withers, and vocalizations.

The proposed amendment has been publicly noticed for 45 days, as is normally done.

Summary of comment six, from Aiden Butler, The Stronach Group, pages 198–199 of the transcript:

It is requested that the proposed amendment be postponed to provide time for the industry to arrive at a national rule regarding the riding crop.

Response to comment six:

It is not necessary to postpone the adoption of the proposed regulation because the rulemaking may be withdrawn from the Office of Administrative Law if a national rule that the Board is willing to adopt is available before the rulemaking is filed with the Secretary of State. If a national rule is available after filing, the Board rule may be amended. Additionally, there is no guarantee that a national rule will be agreed upon.

Summary of comment seven, from Sarah Segal, California citizen, pages 202–204 of the transcript:

Ms. Segal asked that the riding crop be banned.

Response to comment seven:

The proposed amendment will limit the use of the riding crop. Additionally, the riding crop is needed at times for the safety of the horse and rider.

ALTERNATIVE DETERMINATION

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation was proposed, would be as effective and less burdensome to affected private persons than the proposed regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.