

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

NOTICE OF PROPOSAL TO AMEND
RULE 1688. USE OF RIDING CROP

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

PROPOSED REGULATORY ACTION

The Board proposes to amend Board Rule 1688, Use of Riding Crop, to place new restrictions on the use of the riding crop during a race and in training. The proposed amendment describes the correct use of the riding crop and limits the number of times the crop may be used during a race. The proposed regulation provides for penalties for jockeys or exercise riders who use the riding crop in a manner contrary to the regulation. If in the opinion of the stewards the use of the crop was necessary for the safety of the horse or rider, however, the rider will not be penalized.

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, 1625 N. Market Blvd, 1st Floor Hearing Room, 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 on **May 18, 2020**. The Board must receive all comments at that time. However, written comments may still be submitted at the public hearing. Submit comments to:

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AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, and 19562, Business and Professions Code (BPC). Reference: Sections 19440, 19481, and 19562, BPC.

BPC sections 19440, 19562, and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19440, 19481, and 19562 of the BPC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 19420 provides that the Board shall have jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted and over all persons or things having to do with the operation of such meetings. BPC section 19440 states the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of Chapter 4, BPC. Responsibilities of the Board shall include, but not be limited to, adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. BPC section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the state. BPC section 19481 provides that in performing its responsibilities, the Board shall establish safety standards governing equipment for horse and rider. BPC section 19562 provides that the Board may prescribe rules, regulations, and conditions consistent with Chapter 4 of the BPC, under which all horse races with wagering on their results shall be conducted in this State.

The proposed amendment to Board Rule 1688 will add a new subsection 1688(b)(1) to provide that the rider may not use the riding crop during training except when necessary for the safety of horse or rider. Training occurs in the mornings generally between 6:00 a.m. and 10:00 a.m. Training sessions can include walking, trotting, galloping, and working (running). The trainer schedules workouts depending on the horse's level of fitness and the distance it is training to race. Training sessions can also be used to get younger horses used to other horses on a track, where they may be bumped or have dirt flying up in their face. Training also allows younger horses to learn to be guided to the rail by their rider. During training sessions, there are ways, other than using a riding crop, to let the horse know it is time to perform. If an exercise rider is trying to encourage a horse to go forward, changes in posture, shaking the reins, nudging at the withers, and vocalizations such as a whistle or chirp may be used to encourage the horse. Subsection 1688(b)(1), however, allows exercise riders to use a riding crop as necessary for the safety of horse or rider. Safety is paramount on the racetrack. Exercise riders are required to wear safety helmets and safety vests, and the racing association is required to provide ambulance services during racing and training. These safety precautions are necessary because many things can happen during training sessions to put horse and rider at risk. There can be problems with equipment, such as saddles slipping or reins snapping. Horses can stumble or panic. A horse that unseats its rider can cause chaos. The Board has determined that at such times, the use of the riding crop may be necessary for the

safety of horse and rider. The crop can be used for guiding and communicating with the horse when circumstances cause other methods of control to prove ineffective.

The existing subsection 1688(b)(1) has been renumbered and is now subsection (b)(2).

Subsection 1688(b)(2) has been renumbered and is now subsection (b)(3). The subsection has been amended to allow the use of the riding crop after the finish of the race when it is necessary to control the horse. Horses are powerful animals that may become fractious after the excitement of a race. At such times, the jockey may not be able to control the horse, and it may be appropriate and necessary to use the riding crop.

The existing subsections 1688(b)(3) through (b)(6) have been renumbered for the purposes of clarity and are now subsections 1688(b)(4) through (b)(7).

Subsection 1688(b)(7) has been amended to provide that the jockey may not use the riding crop on a horse more than two times in succession without giving the horse a chance to respond before using the crop again. 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.

A new subsection 1688(b)(8) provides that the jockey may not use the riding crop on a horse more than six times during a race, excluding showing or waiving the crop or tapping the horse on the shoulder as defined in subsection (d)¹. Under the current subsection 1688(b)(6) (renumbered as subsection (b)(7)), the jockey is prohibited from using the riding crop more than three times in succession without giving the horse time to respond before using the crop again. However, the current version of the rule has no restriction on the total number of times the crop may be used during a race. The proposed addition of subsection 1688(b)(8) and the amendment of subsection (b)(7) are necessary to place restrictions on the use of the crop during a race to prevent abuse of the horse, to ensure the appropriate and proper use of the crop as a means of guidance and encouragement, and to keep the rider and horse out of trouble.

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.

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

¹ In effect, the jockey may only use the riding crop on the horse's hind quarters two times in succession, giving the horse a chance to respond before using the crop again, for a total of six times during a race.

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.

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 heat², the suspension shall include the subsequent related stakes race³. 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.

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. An out-of-control horse is a danger to itself, the rider, and other horses and riders on the track.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment of Board Rule 1688 promotes the safety and welfare of all horses and riders participating in recognized race meetings. The proposed amendment

² Trial heat: a race run in preparation for a more important race, usually held a week in advance and at a different distance.

³ 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.

provides a guide to the acceptable use of the riding crop during racing and training. It describes the correct use of the riding crop and limits the number of times the crop may be used during a race or in training. The regulation provides for penalties for jockeys or exercise riders who use the riding crop in a manner contrary to the regulation. If in the opinion of the stewards the use of the crop was necessary for the safety of the horse or rider, however, the rider will not be penalized. The proposed regulation will encourage an acceptable use of the riding crop, which will promote animal welfare and good horsemanship and will help to create a positive image of horse racing.

CONSISTENCY EVALUATION

During the process of developing the amendment, the Board has conducted a search of any similar regulation 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 (GC) 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 Board Rule 1688 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 amendment to Board Rule 1688 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) result in the expansion of businesses currently doing business with the state. The proposed amendment of Board Rule 1688 promotes the safety and welfare of horses and riders participating in recognized race meetings. The proposed amendment provides a guide to the acceptable use of the riding crop during racing and training. It describes the correct use of the riding crop and limits the number of times the crop may be used during a race or in training. The regulation provides for penalties for jockeys or exercise riders who use the riding crop in a manner contrary to the regulation. The Board takes its responsibilities in relation to animal welfare seriously. As such, the Board believes that high standards of animal welfare and good horsemanship are central to the sport of horse racing. The proposed amendment to Board Rule 1688 will encourage a judicial, more careful use of the riding crop, which will promote animal welfare and good horsemanship and will help to create a positive image of horse racing.

The proposed amendment to Board Rule 1688 will benefit worker safety in that it will allow the use of the riding crop when necessary for control of the horse and the safety of horse and rider.

The proposed amendment to Board Rule 1688 will not benefit the state's environment.

Effects on small businesses: none. The proposal to amend Board Rule 1688 does not affect small businesses because horse racing is not a small business under GC section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with GC 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, would be as effective and less burdensome on affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT PERSON

Inquiries concerning the substance of the proposed action and requests for copies of the proposed text of the regulation, the initial statement of reasons, the modified text of the

regulation, if any, and other information upon which the rulemaking is based should be directed to:

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Sacramento, CA 95825
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If the person named above is not available, interested parties may contact:

Amanda Drummond, Manager
Policy and Regulations
Telephone: (916) 263-6033
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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, may be obtained by contacting Rick Pimentel 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 that 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 regulation should be sent to the attention of Rick Pimentel 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 made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Rick Pimentel 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.