

## INITIAL STATEMENT OF REASONS

### RULE 1843.2. CLASSIFICATION OF DRUG SUBSTANCES

#### SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1843.2, Classification of Drug Substances. The proposed amendment will delete the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference in Rule 1843.2. The Penalty Category Listing by Classification will be supplanted by the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The proposed amendment will bring the Board's regulation in line with the Association of Racing Commissioners International (ARCI) Uniform Classification Guidelines for Foreign Substances, which has had several revisions since the Board last updated its classification of drug substances under Rule 1843.2. The Classification of Foreign Substances Alphabetical Substance List will also contain special notations for the drugs cobalt; cocaine; methamphetamine; morphine; ractopamine; and zilpaterol.

#### PROBLEM

The Board proposes to amend Rule 1843.2 to replace the CHRB Penalty Categories Listing by Classification, which is incorporated by reference in Rule 1843.2, with the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List. The Alphabetical Substance List which will be incorporated by reference in Rule 1843.2, will bring the regulation in line with the ARCI Uniform Classification Guidelines for Foreign Substances which has been updated by the ARCI several times since the CHRB Penalty Categories Listing was last amended in 2015. The Alphabetical Substance List identifies medications and drug substances whose presence in an official test sample, or whose presence in excess of the authorized level, will result in a violation of the Board's rules. The form also lists the drug classification and penalty class for each substance. The CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List arranges the drug substances alphabetically, which is user friendly in that it is not necessary to know the penalty class of a drug to find it on the Alphabetical Substance List. When adjudicating a hearing for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer, or the administrative law judge must consider the classification of the substance as listed in the 1843.2 Classification of Foreign Substances Alphabetical Substance List.

#### NECESSITY

The proposed amendment to Rule 1843.2 will delete the form CHRB Penalty Categories Listing by Classification from the regulation. The Penalty Categories Listing document, which is based on the ARCI Uniform Classification Guidelines for Foreign Substances, is outdated. The ARCI updates its Uniform Classification Guidelines annually, and the Board has not amended its Penalty Categories Listing since 2015. In addition, the Penalty Categories Listing may be awkward to follow for persons who are unfamiliar with the document. The form arranges drug substances alphabetically within each penalty category. This means one would have to know the penalty category of a drug substance to find it on the listing. The proposed amendment to Rule 1843.2

will replace the CHRB Penalty Categories Listing by Classification with a new form, the CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The Alphabetical Substance List will bring Rule 1843.2 in line with the current ARCI Uniform Classification Guidelines for Foreign Substances which has been updated by the ARCI several times since the CHRB Penalty Categories Listing was last amended in 2015. Like the CHRB Penalty Categories Listing by Classification, the new Alphabetical Substance List identifies medications and drug substances whose presence in an official test sample, or whose presence in excess of the authorized level, will result in a violation of the Board's rules. The form also lists the drug classification and penalty class for each substance. However, the 1843.2 Classification of Foreign Substances Alphabetical Substance List arranges the drug substances alphabetically followed by the drug class and penalty class. The new format is more user friendly in that it is not necessary to know the penalty class of a drug to find it on the Alphabetical Substance List. The CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List will provide clarity and consistency for interested parties, as the form will align with the ARCI Uniform Classification Guidelines for Foreign Substances. The ARCI guidelines have been adopted by the majority of racing states, so horsemen, especially those from out-of-state, will find the same prohibitions regarding medications and drug substances apply in California as in New York, Florida or Texas.

The 1843.2 Classification of Foreign Substances Alphabetical Substance List features a "Special Notation" section that contains comments regarding specific drug substances. With the exception of cobalt, the notations are intended to give the Board leeway for Class "A" penalties when the finding of a drug substance in an official test sample could be the result of incidental or dietary exposures. The special notations for cobalt set the penalty as either a Class "C" or Class "B" penalty, depending on the concentrations of the drug substance in blood serum or plasma. Under the Alphabetical Substance List, cobalt is a Class 3 drug at a level of 50 nanograms per milliliter, or more, in blood serum or plasma. Class 3 drugs are substances that may or may not have generally accepted medical use in the racing horse, but the pharmacology of which suggests less potential to affect performance than drugs in Class 2. In addition, cobalt is listed as a Class 4 drug at a level of 25 nanograms per milliliter, or more, in blood serum or plasma. Class 4 drugs are substances that include therapeutic medications that would be expected to have less potential to affect performance than those in Class 3. The two tiered system for listing cobalt recognizes the scenario of a trainer negligently feeding a high cobalt containing mineral supplement and exceeding 25 parts per billion (ppb). Exceeding 50 ppb would require an intentional administration of cobalt.

The 1843.2 Classification of Foreign Substances Alphabetical Substance List contains a special provision if levo-methamphetamine is found in the official test sample. The notation is necessary because a finding of levo-methamphetamine is indicative of a pharmaceutical administration, likely from a cough syrup preparation and not methamphetamine abuse. Levo-methamphetamine is a vasoconstrictor which is the active ingredient in some over the counter decongestant inhalers. (Vasoconstrictor: a drug, agent or nerve that causes narrowing of the walls of blood vessels.)

The remaining special notations are for cocaine, morphine, ractopamine and zilpaterol. The notations are designed to give the Board the ability to elect to assign a Class "B" penalty for what would otherwise be a Class "A" penalty if it is determined that the positive finding could be

incidental or dietary exposure. For example, while ractopamine and zilpaterol may be used as anabolic agents, they have been found in contaminated feed. (An anabolic agent is a substance which mimics pharmacological actions of anabolic steroids.)

The 1843.2 Classification of Foreign Substances Alphabetical Substance List will provide clarity and consistency for interested parties, as the form will align with the ARCI Uniform Classification Guidelines for Foreign Substances. The ARCI is a national umbrella organization for official governing rule making bodies for professional horseracing in North America. The ARCI sets standards for racing regulations, medication policy, drug testing laboratories and other issues pertaining to horse racing. The Uniform Classification Guidelines are intended to assist stewards, hearing officers and racing commissioners in evaluating the seriousness of alleged violations of medication and prohibited substances rules in racing jurisdictions. The ranking of drugs is based on their pharmacology, their ability to influence the outcome of a race, whether or not they have legitimate therapeutic uses, or other evidence that they may be used improperly. The ARCI guidelines have been adopted by the majority of racing states, so horsemen, especially those from out-of-state, will find the same prohibitions regarding medications and drug substances apply in California as in New York, Florida or Texas.

#### BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1843.2 will incorporate by reference the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List. The Alphabetical Substance List will bring the Board's regulation in line with the ARCI Uniform Classification Guidelines which have been adopted by the majority of racing states. The proposed amendment will have the benefit of providing guidance to the board of stewards, the hearing officer, or the administrative law judge when adjudicating a hearing for a violation of Business and Professions Code section 19581. The Alphabetical Substance List will provide both the drug class and the penalty class for listed medications and drug substances. The penalty classifications are used under Board Rule 1843.3, Penalties for Medication Violations, to determine penalties for violations due to the presence of a drug substance in an official test sample. The Alphabetical Substance List will also increase openness and transparency in government and provide clarity for licensees. Interested parties will easily be able to determine which drug substances in an official test sample (at specified levels) will constitute a medication violation, and the penalty classifications associated with the listed drug substances will provide the possible penalties. The proposed amendment to Rule 1843.2 will promote fairness, as board of stewards, the hearing officer, or the administrative law judge will all work with the same range of penalties when adjudicating a hearing for a violation of Business and Professions Code section 19581. The proposed amendment to Rule 1843.2 will have the benefit of promoting worker safety. Jockeys and exercise riders will be less likely to work with horses whose soundness has been compromised by the administration of excessive amounts of authorized drug substances, or the administration of unauthorized substances.

The proposed amendment will have the benefit of providing clarity and consistency for interested parties, as the form will align with the ARCI Uniform Classification Guidelines for Foreign Substances. The ARCI guidelines have been adopted by the majority of racing states, so horsemen, especially those from out-of-state, will find the ARCI prohibitions regarding medications and drug

substances also apply in California. The proposed amendment to Rule 1843.2 will not protect the environment, public health or prevent discrimination.

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

In proposing the amendment to Rule 1843.2 the Board relied on the documents:

- ARCI Uniform Classification Guidelines for Foreign Substances and Recommended Penalties Model Rule, updated 1/9/2018.

#### ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/New Businesses: The Board has determined that this regulatory proposal will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. The jurisdiction of Rule 1843.2 is limited to the inclosure of racing associations and racing fairs, and only has an effect on horseracing and no other California business.

#### RESULTS OF 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 eliminate jobs within the State of California, or the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.
- The proposed amendment to Rule 1843.2 will not impact the creation of new businesses or eliminate existing businesses in California.
- Rule 1843.2 will not impact the expansion of businesses currently doing business in California.
- The proposed regulation will benefit the health and welfare of horses that are in California for pari-mutuel racing and will not benefit the state's environment.

The Board has made an initial determination that the proposed amendment to Rule 1843.2 will not have a significant statewide adverse economic impact directly affecting business including the ability of California business to compete with businesses in other states. The proposed amendment incorporate by reference in Rule 1843.2 the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List. The incorporation of the Alphabetical Substance List will bring Rule 1843.2 in line with the ARCI Uniform Classification Guidelines for Foreign Substances. The ARCI, a national horse racing organization, and California's adoption of the ARCI guidelines has helped promote uniformity in the various states' horse racing regulations as they relate to the classification foreign substances. Uniformity among the various states' regulations encourages out-of-state horsemen to compete in California, as they can be assured medication requirements will be consistent. Conversely, the proposed regulation will allow California horsemen to compete with confidence in other states.

## PURPOSE:

The proposed amendment to Rule 1843.2 will replace the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference in Rule 1843.2. The Penalty Category Listing by Classification will be supplanted by the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The Alphabetical Substance List will bring the Board's regulation in line with the ARCI Uniform Classification Guidelines for Foreign Substances, which has had several revisions since the Board last updated its classification of drug substances under Rule 1843.2. The Classification of Foreign Substances Alphabetical Substance List will also contain special notations for the drugs cobalt; cocaine; methamphetamine; morphine; ractopamine; and zilpaterol.

## THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1843.2 will replace the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference in Rule 1843.2. The Penalty Category Listing by Classification will be supplanted by the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The Alphabetical Substance List will bring the Board's regulation in line with the ARCI Uniform Classification Guidelines for Foreign Substances, which has had several revisions since the Board last updated its classification of drug substances under Rule 1843.2. The Classification of Foreign Substances Alphabetical Substance List will also contain special notations for the drugs cobalt; cocaine; methamphetamine; morphine; ractopamine; and zilpaterol.

The regulation will only affect boards of stewards, hearing officers, or administrative law judges when adjudicating a hearing for a violation of Business and Professions Code section 19581. The proposed amendment will also affect licensed trainers, owners and veterinarians who must comply with the Board's medication regulations. Therefore, the Board has determined that the proposed regulatory action will not have an 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 1843.2 will replace the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference in Rule 1843.2. The Penalty Category Listing by Classification will be supplanted by the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The Alphabetical Substance List will bring the Board's regulation in line with the ARCI Uniform Classification Guidelines for Foreign Substances, which has had several revisions since the Board last updated its classification of drug substances under Rule 1843.2. The Classification of Foreign Substances Alphabetical Substance List will also contain special notations for the drugs cobalt; cocaine; methamphetamine; morphine; ractopamine; and zilpaterol.

The regulation will only affect boards of stewards, hearing officers, or administrative law judges when adjudicating a hearing for a violation of Business and Professions Code section 19581. The

proposed amendment will also affect licensed trainers, owners and veterinarians who must comply with the Board's medication regulations. Therefore, the Board has determined that the proposed regulatory action will not have an impact on the creation or 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 1843.2 will replace the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference in Rule 1843.2. The Penalty Category Listing by Classification will be supplanted by the form CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List (New 05/18). The Alphabetical Substance List will bring the Board's regulation in line with the ARCI Uniform Classification Guidelines for Foreign Substances, which has had several revisions since the Board last updated its classification of drug substances under Rule 1843.2. The Classification of Foreign Substances Alphabetical Substance List will also contain special notations for the drugs cobalt; cocaine; methamphetamine; morphine; ractopamine; and zilpaterol.

The regulation will only affect boards of stewards, hearing officers, or administrative law judges when adjudicating a hearing for a violation of Business and Professions Code section 19581. The proposed amendment will also affect licensed trainers, owners and veterinarians who must comply with the Board's medication regulations. Therefore, the Board has determined that the proposed regulatory action is not relevant to the expansion of businesses in California. The proposed amendment to Rule 1843.2 will not have an impact on the expansion of existing businesses, as the proposed amendment will only affect those adjudicating a hearing for a violation of Business and Professions Code section 19581, and licensed trainers, owners and veterinarians. Therefore, the Board has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business within the State of California.

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

The anticipated benefit of the proposed amendment to Rule 1843.2 is the promotion of worker safety. Jockeys and exercise riders will be less likely to work with horses whose soundness has been compromised by the administration of excessive amounts of authorized medications or prohibited substances. The proposed amendment will not affect the health and welfare of California residents or 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 1843.2 was discussed at the April 18, 2018 Medication, Safety and Welfare Committee meeting, and the April 19, 2018 Regular Board Meeting. No alternatives to the recommendation were proposed by the Committee or the Board, or by any other individual or entity at either meeting. 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  
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