

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

NOTICE OF PROPOSAL TO AMEND
RULE 1843.2. CLASSIFICATION OF DRUG SUBSTANCES

The California Horse Racing Board (Board/CHRB) 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 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 Alphabetical Substance List is essentially a reformatted version of the Penalty Category Listing; however, its format is more user friendly, and it 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.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, August 23, 2018**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Race Place, 2260 Jimmy Durante Boulevard, Del Mar, 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 **5:00 p.m., on August 20, 2018**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6026

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AUTHORITY AND REFERENCE

Authority cited: Sections 19580, 19581 and 19582, Business and Professions Code.

Reference: Section 19580, 19581 and 19582, Business and Professions Code.

Business and Professions Code sections 19580, 19581 and 19582 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19580, 19581 and 19582, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code 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 California. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and the composition thereof. Business and Professions Code section 19582 states violations of section 19581, as determined by the Board are punishable as set forth in regulations adopted by the Board. The Board may classify violations of section 19581 based on each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime.

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 will bring Rule 1843.2 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 Penalty Categories Listing currently lists drugs by penalty category. This can make it difficult to find a drug substance on the list if one is not familiar with CHRB penalty categories. The new 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 the drug substances are arranged alphabetically, so it is not necessary to know the penalty class of a drug to find it on the 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.

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 necessary to give the Board the ability to elect to assign a Class “B” penalty for Class “A” penalties that 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. (Anabolic agents stimulate the growth or manufacture of body tissues and energy storing.)

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 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.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposal to amend Rule 1843.2 will delete the form California Horse Racing Board (CHRB) Penalty Category Listing by Classification (Revised 04/15), which is incorporated by reference.

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 is essentially a reformatted version of the Penalty Category Listing; however, its format is more user friendly, and it 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 proposed amendment promotes uniformity among the various state horse racing jurisdictions by bringing the Board's rule in line with ARCI Uniform Classification Guidelines for Foreign Substances. The regulation will provide clarity for horsemen racing in California regardless of which state they are from, trainers and owners will be clear on how drugs are classified and what the penalties are. The proposed regulation will help to reduce drug violations and will promote drug safety, as owners and trainers will not be forced to change medications as they move from other states to race in California. This will help increase efficiency in the enforcement of the Board's medication rules and regulations because out-of-state owners and trainers will be familiar with the drug classification scheme. If more trainers and owners are complying with Board rules, the public will have more confidence in California horse racing and see it as an honest product, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions. The proposed amendment will also help to ensure the health and well-being of race horses as the CHRB 1843.2 Classification of Foreign Substances Alphabetical Substance List provides owners and trainers with information regarding drug substances that are prohibited for use in the sport.

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendment, the Board has conducted an evaluation for any related regulations and has determined that Rule 1843.2 is the only regulation dealing with classification of drug substances with regards to horse racing in California. Therefore the proposed regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

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 amendment to Rule 1843.2 will not have a significant statewide adverse economic impact directly affecting business 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: 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 Rule 1843.2 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 amendment to Rule 1843.2 promotes the health and safety of race horses, which is jeopardized if they workout or race under the influence of unauthorized drug substances or medications, or have excessive levels of authorized medications in their systems. Keeping race horses healthy protects the economic interest of owners and ensures that there is an adequate horse inventory. Ensuring that horses entered to race are sound and are not under the influence of unauthorized drug substances or medications, or excessive levels of authorized medications, also promotes jockey safety. If horses entered to race are not running with unauthorized drug substances or medications in their systems, the public will see horseracing as a sport that cares about the health and safety of both horse and rider, which may result in an increase in the publics' positive perception of the sport. A more favorable public response to horse racing could result in an increase in wagering which will have a positive economic impact on the industry.

Effect on small businesses: none. The proposal to amend Rule 1843.2 does not affect small businesses because horse racing is not a small business 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:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6026
E-mail: haroldc@chrb.ca.gov

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

Andrea Ogden, Policy, Regulations Manager
Telephone: (916) 263-6033

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 Harold Coburn, 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 Harold Coburn 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 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 Harold Coburn 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 website. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.