

INITIAL STATEMENT OF REASONS

RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS;
RULE 1843.4. MULTIPLE MEDICATION VIOLATIONS (MMV)

SPECIFIC PURPOSE OF THE REGULATION

California Horse Racing Board (Board) Rule 1843.3, Penalties for Medication Violations, sets forth the penalty guidelines for medication violations. The proposed amendment to Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for multiple medication violations (MMV), which will run consecutive to any suspension imposed under the rule.

The proposed addition of Board Rule 1843.4, Multiple Medication Violations (MMV), will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed.

PROBLEM

The penalty guidelines set forth in Board Rule 1843.3 are inconsistent with the Association of Racing Commissioners International (ARCI) Penalty Guidelines. The ARCI Penalty Guidelines utilize MMV penalties, whereas the Board Rule 1843.3 does not. This is a problem because Board Rule 1843.3 is modeled after the ARCI Penalty Guidelines, and the inconsistency can lead to confusion as to whether certain penalties apply to the licensed trainer of a horse that is racing in California. Additionally, the lack of enhanced penalties for MMV in California means that the penalty system for medication violations within the state are more lenient than in jurisdictions that do utilize the MMV penalties, which can compromise the integrity of horse racing in California with respect to the use of medication, leading to increased risk for injury to the horse and its rider.

NECESSITY

Board Rule 1843.3 sets forth the penalty guidelines for medication violations and is modeled after the ARCI Penalty Guidelines. The proposed amendment to Board Rule 1843.3 will modify subsection (a) to establish separate, enhanced penalties for MMV, which will run consecutive to any suspension imposed under the rule. The amendment is necessary to maintain consistency between the rule and the ARCI Penalty Guidelines after which it is modeled, as the ARCI Penalty Guidelines utilize MMV, while the rule does not. The amendment is also necessary to provide clarity on how the two penalty regulations operate in conjunction with one another.

The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV. It will establish a point system by which the enhanced penalties are imposed, whereby the number of points assigned to a trainer depends on the class and number of violations committed. The number of points accumulated determines the length of the suspension imposed on the trainer, and the class of violation determines the length of time before the

points expire. The proposed regulation mirrors the ARCI's Multiple Medication Violation Model Rule within the ARCI Penalty Guidelines. Essentially, the proposed rule implements the ARCI Model Rule and mirrors it subsection by subsection.

Subsection 1843.4(a) will specify the number of points assigned to a trainer who receives a penalty for a medication violation, based on the Penalty Class and depending on whether the violation involves a controlled substance. The proposed regulatory language mirrors subsection (a) of the ARCI Model Rule mentioned above. There are minor technical modifications to allow incorporation into the Board's rules. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(a)(1) will provide that points for phenylbutazone violations with a concurrent flunixin violation apply only when the primary threshold is exceeded, and points are not separately assigned for a stacking violation. The proposed regulatory language mirrors footnote (1) under subsection (a) of the ARCI Model Rule mentioned above but with terms for specific substances rather than a general term for the substances. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled. Also, the specificity reflects actual usage.

Subsection 1843.4(b) will provide that points assigned to a medication violation by the Board be included in the ARCI official database, specify conditions under which points are assigned, and require the Board's ruling to be posted on the official website and within the ARCI official database. The proposed regulatory language mirrors subsection (b) of the ARCI Model Rule mentioned above. There are minor technical modifications to allow incorporation into the Board's rules. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(c) will provide that a trainer's cumulative points for violations in all racing jurisdictions be maintained by the Board and ARCI, specify the conditions under which the points become part of the trainer's official Board and ARCI record, and provide that the Board consider said points in its determination to impose the enhanced penalties on the trainer. The proposed regulatory language mirrors subsection (c) of the ARCI Model Rule mentioned above. There are minor technical modifications to include the Board in the maintenance of points and allow incorporation into the Board's rules. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(d) will provide for instances in which multiple positive tests for a medication may be treated as a single violation. Additionally, if there is a positive test indicating multiple substances in a single post-race sample, the Board may treat each substance as an individual violation with assigned points. The proposed regulatory language mirrors subsection (d) of the ARCI Model Rule mentioned above, with a minor technical change to make it specific to the Board. The adoption of this subsection is

necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(e) will provide that the official Board and ARCI record be used to advise the Board of a trainer's past record of violations and cumulative points. Additionally, it will provide that nothing in the rule gives a licensed trainer the right to appeal a violation for which all remedies have been exhausted or for which the appeal time has expired. The proposed regulatory language mirrors subsection (e) of the ARCI Model Rule mentioned above, with a minor technical change to include use of the Board's records. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(f) will require the Board to consider all points for violations in all racing jurisdictions when determining whether mandatory enhancements will be imposed. The proposed regulatory language mirrors subsection (f) of the ARCI Model Rule mentioned above, with minor technical changes to allow incorporation into the Board's rules, whereby the Board is the entity imposing the penalties, and include use of the Board's records. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(g) will specify the penalty enhancements to be imposed on a licensed trainer based on the number of points accumulated in their official Board and ARCI record. It will provide that MMV penalties are not a substitute for the current penalty system and are an additional penalty when (1) there are multiple violations in a given time period and (2) the permissible number of points has been exceeded. It will also require the Board to consider aggravating and mitigating circumstances in determining the appropriate penalty for the underlying offense. The proposed regulatory language mirrors subsection (g) of the ARCI Model Rule mentioned above, with minor technical changes to include use of the Board's records and allow incorporation into the Board's rules, as the Board is the entity imposing the penalties. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(h) will provide that the suspension periods provided in subsection (g) run consecutive to any suspension imposed for the underlying offense. The proposed regulatory language mirrors subsection (h) of the ARCI Model Rule mentioned above, with a minor technical change to refer to subsection (g) of the proposed rule. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(i) will require that the Board distinguish between the penalty for the underlying offense and any enhancement based on review of a trainer's history. The proposed regulatory language mirrors subsection (i) of the ARCI Model Rule mentioned above, with a minor technical change to specify the Board as the entity imposing the penalty. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

Subsection 1843.4(j) will specify the amount of time after which points shall expire, based on the penalty classification. Additionally, in the case of a medication violation resulting in a suspension, any points assessed will expire on the anniversary date of the date the suspension is completed. The proposed regulatory language entirely mirrors subsection (j) of the ARCI Model Rule mentioned above. The adoption of this subsection is necessary to maintain consistency between the proposed rule and the ARCI Model Rule after which it is modeled.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment of Board Rule 1843.3 and proposed addition of Board Rule 1843.4 will benefit the health of racehorses and increase safety for the horses and their riders. By imposing separate, enhanced penalties for MMV, the proposed regulatory action will act as an incentive for the trainer, who is the individual subject to the enhanced penalties, to ensure that medication violations are avoided. This will contribute to the overall health of the horse, which will help prevent injuries and accidents from occurring, thereby increasing safety for the horse and its rider.

The multiple medication penalty violations were developed by the Racing Medication Testing Consortium approximately six years ago and have been implemented in a number of states. Currently, the penalty guidelines outlined in Board Rule 1843.3 only count penalties in California. By adopting this Rule, the Board will also be eligible to consider medication penalty violations from other states and, thus, be better able to establish trends and determine if a licensee has frequent medication violations.

The proposed regulatory action will also provide for consistency between the penalty guidelines set forth in Board Rule 1843.3 and the ARCI Penalty Guidelines after which the rule is modeled, as the rule currently does not utilize MMV.

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

The Board relied on ARCI's rule ARCI-011-020(B)(13), Multiple Medication Violations (MMV), in proposing this regulatory action. In proposing this regulatory action, the Board relied on rule ARCI-011-020(B)(13), Multiple Medication Violations (MMV), within ARCI's Uniform Classification of Foreign Substances Version 14.1 (January, 2020) Penalty Guidelines.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The results of the Board's Economic Impact Assessment as required by Government Code (GC) section 11346.3(b) are as follows:

- The proposed regulation will not impact the creation or elimination of jobs within the State of California.

- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulation will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulation will benefit California by promoting the safety of horses and their riders and will not benefit the State's environment.

The Board has made an initial determination that the proposed regulatory action 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 proposed amendment to Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV that will run consecutive to any suspension imposed under the rule. The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed. As such, the proposed regulatory action will affect only the trainer of a horse involved in MMV. Therefore, the proposed regulatory action will have an effect on only horseracing and not any other type of California business.

PURPOSE

Board Rule 1843.3 sets forth the penalty guidelines for medication violations. The proposed amendment to Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV, which will run consecutive to any suspension imposed under the rule.

The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed, whereby the number of points assigned to a trainer depends on the class and number of violations committed. The number of points accumulated determines the length of the suspension imposed on the trainer, and the class of violation determines the length of time before the points expire.

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment of Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV, which will run consecutive to any suspension imposed under the rule. The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed. As such, this regulation has an effect on only horseracing and not on any other type of California business. Therefore, the Board has determined that this regulatory proposal will have no direct impact on the creation or elimination of jobs within the State of California.

CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed amendment of Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV, which will run consecutive to any suspension imposed under the rule. The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed. As such, this regulation has an effect on only horseracing and not on any other type of California business. Therefore, the Board has determined that this regulatory proposal will have no direct impact on the creation of new businesses or the elimination of existing businesses within the State of California.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA

The proposed amendment of Board Rule 1843.3 will authorize the Board to establish separate, enhanced penalties for MMV, which will run consecutive to any suspension imposed under the rule. The proposed addition of Board Rule 1843.4 will specify the enhanced penalties for MMV and establish a point system by which the enhanced penalties are imposed. As such, this regulation has an effect on only horseracing and not on any other type of California business. Therefore, the Board has determined that this regulatory proposal 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 proposed amendment of Board Rule 1843.3 and proposed addition of Board Rule 1843.4 will benefit the health of racehorses and increase safety for the horses and their riders. By imposing separate, enhanced penalties for MMV, the proposed regulatory action will act as an incentive for the trainer, who is the individual subject to the enhanced penalties, to ensure that medication violations are avoided. This will contribute to the overall health of the horse, which will help prevent injuries and accidents from occurring, thereby increasing safety for the horse and its rider.

The regulation does not benefit 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective and equally effective in implementing the statutory policy or other provision of law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed amendment to Board Rule 1843.3 and proposed addition of Rule 1843.4 were discussed at the July 16, 2020 regular Board meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments that offer any alternative proposal.

CALIFORNIA HORSE RACING BOARD
September 11, 2020