

FINAL STATEMENT OF REASONS

UPDATED INFORMATIVE DIGEST

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

The California Horse Racing Board (Board) approved language for the amendment to Board Rule 1843.3, Penalties for Medication Violations, Board Rule 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race, and Board Rule 1844, Authorized Medication, at the June 20, 2019 regular Board meeting. The Board subsequently approved modifications to the proposed language at the February 20, 2020 and March 26, 2020 regular Board meetings and directed staff to initiate a 15-day notice and comment period. The 15-day notice was published March 27, 2020 and the public comment period closed April 11, 2020. Proposed subsection 1843.5(g) was struck from the approved language to maintain consistency with a previously approved emergency amendment to Board Rule 1843.5 that became effective February 26, 2020. Additionally, the definition of “entered to race” in subsection 1843.5(a) was modified to reflect the original definition prior to the amendment to Board Rule 1843.5 pursuant to Board Rule 1406, Suspension of Rule.

The 15-day Notice of Modification to the Text of the Proposed Amendment to Board Rules 1843.3, 1843.5, and 1844, mailed on March 27, 2020, provided notice that a document incorporated by reference was available for public inspection and comment. There was, however, no document incorporated by reference in the amendment, and thus that provision was incorrect.

LOCAL MANDATE DETERMINATION

The amendment of Board Rules 1843.3, 1843.5, and 1844 does not impose any mandates on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY NOTICE PERIOD OF JANUARY 3, 2020 THROUGH FEBRUARY 17, 2020.

No comments were received during the original notice period of January 3, 2020 through February 17, 2020.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE FEBRUARY 20, 2020 REGULATORY HEARING.

Comment: (Transcript pages 16 – 17) Proposed amendments to Board Rule 1843.5(g) were inconsistent with a pending emergency amendment under review by the Office of Administrative Law (OAL). The emergency amendment struck subsection 1843.5(g) and took effect on February 26, 2020.

Response: The Board agreed that the proposed amendment to Board Rule 1843.5 was inconsistent with the emergency amendment approved by OAL that took effect on February 26, 2020. The Board approved an amendment to the proposed regulation, striking subsection 1843.5(g), at the February 20, 2020 regular Board meeting, thus bringing the proposed amendment to Board Rule 1843.5 in alignment with the approved emergency regulation.

Comment: (transcript pages 18 – 20) The proposed amendment provides that the fourth medication violation within a 365-day period will require a minimum 15-day suspension and a fine of \$2,500. The \$2,500 fine is too low and should be a larger fine to discourage horsemen from repeatedly violating medication rules because they do not fear the fine at such a low amount.

Response: The Board has determined that the proposed fine amounts are satisfactory and that raising the fine amount is not necessary. The Category C penalty referred to is less severe than Category A and B penalties, so if a more egregious violation is committed warranting a higher penalty and longer suspension, the Board would issue a Category A or Category B penalty instead of a Category C penalty. Additionally, the fine amount alone is not the full extent of the penalty. The 15-day suspension accompanying the \$2,500 fine after a fourth offense in a 365-day period is also financially painful for the offending horsemen because they cannot participate in training or racing during that suspension. Training and racing are the horsemen's primary source of income, so suspension for 15 days is effectively stripping the horsemen of income for that period in addition to the \$2,500 fine.

Comment: (transcript pages 20 – 21) Even with an increased focus on regulating and disallowing pre and post-race medications, racing injuries and fatalities still occur. Therefore, horseracing needs to be prohibited.

Response: The Board supports the industry-wide initiative to move to an industry model in which horses race medication-free, and in an effort to further that goal, the amendment to Board Rules 1843.3, 1843.5, and 1844 restricts the use of medication and prohibits many medications from being administered. While it is true that horses may still suffer injury and even fatalities, the Board promulgates regulations in order to minimize hazards and the potential for accidents and to safeguard the wellbeing of race horses. Despite this, accidents do happen and horses will continue to face risk while racing, as they do in any environment. However, it is the Board's mission to oversee, regulate, and improve horse racing, not eliminate it.

SUMMARY AND RESPONSE TO THE LETTER RECEIVED FEBRUARY 29, 2020 FROM THE THOROUGHBRED OWNERS OF CALIFORNIA (TOC) AND THE CALIFORNIA THOROUGHBRED TRAINERS (CTT).

Comment: Amendments to Board Rule 1843.5 and Board Rule 1844, which under emergency action are set to be enforced March 1, 2020, have created unintended consequences that threaten the survival of horse racing in California.

Response: The emergency amendment to Board Rule 1843.5 and Board Rule 1844 was approved by OAL and became effective on February 26, 2020. While the emergency amendment to Board Rule 1843.5 and 1844 is not the subject of this rulemaking action, the Board continues to work with industry representatives and stakeholders to facilitate a transition to the shared objective, as stated by the major racetracks and racing associations in the United States, and the Thoroughbred Safety Coalition (TSC), of major reform to medication regulations nation-wide, including reform of race day medication regulations. In hopes of smoothing this transition in horse racing regulation that surely has sweeping impacts on the industry, the Board is maintaining open dialogue with industry representatives and stakeholders. However, the need to ensure the safety of racehorses and riders takes precedence over the temporary disruption caused by the changing regulation.

Comment: The TOC and the CTT jointly request that the amendments to medication rates and the definition of entry date be suspended. The TOC and CTT also commented that they believe there is precedent for such an action, and that the Board has the authority to suspend portions or all of a regulation when unanticipated, serious, and unintended consequences arise in the aftermath of a Board action.

Response: The Board does have the authority to suspend a rule for any condition which it imposes, including unanticipated consequences arising from a Board action, under Board Rule 1406, Suspension of Rule. However, Board Rule 1406 is used to suspend a currently enforceable rule that is in effect. The rulemaking being considered in this rulemaking action is the proposed amendment to Board Rules 1843.3, 1843.5, and 1844, which, unlike the emergency amendment to Board Rules 1843.5 and 1844, are not yet effective, and thus, Board Rule 1406 is not applicable. The Board also has the ability to modify the text of a proposed regulation in response to concerns regarding unintended consequences. Accordingly, the Board approved an amendment to the proposed language in Board Rule 1843.5 at the March 26, 2020 regular Board meeting, to revert the definition of “entered to race” to its original definition, pursuant to Board Rule 1406, Suspension of Rule, prior to initiation of the proposed amendment to Board Rules 1843.3, 1843.5, and 1844.

Comment: Trying to informally sort through what would continue to be permitted or not permitted as a result of the proposed amendment is complex and would result in unfairness to owners and trainers based on where they are stabled, how they ship for races, and how the rules are understood. Additional concerns exist around unanticipated confusion that could arise as a result of the proposed changes.

Response: The reversion of the definition of “entered to race” to its original definition, pursuant to Board Rule 1406, Suspension of Rule, prior to the proposed amendment to Board Rules 1843.3, 1843.5, and 1844 maintains the Board’s desired medication thresholds and penalty guidelines while providing a definition of entry date that was previously applied and understood by Board licensees.

Comment: The TOC and CTT cannot ignore the exceptionally precarious state of California racing, given all the events of 2019 and the increasingly complex regulatory environment, which many perceive to be unnecessarily burdensome, especially when most owners and trainers are doing their very best to adhere to principles of good horsemanship. Now is not the time for anymore perceived burdens.

Response: The Board's primary concern is the health and safety of racehorses in California, and thereby the health and safety of the jockeys and riders. The proposed amendment to Board Rules 1843.3, 1843.5, and 1844 provides for the prohibition of eleven previously suspended medications in an effort to further the industry's initiative to move toward a zero-tolerance policy toward race-day medication in racehorses to safeguard horse welfare and safety. In order to maintain this effort, but simultaneously address industry concerns regarding regulatory burden faced by owners and trainers, the Board approved an amendment to the proposed regulation to revert the definition of "entered to race" from "midnight the day entries close for the race", back to the original prior definition, "48 hours before post time of the running of the race", pursuant to Board Rule 1406, Suspension of Rule. Reversion to the original, prior definition will provide owners and trainers with a familiar definition with no added complexity or unfamiliarity.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE MARCH 26, 2020 REGULATORY HEARING.

Comment: (Transcript pages 88 – 89) Industry representatives raised concerns about the proposed definition of "entered to race" in the initial proposed rulemaking. The initially proposed definition was "midnight the day entries close for the race".

Response: The Board responded to industry concerns about the proposed modification to the definition of "entered to race" by approving an amendment to revert the definition back to the prior, original definition of "48 hours before post time of the running of the race", at the March 26, 2020 regular Board meeting pursuant to Board Rule 1406, Suspension of Rule.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF MARCH 27, 2020 THROUGH APRIL 11, 2020.

No comments were received during the 15-day notice period of March 27, 2020 through April 11, 2020.

ALTERNATIVE DETERMINATION

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or 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 provisions of law. The proposed amendment to Board Rule 1843.3, Penalties for Medication Violations, 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race, and 1844, Authorized Medication removes Category "C" penalties for non-steroidal anti-inflammatory drug substances (NSAID), adds Category "C" penalties for a fourth and subsequent medication violation within a 365-day period, prohibits NSAIDs and two additional substances from being administered 24 hours before post time of a race, and prohibits the use of any previously authorized bleeder medication except furosemide. The amendment also removes the list of NSAIDs that were authorized for administration to horses entered to race, provides that not more than one glucocorticoid may be administered to a horse entered to race, and removes eight drug substances that previously could be present in official blood test samples.

The Board invited 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. No alternatives were proposed.

No alternatives that would lessen any adverse economic impact on small businesses were proposed.