

INITIAL STATEMENT OF REASONS

RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment to Rule 1843.3, Penalties for Medication Violations, will correct a discrepancy that occurred when the rule was last amended in 2016. The amendment will modify subsection 1843.3(d) to correct a discrepancy in the Licensed Trainer phenylbutazone levels within the Category “C” penalty chart. The Licensed Trainer category, 2nd offense within 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” will be changed to “Phenylbutazone (> 5.0 mcg/ml).” The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation.

PROBLEM

The penalty categories contained in Rule 1843.3 are closely aligned with those of the Association of Racing Commissioners International (ARCI) model rules of racing. The ARCI is a national horse racing organization composed of the governmental regulators of horse racing in the United States, Canada, Mexico, Jamaica and Trinidad-Tobago. The ARCI developed its Model Rules of Racing to set standards and best practices in horseracing, and to ensure the quality of drug testing programs and the security of the wagering system. California’s adoption of the ARCI Model Rule guidelines promotes uniformity in the various states’ horse racing regulations and ensures that California’s regulations are in agreement with other racing jurisdictions nationwide. The uniformity of regulations between the various racing jurisdictions provides clarity for horsemen and equine veterinary practitioners. When the ARCI updates its model rules of racing it becomes necessary for the Board to amend one or more of its regulations. In 2016, the Board amended Rule 1843.3 to bring it in line with the ARCI model rules of racing. One element of the amendment eliminated the phenylbutazone measurements in serum or plasma for Category “D” penalties which were found under subsection 1843.3(e). The measurements were moved to the Category “C” penalties column under subsection 1843.3(d). The first levels of Category “C” phenylbutazone penalties were changed to match the levels previously found in the Category “D” penalties for Rule 1844(c)(1) phenylbutazone violations. This meant the second level of measurements of serum or plasma for Licensed Trainer and Licensed Owner had to be adjusted so they would be sequential without a gap. The subsequent Licensed Trainer and Licensed Owner columns were supposed to be changed to “Phenylbutazone (≥ 5.0 mcg/ml).” The Licensed Owner category was changed; however, the changes that should have been made to the Licensed Trainer category were omitted from the final text submitted to OAL on September 13, 2016. The proposed amendment to Rule 1843.3 is necessary, as it will correct the discrepancy by adjusting the Licensed Trainer category, 2nd offense within 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” to “Phenylbutazone (≥ 5.0 mcg/ml).”

NECESSITY

In 2016, Rule 1843.3 was amended to bring it in line with the ARCI model rules of racing. One facet of the amendment modified subsection 1843.3(e) to eliminate Category “D” penalties for Rule 1844(c)(1) violations. Such violations were moved to the Category “C” penalties column under subsection 1843.3(d). The first levels of Category “C” phenylbutazone penalties were changed to match the levels previously found in the Category “D” penalties for Rule 1844(c)(1) phenylbutazone violations. This meant the second level of measurements of serum or plasma for Licensed Trainer and Licensed Owner had to be adjusted so they would be sequential without a gap. The subsequent Licensed Trainer and Licensed Owner columns were supposed to be changed to “Phenylbutazone (≥ 5.0 mcg/ml).” The Licensed Owner category was changed; however, the changes that should have been made to the Licensed Trainer category were omitted from the final text submitted to OAL on September 13, 2016. The proposed amendment to Rule 1843.3 is necessary, as it will correct the discrepancy by adjusting the Licensed Trainer category, 2nd offense within 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” to “Phenylbutazone (≥ 5.0 mcg/ml).”

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1843.3 is necessary to provide clarity and consistency within the text of the regulation. The proposed amendment will ensure the integrity of horseracing and the protection of the public by providing greater clarity regarding the consequences of violating the Board’s medication regulations. The proposed amendment to Rule 1843.3 will promote the health and welfare of race horses and licensees by removing those with the most egregious medication violation from the inclosure. The proposed amendment to Rule 1843.3 promotes the health and safety of race horses, which is jeopardized if they workout or race when they are not sound due to the unauthorized administration of medications or drug substances. Keeping race horses healthy protects the economic interest of owners and ensures that there is adequate horse inventory. Ensuring that horses entered to race are sound also promotes jockey/driver safety. Sound, healthy horses results in a favorable public response to horse racing, which could result in an increase in wagering activity, and a positive economic impact on the industry.

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

The Board did not rely on any technical, theoretical, and/or empirical study, reports or documents in proposing the amendment of Rule 1843.3.

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 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 and welfare of horse and rider and will not benefit the State's environment.

The Board has made the initial determination that the proposed amendment of Rule 1843.3 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 Rule 1843.3 impacts individuals who violate the Board's medication regulations. In making the determination that the proposed amendment to Rule 1843.3 will not have an adverse economic impact, the Board looked at the number of licensees who might be affected. The individuals impacted are licensed horse trainers. There are currently 626 individuals who hold CHRB trainer licenses. In fiscal year 2017/2018, the CHRB issued penalties for Category "C" phenylbutazone violations to twelve trainers, or just under two percent of CHRB's licensed trainers. Penalties for medication violations act as deterrents, as is demonstrated by the low percentage of licensees who have been found to have violated the Board's medication regulations.

The amendment to Rule 1843.3 will correct a discrepancy that occurred when the rule was last amended in 2016. The amendment will modify subsection 1843.3(d) to correct a discrepancy in the Licensed Trainer phenylbutazone levels within the Category "C" penalty chart. The Licensed Trainer category, 2nd offense within 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," will be changed to "Phenylbutazone (> 5.0 mcg/ml)." The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation.

PURPOSE

The proposed amendment will correct a discrepancy that occurred when the regulation was amended in 2016. The licensed trainer phenylbutazone levels within the Category "C" penalty chart, 2nd offence within a 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," will be changed to "Phenylbutazone (> 5.0 mcg/ml). The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation.

THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment will correct a discrepancy that occurred when the regulation was amended in 2016. The licensed trainer phenylbutazone levels within the Category "C" penalty chart, 2nd offence within a 365-day period, which currently reads "Phenylbutazone (≥ 10.0 mcg/ml)," will be changed to "Phenylbutazone (> 5.0 mcg/ml). The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation. The proposed regulation will only affect licensed trainers who have second offence

phenylbutazone violations within a 365-day period, and as such only has an effect on horseracing and not any other type of California business. Therefore, the Board has determined that this regulatory action will not have a significant 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 will correct a discrepancy that occurred when the regulation was amended in 2016. The licensed trainer phenylbutazone levels within the Category “C” penalty chart, 2nd offence within a 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” will be changed to “Phenylbutazone (> 5.0 mcg/ml). The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation. The proposed regulation will only affect licensed trainers who have second offence phenylbutazone violations within a 365-day period, and as such only has an effect on horseracing and not any other type of California business. Therefore, the Board has determined this regulatory action will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

THE EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA

The proposed amendment will correct a discrepancy that occurred when the regulation was amended in 2016. The licensed trainer phenylbutazone levels within the Category “C” penalty chart, 2nd offence within a 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” will be changed to “Phenylbutazone (> 5.0 mcg/ml). The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation. The proposed regulation will only affect licensed trainers who have second offence phenylbutazone violations within a 365-day period, and as such only has an effect on horseracing and not any other type of California businesses. Therefore, the Board has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business in the State of California.

BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE’S ENVIRONMENT

The proposed amendment will correct a discrepancy that occurred when the regulation was amended in 2016. The licensed trainer phenylbutazone levels within the Category “C” penalty chart, 2nd offence within a 365-day period, which currently reads “Phenylbutazone (≥ 10.0 mcg/ml),” will be changed to “Phenylbutazone (> 5.0 mcg/ml). The proposed change will correct the Licensed Trainer level of serum or plasma for phenylbutazone so it is in line with the Licensed Owner category, and is presented as the Board intended in its 2016 amendment of the regulation. The proposed amendment to Rule 1843.3 will benefit the health and welfare of California

horsemen by helping to ensure the health and safety of horses participating in California horseracing meetings. 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 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 1843.3 was discussed at the May 24, 2018 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 which offer any alternative proposal.

California Horse Racing Board
August 3, 2018