

## INITIAL STATEMENT OF REASONS

### RULE 1844. AUTHORIZED MEDICATION.

### RULE 1866.1. PRESENCE OF CLENBUTEROL IN QUARTER HORSES

#### SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1844, Authorized Medication, to revise subsection 1844(e) to remove clenbuterol, or its metabolites or analogs, from the list of drug substances that may be detected in an official urine test sample at specified levels. Additionally, the Board proposes to amend Rule 1866.1, Presence of Clenbuterol in Quarter Horses, to change the title of the regulation to “Presence of Clenbuterol in Horses,” as the regulation will be modified to include all breeds of horse that participate in authorized race meetings in California. The proposed regulation will require that a horse that is prescribed or otherwise tests positive for clenbuterol in a blood, urine, or other official test sample be placed on the Veterinarian’s List until clenbuterol is no longer detected in the horse’s blood or urine by an official test sample. All other changes to Rule 1844 and Rule 1866.1 are for the purposes of clarity and consistency.

#### PROBLEM

Clenbuterol is a beta-2 agonist used typically as a bronchodilator in horses that can also have anabolic steroidal-type effects, enhancing the performance of the horse. Because of these anabolic effects, clenbuterol has been abused in quarter horses in recent history to enhance their performance in races. In 2010, the California Horse Racing Board (CHRB) conducted testing at Los Alamitos Race Course by collecting blood samples from 72 quarter horses. The results revealed that every sample (72 out of 72) contained detectable levels of clenbuterol in the horse’s blood. Clenbuterol can be detected in blood for no more than 4-7 days after administration, indicating that all of the tested horses had recently been administered clenbuterol. At the request of Los Alamitos Race Course and the Pacific Coast Quarter Horse Racing Association, the CHRB suspended authorization of clenbuterol by breed and track for one year at a time, pursuant to Rule 1844.1. The suspension was in place for 2011, and upon conducting a similar testing program, the CHRB found that no horses tested positive for clenbuterol following the suspension. In 2013, however, a number of trainers began to once again push the limits on clenbuterol use. In Fiscal Year 2013-14 there were thirteen clenbuterol violations at Los Alamitos. After additional violations in Fiscal Year 2015-16, the Board amended Rule 1844 to deauthorize any detectable level of clenbuterol in a quarter horse’s official urine test sample. At the same time, the Board added Rule 1866.1 to provide that a quarter horse prescribed clenbuterol would be placed on the Veterinarian’s List until an official test sample demonstrated there was no clenbuterol in the blood or urine of the quarter horse after a workout to demonstrate its physical fitness. A quarter horse placed on the Veterinarian’s List for clenbuterol would not be allowed to start in a race until it was removed from the list. In January 2018, Rule 1844 was amended to provide that no horse participating in a quarter horse race may have clenbuterol, or its metabolites or analogs, present in the official test sample. At its October 2018 Regular Meeting, the Board voted to suspend the authorized administration of clenbuterol for all horses participating in a horse race for a period of 12 months pursuant to Rule 1844.1, Suspension of Authorized Medication. The suspension was the result of an increase in the presence of

clenbuterol in thoroughbred out-of-competition test samples. The Equine Medical Director stated an analysis of the clenbuterol positives indicated the drug was not consistently used for therapeutic purposes. Instead, after monitoring the veterinarian reports of medication prescribed, it appeared that in some instances the drug's use was not random. Rather, in some barns the use of clenbuterol was "trainer driven." The veterinarian reports revealed that some veterinarians would prescribe the drug to a large number of horses in one trainer's barn and have no prescriptions in another. At its October 2018 Regular Meeting, the Board also voted to initiate an amendment to Rule 1844 and Rule 1866.1. The regulations would collectively prohibit the presence of clenbuterol, or its metabolites or analogs, in an official urine sample of any horse competing in a race. The proposed regulations will not prohibit the use or possession of clenbuterol. A horse may still be placed on clenbuterol for therapeutic purposes; however, the horse must be placed on the Veterinarian's List in accordance with Rule 1866, Veterinarian's List. To be eligible to run in a race, the horse must work out to demonstrate its physical fitness and test clear of clenbuterol in its blood or urine test sample. The proposed amendments are intended to protect the public and the health and welfare of the horse. While trainers with clenbuterol positives may be sanctioned, the public is not protected in these instances. Those who wager on races where certain horses have been administered clenbuterol have no recourse. The fans who wager on a winning horse that has been administered clenbuterol—which often includes the horse's owners and trainers—are rewarded, while those who wager on a losing horse not administered clenbuterol become victims of an unfair and illegal performance enhancing scheme. Furthermore, unless properly used for therapeutic purposes, side-effects associated with clenbuterol administration have been scientifically documented in horses to include a repartitioning effect (the reduction of fat levels, while preserving or increasing muscle mass) and major alterations in cardiac and skeletal muscle function, as well as affects on bone, immune, endocrine, and reproductive systems.

## NECESSITY

The proposed amendment to Rule 1844 will revise subsection (e)(6) to deauthorize any detectable level of clenbuterol in an official urine test sample in any horse participating in a race. This is necessary to officially prohibit the use of clenbuterol in horses entered to race, making violations of the rule actionable and subject to Board penalties.

The proposed amendment of Rule 1866.1 will change the title of the regulation to: "Presence of Clenbuterol in Horses." In addition, the text of the regulation will be changed to replace "quarter horse" with "horse." The changes to the title and text of Rule 1866.1 are necessary as the regulation will no longer address only quarter horses. All horses participating in a race shall not have a detectable level of clenbuterol in their official test samples. Pursuant to Rule 1866.1, any horse prescribed clenbuterol will be placed on the Veterinarian's List for veterinary treatment until an official test sample shows that there is no clenbuterol in the blood or urine of the horse after a workout to demonstrate its physical fitness pursuant to Rule 1866. The proposed amendment of Rule 1866.1 will allow for the legitimate therapeutic use of clenbuterol in race horses, while prohibiting any level of clenbuterol, or its metabolites or analogs, in the official test samples of horses competing in a race.

## BENEFITS ANTICIPATED FROM THE REGULATORY ACTION.

The proposed amendment to Rule 1844 and Rule 1866.1 will benefit California's race horses by protecting them from the unregulated and potentially harmful administration of clenbuterol. Clenbuterol, a beta-2 agonist typically used as a bronchodilator in horses, can also be used for its anabolic-type effects to enhance the performance of a race horse. Such a practice is not only unfair to competitors and the wagering public but can also lead to harmful side effects for the horse, such as a repartitioning effect and major alterations in cardiac and skeletal muscle function, as well as affects on bone, immune, endocrine, and reproductive systems. Such side effects may also increase the likelihood of the horse becoming injured while running, which always carries the potential of injuring the rider as well. By restricting the prescription and administration of clenbuterol and prohibiting horses from racing with clenbuterol in their system, these regulations will increase the safety and welfare of equine athletes and their riders.

The proposed amendments will also benefit the wagering public by assuring them that trainers and owners are not permitted to illegitimately enhance the performance of their horses using clenbuterol. In fact, when trainers and owners follow the proposed rule amendments, the public will have more confidence in California horse racing, 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 rule amendments will benefit the horse racing industry by ensuring that horses receiving clenbuterol will not be permitted to race in California, protecting both the horse from potential injury and the industry from negative public perceptions of horse racing.

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

In proposing the amendment to Rule 1844 and Rule 1866.1, the Board relied on:

- Nolen-Walston et al., *Effect of long-term oral administration of a low dosage of clenbuterol on body fat percentage in working and nonworking adult horses*, 76 AJVR 460-466 (2015).
- Charles F. Kearns & Kenneth H. McKeever, *Clenbuterol and the horse revisited*, 182 THE VETERINARY JOURNAL 384-391 (2009).

The Board did not rely on any other technical, theoretical, and/or empirical study, reports or documents in proposing the amendment of Rule 1844 and Rule 1866.1.

## 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 regulations will not impact the creation or elimination of jobs within the State of California.

- The proposed regulations will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulations will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulations 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 1844 and Rule 1866.1 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 amendment to Rule 1844 and Rule 1866.1 will deauthorize any detectable level of clenbuterol in an official urine test sample in race horses, and otherwise require that any horse prescribed clenbuterol be placed on the Veterinarian's List until an official test sample shows that there is no clenbuterol in the blood or urine of the horse after a workout to demonstrate its physical fitness pursuant to Rule 1866. The proposed rules define reporting, timing, and labeling requirements for clenbuterol prescriptions—which includes compliance with Veterinary Medical Board prescription regulations—as well as trainer reporting requirements for clenbuterol administration. Finally, the proposed rules require that any horse that has clenbuterol detected in a blood, urine, or other official test sample be placed on the Veterinarian's List until an investigation is conducted to determine the circumstances surrounding the detected clenbuterol, and a subsequent official test fails to detect clenbuterol in the horse after a workout pursuant to Rule 1866. This will not impact businesses in any way, and only serves to more actively monitor and regulate the prescription and administration of clenbuterol in California's race horses.

#### Purpose:

The proposed amendment to Rule 1844, Authorized Medication, will revise subsection 1844(e)(6) to deauthorize any detectable level of clenbuterol in an official urine test sample in horses. Additionally, the proposed amendment of Rule 1866.1 will require that a race horse that is prescribed or otherwise tests positive for clenbuterol in a blood, urine, or other official test sample be placed on the Veterinarian's List until clenbuterol is no longer detected in the horse's blood or urine by an official test sample. These changes will increase the safety and welfare of both equine and human athletes, as well as the wagering public.

#### The Creation or Elimination of Jobs Within the State of California

The proposed amendment of Rule 1844 and Rule 1866.1 will deauthorize any detectable level of clenbuterol in an official urine test sample in race horses, and otherwise require that horses prescribed and/or administered clenbuterol be placed on the Veterinarian's List until clenbuterol is no longer detectable in their blood or urine. This regulation will only impact individual CHRB licensees treating race horses with clenbuterol. Therefore, the Board has determined that the proposed rule amendments will have no direct impact on the creation or elimination of jobs within the State of California.

## The Creation of New Businesses or the Elimination of Existing Businesses Within the State of California

The proposed amendment of Rule 1844 and Rule 1866.1 will deauthorize any detectable level of clenbuterol in an official urine test sample in race horses, and otherwise require that horses prescribed and/or administered clenbuterol be placed on the Veterinarian's List until clenbuterol is no longer detectable in their blood or urine. This regulation will only impact individual CHRB licensees treating race horses with clenbuterol. Therefore, the Board has determined that the proposed rule amendments will have no direct impact on the creation of new businesses or the elimination of existing businesses within the State of California.

## The Expansion of Businesses Currently Doing Business Within the State of California

The proposed amendment of Rule 1844 and Rule 1866.1 will deauthorize any detectable level of clenbuterol in an official urine test sample in race horses, and otherwise require that horses prescribed and/or administered clenbuterol be placed on the Veterinarian's List until clenbuterol is no longer detectable in their blood or urine. This regulation will only impact individual CHRB licensees treating race horses with clenbuterol. Therefore, the Board has determined that the proposed rule amendments will have no direct impact on 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 Rule 1844 and Rule 1866.1 is a benefit to California because they promote the safety and welfare of horse, rider, and the wagering public. Clenbuterol, a beta-2 agonist typically used as a bronchodilator in horses, can also be used for its anabolic-type effects to enhance the performance of a race horse. Such a practice is not only unfair to competitors and the wagering public but can also lead to harmful side effects for the horse, such as a repartitioning effect and major alterations in cardiac and skeletal muscle function, as well as affects on bone, immune, endocrine, and reproductive systems. Such side effects may also increase the likelihood of the horse becoming injured while running, which always carries the potential of injuring the rider as well. By restricting the prescription and administration of clenbuterol and prohibiting horses from racing with clenbuterol in their system, these regulations will increase the safety and welfare of equine athletes and their riders.

The proposed amendments will also benefit the wagering public by assuring them that trainers and owners are not permitted to illegitimately enhance the performance of their horses using clenbuterol. When trainers and owners are following the proposed rules, the public will have more confidence in California horse racing, 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.

Finally, the proposed amendments will benefit the California horse racing industry by ensuring that race horses receiving clenbuterol will not be permitted to race in California, protecting both the horse from potential injury and the industry from negative public perceptions of horse racing. These regulations do 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 amendments to Rule 1844 Rule 1866.1 were discussed at the October 24, 2018 Medication and Track Safety Committee Meeting and the October 25, 2018 Regular Board Meeting. No alternatives to the recommendation were proposed by 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  
March 29, 2019