

CALIFORNIA HORSE RACING BOARD

TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND

RULE 1845. AUTHORIZED BLEEDER MEDICATION

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 Board Rule 1845, Authorized Bleeder Medication, to provide that the maximum allowable dose of race day furosemide for horses born before 2018 is reduced from 500 milligrams to 250 milligrams. The proposed amendment also provides that all administration of race day furosemide is prohibited to foals born in or after 2018.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, March 19, 2020**, or as soon after that as business before the Board will permit, at the **Clubhouse** at the **California Exposition and State Fair Grandstand, 1600 Exposition Boulevard, Sacramento, 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 on **March 9, 2020**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Zachary Voss, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6036
Fax: (916) 263-6022
E-mail: zavoss@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Section 19440 and 19562, Business and Professions Code (BPC).

Reference: Sections 19580, 19581 and 19582, BPC.

BPC sections 19440 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19580, 19581 and 19582 of the BPC.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

BPC section 19440 provides that the Board shall have all powers necessary to adopt rules and regulations for the protection of the public and the control of horse racing. BPC section 19562 provides that the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in the state of California. BPC 19580 provides that the Board shall adopt regulations to establish policies, guidelines and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. BPC section 19581 provides that 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 composition thereof. BPC section 19582 provides that violations of BPC section 19581 are punishable as set forth in regulations adopted by the Board, and the Board has the power to determine if a violation has occurred.

Exercise-Induced Pulmonary Hemorrhage (EIPH) is a common affliction in race horses and other equestrian athletes. EIPH refers to a condition wherein pulmonary bleeding occurs when capillaries¹ in horses' lungs burst as a result of the exertion from intense exercise or racing. Most horses experience some level of EIPH, but for many horses, repeated bleeding in the lungs can lead to inflammation, tissue damage and decreased lung capacity. Furosemide, or Lasix, is a medication used for treating EIPH. Under the current Board Rule 1845, furosemide may be administered to a horse in a dosage of not less than 150 milligrams and not more than 500 milligrams on the grounds of the racetrack not later than four hours prior to the post time of the race that the horse is entered to run. This effectively sets the maximum dosage for race day furosemide at 500 milligrams.

Furosemide is the only authorized bleeder medication currently permitted by the Board to treat EIPH. According to a review conducted by the American College of Veterinary

¹ A capillary is any of the fine branching blood vessels of hair-like thickness that form a network to carry blood between the arterioles and venules.

Internal Medicine (ACVIM) of the veterinary literature regarding EIPH, there is high quality evidence that furosemide administered before strenuous exercise decreases the severity and incidence of EIPH. However, furosemide is a diuretic and causes horses to whom it is administered to urinate approximately 10 to 15 liters of urine. The loss of bodily fluid before a race, if the horse is not allowed to rehydrate, results in the horse weighing 10 to 20 pounds lighter by the start of the race, leading some in the racing industry to assert that furosemide gives horses an unfair advantage by allowing them to race with less weight than they otherwise would naturally.

In March 2019, The Stronach Group (TSG), which owns Golden Gate Fields (GGF) and Santa Anita Park Race Track (SA), declared its intent to progress toward a zero-tolerance policy for race day medication at its racetracks and entered into an agreement with the Thoroughbred Owners of California (TOC) to reduce the maximum allowable level of furosemide administration from 500 milligrams to 250 milligrams. The agreement will also phase out race day medication, including furosemide, in horses born in or after 2018. Board Rule 1581, Racing Secretary to Establish Conditions, provides that if participating horsemen's organizations agree in advance to conditions that restrict the use of a drug substance or medication, the Board can approve an agreement to allow the racing secretary to condition races based on the exclusion of those prohibited substances or medications. The Board approved the agreement between TSG and TOC at its March 2019 Regular Board Meeting, effectively allowing TSG to reduce the maximum dose of race day furosemide allowable in horses born before 2018 and prohibit any amount of furosemide to be administered to horses born in or after 2018 at its California racetracks. Shortly after this agreement went into effect, all other racing associations and fairs in California approached the Board proposing similar agreements. The Board approved these agreements under Board Rule 1581 and effectively conditioned all races in California to run following the same terms per the March 2019 agreement.

The 2019 agreement between TSG and TOC represents a larger horse racing industry trend. The United States (U.S.) is one of the few major racing jurisdictions worldwide that still allows horses to receive medication on the day of the race. Countries like South Africa, Australia, Malaysia, Brazil, Ireland, Germany and Switzerland all prohibit race day administration of furosemide in their jurisdictions. Many industry leaders in the U.S. are moving to align their policies with stricter international standards. The 2019 agreement between TSG and TOC comes on the heels of a similar agreement between organizations representing a group of racetracks that account for 90 percent of the total handle² on U.S. races, including all three hosts of the Triple Crown³. The group also includes

² The handle is the total amount of money bet on a race, or during the entire day or season.

³ The Triple Crown is a series of three thoroughbred horse races consisting of the Kentucky Derby, Preakness Stakes and Belmont Stakes. The Triple Crown is the U.S. horse racing industry's most valuable asset and it generates millions of dollars for the horse racing industry.

organizations representing a diverse set of U.S. racetracks including Aqueduct, Del Mar, Fair Grounds, Gulfstream, Keeneland, Oaklawn, Pimlico, and Saratoga. The group's initiative has received the endorsement of the Breeder's Cup, the Thoroughbred Owners and Breeders Association, and the American Graded Stakes Committee. The Board has accommodated TSG and TOC in this effort through its powers under Board Rule 1581 and has done the same for the subsequent agreements with other California racing associations and fairs. In order to bring its authorized bleeder medication rules in line with the terms of the approved agreements, the Board has determined to amend Board Rule 1845 to align California's race day furosemide rules with the industry's initiative.

The proposed amendment to Board Rule 1845 will modify subsection 1845(a) by reducing the maximum allowable dose of race day furosemide from 500 milligrams to 250 milligrams, and this dose may only be administered to horses born before 2018. This is a return to the maximum dosage levels from before 2005 when the maximum was raised to 500 milligrams. The reduction to 250 milligrams allows for horses that currently run on furosemide to continue doing so, but at reduced levels. Furosemide administration is common in the U.S., and the complete and abrupt prohibition of furosemide could carry health risks for horses currently receiving furosemide treatment. In a worst case, a horse on a furosemide regimen that was taken off prematurely could bleed into its lungs to the point of becoming incapacitated during a race. The proposed amendment allows for a gradual reduction in furosemide levels to ease the process of phasing out furosemide administration in California horse racing while protecting the horses currently receiving furosemide.

The proposed amendment will also add subsection 1845(a)(1) to provide that the administration of furosemide is prohibited to horses born in or after 2018. Horses born in 2018 will not race until 2020 when they reach two years of age. All two-year olds, starting in 2020 and continuing thereafter, will race medication free. Eventually, as horses who were born before 2018 age and ultimately retire, the limited number of horses allowed to race on furosemide will leave the horse racing population and only those born in or after 2018, who race medication-free, will remain. This completes the phase out of race day furosemide administration.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Board Rule 1845 has the benefit of providing consistency and clarity regarding California's anti-bleeding medication rules. The proposed amendment is consistent with the 2019 Board-approved agreement between TSG and TOC to reduce the maximum allowable dosage of race day furosemide to 250 milligrams and prohibit all race day administration of furosemide to race horses born in or after 2018. The amendment aligns the Board's rules for furosemide administration with a wider industry initiative to race medication-free. The amendment also has the benefit of

facilitating the transition away from the use of medication on race day gradually to safeguard the health of horses currently racing on furosemide who may suffer health risks if the Board were to abruptly ban the drug's use.

Additionally, providing for the banning of a substance that many view as performance enhancing will encourage the public to view the California racing industry as fair and honest. This has the further benefit of promoting a positive view of the horse racing industry in the eyes of the wagering public. A favorable view of horse racing could result in an increase in wagering activity and a positive economic impact for the industry.

CONSISTENCY EVALUATION

During the process of developing the amendment, the Board has conducted a search of any similar regulation on this topic and has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 (GC) 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 Board Rule 1845 will not have a significant statewide adverse economic impact directly affecting businesses 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: none.

The Board is not aware of any cost impact 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 Board Rule 1845 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) expand businesses currently doing business in California. The proposed amendment to Board Rule 1845 promotes the safety and welfare of all horses participating in recognized race meetings. The proposed amendment will reduce the maximum allowable dose of race day furosemide from 500 milligrams to 250 milligrams and will ban all administration of race day furosemide to foals born in or after 2018. The amendment aims to phase out the race day administration of furosemide but will do so gradually so as to allow horses currently racing on furosemide to continue doing so to avoid any potential health risks. Therefore, the amendment safeguards the health and safety of race horses. Safeguarding the health of race horses also benefits jockeys and drivers by subsequently promoting their safety while working those horses. As such, the proposed amendment to Board Rule 1845 will benefit worker safety.

The proposed amendment to Board Rule 1845 will not benefit the state's environment and will not affect small businesses. Effects on small businesses: none. The proposal to amend Board Rule 1845 does not affect small businesses because horse racing is not a small business under GC section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with GC 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:

Zachary Voss, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6036
Fax: (916) 263-6022
E-mail: zavoss@chrb.ca.gov

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

Amanda Drummond, Policy and Regulations Manager
California Horse racing Board
Telephone: (916) 263-6033
E-mail: amdrummond@chrb.ca.gov

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 of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting Zachary Voss, or the alternative contact persons 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 regulation. Requests for copies of any modified regulation should be sent to the attention of Zachary Voss 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 FINAL 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 Zachary Voss 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 web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.