

## INITIAL STATEMENT OF REASONS

### Rule 1868. Authorized Medication During Training

#### SPECIFIC PURPOSE OF THE REGULATION

The proposed addition of Rule 1868, Authorized Medication During Training will place restrictions on the use of local anesthetics, narcotic analgesics, and non-steroidal anti-inflammatory drugs (NSAIDs) for horses completing timed workouts by: 1) prohibiting the administration of a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout; 2) allow not more than one approved NSAID in an official test sample taken from a horse after it completes a timed workout; 3) set levels for NSAIDs in official test samples taken from horses after a timed workout; 4) provide that if a test sample contains authorized NSAIDs over allowed levels, the Official Veterinarian shall work with the veterinarian who administered or prescribed the substance to establish a dosage amount or time of administration that will comply with the limits of Rule 1868. The proposed regulation provides that if a test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. Rule 1868 provides a definition of "timed workout."

#### PROBLEM

The CHRB conducts a post-race testing program to prevent and detect the unauthorized use of certain medications and drug substances during horse races. The program is intended to guard the health and welfare of horse and rider, and to ensure the integrity of horse racing to protect participating licensees and the wagering public. However, the industry has gone without similar protections when horses complete timed workouts at licensed racing facilities. The proposed addition of Rule 1868 is intended to address this issue by establishing restrictions on the use of local anesthetics, narcotic analgesics, and non-steroidal anti-inflammatory drug substances (NSAID) for horses engaging in timed workouts.

#### NECESSITY

Subsection 1868(a) provides that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24 hours of a timed workout, nor shall any horse participating in a timed workout carry in its body any local anesthetic or narcotic analgesic. Local anesthetics are substances that cause the absence of pain sensation; narcotic analgesics are drugs used to treat pain. It is necessary to prohibit the use of such substances in horses participating in timed workouts to prevent injury in horses with pre-existing conditions that may be running before they are fully healed, to protect the health of horse and rider, and to ensure the results of the timed workout is not altered. The 24-hour period is consistent with the provisions of Board Rule 1844, Authorized Medication, which provides that no drug substance, other than an authorized bleeder medication, shall be administered to a horse within 24 hours of the race in which it is entered. After 24

hours of administration, the local anesthetic or narcotic analgesic should no longer be active.

Subsection 1868(b) provides that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. This provision is consistent with Board Rule 1844, Authorized Medication, which provides that not more than one approved NSAID may be administered to a horse that is entered to race. Subsection 1868(b) is necessary to prevent concurrent and excessive administrations of NSAIDs. While NSAIDs can improve healing and recovery from injury, they can also inhibit the effects of the natural healing process, including swelling and associated pain that would prevent a horse from sustaining further injury. Using more than one NSAID, or “stacking” NSAIDs, can pose a threat to equine health and welfare. Using two or more NSAIDs at a time can put the horse at increased risk of complications, including colic, protein loss, diarrhea, gastric ulcers, colitis and kidney damage. Some complications, such as gastric ulcerations are performance limiting, while others can be life-threatening. Regular administration of NSAIDs to horses in active training can mask the signs of musculoskeletal injury, making it difficult for trainers to accurately assess the soundness of a horse during and following exercise.

Subsections 1868(b)(1) through (b)(3) provide a listing of approved NSAIDs, and the levels of the substances that may be present in an official test sample taken from a horse after it completes a timed workout. The approved NSAIDs, phenylbutazone, flunixin and ketoprofen are consistent with the NSAIDs allowed under Board Rule 1844. The levels that may be present in an official test sample, however, differ from those in Rule 1844, which allow for a 24-hour administration. Rule 1868 provides for allowed levels of NSAIDs consistent with a 48-hour administration. The allowed levels under Rule 1868 are in line with protocols instituted in 2019 by The Stronach Group (TSG) at Golden Gate Fields and Santa Anita Park Race Track. The TSG conditions are the result of an agreement between TSG and the Thoroughbred Owners of California, which is intended to monitor the horse population and enhance racing safety. Under the TSG protocols, all horses that perform a workout are subject to TSG administered post-work blood testing. The 48-hour administration is also consistent with the Association of Racing Commissioners International (ARCI) Model Rules of Racing. The Board has determined that the 48-hour administration levels are necessary to further protect horses that perform a timed workout.

Subsection 1868(b)(4) states metabolites or analogues of approved NSAIDs may be present in test samples collected after a timed workout. While Rule 1868 places restrictions on the use of NSAIDs in horses performing timed workouts, it does not prohibit the legitimate use of the drug substances. This subsection is consistent with Rule 1844(c)(4), which provides that metabolites or analogues of approved NSAIDs may be present in an official post-race test sample. A metabolite results when a drug is metabolized by the body into a modified form and continues to produce effects on the body. Usually these effects are like those of the parent drug but weaker. An analog is a compound having a structure like that of another compound but differing from it in respect to a certain component.

Subsection 1868(c) provides that if a blood test sample collected from a horse after it completes a timed workout contains an authorized NSAID in excess of the limit for that drug under Rule 1868, the official veterinarian shall work with the veterinarian who administered or prescribed the NSAID to establish a dosage amount or time of administration that will comply with the limits under the rule. The primary intent of Rule 1868 is to ensure that California's race horses train and work without excess levels of medication in their systems. Current testing of horses performing timed workouts has demonstrated that most horsemen and private veterinarians comply with the Board's medication regulations. Subsection 1868(c) provides an opportunity for the official veterinarian to work with horsemen and private veterinarians to correct NSAID overages. If, however, the official veterinarian determines no dosage amount or change in time of administration will result in a test sample level within the limits of Rule 1868, withdrawal of authorization for use of any one NSAID may occur. The official veterinarian's ability to withdraw authorization for use of a NSAID is necessary to prevent repeat violations of the rule.

Subsection 1868(d) provides that if a blood and/or urine test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. The CHRB currently provides a post-race testing program intended to prevent and detect the unauthorized use of certain medications and drug substances during horse races. The program is intended to guard the health and welfare of horse and rider, to ensure the integrity of horse racing in this State, and to protect participating licensees and the wagering public. The industry, however, has gone without similar protections when horses complete timed workouts at licensed racing facilities. Subsection 1868(d) will address the issue by allowing the Board to apply the penalty provisions of Article 15. Subsection 1868(d) is necessary to discourage trainers from using substances that would otherwise be prohibited during a race, and to provide penalties if such substances are detected in the test sample. The subsection is consistent with Rule 1866, which applies the provisions of Article 15 to horses performing workouts for removal from the Veterinarian's List.

Subsection 1868(e) provides a definition of "timed workout." The subsection is necessary for purposes of clarity.

## BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed addition of Rule 1868 promotes the safety and welfare of horses participating in timed workouts, as well as CHRB licensees who ride horse performing such workouts. The proposed rule will also protect the wagering public by establishing restrictions on the use of local anesthetics, narcotic analgesics, and NSAID for horses engaging in timed workouts. The proposed regulation will act to prevent horses from being administered medications and other substances that could increase the likelihood of them becoming injured during timed workouts. In a timed workout, a horse will run at or near full speed, meaning the same concerns about certain medications increasing the chance of injury to horse and rider during a race are equally applicable. The proposed addition of Rule 1868 will protect the wagering public. Many horse racing fans rely on the

past performance of horses to predict the order of finish in a race. Past performances often include the results of timed workouts, which means when these workouts are altered by the overuse of pain-masking medications the wagering public is deceived regarding the true condition of the horse and its natural skill and ability. Rule 1868 will help to ensure that timed workouts accurately reflect the true condition and ability of the horse. Rule 1868 will protect the health and safety of horse and rider. The proposed regulation, therefore, benefits the health and welfare of California residents and improves worker safety. Sound, healthy horses result in a favorable public response which is necessary for the economic health of the industry.

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

The Board did not rely on any technical, theoretical, and/or empirical studies, reports or documents in proposing the addition of Rule 1868.

#### 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 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 the State of California by helping to ensure the health and safety of horse and rider. The proposed regulation will not benefit the State of California's environment.

The Board has made the initial determination that the proposed addition of Rule 1868 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 regulation will restrict the use of local anesthetics, narcotic analgesics, NSAIDs for horses completing timed workouts by providing that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout, and that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. Rule 1868 sets levels for NSAIDs in official test samples taken from horses after a timed workout and provides that if a test sample contains authorized NSAIDs more than allowed levels, the Official Veterinarian shall work with the veterinarian who administered or prescribed the substance to establish a dosage amount or time of administration that will comply with the limits of the rule. The proposed regulation provides that if a test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. The proposed regulation 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 because it only affects horses completing timed workouts.

Purpose:

The proposed addition of Rule 1868 will ensure that horses do not perform timed workouts after having been administered a local anesthetic or narcotic analgesic. Additionally, the rule will provide that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. The regulation will require the official veterinarian to work with trainers whose test samples contained an authorized NSAID in excess of the authorized levels to establish a dosage level or time of administration that will comply with the limits under the rule. Also, Rule 1868 provides that the provisions of Article 15 will apply in the same manner as to a scheduled race to blood and/or urine test samples taken from a horse that has performed a timed workout. The proposed addition of Rule 1868 promotes the safety and welfare of horses participating in timed workouts, as well as CHRB licensees who ride horse performing such workouts. The proposed rule will also protect the wagering public by establishing restrictions on the use of local anesthetics, narcotic analgesics, and NSAID for horses engaging in timed workouts.

The Creation or Elimination of Jobs within the State of California

Rule 1868 will restrict the use of local anesthetics, narcotic analgesics, NSAIDs for horses completing timed workouts by providing that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout, and that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. Rule 1868 sets levels for NSAIDs in official test samples taken from horses after a timed workout and provides that if a test sample contains authorized NSAIDs more than allowed levels, the Official Veterinarian shall work with the veterinarian who administered or prescribed the substance to establish a dosage amount or time of administration that will comply with the limits of the rule. The proposed regulation provides that if a test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. Rule 1868 will only affect CHRB licensed trainers whose horses perform timed workouts while under the influence of local anesthetics or narcotic analgesics, or that run with more than one authorized NSAID or an authorized NSAID in excess of the prescribed amounts. The proposed regulation will not have an effect on any other type of California business. Therefore, the CHRB 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 addition of Rule 1868 will only affect trainers whose horse perform timed workouts while under the influence of local anesthetics or narcotic analgesics, or that run

with more than one NSAID or an authorized NSAID in excess of the prescribed amounts. Rule 1868 will restrict the use of local anesthetics, narcotic analgesics, NSAIDs for horses completing timed workouts by providing that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout, and that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. Rule 1868 sets levels for NSAIDs in official test samples taken from horses after a timed workout and provides that if a test sample contains authorized NSAIDs more than allowed levels, the Official Veterinarian shall work with the veterinarian who administered or prescribed the substance to establish a dosage amount or time of administration that will comply with the limits of the rule. The proposed regulation provides that if a test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. The proposed regulation will only affect a limited number of CHRB licensees<sup>1</sup>, as such only has an effect on horseracing and not any other type of California business. Therefore, the CHRB has determined that this regulatory proposal 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

Rule 1868 will restrict the use of local anesthetics, narcotic analgesics, and NSAIDs for horses completing timed workouts by providing that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout, and that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. Rule 1868 sets levels for NSAIDs in official test samples taken from horses after a timed workout and provides that if a test sample contains authorized NSAIDs more than allowed levels, the Official Veterinarian shall work with the veterinarian who administered or prescribed the substance to establish a dosage amount or time of administration that will comply with the limits of the rule. The proposed regulation provides that if a test sample is taken from a horse after a timed workout, the penalty provisions of Article 15 shall apply in the same manner as to a scheduled race. The proposed regulation will only affect those CHRB licensees whose horses perform timed workouts under the influence of local anesthetics or narcotic analgesics, or that have more than one NSAID in their system or that have an authorized NSAID in excess of the limit for that drug. Therefore, the CHRB has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business within 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 addition of Rule 1868 will protect the health and safety of California's racehorses, jockeys and exercise riders. The proposed regulation prohibits the use of

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<sup>1</sup> Example: There can be upwards of 300 workouts a day at Del Mar (when the race track is open). The Board's Equine Medical Director (EMD) has stated no more than 3 to 20 samples a day would be taken. At the April 18, 2019 Regular Board meeting, the EMD stated that through April 7 there were no violations out of 60 horses tested.

local anesthetics, narcotic analgesics and NSAIDs for horses completing timed workouts by providing that no person shall administer a local anesthetic or narcotic analgesic to any horse within 24-hours of a timed workout, and that not more than one approved NSAID may be detected in an official test sample taken from a horse after it completes a timed workout. The use of pain masking drug substances and the over use of NSAIDs can allow horses with mild injuries to continue to train and race, increasing the potential for mild injuries to become catastrophic. The proposed regulation's prohibition on the use of local anesthetics and narcotic analgesics, and the over use of NSAIDS in horses performing timed workouts, will ensure that such horses are sound. Healthy race horses protect the health and safety of jockeys and exercise riders. Accordingly, the proposed regulation benefits the health and welfare of California residents engaged in horse racing and improves worker safety. 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 addition of Rule 1868 was discussed at the April 2019 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  
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