Whether you are watching a Triple Crown race, or spending a Saturday afternoon at the track, your mind is likely far from the rules and regulations surrounding one of our country's oldest sports. Nonetheless, horse racing regulations face many issues. This is especially true with regulations concerning the riding crop. In states where horse racing is a popular pastime, policymakers are struggling to balance public perception and industry efficiency. The trend has been toward stricter crop laws with public perception as the driving force. In the last year, California—home to some of the country's most prestigious tracks—attempted to expand its originally narrow crop-use regulations. As enacted in 2015, California's Code of Regulations §1688 currently reads:

(b) although the use of a riding crop is not required, any jockey who uses a riding crop during a race is prohibited from using a riding crop on a horse:

(6) more than three times in succession without giving the horse a chance to respond before using the riding crop again.

The California Horse Racing Board (CHRB) proposed an amendment to §1688(b)(6) last June that would increase the number of consecutive strikes from three to four in the last sixteenth of a mile in a race. The proposal, which passed the CHRB with a vote of four to three, revitalized the riding crop conversation.
Other horse racing states such as Kentucky and New York are not without limits. Kentucky’s regulations state that once a rider has used a crop, the rider shall “give the horse a chance to respond before using it again.”[viii] Similarly, New York prohibits a jockey from using a crop “persistently even though the horse is showing no response under the whip.”[ix] What separates California’s regulation from other states is the use of a specific language and a quantitative limit.

While California had the right idea by attempting to clear up some of the arbitrary language used in crop use regulations, the State dug itself into a hole. The original regulation—the three-strike limit—was praised by those in opposition to horse racing, but new horse racing groups view the attempted amendment as a step backward.[x] If the goal was to cut negative public perception about horse racing, California inevitably made things worse by enacting the bright-line regulation and then having to reevaluate it.

Ideally, the current unclear language of state’s regulations would come with definitions or a bright-line rule. Words like “persistently” are hard to judge; they blur the line between use and abuse, and are hard to enforce. At the same time, it is likely difficult for a jockey to remember the exact number of times he strikes a horse as he races toward the finish line.[x] However, states can learn from California’s mistake. If a state chooses to enact more specific regulations concerning riding crops—particularly as a means of creating a more positive perception of the sport—then they should start broadly and narrow as need be, because having to back step creates an even worse perception in the long run.

[iii] Id.
[iv] Id.
[vi] Voss, supra note ii.