

NOTE: Government Code section 11340.85 requires the Board to post all notices, initial statement of reasons and texts of rules noticed to the public **until 15 days after the proposed regulations are filed with the Secretary of State by the Office of Administrative Law.**

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS

NOTICE OF PROPOSAL TO AMEND
RULE 1887, TRAINER TO INSURE CONDITION OF HORSE

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 proposed amendment to Board Rule 1887, Trainer to Insure Condition of Horse, will modify subsection (a) to state that the owner and trainer of a “ship-in” horse are equally responsible for the condition of the horse entered in a race. The proposed amendment also adds a new subsection (b) to define ship-in horse. In addition, the proposed amendment modifies subsection (c) by providing that the owner of a ship-in horse will not be held responsible for a positive test result if the Board fails to notify the owner within the specified timeframe, unless it is shown by the preponderance of the evidence that the owner of the ship-in horse administered, caused the administration, or had knowledge of the administration of the prohibited drug substance.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, August 20, 2015**, or as soon thereafter as business before the Board will permit, at the **Del Mar Race Track, 2260 Jimmy Durante Boulevard, Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing relevant to 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 at **5:00 p.m. on August 10, 2015**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Nicole Lopes-Gravely, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
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AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19577, 19580 and 19581, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Business and Professions Code section 19577 requires that any blood or urine test sample required by the Board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after the initial test sample has been taken. Business and Professions Code section 19580 states 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 California. Business and Professions Code section 19581 states 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. Rule 1887, Trainer to Insure Condition of Horse, provides that the trainer is the absolute insurer of and is responsible for the condition of the horse entered in a race. If a positive test showing the presence of any prohibited drugs substance as defined in Rule 1843.1, Prohibited Drug Substances, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off. If the Board or its agents fail to notify a trainer of a potential positive test within 21 days from the date the sample was taken, the trainer shall not be deemed responsible.

The Board is proposing to amend Rule 1887 to provide that the owner of a ship-in horse is the joint absolute insurer of and is equally responsible for the condition of the horse entered to race. Currently, Rule 1887 holds only the CHRB licensed trainer responsible for the condition of the horse, as the absolute insurer of the horse entered to race. This has become an issue because a horse can be trained at a private training facility or farm, under the care or direction of its CHRB licensed owner, by a non-CHRB licensed trainer. If the owner wishes to enter the horse to race, it must be shipped to a facility under the jurisdiction of the Board, and placed under the care of a CHRB licensed trainer who may have little or no knowledge of the horse's condition. If the shipped-in horse tests positive for a prohibited substance, the CHRB licensed owner of the horse is not held accountable, nor can the Board hold the non-CHRB licensed trainer accountable. Only the CHRB licensed trainer, who may not have known that any prohibited substances were administered to the horse, is held responsible. As the Board has no jurisdiction over the non-CHRB licensed trainer, it has determined that the CHRB licensed owner of the ship-in horse shall be considered the joint absolute insurer of and equally responsible for the condition of the horse entered to race. The proposed amendment to Rule 1887 also provides a definition of a ship-in horse as a horse that has not been in the care of a Board licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.

Rule 1887 provides that the trainer is the absolute insurer of and is responsible for the condition of the horse entered in a race, and holds the trainer responsible if the horse subsequently tests

positive for a prohibited drug substance, regardless of the acts of third parties. This creates the potential for a Board licensed trainer to be held accountable for the actions of a non-CHRB licensed trainer, and the owner of a ship-in horse. If the owner of a horse being trained by a non-CHRB licensed trainer wishes to enter the horse to race, he or she must place the horse under the care of a CHRB licensed trainer. The CHRB licensed trainer may have had little or no involvement with the prior care and training of the ship-in horse, but under Rule 1887 he or she assumes responsibility as the absolute insurer of the condition of the horse entered to race. If the ship-in horse subsequently has a positive test showing the presence of a prohibited drug substance, the CHRB licensed trainer who assumed control of the ship-in horse may be fined, his/her license suspended or revoked, or be ruled off. Though Rule 1887 states the owner of the horse, and any other person shown to have had the care or attendance of the horse, may be held responsible, the trainer is typically deemed responsible as the absolute insurer. Occasionally an owner will admit he or she had prior custody of the horse, in which case the CHRB will file a complaint against the owner. When there is no such admission, it can be difficult for the Board to take action. In addition, the Board has no jurisdiction over the non-CHRB licensed trainer who had previous care of the horse. The proposed amendment to Rule 1887, subsection (a) will close that loophole by stating that the owner of a ship-in horse is the joint-absolute insurer of and equally responsible for the condition of the horse entered in a race. The Board has determined that holding the owner of a ship-in horse equally responsible is necessary, as it has no jurisdiction over the non-CHRB licensed trainer. Racing associations oversee the arrival and entry of horses that are shipped-in to race. If a post-race test sample taken from a shipped-in horse tests positive for a prohibited drug substance, the CHRB will consult with the racing association to confirm the arrival and entry information for the shipped-in horse and will be able to take action against the appropriate parties.

For purposes of clarity, the proposed amendment to Rule 1887 adds subsection (b) to provide the definition of a ship-in horse as a horse that has not been in the care of a Board licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.

The proposed amendment to Rule 1887 modifies subsection (c) to create consistency in the rule by stating that the owner of a ship-in horse will not be held responsible for a positive test result if the Board fails to notify the owner of a ship-in horse within the specified timeframe, unless it is shown by the preponderance of the evidence the owner of the ship-in horse administered, caused or had knowledge of the administration of the drug; this same caveat currently applies to trainers.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1887 will promote fairness and helps to protect the health and safety of horse and rider by holding the trainer and owner equally accountable for the condition of the horse entered in a race. This will increase the public's 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 may increase purses and commissions.

CONSISTENCY EVALUATION

During the process of developing this regulation and amendment, the CHRB conducted a search of any similar regulations on this topic and has concluded that these regulations are 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 Section 17500 through 17630: none.

Other non-discretionary cost 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 Rule 1887 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 following studies/relevant data were relied upon in making the above determination: none.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment to Rule 1887 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California. The proposed amendment to Rule 1887 is a benefit to the health and welfare of California residents by promoting fairness and helping to protect the health and safety of horse and rider by holding the trainer and owner of a ship-in horse equally accountable for the condition of a horse entered in a race that subsequently tests positive for a prohibited drug substance.

Effect on small businesses: none. The proposal to amend Rule 1887 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 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:

Nicole Lopes-Gravely, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6042
E-mail: nlgravely@chr.ca.gov

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

Andrea Ogden, Manager
Policy and Regulations
Telephone: (916) 263-6033

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 Nicole Lopes-Gravely, or the alternative contact person 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 regulations. Requests for copies of any modified regulations should be sent to the attention of Nicole Lopes-Gravely 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 available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Nicole Lopes-Gravely 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 regulations and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS

RULE 1887. TRAINER TO INSURE CONDITION OF HORSE.

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment to Board Rule 1887, Trainer to Insure Condition of Horse, will modify subsection (a) to state that the owner and trainer of a "ship-in" horse are equally responsible for the condition of the horse entered in a race. The proposed amendment also adds a new subsection (b) to define ship-in horse. In addition, the proposed amendment modifies subsection (c) by providing that the owner of a ship-in horse will not be held responsible for a positive test result if the Board fails to notify the owner within the specified timeframe, unless it is shown by the preponderance of the evidence that the owner of the ship-in horse administered, caused the administration, or had knowledge of the administration of the prohibited drug substance.

PROBLEM

Rule 1887 provides that the trainer is the absolute insurer of and is responsible for the condition of the horse entered in a race, and holds the trainer responsible if the horse subsequently tests positive for a prohibited drug substance, regardless of the acts of third parties. However, a horse can be trained at a private training facility or farm, under the care or direction of its CHRB licensed owner, by a non-CHRB licensed trainer. If the owner wishes to enter the horse to race, it must be shipped to a facility under the jurisdiction of the Board, and placed under the care of a CHRB licensed trainer who may have little or no knowledge of the horse's condition. If the shipped-in horse tests positive for a prohibited substance, the CHRB licensed owner of the horse is not held accountable, nor can the Board hold the non-CHRB licensed trainer accountable. Only the CHRB licensed trainer, who may not have known that any prohibited substances were administered to the horse, is held responsible. As the Board has no jurisdiction over the non-CHRB licensed trainer, it has determined that the CHRB licensed owner of the ship-in horse shall be considered the joint absolute insurer of and equally responsible for the condition of the horse entered to race. The proposed amendment to Rule 1887 also provides a definition of a ship-in horse as a horse that has not been in the care of a Board licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.

NECESSITY

Rule 1887 provides that the trainer is the absolute insurer of and is responsible for the condition of the horse entered in a race, and holds the trainer responsible if the horse subsequently tests positive for a prohibited drug substance, regardless of the acts of third parties. This creates the potential for a Board licensed trainer to be held accountable for the actions of a non-CHRB licensed trainer, and the owner of a ship-in horse. If the owner of a horse being trained by a non-CHRB licensed trainer wishes to enter the horse to race, he or she must place the horse under the care of a CHRB licensed trainer. The CHRB licensed trainer may have had little or no involvement with the prior care and training of the ship-in horse, but under Rule 1887 he or she assumes responsibility as the absolute insurer of the condition of the horse entered to race. If the ship-in horse subsequently has a positive test showing the presence of a prohibited drug substance, the CHRB licensed trainer who assumed control of the ship-in horse may be fined, his/her license suspended or revoked, or be ruled off. Though Rule 1887 states the owner of the horse, and any other person shown to have had the care or attendance of the horse, may be held responsible, the trainer is typically deemed responsible as the absolute insurer. Occasionally an owner will admit he or she had prior custody of the horse, in which case the CHRB will file a complaint against the owner. When there is no such admission, it can be difficult for the Board to take action. In addition, the Board has no jurisdiction over the non-CHRB licensed trainer who had previous care of the horse. The proposed amendment to Rule 1887, subsection (a) will close that loophole by stating that the owner of a ship-in horse is the joint-absolute insurer of and equally responsible for the condition of the horse entered in a race. The Board has determined that holding the owner of a ship-in horse equally responsible is necessary, as it has no jurisdiction over the non-CHRB licensed trainer. Racing associations oversee the arrival and entry of horses that are shipped-in to race. If a post-race test sample taken from a shipped-in horse tests positive for a prohibited drug substance, the CHRB will consult with the Racing association to confirm the arrival and entry information for the shipped-in horse and will be able to take action against the appropriate parties.

For purposes of clarity, the proposed amendment to Rule 1887 adds subsection (b) to provide for a definition of a ship-in horse as a horse that has not been in the care of a Board licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.

The proposed amendment to Rule 1887 modifies subsection (c) to create consistency in the rule by stating that the owner of a ship-in horse will not be held responsible for a positive test result if the Board fails to notify the owner of a ship-in horse within the specified timeframe, unless it is shown by the preponderance of the evidence the owner of the ship-in horse administered, caused or had knowledge of the administration of the drug; this same caveat currently applies to trainers.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1887 will have the benefit of promoting fairness and helps to protect the health and safety of horse and rider by holding the trainer and owner of a ship-in horse equally accountable for the condition of the horse entered in a race. This will increase the public's 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 may increase purses and commissions.

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 the regulation.

RESULTS OF ECONOMIC IMPACT ASSESSMENT (Government Code 11346.3(b))

- 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 health and safety of horse and rider and will not benefit the State's environment.

Purpose:

The proposed amendment to Rule 1887, Trainer to Insure Condition of Horse, would require the owner and trainer of a "ship-in" horse to be equally responsible for the condition of the horse entered in a race, and would include the definition of a ship-in horse.

The Creation or Elimination of Jobs Within the State of California

The proposed amendment to Rule 1887 will ensure that both the trainer and owner of a ship-in horse are equally responsible for the condition of the horse entered in a race. This regulation will only affect trainers and owners and as such only has an effect on horseracing and not on any other type of California business. Therefore, CHRB has determined that this regulatory proposal 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 to Rule 1887 will ensure that both trainer and owner of a ship-in horse are equally responsible for the condition of the horse entered in a race. This regulation will only affect trainers and owners and as such only has an effect on horseracing and not on any other type of California business. Therefore, CHRB has determined 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

The proposed amendment to Rule 1887 will ensure that both trainer and owner of a ship-in horse are equally responsible for the condition of the horse entered in a race. Therefore, CHRB 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 Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed amendment to Rule 1887 will have the benefit of promoting fairness and helps to protect the health and safety of horse and rider by holding the trainer and owner of a ship-in horse equally accountable for the condition of a horse entered in a race. These regulations do not benefit the state's environment.

The Board has made an initial determination that the proposed amendment to Rule 1887 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 1887 will require the owner and trainer of a ship-in horse to be equally responsible for the condition of the horse entered in a race, and will include the definition of a ship-in horse.

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 1887 was discussed at the February 18, 2015, 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
June 26, 2015

**CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 16. GENERAL CONDUCT
PROPOSED AMENDMENT OF
RULE 1887. TRAINER TO INSURE CONDITION OF HORSE**

1887. Trainer or Owner to Insure Condition of Horse

(a) The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this

article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off. The owner of a ship-in horse is the joint-absolute insurer of and is equally responsible for the condition of the horses entered in a race.

(b) A ship-in horse is defined as any horse entered to race that has not been in the care of a Board licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.

~~(b)~~ (c) Notwithstanding the above, if the Board or its agents fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer or the owner of a ship-in horse administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

Authority: Sections 19440, 19580 and 19581,
Business and Professions Code.

Reference: Section 19440, 19577, 19580 and 19581
Business and Professions Code.