

INITIAL STATEMENT OF REASONS

RULE 1581.1 ENTRIES

RULE 1597.5 MICROCHIPS REQUIRED FOR ALL HORSES ON GROUNDS

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1581.1, Entries, and Rule 1597.5, Microchips Required for all Horses on Grounds. The proposed amendment to Rule 1581.1 will delete subsection 1581.1(a)(4), which prohibits a horse that does not carry a microchip or has not received a microchip waiver from the stewards, from entering to race. The proposed amendment to Rule 1597.5 will change the title of the regulation to “Microchips Required for all Race Horses on Grounds.” The change reflects the fact that the microchipping requirement applies only to race horses, and not to pony or companion horses. In addition, the proposed amendment will designate the horse identifier as the person who shall be informed of the horse’s microchipping rather than the stewards and stable superintendent. The proposed amendment to Rule 1597.5 also removes the requirement for posting signage on stall of horses that do not carry a microchip; deletes the requirement that a horse must be implanted with a microchip within 72 hours of arriving on the grounds; removes the requirement that a horse that has not been microchipped within 72 hours of coming onto the grounds be removed from the premises; and extends the 72 hour deadline for microchipping a horse to within 7 days of arriving on the grounds of the racetrack. The proposed amendment to Rule 1597.5 also expands the stewards’ authority to grant a microchipping waiver. Waivers may be granted for any single race rather than only for stakes races. Further, waivers will remain in effect for 7 days rather than 72 hours. Finally, Rule 1597.5 will be amended to allow horses without a microchip to enter to race. Horses without a microchip may be entered to race, provided they are microchipped prior to the actual race. All other changes to the regulations are for the purposes of clarity and consistency.

The purpose of the proposed regulations is to simplify the effective implementation of California’s race horse microchipping program. The proposed regulations will help the California horse racing industry to achieve greater accuracy in intrastate horse identification and inventory reporting, to better prevent the spread of infectious equine diseases, and to meet the new identification methods and standards being implemented by The Jockey Club (i.e. the national registry organization for thoroughbred race horses).

PROBLEM

In January 2018, the proposed addition of rules governing the microchipping of race horses in California were approved by the Office of Administrative Law. The regulations were intended to replace the existing standard for identification of race horses in California which was based on written descriptions of the horse’s distinctive physical markings and unique lip tattoo numbers. These identifying features were recorded on each horse’s registration papers (also known as “foal certificates”), which were created by breed-specific national registry organizations. The registration papers followed the horse from racing facility to racing facility and were the primary tool used to accurately identify horses in California. The effective date of the microchipping regulations was delayed until December 26, 2018 to provide time for the implementation of the

Board's microchipping program. The delay was necessary because under the microchipping regulations, race horses that do not carry a microchip, or that have not been granted a microchip waiver by the stewards, could not be entered to race. By December 2018, however, there were still a significant number of horses without microchips, and it became evident that races might be cancelled if horses not carrying a microchip could not be entered. In January 2019, the Board extended the delayed implementation date of its microchipping regulations and determined that it was necessary to amend Rules 1581.1 and 1597.5 to ensure that the microchipping of race horses would not interrupt the entry of horses to race.

NECESSITY

The proposed regulations are necessary to modify and enhance horse identification processes in California, which will in turn prevent accidental misidentifications, substantially improve horse inventory reporting, and help prevent the spread of infectious equine diseases through accurate movement tracking.

The proposed amendment to Rule 1581.1 will delete subsection (a)(4), which prohibits a horse from being entered in a race if it does not carry a microchip or has not received a waiver from the stewards in compliance with Rule 1597.5. This is necessary as the Board has determined that the provision is impractical and may have a detrimental effect on racing associations' ability to fill races. Horses that are ready to race are routinely brought onto the racetrack inclosure prior to entry and well before race day. Entries are taken 3 to 6 days prior to the race. The fact that the horse will be at the track before entries are taken provides ample time for a horse that does not carry a microchip to have the procedure completed. Under the proposed amendments to rules 1581.1 and 1597.5, a horse that does not carry a microchip will be allowed to enter to race, but it cannot start in a race if it has not had the procedure completed prior to such race. The amendments are consistent with the provisions of Rule 1588, Horse Ineligible to Start in a Race, which prohibits a horse that does not carry a microchip, or that has not received a waiver from the stewards, from starting in a race. The change to the regulations will ensure that racing associations can fill their race cards while also ensuring that no un-chipped horse starts in a race unless a waiver has been granted. The proposed amendments to the regulations necessitate the deletion of subsection 1581.1(a)(4).

Rule 1597.5 is currently entitled "Microchips Required for all Horses on Grounds." The proposed amendment will change the title to: "Microchips Required for all Race Horses on Grounds." The change is being made for purposes of clarity, as not all horses found at California's racing or training facilities are race horses. Pony horses are used in the post parade (the procession of race horses from the paddock to their placement at the start) and in workouts. The Pony Rider assists in controlling other, usually younger and more fractious horses. Pleasure horses may also be in use at the racetrack; an example is a trainer observing the morning workout while mounted. The amended title will make it clear that only race horses must be microchipped.

Subsection 1597.5(a) has been modified for purposes of clarity. "Horses" was changed to "race horses" as only such horses present within the inclosure will be required under the regulation to be microchipped. Additionally, "training facility" was modified to read "authorized training facility." Within the application for license to operate a race meeting, racing associations may

designate auxiliary training facilities. These are facilities that provide additional barns and a track for training purposes. San Luis Rey Downs in Southern California is an example. At the time of approval of a license to operate a race meeting, the Board also “authorizes” the training facility, which has the effect of extending the race meeting inclosure to include the authorized training facility.

Subsection 1597.5(a)(1) has been re-worded for purposes of clarity. The intended meaning of the sentence, however, will not change.

Rule 1597.5 currently assigns multiple racing officials with responsibility for different aspects of the microchipping program; the Board of Stewards, the stable superintendent and the horse identifier all have roles. The division of microchipping tasks among multiple parties could result in confusion for racing association staff or licensees and increase the time it takes to get a race horse microchipped. The Board has determined that designating one racing official as the point of contact for microchipping will help eliminate confusion that may result when multiple officials have responsibility for different parts of the program. The proposed change will also reduce the time and effort a licensee will have to expend to get his or her horse microchipped. Throughout Rule 1597.5, specifically subsections (a)(1)(A), (a)(1)(B), (a)(5)(A), (a)(5)(D), the horse identifier has been designated as the official who shall supervise and oversee the microchipping procedure. This will provide one point of contact for microchipping, provide clarity, and streamline the procedure for licensees.

Subsection 1597.5(a)(1)(C), which requires that signs be posted on the stalls of horses that do not carry a microchip, has been deleted. Stable populations are not static. Trainers ship horses to and from the racetrack. With the constant movement of horses, it is not unusual for trainers to move horses from stall to stall within their barns, which would require that any signage also be moved with the horses. This creates the possibility for mistakes and confusion resulting from signage not being moved or placed on the wrong stall. In addition, the proposed amendment to Rule 1597.5 designates the horse identifier as the official who shall be informed if a horse does not carry a microchip, which renders signs redundant and unnecessary.

Subsection 1597.5(a)(1)(D), which requires that a horse be implanted with a microchip within 72 hours of arriving on the grounds, has been deleted. The provision is no longer necessary, as the proposed amendment to Rule 1597.5 will change the timeframe for the microchipping of race horses. Under subsection 1597.5(a)(2), the proposed amendment extends the microchipping deadline to 7-days (168 hours), which will allow for microchipping even after entry to race.

Subsection 1597.5(a)(2) has been amended to change the requirement that horses be removed from the premises if not microchipped within 72 hours of coming onto the grounds. The 72-hour deadline has been extended to 7 days, which ensures adequate time for the microchipping procedure to be completed. The 72-hour deadline is not necessary as horses that are ready to race are routinely brought onto the racetrack inclosure prior to entry and well before race day. Entries are taken 3 to 6 days prior to the race. The fact that the horse will be at the track before entries are taken provides ample time for a horse that does not carry a microchip to have the procedure completed. The extended deadline will also provide adequate time for the trainer or owner to seek a waiver from the stewards, if necessary.

Subsection 1597.5(a)(3) currently provides that the stewards may grant a waiver from the microchip requirements for horses shipped in from another racing jurisdiction for the purposes of participating in a stakes race. The purpose of the waiver was to ensure that out-of-state owners and trainers would not be discouraged from participating in California stakes races. The proposed amendment to subsection 1597.5(a)(3) expands the stewards' authority to grant a waiver by allowing waivers to be granted to horses from any racing jurisdiction and in any single race. The Board determined there may be circumstances wherein a California horse may need a waiver. A horse may have been trained on the farm or a private training center and shipped in late for a race. Additionally, there have been instances where the horse has been microchipped, but the chip fails to read when the horse is "waned" prior to racing. There are numerous and likely unknown circumstances where a waiver may be appropriate. Therefore, it is not possible to define the exact scope of when waivers should be granted. Limiting waivers to out-of-state horses running in stakes races placed an unnecessary restriction on the stewards' ability to remove the microchipping requirement. Under Board Rule 1527, the stewards have general authority and supervision over all licensees, the inclosure of any recognized race meeting, and are responsible to the Board for the conduct of the race meeting. The stewards should be able to determine when and under what circumstances a waiver may be granted. Additionally, the removal of a microchipping requirement does not mean the horse cannot be identified. There are two systems in use at all race tracks. One system identifies the chestnuts or horny growths on the inside of a horse's legs, which are as individual with horses as a fingerprint. The second system is lip tattooing with a number assigned by the breed registry. The ink used is indelible, and as the tattoo is manually applied, it is irregular. Each horse's tattoo is compared to a photograph of the marks made at the time of application.

Subsection 1597.5(a)(3) currently provides that a trainer or owner must apply for a microchipping waiver at least 24 hours before the horse is to arrive on the grounds. The 24-hour lead time allowed for the granting of the waiver prior to entry, as without a waiver, an unchipped horse could not enter to race. The proposed amendment provides that requests for waivers shall be submitted at time of entry. The proposed amendment allows horses without microchips to enter to race. If a waiver is denied, there would still be time for the horse to receive a microchip prior to racing. Under the current regulation, a waiver expires 72 hours after the running of the race for which it is granted. The expiration date has been modified to 7 days. The extended time for waivers is consistent with the amendment of subsection (D)(2), which states that a horse that has not received a microchip after 7 days from the time it arrives at the inclosure shall be removed from the grounds. The 7-day expiration of a microchip waiver provides time for a horse to be microchipped, or shipped off the grounds of the racing association, racing fair, or authorized training facility.

If a microchipping waiver is granted, subsection 1597.5(a)(3) currently requires the trainer to post the CHRB Form 235, Horse Not Microchipped (New 04/16) (CHRB 235), on the individual stall in which the horse is stabled until the horse is removed from the grounds of the racing association. (The CHRB 235 is incorporated by reference in Rule 1597.5.) The proposed amendment to the regulation removes the requirement. It is not unusual for a horse to be moved from stall to stall within a barn, requiring that the signage be moved with the horse. This creates the possibility for mistakes and confusion resulting from signage not being moved. In addition, the proposed amendment to Rule 1597.5 designates the horse identifier as the official who shall be informed if a horse does not carry a microchip. The horse identifier will have possession of copies of the

identification papers of every race horse within the inclosure. The papers describe the horse and state if it is microchipped. Because the CHRB 235 is no longer required under Rule 1957.5, and its use is not required under any other CHRB regulation, the form has been repealed.

Under the proposed language of subsection 1597.5(a)(3) a horse may receive only one waiver per race meeting. The provision will ensure trainers and owners do not routinely request microchip waivers for the same horse, thereby circumventing the purpose of these regulations.

Subsection 1597.5(a)(4) currently provides that a horse that has not been implanted with a microchip, or has not been granted a waiver, shall not be eligible to enter or participate in a race. The proposed amendment modifies subsection (a)(4) to provide that a horse that has not been implanted with a microchip, or granted a waiver, may not start in a race. The proposed change to the subsection is consistent with the proposed amendment of Rule 1581.1, which also eliminates the prohibition on unchipped horses entering to race. Additionally, the modification of subsection 1597.5(a)(4) is consistent with the provisions of Rule 1588, which prohibits a horse that does not carry a microchip, or that has not received a waiver from the stewards, from starting in a race.

The proposed amendment deletes subsection 1597.5(a)(5). The subsection currently states the racing secretary will not accept entries from horses whose microchipping cannot be verified, or that have not received a waiver. Under the proposed amendment, however, the subsection is not necessary, as Rule 1597.5 will allow horses without microchips to be entered, provided they are microchipped, or have received a microchipping waiver, prior to the actual race.

The form Microchip Waiver Request CHRB-237 (Rev. 04/19) has been modified to remove the word “stakes” as stakes races will no longer be the only type of race for which such waivers will be granted.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment of Rule 1581.1 and Rule 1597.5 will jointly promote the health, safety and welfare of horses that come onto the grounds of a licensed racing or training facility.

By implanting uniquely assigned microchips into every race horse that comes onto the grounds of a licensed racing or training facility, racing associations and fairs will be able to significantly improve horse inventory reporting and horse identification. Such information will benefit the Board by enabling it to make more informed decisions about the number of stalls an association or fair should be required to have for a particular race meet based on historic inventory.¹ This will ensure that the associations are able to meet the stabling demands of a particular race meeting while not overspending to make unused stalls available. These proposed regulations will also benefit Board staff in determining whether or not a particular horse is on the grounds of a licensed racing or training facility, which will aid investigations as well as the Board’s out-of-competition testing program. Additionally, the proposed regulations will reduce the likelihood that a horse will be misidentified and allowed to participate unlawfully in a horse race.

¹ Pursuant to Business and Professions Code section 19535(a), the Board is required to determine the number of useable stalls that each racing association or fair shall make available and maintain during their racing meeting at the time the board allocates racing weeks.

The proposed regulations will also benefit racing associations and fairs by enhancing their ability to meet inventory reporting obligations under CHRB regulations.² Also, the proposed regulations will give racing secretaries (who are employees of the associations and fairs) a tool to assist in determining which races to hold on which days. By knowing exactly which horses are on the grounds, racing secretaries will be able to gauge which types of races are more likely to receive adequate entries based on the population of horses meeting the requisite criteria (i.e. “race conditions”).

Furthermore, the proposed regulations will increase public health and safety by helping prevent the spread of infectious equine diseases. Given the constant movement of race horses to different facilities throughout the state, country, and world, these animals can sometimes contribute to the spread of infectious diseases. For example, states like Louisiana and New Mexico have recently experienced a number of Equine Infectious Anemia (EIA) outbreaks in the past several years. When such an outbreak occurs, it becomes necessary to immediately quarantine those horses entering California that were exposed to the disease, which requires rapid identification of the animal. By implementing the proposed regulations, all Board-licensed racing facilities will be able to immediately identify whether a horse that was exposed to the disease is on their grounds, and take steps to quarantine the animal until it is made healthy again.

Finally, the proposed regulations will also benefit the wagering public by ensuring no horses participating in a race are misidentified. When determining which horse to wager on, bettors often consider a horse’s past performance in racing and training. If another horse participates in that horse’s stead though—whether by accident or on purpose—and the public is not aware, there is a deception on those wagering that may negatively impact their chances of winning. Although Horse Identifiers are entrusted to perform this function using descriptive foal certificates and unique tattoo numbers, the proposed regulations will give these officials yet another tool to verify their identifications. This will therefore further reduce the already low rate of error in horse identification, and instill greater confidence in the public that the horses participating in a race have all been properly identified.

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

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

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.

² Currently, and also under the proposed amendments, CHRB Rule 1597 requires that racing secretaries maintain a list of all horses admitted to the association or fair grounds.

- 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 safety and welfare of race horses, as well as the wagering public, and will not benefit the State's environment.

The Board has made the initial determination that the proposed amendment of Rule 1597.5 and Rule 1581.1 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 of Rules 1597.5 and 1581.1 will result in the simplified implementation of a modern horse racing identification system. The system will improve the Board's ability to manage the horse racing industry and provide added protection for the safety and welfare of the race horse. The regulations will not impact businesses in any way.

Purpose:

The Board proposes to amend Rule 1581.1 to delete the prohibition of horse's entry into a race if it does not carry a microchip or waiver in accordance with proposed Rule 1597.5.

The Board proposes to amend Rule 1597.5 to change the title of the regulation, designate the horse identifier as the racing official responsible for the microchipping program, and to require that all horses present within the inclosure of a licensed racing association, racing fair, or training facility carry an implanted microchip. Horses entering the inclosure that do not carry a microchip will be required to have a microchip implanted following specific procedures. Horses participating in a race may request a waiver to the microchip requirement provided a horse only receives one waiver.

The purpose of the proposed regulations is to simplify the implementation of the use of microchips in the California horse racing industry to achieve greater accuracy in intrastate horse identification and inventory reporting, to better prevent the spread of infectious equine diseases, and to meet the new identification methods and standards being implemented by The Jockey Club. These rule amendments will therefore increase protections for the race horse and help protect the wagering public.

The Creation or Elimination of Jobs Within the State of California

The proposed amendment of Rules 1597.5 and 1581.1 will adjust the procedures for microchipping racehorses and the microchip waiver process. These regulations will therefore impact individual horse owners and trainers needing to implant their horses with microchips on a one-time basis. The Board has therefore determined that the proposed rule amendments will have no direct impact on the creation or elimination of jobs with the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed amendment of Rules 1597.5 and 1581.1 will adjust the procedures for microchipping racehorses and the microchip waiver process. These regulations will therefore impact individual race horse owners and trainers needing to implant their horses with microchips on a one-time basis. The Board has therefore 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 Rules 1597.5 and 1581.1 will adjust the procedures for microchipping racehorses and the microchip waiver process. These regulations will therefore impact individual race horse owners and trainers needing to implant their horses with microchips on a one-time basis. 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 Rules 1597.5 and 1581.1 will adjust the procedures for microchipping racehorses and the microchip waiver process. These rules will benefit the safety of the race horse by providing easy, accurate identification throughout the horse's lifetime. This will allow for rapid disease treatment decisions, movement traceability, and positive identification after the horse has been retired from racing. Also, the wagering public will benefit from the assurance that there will be virtually zero racehorse identification errors during both training and racing. These regulations do not benefit the state's environment or worker safety.

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 of Rules 1597.5 and 1581.1 were discussed at the January 24, 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,

April 26, 2019