

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

NOTICE OF PROPOSAL TO AMEND
RULE 1581.1. ENTRIES
AND
RULE 1597.5 MICROCHIPS REQUIRED FOR ALL HORSES ON GROUNDS

The California Horse Racing Board (Board/CHRB) proposes to amend the regulations described below after considering all comments, objections or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

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.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, June 20, 2019**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, 285 West Huntington Drive, Arcadia, 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 at **5:00 p.m., on June 11, 2019**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6026
Fax: (916) 263-6042
E-Mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19562, and 19590, Business and Professions Code.
Reference: Sections 19440, and 19562, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19562, and 19590 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific sections 19440, and 19562, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 states that the Board has jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings. 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. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19590 provides that the Board shall adopt rules governing, permitting, and regulation pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering.

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 effective date of the 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 of its microchipping regulations and determined that it was necessary to revise Rules 1581.1 and 1597.5 to ensure that the microchipping of race horses would not interrupt the entry of horses to race.

The proposed amendment to Rule 1581.1 will delete subsection 1581.1(a)(4). Subsection (a)(4) of Rule 1581.1 currently provides that a race horse that does not carry a microchip, or that has not been granted a microchip waiver by the stewards, cannot be entered to race. The Board has determined that this 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 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)(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, eliminate possible confusion, 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 race track. 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.¹ Limiting waivers to stakes races placed an unnecessary restriction on the stewards' authority. 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.

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

¹ Horses entered to race are taken to the receiving barn at least one hour prior to the race. At that time the horses are identified and examined by the racing veterinarian. The identification process will include reading/scanning the microchip.

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, racing fair, or authorized training facility. (The CHRB 235 is incorporated by reference in Rule 1597.5.) The proposed amendment to Rule 1597.5 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 1597.5, and its use is not required under any other CHRB regulation, the form has been repealed.

Under the proposed amendment 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.

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.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposal to amend 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 proposed regulation will help to implement a horse identification system that utilizes state-of-the-art microchip technology to implement an accurate process of regular inventory reporting and horse movement tracking at all California racetrack and training facilities. The microchipping program will replace a cumbersome paper system that did not allow for timely reporting of race horse inventory throughout the state. The proposed amendment to Rule 1581.1 will allow horses that do not carry a microchip to enter to race which will encourage owners and trainers of such horses to race in California, as their un-chipped horses will have ample time to have the procedure completed prior to race day. The proposed amendment to Rule 1597.5 streamline the microchipping procedure and provide clarity for owners and trainers whose horses have not been microchipped.

By implanting uniquely assigned microchips into every race horse that comes onto the grounds of a licensed racing or training facility, the Board, as well as 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 how many stalls an association or fair should be required to have for a race meet based on historic inventory. This will ensure that the associations are able to meet the stabling demands of a race meeting while not overspending to make unused stalls available. These proposed regulations will also benefit Board staff in determining whether a race 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 race horse will be misidentified and allowed to participate unlawfully in a horse race.

The proposed regulations will also benefit racing associations and fairs by enhancing their ability to meet their inventory reporting obligations under CHRB regulations. Also, the proposed regulations will give racing secretaries (who are employees of the associations and fairs) a tool to

assist them 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 will 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 experienced several 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.

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 public confidence that the horses participating in a race have all been properly identified.

Evaluation of Consistency and Compatibility with Existing State Regulations: During the process of developing the proposed amendments, the Board has conducted an evaluation for any related regulations and has determined that Rule 1581.1 is the only regulation dealing with the entry of horses to race and Rule 1597.5 is the only rule dealing with microchipping procedures of race horses on the grounds of a race track with regards to horse racing in California. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURE REGARDING THE PROPOSED ACTION

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 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 Rule 1581.1 and Rule 1597.5 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.

RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed amendment to Rule 1581.1 and Rule 1597.5 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 amendments promote the improvement of horse inventory reporting and horse identification. The proposed regulations will benefit racing associations and fairs by enhancing their ability to meet their inventory reporting obligations under CHRB regulations. The proposed regulations will also give racing secretaries a tool to assist them 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 will receive adequate entries based on the population of horses meeting the requisite criteria (i.e. race conditions). Greater inventory control will benefit the public, as racing secretaries will be able to provide quality race programs, which could result in an increase in wagering and a positive economic impact on the industry. The regulations will not affect worker safety or the state's environment.

Effect on small businesses: none. The proposed amendment to Rule 1581.1 and Rule 1597.5 will not affect small businesses because horse racing is not a small business 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:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6026
E-mail: haroldc@chr.ca.gov

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

Andrea Ogden, Policy, Regulations Manager
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 may be obtained by contacting Harold Coburn, 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 regulation should be sent to the attention of Harold Coburn 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 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 Harold Coburn 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 website. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: www.chrb.ca.gov.