

INITIAL STATEMENT OF REASONS

RULE 1858, TEST SAMPLE REQUIRED.

RULE 1859.1, OUT-OF-COMPETITION TESTING PROCEDURES AND REQUIREMENTS.

RULE 1859, TAKING, TESTING AND REPORTING OF SAMPLES.

RULE 1859.25, SPLIT SAMPLE TESTING.

RULE 1867, PROHIBITED VETERINARY PRACTICES.

RULE 1869, PROHIBITED DRUG SUBSTANCES IN OUT-OF-COMPETITION TESTING.

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to add Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, to establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, out-of-competition test samples will be collected at the direction of the official veterinarian, the Equine Medical Director, or his/her designee at any time and in any location. Trainers, owners, and their designee(s) are required to disclose the location of all of their horses that are eligible for out-of-competition testing; however, any party may request that their horse be tested in an alternative location. Additionally, trainers, owners, their designee(s), and racing association employees are required to cooperate with persons collecting out-of-competition test samples. Licensees who willfully fail to make a horse available for out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension, and horses not made available for out-of-competition testing will be placed on the Steward's List for a minimum of 180 days.

The Board also proposes to add Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, to list all medications, drugs, and other substances that are prohibited from being present in an out-of-competition test sample. Additionally, the proposed rule will describe exceptions for certain therapeutic medications in cases where specific procedural and reporting requirements are followed by the trainer and/or their veterinarian. Finally, the rule will describe the liability and rights of trainers, owners, and other licensees who have the care and custody of a horse that tests positive for a prohibited substance in an out-of-competition test sample.

The Board also proposes to amend Rule 1858, Test Sample Required, to clarify the Board's authority to collect official blood, urine, and other biological test samples, as well as describe specifically which horses are eligible for out-of-competition testing. Additionally, the proposed amendment will make it a condition of trainers' and owners' licenses that the Board be given consent to collect out-of-competition test samples at any location where an eligible horse is present.

The Board also proposes to amend Rule 1859, Taking, Testing and Reporting of Samples, to make minor technical changes to existing language that ensures out-of-competition testing procedures do not conflict with existing official test sample collection requirements.

The Board also proposes to amend Rule 1859.25, Split Sample Testing, to extend the same split sample process and rights currently in place for post-race testing to licensees who have a horse in their custody that test positive for a prohibited substance in an out-of-competition test sample.

Finally, the Board proposes to amend Rule 1867, Prohibited Veterinary Practices, to add a number of medications and drug substances to the current prohibited list, and extend the regulation's application to substances detected in out-of-competition test samples.

The general purpose of these proposed regulations is to better enhance the integrity and fairness of California horse racing by more effectively monitoring and controlling the use of medications in race horses when they are out-of-competition. Such measures will not only protect horses and riders, but also the wagering public.

PROBLEM

Currently, the California Horse Racing Board's (CHRB or Board) drug enforcement efforts focus almost exclusively on testing for and restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been eliminated from the horse's body. While the CHRB regularly tests horses that are out-of-competition, it presently has no recourse when a substance is detected that is a known performance enhancer.¹ Accordingly, these proposed regulatory changes will allow the CHRB to affirmatively test for and restrict certain medications and drug substances in race horses that are intended to compete but not currently entered for a specific race.

NECESSITY

Rule 1859.1, Out-of-Competition Testing Procedures and Requirements:

The proposed addition of Rule 1859.1, Out-of-Competition Testing Procedures and Requirements, will establish procedures by which the Board will collect out-of-competition test samples, as well as penalties for non-compliance. Specifically, subsection (a) states that out-of-competition test samples will be collected at the direction of the official veterinarian, the Equine Medical Director, or his/her designee at any time and in any location. This is necessary to establish the Equine Medical Director and Official Veterinarians' authority to order out-of-competition sampling, and to ensure such sampling is done safely and correctly. The subsection also requires blood samples to be collected by a veterinarian licensed by the Board, or by a veterinary technician licensed by the Board who is acting under the supervision of the official veterinarian or Equine Medical Director. This is necessary to make sure blood drawn from horses is collected safely by persons with proper veterinary training and certifications.

¹ In March 2017, Los Alamitos Race Course conducted out of competition testing on horses that qualified for the track's Quarter Horse Derbys. Trippys Royal Jess, a qualifier for the La Primera Del Ano Derby, tested positive for zilpaterol, a muscle builder. Whata Corona, a qualifier for the same race, tested positive for clenbuterol, a bronchodilator used to increase muscle mass and enhance performance. Both horses were disqualified after testing positive for the banned medications.

Subsection (b) requires trainers, owners, and their designees to disclose the location of all of their horses that are eligible for out-of-competition testing. This is necessary to ensure that CHRB officials are able to locate all eligible horses that they want to test.

Subsection (c) states that the Board need not provide advance notice to the trainer or owner before arriving at any location to collect official out-of-competition test samples from an eligible horse; however if any party requests that their horse be tested in an alternative location, the Board may, in its sole discretion, collect the sample at an alternative time and location designated by the Board. Out-of-competition sample collection without notification is necessary to ensure that licensees do not attempt to mask or conceal a medication or drug substance in a horse's body. By appearing unannounced, the Board has the best opportunity to detect prohibited substances, which will further deter licensees from doping their horses while out-of-competition. Nevertheless, the subsection also provides for designating an alternative testing location at the Board's discretion. This is necessary to permit the Board a mechanism for adjusting testing locations at the convenience of all parties.

Subsections (d) and (e) require trainers, owners, their designee(s), and racing association employees to cooperate with persons collecting out-of-competition test samples on behalf of the Board. This includes assisting with location and identification of the horse, making the horse physically available for testing, providing a safe space for testing, assisting with the control of the horse, and witnessing the sampling. This is necessary to ensure that licensees do not cause any unnecessary delay in the collection of the out-of-competition test samples. It is also necessary to ensure the safety of the Board's sample collectors—especially when samples are collected from unfamiliar locations.

Subsection (f) explains that the Board may arrange to have test samples collected from a horse that is physically located outside of California, but otherwise eligible for out-of-competition testing pursuant to Rule 1858. This is necessary to ensure that licensees are not able to avoid out-of-competition testing by taking their horses out of state. The subsection also requires the racing commission or Board-designated person collecting the sample to follow the collection procedures described in this regulation (except for certain licensing and identification requirements). This is necessary to maintain the same chain of custody standards and sample collection process as is in place for in-state out-of-competition testing.

Subsection (f)(1) permits the Board to share the results of out-of-state out-of-competition tests with the racing commission that participates in the sample collection. This is necessary to achieve maximum cooperation with other racing commissions, and also to create a mechanism for these states to proceed with their own prosecution efforts for violations occurring within their jurisdictions. Subsection (f)(2) states that the Board may, in its sole discretion, permit a trainer, owner, or their designee to transport a horse eligible for out-of-competition testing into California if the horse is out-of-state. This is necessary to permit the Board a mechanism for adjusting testing locations at the convenience of all parties, and to also give the Board greater control over the collection process when possible.

Subsection (g) states that the person who collects official out-of-competition test samples for the Board shall, at the time of sample collection, provide their CHRB identification and disclose to

the owner and/or trainer of the horse that the purpose of the sampling is for out-of-competition testing. This is necessary to maximize transparency in the out-of-competition testing process, and to also give owners and trainers adequate notice of what is occurring so that they do not unknowingly impede the sample collection process.

Subsection (h) explains that if the trainer or any other person having care and custody of a horse selected for out-of-competition testing refuses or declines to make the horse available for test sample collection, the Board shall attempt to notify the owner and give them the opportunity to make the horse available for immediate testing. This is necessary because pursuant to subsection (k) horses that are not made available for out-of-competition testing are required to be placed on the Steward's List for a minimum of 180 days. This impacts the horse's owner most severely, and therefore the owner must be given an opportunity to remedy any impediments to testing created by the trainer.

Subsection (i) requires that all available records demonstrating the chain of custody for an official out-of-competition test sample are to be made available to the trainer, owner, or their designee, at their request, when a complaint results from an out-of-competition test. This is necessary to ensure that respondents to a CHRB complaint are given all chain of custody evidence that will be used against them to establish their out-of-competition violation.

Subsection (j) states that any licensee who willfully fails to make a horse available for out-of-competition testing, or commits other willfully deceptive acts in connection with out-of-competition testing, or who cause interference or obstruction to the sampling process will receive a minimum one-year license suspension. This is necessary to ensure maximum cooperation by licensees with the CHRB's out-of-competition testing efforts, and to deter any willful efforts to obstruct sample collection and testing.

Subsection (k) requires any horse not made available for out-of-competition testing to be placed on the Steward's List for a minimum of 180 days (which prevents the horse from racing in California during that time), including those horses that are asserted to be no longer engaged in horse racing. This is necessary to ensure maximum cooperation by licensees with the CHRB's out-of-competition testing efforts, and to also prevent horses from participating in racing that have potentially received prohibited performance enhancing medications while out-of-competition. Extending this requirement to horses asserted to be no longer engaged in racing is necessary to prevent owners and trainers from temporarily retiring a horse just to avoid testing. By still putting such horses on the Steward's List, there will be no loophole for owners and trainers to take advantage of.

Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing:

The proposed addition of Rule 1869, Prohibited Drug Substances in Out-of-Competition Testing, will define those drugs, substances, doping agents, and medications that are prohibited from being present in an out-of-competition test sample. Specifically, subsection (a) states that the following substances are prohibited: anabolic androgenic steroids will be prohibited unless the anabolic agent has been approved by the United States Food and Drug Administration (FDA), is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian within 72 hours of administration by the trainer or owner on CHRB-60 (Rev. 7/15),

Trainer Medication Report. Additionally, horses receiving permitted anabolic steroid treatments will be required to remain on the Veterinarian's List for a minimum of six months, and until such horse is declared raceably sound and in fit physical condition to exert its best effort in a race.² Also prohibited will be: selective androgen receptor modulators, tibolone, and zeranol; Erythropoietin-Receptor agonists; Hypoxia-inducible factor stabilizers (except out-of-competition blood samples may contain cobalt in an amount that does not exceed 50 nanograms per milliliter)³; Chorionic Gonadotropin and Luteinizing Hormone and their releasing factors; Corticotrophins and their releasing factors (except adrenocorticotrophic hormone (ACTH) may be used in a horse that is out-of-competition, provided that the substance is approved by the FDA, is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian within seventy-two hours of administration by the trainer or owner on CHRB-60 (Rev. 7/15), Trainer Medication Report)⁴; Beta-2 agonists, including all optical isomers (except clenbuterol and albuterol may be used in a horse that is out-of-competition, provided that the administration is pursuant to a valid veterinary prescription, and both the administration and prescription are carried out in accordance with all rules and regulations in this division)⁵; aminoglutethimide, anastrozole, androsta-1,4,6-triene-3,17-dione (androstatrienedione), 4-androstene-3,6,17 trione (6-oxo), exemestane, formestane, letrozole, and testolactone; raloxifene, tamoxifen, and toremifene; clomiphene, cyclofenil, and fulvestrant; myostatin inhibitors; activators of the AMP-activated protein kinase, Peroxisome Proliferator Activated Receptor δ (PPAR δ) agonists, insulins, trimetazidine, Thyroxine, and thyroid modulators/hormones containing T4 (tetraiodothyronine/thyroxine), T3 (triiodothyronine), or combinations thereof (except Thyroxine (T4) will not be considered a prohibited substance,⁶ and altrenogest will not be considered a prohibited substance in fillies and mares,⁷ provided that such treatments are made pursuant to a valid veterinary prescription, and both the administrations and prescriptions are carried out in accordance with all rules and regulations in this division); desmopressin, furosemide, plasma expanders, probenecid, torsemide, acetazolamide, amiloride, bumetanide, canrenone, chlorthalidone, etacrynic acid, indapamide, metolazone, spironolactone, thiazides, triamterene, trichlormethiazide, vasopressin receptor antagonists, and vaptans (except furosemide and trichlormethiazide may be used in a horse that is out-of-competition,⁸ provided that the administration is pursuant to a valid veterinary prescription, and both the administration

2. This exception is necessary because there are legitimate therapeutic uses for FDA-approved anabolic steroids in race horses recovering from debilitating illnesses. Nevertheless, the six-month Veterinarian's List requirement is also necessary to ensure race horses prescribed anabolic steroids are given sufficient time to recover from whatever ailment they have that necessitates the treatment and to ensure anabolic steroids are not being used to enhance performance. The seventy-two hour reporting requirement is also necessary to ensure the length of time a horse stays on the Veterinarian's List is properly calculated, and to also ensure that trainers do not delay reporting to keep the horse racing after initial administration.

3. This exception is necessary because cobalt naturally occurs in a horse's body and is present at low levels in nutritional supplements for horses.

4. This exception is necessary because there are legitimate therapeutic uses for FDA-approved adrenocorticotrophic hormone (ACTH) in race horses. The seventy-two hour reporting requirement is necessary to ensure that reports of administrations are timely, and to allow the Official Veterinarian to better track use of this particular medication.

5. This exception is necessary because there are legitimate therapeutic uses for FDA-approved clenbuterol and albuterol in race horses.

6. This exception is necessary because there are legitimate therapeutic uses for FDA-approved Thyroxine (T4) in race horses with hypothyroidism.

7. This exception is necessary because altrenogest is used to control estrus in cycling females.

8. This exception is necessary because there are legitimate therapeutic uses for FDA-approved furosemide and trichlormethiazide in race horses.

and prescription are carried out in accordance with all rules and regulations in this division). Additionally, any of the diuretics mentioned above may be administered in an emergency situation in order to safeguard the health of the horse so long as the substance is administered pursuant to a valid veterinary prescription, and is reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15), Trainer Medication Report, or by the treating veterinarian on form CHRB-24 (Rev. 7/15), Veterinarian Report, within 24 hours of the administration.⁹ These prohibitions are necessary to prevent race horses from having their performance unnaturally enhanced while out-of-competition. The abovementioned medications, drug substances, and doping agents have been determined by the Racing Medication Testing Consortium (RMTC)¹⁰ and the Association of Racing Commissioners International (ARCI)¹¹ to be potential performance enhancers that may give horses unfair advantages during racing, even after the substance clears the horse's system. Accordingly, it is necessary to prohibit these substances from being present in out-of-competition test samples to protect the horses, riders, and the wagering public, and to otherwise enhance the integrity and public perception of California racing.

Subsection (b) explains that any substance not prohibited by this regulation is permitted for use when a horse is out-of-competition, provided such substance has been approved by the FDA for use in the United States, and is prescribed and administered in accordance with all applicable federal and state laws and regulations, including all CHRB rules and regulations. This is necessary to clarify for licensees precisely which medications and drug substances are allowed in race horses that are out-of-competition, while also still generally prohibiting unapproved and/or unprescribed medications and drug substances.

Subsection (c) establishes a presumption that a prohibited drug substance detected in an official out-of-competition test sample is prima facie evidence that the trainer and/or any other licensee responsible for the care of the horse has been negligent in the care of the horse, and is also prima facie evidence that the drug substance has been administered to the horse. It also permits such licensee to be fined, and/or have his or her license suspended or revoked. This is necessary to mirror the legal presumptions currently in place for the CHRB's post-race testing program,¹² which will place the burden on the trainer and/or other licensee having care of the horse to rebut the presumption that they negligently permitted the administration of a prohibited substance to the out-of-competition horse.

9. This exception is necessary to ensure that an owner and/or trainer are not penalized for protecting the health and welfare of a horse in an emergency situation where a veterinarian has to prescribe a diuretic.

10. The RMTC strives to develop and promote uniform rules, policies and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and to protect the interests of the racing public. The RMTC was founded in 2001 by representatives of a broad spectrum of racing-related groups who participated in an industry effort to determine potential consensus points on the most basic elements of a uniform national medication policy for racehorses. The RMTC is incorporated as a 501(c)(3) charitable organization with both scientific and educational purposes. It is governed by a board of directors consisting of 24 industry stakeholder groups.

11. The ARCI is composed of the governmental regulators of horse and greyhound racing in the United States, Canada, Mexico, Jamaica, and Trinidad-Tobago. ARCI collaborates with other racing industry organizations who share its common goal of ensuring integrity in racing. ARCI is a not-for-profit trade association with no regulatory authority. Its members individually possess regulatory authority within their jurisdictions and solely determine whether or not to adopt ARCI recommendations on policies and rules.

12. See subsection (d) of CHRB Rule 1843, Medication, Drugs and Other Substances.

Subsection (c)(1) also makes the trainer the absolute insurer of horses under their care within a licensed inclosure, and subsection (c)(2) makes the owner the absolute insurer of horses they own located outside of a licensed inclosure when not in the care of another CHRB licensee. This is necessary to ensure consistency with CHRB Rule 1887, Trainer or Owner to Insure Condition of Horse, and to impose a strict liability standard on those licensees having care and/or custody of horses that are in training and intended to race in California. Such a standard for licensed trainers and owners is designed to afford the wagering public maximum protection against unfair and/or unlawful performance enhancement in race horses. If responsibility for out-of-competition doping were to be imposed only for actual guilty participation or culpable negligence, there would exist a possible field of activity beyond the affirmative protection thereby afforded to the wagering public. Instead, by imposing strict liability on trainers and owners for the condition of horses in their care that are out-of-competition but intended to race, the public will enjoy maximum protection from this serious public danger.¹³

Subsection (c)(3) states that the defenses described in Rule 1888, Defense to Trainer Insurer Rule, shall be available to any person charged with a violation of this regulation. This is necessary to preserve the due process rights of licensees charged with violations of this rule.

Finally, subsection (d) explains that a race day prohibition or restriction of a substance under this Article is not applicable to an out-of-competition test unless otherwise stated. This is necessary to clarify that the race-day and post-race medication restrictions described in Article 15, Veterinary Practices, of the CHRB Rules and Regulations are inapplicable to out-of-competition test samples.

Rule 1858, Test Sample Required:

The proposed amendment to Rule 1858, Test Sample Required, will add a new subsection (b) to explain that the Board may take official blood, urine or other biological samples from horses, in accordance with Rules 1859 and 1859.1, to enhance the ability of the Board to enforce its medication and anti-doping rules at any time or date. This is necessary to clarify the scope of the Board's authority to draw official pre-race, post-race, and out-of-competition blood, urine, and other biological test samples from horses for the purpose of enforcing its regulations.

The amendment also revises new subsection (c) to expand the criteria for those horses eligible for testing (out-of-competition or otherwise) to include any horse under the care or control of a licensed trainer, or owned by a licensed owner. This is necessary to clarify which horses are subject to official drug testing by the Board. Furthermore, it is necessary to expand the criteria for testing to horses trained and owned by CHRB licensees in order to ensure all horses intended to race in California are eligible for out-of-competition testing. Without the amendment, a trainer or owner could merely take a horse outside of the inclosure and train them on any medications they wish without fear of being tested or prosecuted. If this were the case, then a major loophole would exist in the proposed out-of-competition testing program that would render the CHRB ineffective in its monitoring and enforcement of out-of-competition medication use. This

13. This is supported by the California Supreme Court's finding in *Sandstrom v. California Horse Racing Board*, 31 Cal.2d 408 (1948): "The closer the supervision to which the trainer is held, the more difficult it becomes for anyone to administer a drug or chemical to the horse. The exaction of the ultimate in that regard is justified by the peril to be avoided."

subsection also adds the Executive Director to the list of CHRB officials who may direct testing. This is necessary because information about unlawful medication use that is uncovered by the CHRB's Enforcement Division during an investigation may require a horse to be tested. As the top supervisor of the CHRB Enforcement Division, the Executive Director is the best person to order such testing while maintaining the confidentiality of ongoing investigations.

The amendment also revises new subsection (c)(1) to expand the definition of the phrase "registered to race at an inclosure," to include horses that have raced at a licensed inclosure within the previous 12 months. This is necessary to implement the same definitions and out-of-competition testing criteria as recommended by the ARCI. It is also necessary to ensure once again that race horse owners do not attempt to take advantage of any loopholes in order to avoid testing. Without this expansion, a licensed owner could technically remove their horse from the inclosure, sell the horse to a straw buyer, and then continue to train the horse on prohibited medications without risk of being subject to out-of-competition testing. This expanded definition will therefore allow the Board to continue testing such a horse until a year after it has left a licensed inclosure.

New subsection (c)(2) explains that a horse is "out-of-competition" when it is not entered in a race as defined in this Article, but otherwise prohibits testing of weanlings, yearlings, and horses no longer engaged in racing, as defined, that are outside of the inclosure and not entered in a Board-authorized horse sale. This is necessary to define when a horse is "out-of-competition," which under current regulations is up until 48 hours before a race horse participates in a race.¹⁴ The limitation on weanlings, yearlings, and horses no longer engaged in racing is also necessary to tighten the scope of horses eligible for testing so that the CHRB does not spend unnecessary time and resources testing horses that will not be racing in the near future. For clarity, the subsection provides various options for how a horse may be proven to be no longer engaged in racing, which includes but is not limited to: the horse is registered as retired with one of the breed registry organizations identified in Rule 1402; the horse is not a breed of horse that races in California; the horse becomes breeding stock; or the horse has suffered an injury or been subject to a procedure that renders the horse permanently unfit to participate in a race as determined by the Official Veterinarian or Equine Medical Director, or any other valid evidence is presented as determined by the Equine Medical Director, the Executive Director, the stewards, or the official veterinarian.

Finally, new subsection (c)(3) states that as a condition of licensure, persons holding trainer and owner licenses shall be deemed to have given consent for the Board to access any location, whether inside or outside of a licensed inclosure, where a horse eligible for testing may be found for the purpose of collecting official out-of-competition test samples. The proposed amendment further explains, however, that such consent does not permit the Board to search the premises when collecting out-of-competition test samples. This is necessary to maintain the constitutionality of these proposed regulations while still achieving the goals set forth by the Board to implement an effective out-of-competition testing program. By making consent to out-of-competition sample collection a condition of owner and trainer licenses, the Board is ensuring

14. See subsection (a) of CHRB Rule 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race.

that all such licensees will permit the Board's representatives access to horses eligible for out-of-competition testing for the limited purpose of collecting samples.

Rule 1859, Taking, Testing and Reporting of Samples:

The proposed amendment to Rule 1859, Taking, Testing and Reporting of Samples, specifies in subsection (a) that all official non-blood and non-urine test samples are to be "biological" in nature. This is necessary to clarify and limit the type of "official test samples" that may be collected from a race horse. The proposed amendment also makes an exception to the requirement that samples must be collected in a Board-approved detention area for out-of-competition test samples. This is necessary to provide the Board with flexibility in where it collects official out-of-competition test samples, which may sometimes be outside of the inclosure. It is also necessary for consistency with the other proposed regulatory changes. Finally, the proposed amendment allows for test samples to be witnessed, confirmed or acknowledged by owners of horses, in addition to their trainers. This is necessary because a horse that is out-of-competition may not necessarily have a trainer if it is outside of the inclosure, and therefore the owner will need to have the same authority to witness, confirm, or acknowledge the collection of such test samples.

Rule 1859.25, Split Sample Testing:

The proposed amendment to Rule 1859.25, Split Sample Testing, amends subsection (a) to add "other biological official test samples" to the list of official samples subject to the split sampling process. This is necessary to achieve consistency with Rule 1859, and to also afford licensees the same rights and opportunities to have a split sample tested for all official biological tests. The proposed amendment also expressly extends the split sample process currently in place for post-race tests collected pursuant to Rule 1859 to licensees having a horse in their care and custody that tests positive for a prohibited substance in an out-of-competition sample (pursuant to proposed Rule 1859.1). This is necessary to clarify that owners and trainers will have the same rights and opportunities to have a split sample tested for out-of-competition tests that are positive for a prohibited substance. Finally, the proposed amendment removes the phrase "participating in any race" from subsection (b). This is necessary for consistency with the other proposed regulations since horses tested while out-of-competition will not have participated in a race.

Rule 1867, Prohibited Veterinary Practices:

The proposed amendment to Rule 1867, Prohibited Veterinary Practices, adds the term "doping agent" in subsection (a). This is necessary to more accurately describe some of the prohibited items listed under subsections (a)(1)-(11). Additionally, the proposed amendment adds the following medications and drug substances to the current prohibited list: venoms or derivatives thereof, aminoimidazole carboxamide ribonucleotide (AICAR), hemopure, Myo-Inositol Trispyrophosphate (ITPP), oxyglobin, and thymosin beta. This is necessary because these medications, drug substances, and doping agents, originally as developed by the World Anti-Doping Agency (WADA) for human athletes, have been determined by the RMTTC and the ARCI to be potential performance enhancers that may give horses unfair advantages during racing. Some of these substances can also harm the health of the horse, and ultimately there is no valid therapeutic use for these medications, drug substances, and doping agents. The proposed amendment does make an exception for platelet rich plasma and autologous conditioned plasma under the general prohibition against growth hormones and analogs, so long as they are

administered pursuant to a valid veterinary prescription and are reported to the Official Veterinarian by the trainer on CHRB-60 (Rev. 7/15) (Trainer Medication Report). This is necessary because these substances can have valid therapeutic uses in race horses when prescribed by a veterinarian for a specific condition. Finally, the proposed amendment extends Rule 1867's application to prohibited substances detected in out-of-competition test samples pursuant to proposed Rule 1859.1. This is necessary to ensure that if any of the abovementioned medications, drug substances, or doping agents are detected in an out-of-competition test sample, the Board can take appropriate disciplinary action against the trainer or owner.

Forms Incorporated by Reference:

The proposed amendment to Rule 1867 and addition of Rule 1869 will incorporate by reference CHRB-24, Veterinarian Report (Revised 07/15), and CHRB-60, Trainer Medication Report (Revised 07/15), as it would be cumbersome, unduly expensive or otherwise impractical to publish these documents in the California Code of Regulations.

Form CHRB-24, Veterinarian Report (Revised 07/15), will be used by licensed veterinarians to report to the Official Veterinarian details of diuretic administrations made in emergency situations as described in Rule 1869(a)(13)(B). Under the proposed regulations, either the treating veterinarian or the trainer will need to report the administration to the Official Veterinarian within 24 hours. Under existing regulations, veterinarians treating horses within the inclosure already have to report all medication prescriptions and administrations to the Official Veterinarian on this form, and therefore this provision is necessary to provide consistency with other CHRB rules. If the emergency administration occurs outside of the inclosure, however, the trainer then will be responsible for reporting the administration on Form CHRB-60. Such reporting is necessary so that the Board has immediate knowledge of diuretic use and does not prosecute a trainer or owner when said diuretic is detected in an out-of-competition sample.

Form CHRB-60, Trainer Medication Report (Revised 07/15), will be used by licensed trainers to report each administration of platelet rich plasma and autologous conditioned plasma, anabolic androgenic steroids, adrenocorticotrophic hormone (ACTH), and emergency diuretic treatments given to horses in their care to the Official Veterinarian. The form includes fields for the name of the horse, name of the trainer, type of medication administered, and date and time of treatment. This is necessary to ensure the Official Veterinarian may properly identify all horses within the inclosure that have been administered these substances and take such treatment into account when examining these horses.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION.

The proposed addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867, will substantially enhance the integrity and fairness of California horse racing by more effectively monitoring and controlling the use of medications in race horses when they are out-of-competition. Currently, the CHRB's drug enforcement efforts focus almost exclusively on restricting substances that are physically detectable in a horse immediately after a race. Although this has effectively curtailed the use of performance enhancing/altering substances immediately prior to a race, it does little to address the issue of substances that enhance performance long after they have been eliminated from the horse's body. While the

CHRB regularly tests horses that are out-of-competition, it presently has no recourse when a substance is detected that is a known performance enhancer. Accordingly, these proposed regulatory changes will allow the CHRB to affirmatively restrict certain medications and drug substances in race horses that are intended to compete but not currently entered for a specific race (i.e. horses that are “out-of-competition”).¹⁵

Such a change will first and foremost benefit the health and welfare of the horse. By giving the CHRB a mechanism to prosecute trainers, veterinarians, and/or owners who administer non-therapeutic medications or other drug substances to horses that are out-of-competition, the Board will be able to deter doping schemes that may harm the horse. A number of the substances prohibited under the proposed rules can have side effects which negatively impact the health of the horse.¹⁶ By explicitly banning such substances—and attaching a penalty in those instances where the substance is detected in an out-of-competition test sample—the Board will further curtail use of such drugs.

The proposed changes will also benefit the wagering public because out-of-competition testing will further eliminate the chance that a horse will unnaturally and/or unlawfully have its performance enhanced during a race due to prior doping. This will help ensure that the public is wagering on the merits of the horses’ natural abilities, and not being deceived by the improper and/or illicit use of performance enhancing drug substances prior to the horse’s entry to race.

Finally, the proposed changes will benefit the horse racing industry by enhancing the sport’s integrity and perception. By expanding the CHRB’s role in monitoring and restricting medication use in race horses, both the participating licensees and the public will have greater confidence in the fairness and safety of California racing, which in turn may grow viewership and wagering. Accordingly, these amendments will benefit the health, safety and welfare of horses, licensees, and the wagering public.

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

In proposing the amendment to Rule 1844, the Board relied on:

- ARCI Model Rules of Racing – Version 8.1 (revised July 2017), pgs. 258-265, 284-288, 416-425, and 443-447.
- World Anti-Doping Agency – The 2014 Prohibited List International Standard– (2014 Version 2.0)

The Board did not rely on any other technical, theoretical, and/or empirical study, reports or documents in proposing the addition of Rules 1859.1 and 1869, and the amendments to Rules 1858, 1859, 1859.25, and 1867.

15. Pursuant to current CHRB regulations, a horse is not entered to race (i.e. in-competition) until 48 hours before the race is actually run. Therefore a horse tested three days before it runs is still considered “out-of-competition.”

16. For example, auto-immune anemias associated with erythropoietin receptor agonists has been documented in horses. The World Anti-Doping Agency (WADA) issued a warning to athletes pointing out pre-clinical trials of the peroxisome proliferator-activated receptor agonist “GW501516” were halted over serious toxicity issues.

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 regulations will not impact the creation or elimination of jobs within the State of California.
- The proposed regulations will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulations will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulations 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 addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 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 addition of Rules 1859.1 and 1869, and the proposed amendments to Rules 1858, 1859, 1859.25, and 1867 will result in implementation of a robust and encompassing out-of-competition testing program that will substantially enhance the integrity and safety of California horse racing. The regulations will not impact businesses in any way.

Purpose:

The general purpose of these proposed regulations is to better enhance the integrity and fairness of California horse racing by authorizing the Board to more effectively monitor and control the use of medications in race horses when they are out-of-competition. Such measures will not only protect horses and riders, but also the wagering public.

The Creation or Elimination of Jobs Within the State of California

The proposed addition of Rules 1859.1 and 1869, and amendments to Rules 1858, 1859, 1859.25, and 1867, will establish a robust and encompassing out-of-competition testing program that will substantially enhance the integrity and safety of California horse racing. The proposed regulatory changes will restrict the use of specified medications, drug substances, and doping agents in race horses. These regulations will only impact individuals treating horses intended to race in California with medications. Therefore, the Board has determined that the proposed regulation will have no direct impact on the creation or elimination of jobs within the State of California.

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

The proposed addition of Rules 1859.1 and 1869, and amendments to Rules 1858, 1859, 1859.25, and 1867, will establish a robust and encompassing out-of-competition testing program

that will substantially enhance the integrity and safety of California horse racing. The proposed regulatory changes will restrict the use of specified medications, drug substances, and doping agents in race horses. These regulations will only impact individuals treating horses intended to race in California with medications. Therefore, the Board has determined that the proposed regulation 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 addition of Rules 1859.1 and 1869, and amendments to Rules 1858, 1859, 1859.25, and 1867, will establish a robust and encompassing out-of-competition testing program that will substantially enhance the integrity and safety of California horse racing. The proposed regulatory changes will restrict the use of specified medications, drug substances, and doping agents in race horses. These regulations will only impact individuals treating horses intended to race in California with medications. Therefore, the Board has determined that the proposed regulation 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 addition of Rules 1859.1 and 1869, and amendments to Rules 1858, 1859, 1859.25, and 1867, will first and foremost benefit the health and welfare of the horse. By giving the CHRB a mechanism to prosecute trainers, veterinarians, and/or owners who administer non-therapeutic medications or other drug substances to horses that are out-of-competition, the Board will be able to deter doping schemes that may harm the horse. A number of the substances prohibited under the proposed rules can have side effects that negatively impact the health of the horse. By explicitly banning such substances—and attaching a penalty in those instances where the substance is detected in an out-of-competition test sample—the Board will further curtail use of such drugs.

The proposed changes will also benefit the wagering public because out-of-competition testing will further eliminate the chance that a horse will unnaturally and/or unlawfully have its performance enhanced during a race due to prior doping. This will help ensure that the public is wagering on the merits of the horses' natural abilities, and not being deceived by the improper and/or illicit use of performance enhancing drug substances. These regulations do 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 Rules 1859.1 and 1869, and amendments to Rules 1858, 1859, 1859.25, and 1867, were discussed at the February 22, 2017 Medication, Safety and Welfare Meeting, and at the February 23, 2017 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
March 16, 2018