

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

TITLE 4, CALIFORNIA HORSE RACING BOARD  
NOTIFICATION OF CORRECTION REGARDING  
THE LOCATION OF THE  
REGULATORY HEARING FOR THE PROPOSED  
AMENDMENT OF  
RULE 1865. ALTERING OF SEX OF HORSE

Pursuant to the requirements of Government Code Section 11346.8(a) of the California Code of Regulations, the California Horse Racing Board is providing notice that the regulatory hearing for the proposed adoption of Rule 1865, Altering of Sex of Horse, will be held on **Thursday, September 27, 2018, at the Santa Anita Park Race Track, 285 West Huntington Drive, Arcadia, California, at 9:30 a.m.**, or as soon thereafter as the business before the Board will permit.

The proposal to amend Rule 1865, Altering of Sex of Horse, was originally noticed to the public with the regulatory hearing located at the Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California; however, the correct location of the regulatory hearings is the **Santa Anita Park Race Track, 285 West Huntington Drive, Arcadia, California** on September 27, 2018.

Any interested person who has questions regarding this notice of correction of location of regulatory hearing should contact

Harold Coburn, Regulations Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
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CALIFORNIA HORSE RACING BOARD  
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO AMEND  
RULE 1865, ALTERING OF SEX OF HORSE

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

**PROPOSED REGULATORY ACTION**

The Board proposes to amend Rule 1865, Altering of Sex of Horse. The proposed amendment modifies subsection 1865(e)(1) to remove the \$1,000 minimum fine specifically levied on a trainer if the true sex of the horse he or she has entered to race is not correctly identified in the official program. In place of the minimum \$1,000 fine, subsection 1865(e)(1) will provide that if the true sex of the horse is not identified in the official program, the responsible party may be sanctioned by the stewards. Subsection 1865(e)(2) has been changed to provide that if a horse has started in a race, and then has been altered prior to starting in a subsequent race, the stewards shall declare the horse from the race if the public is not informed of its true sex prior to the opening of wagering for the race in which it is entered. (To “declare” a horse from a race means the horse is removed from the race.) The proposed amendment to Rule 1865 deletes subsections 1865(e)(3) and 1865(e)(3)(A). The deleted subsections are no longer necessary, as the \$1,000 minimum fine under subsection 1865(e)(1) has been eliminated.

**PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, September 27, 2018**, or as soon after that as business before the Board will permit, at the **Los Alamitos Race Course, 4961 Katella Avenue, Los Alamitos, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed actions 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 actions to the Board. The written comment period closes at **5:00 p.m., on September 17, 2018**. 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  
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1010 Hurley way, Suite 300  
Sacramento, CA 95825  
Telephone (916) 263-6026  
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## AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440, 19460 and 19562, Business and Professions Code.  
Reference: Sections 19420, 19562 and 19661, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19460 and 19562 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19420, 19562 and 19661, Business and Professions Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California 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, is vested in the CHRB. 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, but not be limited to, 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 19460 provides that all licenses granted under this chapter are subject to all rules, regulations, and conditions prescribed by the Board. Business and Professions Code section 19562 provides that the Board may prescribe rules, regulations, and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State. Business and Professions Code section 19661 states unless otherwise expressly provided, the Board may impose a monetary penalty of not more than one hundred thousand dollars (\$100,000) for a violation of any of the provisions of this chapter.

It is widely acknowledged within the horseracing industry that gelding has its benefits. While male horses generally are not fully mature until two years of age, they may begin to reach sexual maturity around 12 to 14 months. At a little over one year old, male horses can start to show interest in fillies and become challenging for handlers. Colts can become fractious, fight their handlers, and lose focus if they think a filly is near. As a group, colts tend to be contrary which makes them difficult to train. A colt's behavior may not be safe for horsemen or the horse, and can become more problematic if it injures itself and requires stall rest and controlled exercise for an extended period of time. The injured colt is likely to chafe under the confining regimen.

In addition to behavioral problems, the gelding procedure may have practical health considerations. Sometimes gelding will help the horse lose some weight and keep it sounder. This can be significant because as the male horse matures, testosterone in its system predisposes it to build extra muscle mass and retain more fat; the growth pattern can outstrip the maturity of the horse's joints. Some male horses may have testicular abnormalities. Cryptorchidism, the failure of one or both testes to descend into a normal scrotal position from the abdominal cavity, is an example. Stallions can still produce normal amounts of testosterone. Such horses are called ridglings and should not be used for breeding.

Regardless of the reasons for gelding a racehorse, the proper identification of a gelding is most important to the wagering public when a horse has been gelded between starts. Some believe a gelding's performance improves significantly in the start after the horse has been gelded, because in its un-altered state, the horse might not have been training as well, performing below his ability, and refusing to put out an honest effort. When the true sex of a horse entered to race is not reported, horseplayers claim the misinformation cost them a valuable data point in evaluating the horse for wagering purposes.

Rule 1865 currently provides that a trainer who enters a horse, or who causes a horse to be entered on his behalf, is responsible for ensuring that the true sex of the entered horse is listed on its certificate of registration on file in the racing office. If the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the trainer of the horse shall be subject to a minimum fine of \$1,000. The \$1,000 penalty was added in 2009, as the Board believed it would cause trainers to ensure they were reporting the horse's correct sex at time of entry; however, the errors continued. Unreported geldings were still slipping through the reporting process and the public was not receiving the information in a timely manner. In the calendar years 2016/2017 twelve trainers were fined for violations of Rule 1865. However, the trainer may not always be entirely at fault. Having been informed of a gelding by the trainer, the racing office may fail to notify the stewards. Errors may also occur when a trainer takes on a new owner and receives horses with which he has never worked. The owner may fail to inform the trainer about a recent gelding. The reality of mitigating circumstances is demonstrated by the fact that of the twelve violations of Rule 1865 in the calendar years 2016/2017, ten of the fines levied against trainers were under \$1,000. That means the stewards found there were mitigating circumstances in accordance with subsection 1865(e)(3) and (e)(3)(A).

The proposed amendment to Rule 1865 will remove the trainer's minimum \$1,000 fine from subsection 1865(e)(1). Instead, the subsection will provide that the party responsible for a misidentification of a horse's true sex in the official program may be sanctioned by the stewards. Such sanctions may include a fine, and/or a number of days of suspension of license. The removal of the \$1,000 fine is the result of the Board's determination that declaration of the horse alone is a penalty which renders the fine an unnecessary deterrent. Declaring a horse from a race penalizes the owner and the trainer. From the owner's perspective, there are still costs associated with maintaining the horse, and preparing it to race. In addition, the owner loses any potential purse money the horse may earn. The trainer loses an opportunity to earn a percentage of the purse, and is placed in the position of having to explain, often to an angry and disappointed owner, why the gelding of the horse was not properly reported. The trainer may lose the owner's business to another trainer. If the racing office is the responsible party, it has to explain to the owner and trainer how it failed to report that the horse was gelded since its last start. The proposed change recognizes that such mix-ups are not always the fault of the trainer, and that others may be the responsible parties. The stewards' sanctions may include a fine, or a number of suspension days, or both, depending on the responsible party.

In 2018, Rule 1865 was amended to add subsection 1865(e)(2), which provided that if the true sex of the horse was not reported to the racing office prior to the opening of wagering for the race in which it was entered, the horse would be declared from the race. This provides adequate time for the trainer to inform the racing office about the true sex of the horse, and for the information to be

disseminated to the wagering public. The morning routine on the backside can begin as early as 4:00 a.m. The racing office generally opens at 7:00 a.m., and the totalizator\* begins operating at 8:30 a.m. PST. As the first post time for a race meeting is generally between 12 noon and 2:00 p.m., the racing office will have time to inform the stewards of the true sex of the horse. (\*The totalizator is an automated system of wagering on races that dispenses and records wagering tickets, calculates and displays odds and payoffs. It also provides for cashing winning tickets.) The 2018 amendment was meant to protect the wagering public against instances where it learns, after placing wagers, that a horse has been gelded. That is exactly the effect of the provision. However, for the wagering public, information regarding gelding is only considered critical if the horse has previously run in a race in an unaltered state. A horse that has never run in a race has no “past performance” statistics on which to base a wager, so gelding is not as much of an issue. The proposed amendment to subsection 1865(e)(2) is meant to acknowledge the fact that information regarding gelding is material when, having started in any race, the horse is subsequently altered, and the public is not informed of the true sex of the horse prior to the opening of wagering for the race in which the horse is entered. Because they are starting their racing career as geldings, the proposed amendment provides a break for horses that have never run. Declaring the horse that has previously run in a race protects the wagering public and provides an additional incentive for responsible parties to pay attention to the information provided to the racing office. Depending on the types of wagers they placed, persons who selected the horse that is scratched will have their wagers cancelled and refunded, or their selections replaced by the favorite or by an alternate they designated at the time they made their wagers. Trainers will have an incentive to pay close attention to their entries, as scratching the horse precludes any possibility of earning a share of the purse. In addition, the responsible parties may be sanctioned by the stewards. The racing office will have incentive to ensure it keeps the stewards informed of any changes, as it may be subject to sanctions.

## POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

Board Rule 1865 requires that any alteration of the sex of a horse from the sex as recorded on the certificate of foal registration or the eligibility certificate or other official registration certificate of the horse shall be reported to the racing secretary and the official horse identifier if the horse is entered to race at any race meeting. The primary purpose of the regulation is to ensure that the public has full and correct information regarding horses entered in a race. The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible parties may be sanctioned by the stewards. The proposed amendment deletes the trainer’s \$1,000 minimum fine under subsection 1865(e)(1), as the Board determined that withdrawal of the horse alone is a penalty which renders the fine an unnecessary deterrent. The proposed amendment amends subsection 1865(e)(2) to provide that if, having started in a race, the sex of the horse has been altered, and the public is not informed of the true sex of the horse, prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race.

The proposed amendments to Rule 1865 benefits California’s horsemen and the public by providing an additional incentive to ensure that any alteration to the sex of a horse is reported as required under Rule 1865. Full information regarding the condition of a horse entered to race helps level the playing field for horsemen and provides valuable information to the wagering

public. Full, accurate disclosure regarding horses entered to race assists the industry in providing transparency, which is essential in maintaining the integrity of the sport. The proposed amendment is consistent with current Board regulations in that the trainer is responsible for the condition of the horse entered to race, and the stewards have general authority and supervision over all licensees and other persons attendant on horses. The proposed amendment does not protect public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in government. The regulation promotes transparency in business by requiring that the true sex of the horse entered to race is disclosed to the public.

## CONSISTENCY EVALUATION

During the process of developing the amendment to Rule 1865, the CHRB has conducted a search of any similar regulations on this topic. Rule 1865 is the only regulation dealing with the alteration of the sex of a horse. Therefore, the Board has concluded that the regulation is neither inconsistent nor incompatible with existing state regulations.

## DISCLOSURES 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 cost or savings imposed upon local agencies: none.

Cost or savings in federal funding to the state: none.

The Board has made an initial determination that the proposed amendment of Rule 1865 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.

## 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 amendment will provide consistency and clarity with regards to the necessity for disclosing the true sex of a horse entered to race, and the consequences if such disclosure is not accomplished prior to the opening of wagering for the race in which the horse is entered. The proposed amendment will protect the interests of California horsemen and the public by ensuring full disclosure and transparency regarding the condition of horses entered to race.

The proposed amendment to Rule 1865 will impact horsemen, or other responsible parties, who fail to report any alteration of the sex of a horse entered to race. However, the net economic effect of the proposed amendment will be neutral. Scratching a horse simply means the horse will not be running in the race. In most instances, wagers on a scratched horse will be refunded. In multi-race wagers, such as a Pick-4 or Pick-6, the scratched horse will be replaced with the favorite (some wagers allow the patron to designate alternate wagering interests).

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 actions.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1865 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; (4) impact the state's environment; (5) impact worker safety.

Effect on small businesses: none. The proposal to amend Rule 1865 does 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 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.

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  
Fax: (916) 263-6022  
E-Mail: [haroldc@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

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

#### AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting 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 regulation. Requests for copies of any modified regulations 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 FINAL STATEMENT OF REASONS

Requests for copies of the final statement of reasons, which will be available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of 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 web site. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. The Board's website address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

#### INITIAL STATEMENT OF REASONS

#### RULE 1865. ALTERING OF SEX OF HORSE



## SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1865, Altering of Sex of Horse. The proposed amendment to Rule 1865 modifies subsection 1865(e)(1) by deleting the trainer's \$1,000 minimum fine, and instead providing that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The proposed amendment also modifies subsection 1865(e)(2) to provide that if, having started in any race, the sex of a horse is altered, and the public is not informed of the true sex of the horse prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. (To "declare" a horse from a race means the horse is removed from the race.) Subsections 1865(e)(3) and (e)(3)(A) have been stricken from the regulation, as the trainer's \$1,000 minimum fine has been removed from subsection 1865(e)(1).

## PROBLEM

Rule 1865 currently provides that a trainer who enters a horse, or who causes a horse to be entered on his behalf, is responsible for ensuring that the true sex of the entered horse is listed on its certificate of registration on file in the racing office. If the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the trainer of the horse shall be subject to a minimum fine of \$1,000. Despite concerted efforts by the CHRB and racing officials, violations of Rule 1865 continue – usually because the trainer fails to notify the racing office that a horse has been gelded. However, the trainer may not always be entirely at fault. Having been informed of a gelding by the trainer, the racing office may fail to notify the stewards. Errors may also occur when a trainer takes on a new owner and receives horses with which he has never worked. The owner may fail to inform the trainer about a recent gelding. Under the current version of Rule 1865, the stewards may deviate from the \$1,000 minimum fine if they find such mitigating circumstances. Evidence that mitigating circumstances are often found is demonstrated by the fact that of the 12 violations of Rule 1865 in the calendar years 2016/2017, 10 of the fines levied against trainers were under \$1,000. That means the stewards found there were mitigating circumstances in accordance with subsection 1865(e)(3) and (e)(3)(A). The proposed amendment to Rule 1865 recognizes that errors in reporting the true sex of horses entered to race are not always the fault of the trainer, and that others may be the responsible parties.

Subsection 1865(e)(2) is meant to protect the wagering public against instances where it learns, after placing wagers, that a horse has been gelded. That is exactly the effect of the provision. However, for the wagering public, information regarding gelding is only considered critical if the horse has previously run in a race in an unaltered state. A horse that has never run in a race has no "past performance" statistics on which to base a wager, so gelding is not as much of an issue. The proposed amendment to subsection 1865(e)(2) is meant to acknowledge the fact that information regarding gelding is material when, having started in any race, the horse is subsequently altered, and the public is not informed of the true sex of the horse prior to the opening of wagering for the race in which the horse is entered. Because they are starting their racing career as geldings, the proposed amendment provides a break for horses that have never run. Declaring the horse that has previously run in a race protects the wagering public and provides an additional incentive for responsible parties to pay attention to the information provided to the racing office.

## NECESSITY

Rule 1865 provides that a trainer who enters a horse, or who causes a horse to be entered on his behalf, is responsible for ensuring that the true sex of the entered horse is listed on its certificate of registration on file in the racing office. If the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the trainer of the horse shall be subject to a minimum fine of \$1,000. Such infractions usually occur because the trainer fails to notify the racing office that a horse has been gelded. However, the fault may not always be entirely with the trainer. For example, after being informed of a gelding by the trainer, the racing office may fail to notify the stewards. Errors may also occur when a trainer takes on a new owner and receives horses with which he has never worked. The owner may fail to inform the trainer about a recent gelding. Under the current version of Rule 1865, the stewards may deviate from the \$1,000 minimum fine if they find such mitigating circumstances. The reality of mitigating circumstances is demonstrated by the fact that of the 12 violations of Rule 1865 in the calendar years 2016/2017, ten of the fines levied against trainers were under \$1,000. That means the stewards found there were mitigating circumstances in accordance with subsection 1865(e)(3) and (e)(3)(A). The proposed amendment to Rule 1865 recognizes that errors in reporting the true sex of horses entered to race are not always the fault of the trainer, and that others may be the responsible parties. Subsection 1865(e)(1) has been modified to delete the trainer's \$1,000 minimum fine. Instead, the subsection has been changed to state that the responsible party may be sanctioned by the stewards. The removal of the \$1,000 fine is the result of the Board's determination that declaration of the horse alone is a penalty which renders the fine an unnecessary deterrent. Declaring a horse from a race penalizes the owner and the trainer. From the owner's perspective, there are still costs associated with maintaining the horse, and preparing it to race. In addition, the owner loses any potential purse money the horse may earn. The trainer loses an opportunity to earn a percentage of the purse, and is placed in the position of having to explain, often to an angry and disappointed owner, why the gelding of the horse was not properly reported. The trainer may lose the owner's business to another trainer. If the racing office is the responsible party, it has to explain to the owner and trainer how it failed to report that the horse was gelded since its last start. The proposed amendment of subsection 1865(e)(1) recognizes that such mix-ups are not always the fault of the trainer, and that others may be the responsible parties. The stewards' sanctions may include a fine, or a number of suspension days, or both, depending on the responsible party.

Subsections (e)(3) states that deviation from the minimum fine is appropriate if the trainer can demonstrate mitigating circumstances. Subsection (e)(3)(A) provides an example of mitigating circumstances. With the repeal of the minimum fine under subsection (e)(1), subparagraphs (e)(3) and (e)(3)(A) are no longer necessary.

There are a number of reasons racehorses are gelded, and the practice is generally considered beneficial. Male horses are not fully mature until two years of age, however they may begin to reach sexual maturity around 12 to 14 months. A yearling colt can start to show interest in fillies and become challenging for handlers. Colts can become fractious, fight their handlers, and lose focus if they think a filly is near. As a group, colts tend to be contrary which makes them difficult to train. A colt's behavior may not be safe for horsemen or the horse, and can become more problematic if it injures itself and requires stall rest and controlled exercise for an extended period

of time. The injured colt is likely to chafe under the confining regimen. In addition to behavioral problems, the gelding procedure may have practical health considerations. Additionally, not all racehorses are fit for breeding. Only a small percentage of racehorses have the stellar blood lines necessary to retire and earn stud fees.

Regardless of the reasons for gelding a racehorse, the proper identification of a gelding is most important to the wagering public when a horse has been gelded between starts. Some believe a gelding's performance improves significantly in the start after the horse has been gelded. This is because in its un-altered state the horse might not have been training as well and performing below his ability, refusing to put out an honest effort. When the true sex of a horse entered to race is not reported, horseplayers claim the misinformation cost them a valuable data point in evaluating the horse for wagering purposes. Conversely, gelding is not necessarily an issue in horses that have never raced. A horse that has never run in a race has no "past performance" statistics on which to base a wager.

The proposed amendment to Rule 1865 amends subsection 1865(e)(2). The amended subsection provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed of the true sex of the horse prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. Subsection 1865(e)(2) sets a reporting deadline of the opening of wagering for the race in which the horse is entered. The deadline provides adequate time for the trainer to inform the racing office about the true sex of the horse, and for the information to be disseminated to the wagering public. The morning routine on the backside can begin as early as 4:00 a.m. The racing office generally opens at 7:00 a.m., and the totalizator\* begins operating at 8:30 a.m. PST. As the first post time for a race meeting is generally between 12 noon and 2:00 p.m., the racing office will have time to disseminate the true sex of the horse. (\*The totalizator is an automated system of wagering on races that dispenses and records wagering tickets, calculates and displays odds and payoffs. It also provides for cashing winning tickets.) Declaring the horse from the race will provide some relief for the wagering public and an additional incentive for trainers to pay attention to the information provided to the racing office. Depending on the types of wagers they placed, persons who selected the horse that is declared will have their wagers cancelled and refunded, or their selections replaced by the favorite or by an alternate they designated at the time they made their wagers. Trainers will have an incentive to pay close attention to their entries, as declaring the horse precludes any possibility of earning a share of the purse. Because they are starting their racing career as geldings, subsection 1865(e)(2) does not penalize horses that are making their first start. Only the horse that has been gelded between starts, and whose true sex is not made public, will be declared from the race.

## BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1865 benefits California's horsemen and the public by providing an additional incentive to ensure that any alteration to the sex of a horse is reported as required under Rule 1865. Full information regarding the condition of a horse entered to race helps level the playing field for horsemen and provides valuable information to the wagering public. Full, accurate disclosure regarding horses entered to race assists the industry in providing transparency, which is essential in maintaining the integrity of the sport. The proposed amendment is consistent with current Board regulations in that the trainer is responsible for the condition of the horse

entered to race, and the stewards have general authority and supervision over all licensees and other persons attending horses. The proposed amendment does not protect public health and safety, worker safety, or the environment, the prevention of discrimination, the promotion of fairness or social equity, and the increase in openness and transparency in government. The regulation promotes transparency in business by requiring that the true sex of the horse entered to race is disclosed to the public.

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

The Board did not rely on any technical, theoretical, and/or empirical study, reports or documents in proposing the amendment to Rule 1865.

#### 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 eliminate jobs within the State of California, or the creation of new businesses or the elimination of existing business or the expansion of businesses in California.
- The proposed amendment to Rule 1865 will not impact the creation of new businesses or eliminate existing businesses in California.
- Rule 1865 will not impact the expansion of businesses currently doing business in California.
- The proposed regulation will not benefit the health and welfare of California residents or benefit the State's environment.

The Board has made an initial determination that the proposed amendment to Rule 1865 will not have a significant statewide adverse economic impact directly affecting business including the ability of California business to compete with businesses in other states. The proposed amendment to Rule 1865 modifies subsection 1865(e)(1). The subsection provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. Subsection 1865(e)(2) has also been modified to provide that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The possibility of stewards' sanctions, and the declaration of the horse from the race will provide relief for the wagering public and an additional incentive for trainers to pay attention to the information provided the racing office. The proposed amendment deals with the proper reporting of the true sex of a horse entered to race, and is meant to help ensure that the horseracing public is fully informed.

#### PURPOSE

The proposed amendment to Rule 1865 modifies subsection 1865(e)(1). The subsection provides that if the true sex of a horse is not correctly identified in the official program for the race in which

the horse is entered, the responsible party may be sanctioned by the stewards. Subsection 1865(e)(2) has also been modified to provide that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The possibility of stewards' sanctions, and the declaration of the horse from the race will provide relief for the wagering public and an additional incentive for trainers to pay attention to the information provided the racing office. The proposed amendment is meant to help ensure that the horseracing public is fully informed regarding the true condition of horses entered to race.

#### CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The regulation also provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The proposed amendment will not affect the creation or elimination of jobs within the State of California, as it deals with the proper reporting of the true sex of a horse entered to race.

#### CREATION OF NEW OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The regulation also provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The proposed amendment will not affect the creation or elimination of existing businesses within the State of California, as it deals with the proper reporting of the true sex of a horse entered to race.

#### EXPANSION OF BUSINESSES OR ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The regulation also provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The proposed amendment will not affect the elimination of existing businesses within the State of California, as it deals with the proper reporting of the true sex of a horse entered to race.

#### INITIAL DETERMINATION

The Board has made an initial determination that the proposed amendment to Board Rule 1865 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 amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The regulation also provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race.

#### **BENEFITS OF THE REGULATION TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT**

The proposed amendment to Rule 1865 provides that if the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, the responsible party may be sanctioned by the stewards. The regulation also provides that if, having started in any race, the sex of the horse has been altered, and the public is not informed prior to the opening of wagering for the race in which the horse is entered, the stewards shall declare the horse from the race. The proposed amendment will provide consistency and clarity with regards to the requirement that the true sex of a horse entered to race be reported to the public.

Based on the above facts detailed in the Economic Impact Analysis, the Board has made an initial determination that the proposed amendment to Board Rule 1865 will not have a significant statewide adverse economic impact directly affecting business including the ability of California business to compete with businesses in other states. The proposed regulation will not benefit the health and welfare of California residents. The proposed regulation will 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 there were no alternatives considered which would be more effective in carrying out the purposes of the proposed regulation or would be more effective and less burdensome to affected private persons or businesses than the proposed regulation.

#### **REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION**

The proposed amendment to Rule 1865 was discussed at the April 19, 2018 Regular Board Meeting. The Board voted to instruct staff to prepare a Notice of Proposed Action. 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  
August 3, 2018

#### **CALIFORNIA HORSE RACING BOARD TITLE 4. CALIFORNIA CODE OF REGULATIONS ARTICLE 15. VETERINARY PRACTICES PROPOSED AMENDMENT OF**

## RULE 1865. ALTERING OF SEX OF HORSE

### 1865. Altering of Sex of Horse.

(a) Any alteration to the sex of a horse from the sex as recorded on the certificate of foal registration or the eligibility certificate or other official registration certificate of the horse shall be reported to the racing secretary and the official horse identifier if the horse is entered to race at any race meeting.

(b) If a racehorse is gelded or castrated on the premises of a licensed racing association, or other facility under the jurisdiction of the Board, the trainer shall report the alteration within 72 hours.

(c) If a racehorse is gelded or castrated off the premises of a licensed racing association, or other facility under the jurisdiction of the Board, and the horse has been previously entered to race at any race meeting in this State, the owner and/or trainer shall report the alteration at the time the horse is next entered to race.

(d) A report of gelding or castration will include the name of the veterinarian performing the alteration and the date of the alteration, and shall be recorded on the official registration certificate and the official horse identification record of the horse.

(e) A trainer who enters a horse, or who causes a horse to be entered on his behalf, is responsible for ensuring that the true sex of the entered horse is listed on its certificate of registration on file in the racing office.

(1) If the true sex of a horse is not correctly identified in the official program for the race in which the horse is entered, ~~the responsible party may be sanctioned by the stewards-trainer of the horse shall be subject to a minimum fine of \$1,000.~~

(2) If, having previously started in any race, the sex of the horse has been altered and the public is not informed of the true sex of the a-horse is not reported to the racing office prior to the opening of wagering for a subsequent ~~the~~ race in which the horse is entered, the stewards shall declare the horse from the race.

(3) ~~Deviation from the minimum fine in subsection (e)(1) of this regulation is appropriate if the trainer can demonstrate mitigating circumstances. Mitigating circumstances may include, but are not limited to:~~

~~(A) Errors made by other parties in recording information correctly provided by the trainer.~~

Authority: Sections 19420, 19440, 19460 and 19562,  
Business and Professions Code.

Reference: Sections 19420, 19562 and 19661,  
Business and Professions Code.