

**STATE OF CALIFORNIA  
OFFICE OF ADMINISTRATIVE LAW**

In re:

CALIFORNIA HORSE  
RACING BOARD

REGULATORY ACTION:  
Title 4, California Code of  
Regulations  
AMEND SECTION 1689.1

DECISION OF DISAPPROVAL  
OF REGULATORY ACTION

(Gov. Code, sec. 11349.3)

OAL File No. 2015-0305-01S

**SUMMARY OF REGULATORY ACTION**

The California Horse Racing Board (Board) proposed to amend section 1689.1, Safety Vest Required, of title 4 of the California Code of Regulations. The proposed amendment would provide that no pony rider shall pony or lead a horse or be mounted on a horse on the grounds of a racing association, racing fair, or authorized training facility unless wearing a safety vest. On March 5, 2015, the Board submitted the proposed amendment to the Office of Administrative Law (OAL) for review in accordance with the Administrative Procedure Act (APA). On April 7, 2015, OAL sent a Notice of Disapproval of the proposed regulatory action. This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

**DECISION**

OAL disapproved the above referenced regulatory action for failure to comply with the "clarity" standard of Government Code section 11349.1.

**DISCUSSION**

The adoption of regulations by the Board must satisfy requirements established by the part of the California Administrative Procedure Act that governs rulemaking by a state agency. Any regulation adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure,

is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.)

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the procedural requirements of the APA and for compliance with the standards for administrative regulations in Government Code section 11349.1. Generally, to satisfy the standards a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency with regard to the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

OAL is mandated to review each regulation adopted pursuant to the APA to determine whether the regulation complies with the “clarity” standard. (Gov. Code, sec. 11349.1(a)(3).) “Clarity” as defined by Government Code section 11349(c) means “...written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them.”

The Board proposed in this rulemaking to add the following provision to section 1689.1, entitled “Safety Vests Required,” of title 4 of the California Code of Regulations:

No pony rider shall pony or lead a horse or be mounted on a horse on the grounds of a racing association, racing fair, or authorized training facility unless wearing a safety vest

The term “pony rider” is not defined anywhere in statute or regulation. However, the Initial Statement of Reasons prepared by the Board as part of this rulemaking describes who pony riders are:

...Pony riders are individuals who ride a calm horse to lead the race horse to the track. Some of the pony riders’ duties can include diverting riders from another rider involved in an accident on the track, riding after a runaway horse to help a ride regain control, leading a racehorse to the paddock or receiving barn after a race, helping horse ambulance workers take away wounded horses from the track, and grooming and feeding racehorses.

While pony riders are not exposed to the dangers of a race, they are subject to the rigors of handling powerful animals, which may result in injury. The amendment to Rule 1689.1 will serve to provide those pony riders who pony, lead, or who are mounted on a racehorse on the track with an additional measure of personal safety.

The Board requires in section 1481 of title 4 of the California Code of Regulations that any person acting in the capacity of a “pony rider” shall obtain a license to do so and pay a required fee:

No person required to be licensed shall participate or attempt to participate in a race meeting without holding a valid license authorizing that participation.

(a) A person acting in any capacity within the restricted area of an inclosure, simulcast facility or auxiliary stabling area shall procure the appropriate license(s) and pay the fee required.

(b) A person acting in any of the following capacities shall procure the appropriate license(s) and pay the fee required:

- ...
- (4) Trainer, Assistant Trainer, Driver, Jockey, Apprentice Jockey, Jockey Agent \$150
- ...
- (10) ) Exercise Rider, **Pony Rider**, Outrider \$75
- .... (Emphasis added.)

An extensive discussion occurred at the June 19, 2014 public adoption hearing during which a number of views were expressed by members of the public as well as the Board as to whether and to what extent the proposed regulation might apply to trainers. After the discussion, a motion to adopt the proposed regulation was made and seconded, but the subsequent vote was held up by a commissioner who wanted to verify that the new provision applied to “...everybody that’s on the track....” At that point another commissioner questioned whether it applied to trainers. The question was then referred to counsel who stated that the new provision applied to “...anyone riding a pony....” The Board Chairman then stated that “...the intent was everybody who is on a horse on the race track should be wearing a vest.” (See transcript of June 19, 2014 Public Hearing, pp. 102-112.) Immediately thereafter, the vote on the motion to adopt the proposed regulation was held and the motion passed. The Final Statement of Reasons prepared by the Board as part of this rulemaking states that the Board agreed with the statement of the Chairman and that the regulation was adopted as noticed.

Subdivision (a) of section 16 of title 1 of the California Code of Regulations provides in part:

In examining a regulation for compliance with the “clarity” requirement of Government Code section 11349.1, OAL shall apply the following standards and presumptions:

- (a) A regulation shall be presumed not to comply with the “clarity” standard if any of the following conditions exists:
  - (1) the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning; or
  - (2) the language of the regulation conflicts with the agency’s description of the effect of the regulation: or

....

The language of the regulation that no “pony rider” shall pony or lead a horse unless wearing a safety vest appears to conflict with the agency’s description of the effect of the regulation at the adoption hearing and in the Final Statement of Reasons that “...everybody who is on a horse on the race track should be wearing a vest.” Alternatively, if the language of the regulation is interpreted to read as described at the adoption hearing and in the Final Statement of Reasons, it would have to be said that the regulation can, on its face, be reasonably and logically interpreted to have more than one meaning. For this reason, the proposed regulation is presumed not to comply with the “clarity” standard of Government Code section 11349.1 either under subdivision (a)(1) or under subdivision (a)(2) of section 16 of title 1 of the California Code of Regulations. In any event, a person directly affected by this regulation would not easily understand from the proposed language whether a safety vest is required for anyone other than those persons required by the Board to obtain a license as a “pony rider” pursuant to subdivision (b)(10) of section 1481 of title 4 of the California Code of Regulations. For this reason the regulation fails to meet the “clarity” standard of Government Code section 11349.1.

Changes made to the regulation to correct the above-described clarity problem must be made available to the public pursuant to section 44 of title 1 of the California Code of Regulations for at least 15 days as required by subdivision (c) of Government Code section 11346.8 prior to adoption by the Board.

**CONCLUSION**

For the reasons set forth above, OAL has disapproved this regulatory action. If you have any questions, please contact me at (916) 323-6808.

Date: April 10, 2015

/s/ Craig Tarpenning

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Director

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