CALIFORNIA HORSE RACING BOARD - RULES NOTICED TO THE PUBLIC:

NOTICE OF PROPOSAL TO AMEND
RULE 1606. COUPLING OF HORSES

The California Horse Racing Board (Board) 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 1606, Coupling of Horses, to delete subsection 1606(b)(2), which requires thoroughbred horses exempted from coupling requirements under subsection 1606(b) to be trained by a different trainer.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Wednesday, August 19, 2009**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Race Place, 2260 Jimmy Durante Boulevard, Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on August 10, 2009**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulation Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
Fax: (916) 263-6022
E-Mail: haroldc@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440 and 19590, Business and Professions Code. Reference: Section 19401, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19590 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific section 19401, Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 states 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 Board. 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 19590 states the Board shall adopt rules governing, permitting, and regulating pari-mutuel wagering on horse races under the system known as the pari-mutuel method of wagering. Business and Professions Code section 19401 states the intent of this chapter is to allow pari-mutuel wagering on horse races, while: assuring protection of the public; encouraging agriculture and breeding of horses in California; supporting the network of California fairs; providing for maximum expansion of horse racing opportunities in the public interest; providing uniformity of regulation for each type of horse racing.

The Board proposes to amend Rule 1606 to delete subsection 1606(b)(2) which requires that thoroughbred horses be trained by different trainers to qualify for a coupling exemption under subsection 1606(b). The deletion of subsection 1606(b)(2) will result in the exemption from coupling requirements of thoroughbred horses if the thoroughbred horses are owned by different partnerships whose composition are not mirror images, and there is at least one partner who has an ownership interest in each of the partnerships. The thoroughbred horses would no longer have to be trained by different trainers.

In 2006 the Board examined the practice of coupling horses as a single wagering interest when the same person or persons owned them in whole or in part. Coupling became an issue when some within the industry expressed dissatisfaction with the possibility that a fan that wagers on a coupled entry consisting of a favorite and a mediocre horse would be left with a wager on the lesser horse if the favorite were scratched. They also argued that owners do not have as much influence as trainers on horse races, so it did not make sense to couple horses owned by the same owners if horses trained by the same trainer were not coupled. The elimination of coupling was seen as one possible solution to these issues. At a Special Teleconference Meeting on May 15, 2006, the Board determined it would test the hypothesis, so it enacted Rule 1406, Suspension of Rule, and temporarily suspended Rule 1606 at two thoroughbred race meetings. The suspension of Rule 1606 was later extended to include the quarter horse meeting at Los Alamitos Race Track. As a condition of the suspension of Rule 1606 the Board requested that the racing associations participating in the experiment keep track of the number of times horses were uncoupled, and the effect of uncoupling on the handle. At the end of the temporary suspension the participating racetracks reported their numbers were not sufficient to support a conclusion. Only a few dozen races qualified for the uncoupling experiment (There had to be five or more racing interests in a race before uncoupling could occur). In races where uncoupling did occur, there was a slight increase in handle due to more wagering interests.

In June 2007 Rule 1606 was amended to exempt quarter horse races from the regulation's coupling requirements.

In November 2008 Rule 1606 was amended to allow the uncoupling of two or more thoroughbred horses entered in the same race that are owned by different partnerships whose composition are not mirror images, but where at least one partner has ownership interest in each partnership, and a different trainer trained each horse.

The proposed amendment to Rule 1606 will remove the requirement that a different trainer trains each thoroughbred horse that is uncoupled under the provisions of subsection 1606(b). This will allow the uncoupling of two or more thoroughbred horses entered in the same race that are owned by different partnerships whose composition are not mirror images, but where at least one partner has an ownership interest in each partnership. Under the proposed amendment different trainers, or the same trainer may train the thoroughbred horses. This is in keeping with current practice, as unless the horses fall under the provisions of subsection 1606(b), only ownership interests can trigger coupling. Thoroughbred horses trained by the same trainer, but owned by different (individual) owners, are currently not required to be coupled.

DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code section 17500 through 17630: none.

Other non-discretionary costs or savings imposed upon local agencies: none.

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

The Board has made an initial determination that the proposed amendment of Rule 1606 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.

Cost impact on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment of Rule 1606 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: none. The proposal to amend Rule 1606 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 must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome on affected private persons than the proposed action.

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) 263-6397
E-mail: haroldc@chrb.ca.gov

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

Andrea Ogden, Regulation Analyst
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its offices at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the 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 STATEMENT OF REASONS:

Requests for copies of the final statement of reasons, which will be made available after the Board has adopted the proposed regulation in its current or modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's web site address is: www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS

RULE 1606. COUPLING OF HORSES.
SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment to Rule 1606 would delete subsection 1606(b)(2). This would mean that thoroughbred horses that are owned by different partnerships whose composition are not mirror images, but there is at least one partner who has an ownership interest in each of the partnerships, would not have to be coupled if the horses are trained by the same trainer. A different trainer, or the same trainer could train each thoroughbred horse, and the horses could be qualified under subsection 1606(b) for an exemption to coupling requirements of Rule 1606.

NECESSITY

The proposed amendment to Rule 1606 will delete subsection 1606(b)(2). This will allow the uncoupling of two or more thoroughbred horses entered in the same race that are owned by different partnerships whose composition are not mirror images, but where at least one partner has ownership interest in each partnership. The requirement that a different trainer train each horse would no longer apply. The proposed amendment brings uncoupling of horses owned by partnerships that fall under the provisions of subsection 1606(b) in line with current practice regarding uncoupling of horses that are owned by individuals. With individual ownership the factor that triggers coupling is one person owning two or more horses entered in the same race; the trainer does not figure into the equation. The Board determined that requiring different trainers to train horses that may fall under the uncoupling provisions of subsection 1606(b) was unnecessary, and was hindering the objective of subsection 1606(b), which is to create additional wagering interests to increase field sizes at thoroughbred race meetings in California.

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 of the regulation.

The adoption of Rule 1606 has no significant adverse economic impact on small business.

The adoption of Rule 1606 has no significant adverse economic impact on business.

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.

PROPOSED TEXT

1606. Coupling of Horses.

(a) Two or more horses shall be coupled as a single wagering interest and as an entry when such horses are owned in whole or in part by the same person or persons.

(b) Subsection (a) of this regulation does not apply when two or more thoroughbred horses, each owned by different partnerships whose composition are not mirror images, are entered in the same race, and

(1) There is at least one partner who has an ownership interest in each of the partnerships.~~, and~~

~~(2) Each horse is trained by a different trainer.~~

(c) Quarter horse races are exempt from subsection (a) of this regulation.

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

Reference: Section 19401,
Business and Professions Code.

NOTICE OF PROPOSAL TO AMEND
RULE 1843.6. TOTAL CARBON DIOXIDE TESTING
RULE 1858. TEST SAMPLE REQUIRED

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

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1843.6, Total Carbon Dioxide Testing, and Rule 1858, Test Sample Required of the California Code of Regulations, Title 4, Division 4. The proposed amendment to Rule 1843.6 would add the Equine Medical Director and the stewards to those who may direct a veterinarian licensed by the board or a registered veterinary technician licensed by the Board to collect blood sample(s) from a horse for the purpose of testing for total carbon dioxide concentrations. The proposed amendment to Rule 1843.6 also adds the Equine Medical Director to the list of persons who may select any horse on a facility under the jurisdiction of the Board for total carbon dioxide testing. The proposed amendment to Rule 1858 adds the Equine Medical Director to the list of those who may designate a horse or horses for official blood or urine testing. The proposed amendment to Rule 1858 also states that no owner, trainer or other person having the care of a horse, shall refuse to submit it for testing when directed by the Equine Medical Director.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 17, 2009**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway,**

Berkeley, California. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

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 **November 9, 2009**. All comments must be received by that time at the Board; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-mail: HaroldC@chrb.ca.gov
AUTHORITY AND REFERENCE

Authority cited Rule 1843.6: Sections 19420, 19440, 19580 and 19582.5, Business and Professions Code.
Reference cited Rule 1843.6: Sections 19581 and 19582, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19580 and 19582.5 authorize the board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19581 and 19582, of the Business and Professions Code

Authority cited Rule 1858: Sections 19440, 19562 and 19580, Business and Professions Code.
Reference cited Rule 1858: Section 19580(b), Business and Professions Code. Sections 337f, 337g, and 337h, Penal Code.

Business and Professions Code sections 19440, 19562 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific section 19580(b), Business and Professions Code, and Penal Code sections 337f, 337g, and 337h.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions, 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 19580 states the Board shall

adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines, and penalties shall include, at a minimum, the provisions set forth in this article. Business and Professions Code section 19580(b) states it is the intent of the Legislature that the Board, in its testing efforts to determine illegal or excessive use of substances, recognize the greater importance of conducting complete and thorough testing of a lesser number of samples in preference to conducting less thorough testing on a greater number of samples. Business and Professions Code section 19581 provides that no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. The Board may require that the official veterinarian approve, in writing, the administration of those substances in accordance with the regulations of the Board. Any medication or equipment used to dispense medication that is located within the inclosure is subject to search and inspection at the request of any Board official. Business and Professions Code section 19582 provides that violations of section 19581, as determined by the Board, are punishable as set forth in regulations adopted by the Board. Business and Professions Code section 19582.5 provides that the board may adopt regulations that prohibit the entry in a race of a horse that tests positive for a drug substance in violation of section 19581.

Penal Code section 337f provides that any person who does any of the following is punishable by a fine not exceeding five thousand dollars ($5,000), or by imprisonment in the state prison or in a county jail not exceeding one year, or by both that fine and imprisonment: (1) Influences, or induces, or conspires with, any owner, trainer, jockey, groom, or other person associated with or interested in any stable, horse, or race in which a horse participates, to affect the result of that race by stimulating or depressing a horse through the administration of any drug to that horse, or by the use of any electrical device or any electrical equipment or by any mechanical or other device not generally accepted as regulation racing equipment, or so stimulates or depresses a horse. (2) Knowingly enters any horse in any race within a period of 24 hours after any drug has been administered to that horse for the purpose of increasing or retarding the speed of that horse. (3) Willfully or unjustifiably enters or races any horse in any running or trotting race under any name or designation other than the name or designation assigned to that horse by and registered with the Jockey Club or the United States Trotting Association or willfully sets on foot, instigates, engages in or in any way furthers any act by which any horse is entered or raced in any running or trotting race under any name or designation other than the name or designation duly assigned by and registered with the Jockey Club or the United States Trotting Association. (b) For purposes of this section, the term "drug" includes all substances recognized as having the power of stimulating or depressing the central nervous system, respiration, or blood pressure of an animal, such as narcotics, hypnotics, benzedrine or its derivatives, but shall not include recognized vitamins or supplemental feeds approved by or in compliance with the rules and regulations or policies of the California Horse Racing Board. Penal Code section 337g states the possession, transport or use of any local anaesthetic of the cocaine group, including but not limited to natural or synthetic drugs of this group, within the racing inclosure is prohibited, except upon a bona fide veterinarian's prescription with complete statement of uses and purposes of same on the container. A copy of such prescription shall be filed with the stewards, and such substances may be used only with approval of the stewards and under the supervision of the veterinarian representing the board. Penal Code section 337h states any person who, except for medicinal purposes, administers any poison, drug, medicine, or other noxious substance, to any horse, or other livestock, entered or about to be entered in any race or upon any race course, for competition for prize, reward, purse, premium, stake, sweepstakes, or other reward, or who exposes any poison, drug, medicine, or noxious substance, with intent that it shall be taken, inhaled, swallowed, or otherwise received by any of these animals or other livestock, with intent to impede or affect its speed, endurance, sense, health, physical condition, or other character or quality, or who causes to be taken by

or placed upon or in the body of any of these animals or other livestock, entered or about to be entered in any race or competition described in this section any sponge, wood, or foreign substance of any kind, with intent to impede or affect its speed, endurance, sense, health, or physical condition, is guilty of a misdemeanor.

Rule 1843.6, subsection (a), provides that the official veterinarian may direct a veterinarian licensed by the Board or a registered veterinary technician licensed by the Board to collect blood sample(s) from a horse for the purpose of testing for total carbon dioxide (TCO_2) concentrations. In addition, subsection 1843.6(b) states that the stewards or the official veterinarian may select any horse on a facility under the jurisdiction of the Board for TCO_2 testing. However, the Board recognizes that the official veterinarian is not the only racetrack official who may have a reason to direct that blood samples be collected for the purpose of TCO_2 testing. There may be occasions when the stewards or the Board's Equine Medical Director have cause to direct that blood samples be collected, or that the Equine Medical Director may wish to select a horse or horses for such testing. The Board has determined that it wishes to add the Equine Medical Director and the stewards to those who are authorized to direct the collection of blood samples for the purpose of TCO_2 testing, and to add the Equine Medical Director as one who may select a horse or horses for TCO_2 testing. The proposed amendment to Rule 1843.6 clarifies the Board's intent regarding officials who can take such actions under Rule 1843.6.

Rule 1858 provides that the stewards or the official veterinarian shall daily designate for testing not less than six or more than nine horses. In addition, Rule 1858 states that every horse within the inclosure or entered in any race is subject to testing when directed by the stewards or the official veterinarian. The Board has determined that it wishes to add the Equine Medical Director to those who are authorized to designate any of the six to nine horse that are daily chosen for testing, or to direct that a horse within the inclosure or entered in any race be tested. The proposed amendment to Rule 1858 clarifies the Board's intention with regards to whom it wishes to have such authority under the regulation.

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 Section 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 to Rule 1843.6 and 1858 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.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1843.6 and 1858 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: none. The proposal to amend Rule 1843.6 and 1858 does not have an effect on small businesses because it does not apply to small businesses. The Rules list officials who may direct that official blood and urine tests samples be taken from horses entered to race or from horses on the grounds of a facility under the jurisdiction of the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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 PERSONS

Inquiries concerning the substance of the proposed action and requests for copies of the proposed texts of the regulations, the initial statement of reasons, the modified texts of the regulations, if any, and other information upon which the rulemaking is based should be directed to

Harold Coburn, Regulation Analyst
California Horse Racing Board
Policy and Regulation Unit
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

If the person named above is not available, interested parties may contact:
Colleen Germek, Regulation Analyst
Telephone: (916) 274-6049

AVAILABILITY OF 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 office, 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 texts of the regulations, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person, at the address, phone numbers, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed texts, the modified texts – with changes clearly marked – shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations should be sent to the attention of Harold Coburn at the address stated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are 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 regulations in their current or in a modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB SITE 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 the notice, the proposed texts of the regulations, and the initial statement of reasons. The Board's web site address is www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS

RULE 1843.6, TOTAL CARBON DIOXIDE TESTING
RULE 1858, TEST SAMPLE REQUIRED

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1843.6, Total Carbon Dioxide Testing, and Rule 1858, Test Sample Required. The proposed amendment to Rule 1843.6 adds the Equine Medical Director and the stewards to those who may direct a veterinarian licensed by the board or a registered veterinary technician licensed by the Board to collect blood sample(s) from a horse for the purpose of testing for total carbon dioxide concentrations. The proposed amendment to Rule 1843.6 also adds the Equine Medical Director to the list of persons who may select any horse on a facility under the jurisdiction of the Board for total carbon dioxide testing. The proposed amendment to Rule 1858 adds the Equine Medical Director to the list of those who may designate a horse or horses for official blood or urine testing. The proposed amendment to Rule 1858 also states that no owner, trainer or other person having the care of a horse, shall refuse to submit it for testing when directed by the Equine Medical Director.

NECESSITY

Rule 1843.6, subsection (a), provides that the official veterinarian may direct a veterinarian licensed by the Board or a registered veterinary technician licensed by the Board to collect blood sample(s) from a horse for the purpose of testing for total carbon dioxide (TCO_2) concentrations. In addition, subsection 1843.6(b) states that

the stewards or the official veterinarian may select any horse on a facility under the jurisdiction of the Board for TCO_2 testing. However, the Board recognizes that the official veterinarian is not the only official who may have a reason to direct that blood samples be collected for the purpose of TCO_2 testing. There may be occasions when the stewards or the Board's Equine Medical Director have cause to direct that blood samples be collected, or that the Equine Medical Director may wish to select a horse or horses for such testing. The Board has determined that it wishes to add the Equine Medical Director and the stewards to those who are authorized to direct the collection of blood samples for the purpose of TCO_2 testing, and to add the Equine Medical Director as one who may select a horse or horses for TCO_2 testing. The proposed amendment to Rule 1843.6 clarifies the Board's intent regarding officials who can take such actions under Rule 1843.6.

Rule 1858 provides that the stewards or the official veterinarian shall daily designate for testing not less than six or more than nine horses. In addition, Rule 1858 states that every horse within the inclosure or entered in any race is subject to testing when directed by the stewards or the official veterinarian. The Board has determined that it wishes to add the Equine Medical Director to those who are authorized to designate any of the six to nine horse that are daily chosen for testing, or to direct that a horse within the inclosure or entered in any race be tested. The proposed amendment to Rule 1858 clarifies the Board's intention with regards to whom it wishes to have such authority under the regulation.

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 of the regulation.

The amendment of Rule 1843.6 and Rule 1858 has no significant adverse economic impact on small business.

The amendment of Rule 1843.6 and Rule 1858 has no significant adverse economic impact on business.

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 regulations or would be more effective and less burdensome to affected private persons or businesses than the proposed regulations.

PROPOSED TEXT AMENDMENT

1843.6. Total Carbon Dioxide Testing.

(a) At the direction of the <u>Equine Medical Director, the stewards or the</u> official veterinarian, a veterinarian licensed by the Board or a registered veterinary technician licensed by the Board may collect blood sample(s) from a horse for the purpose of testing for total carbon dioxide (TCO_2) concentrations. Such blood sample(s) shall be collected under the provision of Rule 1859 of this article, and may be collected pre-race or post-race.

(1) The owner or trainer of a horse selected for testing may request that a duplicate sample be taken. Such request shall be made prior to the collection of the official sample. The costs related to obtaining,

handling, shipping and analyzing the duplicate sample shall be the responsibility of the owner or trainer who requested such sample.

(2) If the Board in its discretion determines the duplicate sample cannot be analyzed within five days after the sample is collected, the findings of the official sample shall be final.

(b) Any horse on a facility under the jurisdiction of the Board may be selected by the Equine Medical Director, the stewards or the official veterinarian for TCO_2 testing.

(c) Any owner, trainer, or other person responsible for a horse, who refuses or fails to permit the taking of test sample(s) from such horse shall be deemed in violation of Rule 1930 of this division and shall have the horse declared ineligible to race by the stewards.

(d) TCO_2 levels in the blood serum or plasma shall not exceed:

(1) 37.0 millimoles per liter of serum or plasma.

(2) TCO_2 levels in excess of 37.0 millimoles shall be considered a Class three-medication violation for administrative purposes.

(e) The provisions of Rule 1859.25 of this article shall not apply to blood sample(s) collected for TCO_2 testing.

Authority: Sections 19420, 19440, 19580 and 19582.5,
Business and Professions Code.

Reference: Sections 19581 and 19582,
Business and Professions Code.

PROPOSED TEXT AMENDMENT

1858. Test Sample Required.

Blood and urine test samples shall be taken daily from the winner of every race, from horses finishing second and third in any stakes race with a gross purse of $75,000 or more, and from not less than six or more than nine other horses designated for testing by the Equine Medical Director, the stewards or the official veterinarian. Every horse within the inclosure or entered in any race is subject to testing and no owner, trainer or other person having the care of a horse shall refuse to submit it for testing when directed by the Equine Medical Director, the stewards or the official veterinarian.

Authority: Sections 19440, 19562 and 19580,
Business and Professions Code.

Reference: Section 19580(b),
Business and Professions Code; and
Sections 337f, 337g and 337h,
Penal Code.

NOTICE OF PROPOSAL TO AMEND

RULE 1859. TAKING, TESTING AND REPORTING OF SAMPLES

The California Horse Racing Board (Board) 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 1859, Taking, Testing and Reporting of Samples. The proposed amendment adds the Equine Medical Director to the list of those who may direct that urine, blood or other official test samples shall be taken, and states that the Equine Medical Director is among those who may approve the taking of official test samples in areas other than the approved detention area. In addition, the proposed amendment to Rule 1859 deletes subsection 1859(b), which requires that official test samples shall be discarded immediately if the official laboratory fails to detect a prohibited drug substance in the official test samples.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 17, 2009**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **November 9, 2009**. All comments must be received by that time at the Board; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-mail: HaroldC@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19420, 19440, 19562 and 19577, Business and Professions Code.
Reference cited: sections 19401, 19440 and 19577, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19562 and 19577 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19401, 19440 and 19577 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19401 states the intent of this chapter is to allow pari-mutuel wagering on horse races, while assuring protection of the public; encouraging agriculture and the breeding of horses in this state; supporting the network of California fairs; providing for maximum expansion of horse racing

opportunities in the public interest; and providing uniformity of regulation for each type of horse racing. Business and Professions Code section 19420 provides jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions, 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 19577 provides that any blood or urine sample required by the Board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after the initial test sample and the secondary sample shall be referred to as the split sample. All samples immediately become and remain the property of the Board. The Board shall adopt regulations to ensure the security of obtaining and testing of all samples. The Board shall adopt regulations to establish policies, guidelines, and procedures that include a split sample process related to total carbon dioxide testing.

Rule 1859 provides that urine, blood or other test samples shall be taken under the direction of the official veterinarian or his or her designee. All samples shall be taken in a detention area approved by the Board, unless the official veterinarian approves otherwise. Subparagraph 1859(b) states if the official laboratory fails to detect in the official test samples, a prohibited drug substance, as defined in this article, the official sample shall be discarded immediately. The Board has determined that it wishes to add the Equine Medical Director as an official who may direct that urine, blood or other test samples be taken. Additionally, the proposed amendment to Rule 1859 deletes subparagraph 1859(b), which requires that official test samples be discarded immediately if the official laboratory fails to detect a prohibited drug substance. Subparagraph 1859(b) conflicts with subparagraph 1859(c), which states the Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis. Deleting subparagraph 1859(b) clarifies the Board's ability to maintain samples.

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 Section 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 to Rule 1859 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.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1859 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: none. The proposal to amend Rule 1859 does not have an effect on small businesses because it does not apply to small businesses. The Rule lists officials who may direct that official blood and urine tests samples be taken. Rule 1859 also specifies that the Board has the authority to direct the official laboratory to retain and preserve by freezing test samples for future analysis.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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 PERSONS

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
Policy and Regulation Unit
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

If the person named above is not available, interested parties may contact:
Colleen Germek, Regulation Analyst
Telephone: (916) 274-6049

AVAILABILITY OF 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 office, at the above address, as of the date this notice is published in the Notice Register. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person, at the address, phone numbers, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding the 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 in a modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB SITE 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 the notice, the proposed text of the regulation, and the initial statement of reasons. The Board's web site address is www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS
RULE 1859, TAKING, TESTING AND REPORTING OF SAMPLES

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1859, Taking, Testing and Reporting of Samples. The proposed amendment adds the Equine Medical Director to the list of those who may direct that urine, blood or other official test samples shall be taken, and states that the Equine Medical Director is among those who may approve the taking of official test samples in areas other than the approved detention area. In addition, the proposed amendment to Rule 1859 deletes subsection 1859(b), which requires that official test samples shall be discarded immediately if the official laboratory fails to detect a prohibited drug substance in the official test samples.

NECESSITY

Subsection 1859(a) provides that urine, blood or other test samples shall be taken under the direction of the official veterinarian or his or her designee. All samples shall be taken in a detention area approved by the

Board, unless the official veterinarian approves otherwise. The Board has determined that it wishes amend subsection 1859(a) to add the Equine Medical Director as an official who may direct that urine, blood or other test samples be taken. This will allow the Equine Medical Director, who oversees the Board's official veterinarians, to supervise the taking of test samples, if necessary. Subsection 1859(b) states if the official laboratory fails to detect in the official test samples, a prohibited drug substance, as defined in this article, the official sample shall be discarded immediately. The proposed amendment to Rule 1859 deletes subparagraph 1859(b), as the Board believes subsection 1859(b) conflicts with subsection 1859(c), which states the Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis. Deleting subsection 1859(b) clarifies the Board's ability to maintain samples. The Board has an interest in maintaining samples, primarily for epidemiological reasons. Horse racing jurisdictions continually update their ability to test for new and unusual drugs or substances that may be used to enhance the performance of the horse. If the Board becomes aware of a new drug or substance in one or more test samples, it may wish to conduct additional testing on preserved samples to determine if the drug has been used, and the incidence and distribution of its use. This will help the Board to decide if it must commit resources to develop more sophisticated tests that can predict when a drug or substance was administered, and at what level it might influence the performance of a horse. Rule 1887, Trainer to Insure Condition of Horse, would still apply to samples retained and preserved by freezing. Subsection 1887(b) provides that if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under Rule 1887 unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance.

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 of the regulation.

The amendment of Rule 1859 has no significant adverse economic impact on small business.

The amendment of Rule 1859 has no significant adverse economic impact on business.

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.

PROPOSED AMENDMENT OF
1859. Taking, Testing and Reporting of Samples.

(a) Urine, blood or other official test samples shall be taken under the direction of the official veterinarian, the Equine Medical Director or ~~their~~ his or her designee. All samples shall be taken in a detention area approved by the Board, unless the official veterinarian or the Equine Medical Director approves otherwise. The taking of any test sample shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or ~~their~~ his or her agent or employee, and may be witnessed by the owner, trainer or other person designated by them. All official test samples shall be sent to the official laboratory approved and designated by

the Board, in such manner as the Board may direct. All required samples shall be in the custody of the official veterinarian, ~~their~~ his or her assistants or other persons approved by ~~them~~ the official veterinarian, from the time they are taken until they are delivered to the custody of the official laboratory.

~~(b) If the official laboratory fails to detect in the official test samples, a prohibited drug substance, as defined in this article, the official sample shall be discarded immediately.~~

~~(c)~~(b) The Executive Director and the Equine Medical Director shall immediately be notified by the official laboratory of each finding that an official test sample contains a prohibited drug substance, as defined in this article. The official laboratory shall further provide all information and data on which the finding is based to the Equine Medical Director, and shall transmit its official report of the finding to the Executive Director within five (5) working days after the initial notification is made.

~~(d)~~(c) The Board has the authority to direct the official laboratory to retain and preserve by freezing samples for future analysis.

~~(e)~~(d) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no drug substance prohibited by this article has been administered, in violation of these rules, to the horse earning such purse money.

Authority: Sections 19420, 19440, 19562 and 19577,
Business and Professions Code.

Reference: Sections 19401, 19440 and 19577,
Business and Professions Code.

NOTICE OF PROPOSAL TO AMEND
RULE 1866. VETERINARIAN'S LIST

The California Horse Racing Board (Board) 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 1866, Veterinarian's List. The proposed amendment adds veterinary treatment, injury, and lameness as reasons a horse may be placed on the Veterinarian's List and determined to be unfit to compete. The proposed amendment also adds a new subsection 1866(b), which states a horse placed on the Veterinarian's List as injured, unsound or lame may not workout for 72 hours after being placed on the list without permission of the official veterinarian. A new subsection 1866(b)(1) provides that the official veterinarian may require a horse placed on the Veterinarian's List to undergo a veterinary examination prior to resuming training at any facility under the jurisdiction of the Board. A new subsection 1866(e) defines "workout" for the purposes of the regulation.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 17, 2009**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. At the hearing, any person may present statements or arguments orally or in writing

about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **November 16, 2009**. All comments must be received by that time at the Board; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-mail: HaroldC@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19440 and 19562, Business and Professions Code.
Reference cited: sections 19440 and 19562, Business and Professions Code.

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

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions, consistent with the provisions of this chapter, under which all horse races with wagering on their results shall be conducted in this State.

Rule 1866 provides for the maintenance of a Veterinarian's List of horses determined to be unfit to compete in a race due to a variety of reasons having to do with the soundness of the horse. The regulation also states the conditions under which a horse may be removed from the Veterinarian's List. The Board proposes to amend subsection 1866(a) to add veterinary treatment, injury and lameness as reasons a horse may be placed on the Veterinarian's List. Horses are currently placed on the Veterinarian's List for veterinary procedures such as shock wave treatments and the administration of anabolic steroids. This brings the regulation in line with current practice. Horses may also be added to the list for physical problems that would affect their ability to compete in races. Adding injury and lameness to the list of reasons a horse may be placed on the list makes it clear that the physical conditions will result in a horse being placed on the Veterinarian's List. A new subsection 1866(b) states that a horse placed on the Veterinarian's List as injured, unsound or lame may not

workout for 72 hours after being placed on the list without the permission of the official veterinarian. The 72-hour period will provide some uniformity with regards to how long a horse must remain on the Veterinarian's List before it may workout, and a reasonable period of rest and recuperation for the horse. The 72-hour period is intended to look after the best interests of the horse, and will ensure that a trainer does not attempt to work a horse too soon. Subsection 1866(b) does provide for exceptions to the 72-hour period if the official veterinarian determines the horse is fit to workout. A new subsection 1866(b)(1) states the official veterinarian may require any horse placed on the Veterinarian's List to undergo a veterinary examination prior to resuming training at a facility under the jurisdiction of the Board. This would require that the trainer and his veterinarian provide the official veterinarian with certification that the horse was examined, and was fit and safe to ride. There are instances where a trainer will work a horse multiple times to get his horse off of the Veterinarian's List, only to have the horse placed on the list again. Subsection 1866(b)(1) provides a process that requires the trainer whose horse has repeatedly been placed on the Veterinarian's List to demonstrate there is nothing significantly wrong with the animal. A new subsection 1866(e) provides a definition of "workout" for the purposes of the regulation. The term "workout" is widely understood in the industry, but it could be a jog, a hand walk or a breeze (to work a horse at an easy pace). Subsection 1866(e) states for the purposes of the regulation a workout is an exercise session at near or close to full speed, which means a horse must gallop (the fastest gait at which a horse runs). At the same time, the definition of workout is not so restrictive that it prevents the official veterinarian from determining the length of the workout.

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 to Rule 1866 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.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1866 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: none. The proposal to amend Rule 1866 does not have an effect on small businesses because it does not apply to small businesses. Rule 1866 provides for the maintenance of a Veterinarian's List of horses determined to be unfit to compete in a race due to a variety of reasons having to do with the soundness of the horse. The regulation also states the conditions under which a horse may be removed from the Veterinarian's List.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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 PERSONS

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
Policy and Regulation Unit
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

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

Colleen Germek, Regulation Analyst
Telephone: (916) 274-6049

AVAILABILITY OF 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 office, at the above address, as of the date this notice is published in the Notice Register. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person, at the address, phone numbers, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding the 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 in a modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB SITE 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 the notice, the proposed text of the regulation, and the initial statement of reasons. The Board's web site address is www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS
RULE 1866, VETERINARIAN'S LIST

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1866, Veterinarian's List. The proposed amendment adds veterinary treatment, injury and lameness as conditions that may cause a horse to be placed on the Veterinarian's List; provides for a 72-hour waiting period before horses listed as injured, unsound or lame may workout; allows the official veterinarian to require that a horse placed on the Veterinarian's List undergo a veterinary examination prior to resuming training at any facility under the jurisdiction of the Board; and provides a definition of "workout" for the purposes of the regulation.

NECESSITY

Rule 1866 provides for the maintenance of a Veterinarian's List of horses determined to be unfit to compete in a race due to a variety of reasons having to do with the soundness of the horse. The regulation also states the conditions under which a horse may be removed from the Veterinarian's List. The Board proposes to amend subsection 1866(a) to add veterinary treatment, injury and lameness as reasons a horse may be placed on the Veterinarian's List. Horses are currently placed on the Veterinarian's List for veterinary procedures such as shock wave treatments and the administration of anabolic steroids. Adding veterinary treatment to subsection 1866(a) brings the regulation in line with current practice. Horses may also be added to the list for physical problems that would affect their ability to compete in races. Adding injury and lameness to the list of reasons a horse may be placed on the list makes it clear that the physical conditions will result in a horse being placed on the Veterinarian's List.

A new subsection 1866(b) states that a horse placed on the Veterinarian's List as injured, unsound or lame may not workout for 72 hours after being placed on the list without the permission of the official veterinarian. The 72-hour period will provide some uniformity with regards to how long a horse must remain on the Veterinarian's List before it may workout, and a reasonable period of rest and recuperation for the horse. The 72-hour period is intended to look after the best interests of the horse, and will ensure that a trainer does not attempt to work a horse too soon. Subsection 1866(b) does provide for exceptions to the 72-hour period if the official veterinarian determines the horse is fit to workout.

A new subsection 1866(b)(1) states the official veterinarian may require any horse placed on the Veterinarian's List to undergo a veterinary examination prior to resuming training at a facility under the jurisdiction of the Board. This would require that the trainer and his veterinarian provide the official veterinarian with certification that the horse was examined, and is fit and safe to ride. There are instances where a trainer will work a horse multiple times to get it off the Veterinarian's List, only to have the horse placed on the list again. This provision will work to protect the horse whose trainer might refuse to recognize that it is no longer fit to run on California racetracks. Subsection 1866(b)(1) provides a process that requires the trainer whose horse has repeatedly been placed on the Veterinarian's List to demonstrate there is nothing significantly wrong with the animal.
A new subsection 1866(e) provides a definition of "workout" for the purposes of the regulation. The term "workout" is widely understood in the industry, but it could be a hand walk, a jog (a slow, easy gait) or a breeze (to work a horse at an easy pace). Subsection 1866(e) states for the purposes of the regulation a workout is an exercise session at near or close to full speed, which means a horse must gallop (the fastest gait at which a horse runs). This will provide for uniform application of the requirement. However, the definition of workout is not so restrictive that it prevents the official veterinarian from determining the length of the workout.

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 of the regulation.

The amendment of Rule 1866 has no significant adverse economic impact on small business.

The amendment of Rule 1866 has no significant adverse economic impact on business.

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.

PROPOSED TEXT AMENDMENT
1866. Veterinarian's List.

(a) The ~~Official Veterinarian~~ official veterinarian shall maintain a Veterinarian's List of those horses determined to be unfit to compete in a race due to veterinary treatment, physical distress, injury, lameness,

unsoundness or infirmity.

(1) When a horse is placed on the Veterinarian's List, the trainer of such horse shall be notified within 72 hours.

(b) A horse placed on the Veterinarian's List as injured, unsound or lame may not workout for 72 hours after being placed on the list without the permission of the official veterinarian.

(1) The official veterinarian may require any horse placed on the Veterinarian's List to undergo a veterinary examination prior to resuming training at any facility under the jurisdiction of the Board.

(c) A horse placed on the Veterinarian's List shall be removed from the ~~List~~ list only after having established or demonstrated to the satisfaction of the ~~Official Veterinarian or the Racing Veterinarian~~ official veterinarian or racing veterinarian that the horse is then raceably sound and in fit physical condition to exert its best effort in a race.

(d) A horse may be required to perform satisfactorily in a ~~work-out~~ workout or qualifying race to demonstrate its physical fitness, and if so a blood and/or urine post-work test sample shall be taken from the horse and the provisions of this article shall apply to such official work-out in the same manner as to a scheduled race.

(e) For the purpose of this regulation, "workout" means an exercise session at near or close to full speed.

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

Reference: Sections 19440 and 19562,
Business and Professions Code.

NOTICE OF PROPOSAL TO AMEND
RULE 1867. PROHIBITED VETERINARY PRACTICES

The California Horse Racing Board (Board) 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 1867, Prohibited Veterinary Practices. The proposed amendment adds analogs of erythropoietin and darbepoietin, and growth hormone and analogs as substances or medications whose possession or use on the premises of a facility under the jurisdiction of the Board is a prohibited veterinary practice. The proposed amendment to Rule 1867 also adds a new subsection 1867(c), which states the presence of any prohibited substance or medication listed in Rule 1867 in any test sample obtained consistent with Rule 1858, Test Sample Required; Rule 1859, Taking, Testing and Reporting of Samples; and Rule 1859.25, Split Sample Testing, shall apply to the sample in the same manner as to a scheduled race.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 17, 2009**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **November 16, 2009**. All comments must be received by that time at the Board; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022
E-mail: HaroldC@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19440, 19562 and 19580, Business and Professions Code.
Reference cited: sections 19580 and 19581, Business and Professions Code.

Business and Professions Code sections 19440, 19562 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19580 and 19581 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19562 states the Board may prescribe rules, regulations and conditions, 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 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines, and penalties shall include, at a minimum, the provisions set forth in this article. It is the intent of the Legislature that the Board, in its testing efforts to determine illegal or excessive use of substances, recognize the grater importance of conducting complete and thorough testing of a lesser number of samples in preference to conducting less thorough testing on a greater number of samples. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. The Board may require that the official veterinarian approve, in writing, the administration of those substances in accordance with the regulations of the Board. Any medication or equipment used to dispense medication that is located within the inclosure is subject to search and inspection at the request of any Board official.

The proposed amendment to Rule 1867 adds subsection 1867(a)(1) to include growth hormone to the list of drugs, substances or medications, the possession or use of which constitutes prohibited veterinary practices. Growth hormone stimulates growth and cell reproduction in humans and animals, and is thought to improve athletic performance. Growth hormone may be administered, contrary to the Board's regulations, to improve a horse's physical performance and healing of injuries. To date, a satisfactory analytical method of detection and confirmation of growth hormone in the race horse has not been developed.

A new subsection 1867(c) provides that the presence of any drug, substance or medication described in subections (a)(1) through (a)(5) and subsection (b) of the regulation in any test sample obtained consistent with Rule 1858, Test Sample Required; Rule 1859, Taking, Testing and Reporting of Samples; and Rule 1859.25, Split Sample Testing, shall apply to the sample in the same manner as to a scheduled race. This is similar to the provisions of Rule 1866, Veterinarian's List, which provides that when a horse is required to perform a workout or qualifying race to demonstrate its physical fitness, a blood and/or urine post race test sample shall be taken from the horse and the provisions of this article shall apply to such official workout in the same manner as to a scheduled race. Under the new subsection 1867(c) the Board may take action if any drug, substance or medication listed in Rule 1867 is found in an out-of-competition test sample. Subsection 1867(c) provides a means of penalizing a trainer for prohibited practices when the horse is not entered to race.

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 to Rule 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.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1867 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: none. The proposal to amend Rule 1867 does not have an effect on small businesses because it does not apply to small businesses. Rule 1867 defines prohibited veterinary practices and lists the drugs, substances and medications that constitute prohibited veterinary practices.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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 PERSONS

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
Policy and Regulation Unit
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

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

Colleen Germek, Regulation Analyst
Telephone: (916) 274-6049

AVAILABILITY OF 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 office, at the above address, as of the date this notice is published in the Notice Register. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person, at the address, phone numbers, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding the 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 in a modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB SITE 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 the notice, the proposed text of the regulation, and the initial statement of reasons. The Board's web site address is www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS
RULE 1867, PROHIBITED VETERINARY PRACTICES

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1867, Prohibited Veterinary Practices to add growth hormone and its analogues to the list of drugs, substances and medications whose possession or use on the premises of a facility under the jurisdiction of the Board is a prohibited veterinary practice. The proposed amendment also adds a new subsection 1867(c), which states the presence of any prohibited substance or medication listed in Rule 1867 in any test sample obtained consistent with Rule 1858, Test Sample Required; Rule 1859, Taking, Testing and Reporting of Samples; and Rule 1859.25, Split Sample Testing, shall apply to the sample in the same manner as to a scheduled race.

NECESSITY

The proposed amendment to Rule 1867 adds subsection 1867(a)(1) to include growth hormone to the list of drugs, substances or medications, the possession or use of which constitutes prohibited veterinary practices. Growth hormone stimulates growth and cell reproduction in humans and animals, and is thought to improve athletic performance. Growth hormone may be administered, contrary to the Board's regulations, to improve a horse's physical performance and healing of injuries. To date, a satisfactory analytical method of detection and confirmation of growth hormone in the race horse has not been developed.

A new subsection 1867(c) provides that the presence of any drug, substance or medication described in subsections (a)(1) through (a)(5) and subsection (b) of the regulation in any test sample obtained consistent with Rule 1858, Test Sample Required; Rule 1859, Taking, Testing and Reporting of Samples; and Rule 1859.25, Split Sample Testing, shall apply to the sample in the same manner as to a scheduled race. This is similar to the provisions of Rule 1866, Veterinarian's List, which provides that when a horse is required to perform a workout or qualifying race to demonstrate its physical fitness, a blood and/or urine post race test sample shall be taken from the horse and the provisions of this article shall apply to such official workout in the same manner as to a

scheduled race. This provision will be particularly useful in the Board's out-of-competition testing program. Under the new subsection 1867(c) the Board may take action if any drug, substance or medication listed in Rule 1867 is found in an out-of-competition test sample. The Board previously attempted to take action on out-of-competition test samples under Rule 1866, but subsection 1867(c) provides a clear means of penalizing a trainer for prohibited practices when the horse is not entered to race.

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 of the regulation.

The amendment of Rule 1867 has no significant adverse economic impact on small business.

The amendment of Rule 1867 has no significant adverse economic impact on business.

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.

PROPOSED TEXT AMENDMENT

1867. Prohibited Veterinary Practices.

For purposes of this division, prohibited veterinary practices means:

(a) The ~~the~~ possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance or medication specified below, for which a recognized analytical method has not been developed to detect and confirm its administration; or the use of which may endanger the health and welfare of the horse, or the safety of the rider or driver, or alter equine performance.

(1) Erythropoietin (EPO) and analogs

(2) Darbepoietin and analogs

(3) Snake venom

(4) Snail venom

(5) Growth hormone and analogs

(b) The ~~the~~ possession and/or use on the premises of a facility under the jurisdiction of the Board of any drug, substance or medication that has not been approved by the United States Food and Drug Administration (FDA) for use in the United States.

(c) The presence of any drug, substance or medication described in subsections (a)(1) through (a)(5), and subsection (b) of this regulation in any test sample obtained consistent with Rules 1858, 1859 and 1859.25 of this article, and the provisions of this article, shall apply to such sample in the same manner as to a scheduled race. The Board may grant an exception to this subsection if the person or persons seeking the exemption submits written documentation that demonstrates an FDA exemption has been obtained pursuant to Guide 1240.3025 of the FDA Center for Veterinary Medicine (CVM) Program Policy and Procedures Manual, which is hereby incorporated by reference. Guide 1240.3025 of the FDA CVM Program Policy and Procedures Manual may be obtained at the California Horse Racing Board's headquarters office.

Authority: Sections 19440, 19562 and 19580,
Business and Professions Code.

Reference: Sections 19580 and 19581,
Business and Professions Code.

NOTICE OF PROPOSAL TO AMEND
RULE 1890. POSSESSION OF CONTRABAND

The California Horse Racing Board (Board) 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 1890, Possession of Contraband. The proposed amendment states that no person other than a veterinarian licensed by the Board shall have in his possession at a facility under the jurisdiction of the Board any substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle. The proposed amendment to Rule 1890 also adds a new subsection 1890(b), which states that no person other than a veterinarian licensed by the Board shall have in his possession at a facility under the jurisdiction of the Board any medicine, medication, or other substance recognized as a medication, which has not been prescribed under Rule 1840, Veterinary Practices and Treatments Restricted, and labeled in accordance with Rule 1864, Labeling of Medications.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Tuesday, November 17, 2009**, or as soon after that as business before the Board will permit, at **Golden Gate Fields Race Track, 1100 Eastshore Highway, Berkeley, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m.** on **November 16, 2009**. All comments must be received by that time at the Board; however, written comments may still be submitted at the public hearing. Submit comments to:

Harold Coburn, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6397
Fax: (916) 263-6022

E-mail: HaroldC@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: sections 19420, 19440 and 19580, Business and Professions Code.
Reference cited: sections 19460, 19580 and 19581, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19580 authorize the Board to adopt the proposed regulation, which would implement, interpret, or make specific sections 19460, 19580 and 19581 of the Business and Professions Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 states that jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the California Horse Racing Board. Business and Professions Code section 19440 provides that the Board shall have all powers necessary and proper to enable it to carry out fully and effectually the purposes of this chapter. Responsibilities of the Board shall include adopting rules and regulations for the protection of the public and the control of horse racing and pari-mutuel wagering. Business and Professions Code section 19460 states that all licenses granted under this chapter are subject to all rules, regulations, and conditions from time to time prescribed by the Board. Business and Professions Code section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines, and penalties shall include, at a minimum, the provisions set forth in this article. It is the intent of the Legislature that the Board, in its testing efforts to determine illegal or excessive use of substances, recognize the grater importance of conducting complete and thorough testing of a lesser number of samples in preference to conducting less thorough testing on a greater number of samples. Business and Professions Code section 19581 states no substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the Board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. The Board may require that the official veterinarian approve, in writing, the administration of those substances in accordance with the regulations of the Board. Any medication or equipment used to dispense medication that is located within the inclosure is subject to search and inspection at the request of any Board official.

The proposed amendment to Rule 1890 amends subsection 1890(a) to provide that no person other than a veterinarian licensed by the Board may have in his possession at a facility under the jurisdiction of the Board any substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle. The amendment makes it clear that the only persons at a facility under the jurisdiction of the Board who have a legitimate reason to possess substances or medications prepared or packaged for injection are Board licensed veterinarians. This provision ties in with the new subsection 1890(b), which states that no person at a facility under the jurisdiction of the Board may have in his possession any veterinary treatment, any medicine, medication, or other substance recognized as a medication, unless it has been prescribed and labeled in accordance with the provisions of the Board's rules and regulations. Subsection 1890(b) is meant to address those who bring into the inclosure various substances, medications and veterinary treatments from the farm or private training facilities. While such items – if used on the horse – may not result in a positive test sample, they will be considered contraband because the Board has an interest in insuring that only those substances

prescribed by a Board licensed veterinarian and properly labeled, are brought into the inclosure. Subsection 1890(b) does not prevent owners and trainers from bringing medications into the inclosure. However, if trainers or owners wish to bring such items into the inclosure, they must work with their veterinarians to prescribe and properly label the substances.

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 to Rule 1890 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.

Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 1890 will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: none. The proposal to amend Rule 1890 does not have an effect on small businesses because it does not apply to small businesses. Rule 1890 prohibits the possession of contraband substances, medications and devices, as described by the regulation, at a facility under the jurisdiction of the Board.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

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 PERSONS

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
Policy and Regulation Unit
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6397
E-mail: HaroldC@chrb.ca.gov

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

Colleen Germek, Regulation Analyst
Telephone: (916) 274-6049

AVAILABILITY OF 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 office, at the above address, as of the date this notice is published in the Notice Register. The rulemaking file consists of this notice, the proposed text of the regulation, and the initial statement of reasons. Copies may be obtained by contacting Harold Coburn, or the alternate contact person, at the address, phone numbers, or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding the 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 in a modified form, should be sent to the attention of Harold Coburn at the address stated above.

BOARD WEB SITE 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 the notice, the proposed text of the regulation, and the initial statement of reasons. The Board's web site address is www.chrb.ca.gov.

INITIAL STATEMENT OF REASONS
RULE 1890, POSSESSION OF CONTRABAND

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1890 to provide that no person other than a veterinarian licensed by the Board shall have in his possession at a facility under the jurisdiction of the Board any substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle. The proposed amendment to Rule 1890 also adds a new subsection 1890(b), which states that no person other than a veterinarian licensed by the Board shall have in his possession at a facility under the jurisdiction of the Board any medicine, medication, or other substance recognized as a medication, which has not been prescribed under Rule 1840, Veterinary Practices and Treatments Restricted, and labeled in accordance with Rule 1864, Labeling of Medications.

NECESSITY

The proposed amendment to Rule 1890 modifies subsection 1890(a) to provide that no person other than a veterinarian licensed by the Board may have in his possession at a facility under the jurisdiction of the Board any substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle. The Board is charged with ensuring the integrity of horse racing and protecting the wagering public. One way the Board fulfills these responsibilities is by promulgating and enforcing regulations related to the use of drugs, medications or other substances in the racehorse. Business and Professions Code section 19580 states the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. To achieve its enforcement objectives the Board conducts a comprehensive drug testing program, and it closely regulates other aspects of the veterinary treatment of racehorses. As part of its overall efforts to monitor the medication of racehorses, the Board has an interest in limiting those within the inclosure who may possess substances or medications that have been prepared or packaged for injection by hypodermic syringe or hypodermic needle. The amendment to subsection 1890(a) makes it clear that any substance or medication that has been prepared of packaged for injection by a hypodermic needle or syringe, if found in the possession of anyone but a Board licensed veterinarian, will be considered contraband.

A new subsection 1890(b) states that no person at a facility under the jurisdiction of the Board may have in his possession any veterinary treatment, any medicine, medication, or other substance recognized as a medication, unless it has been prescribed and labeled in accordance with the provisions of Board Rule 1840, Veterinary Practices and Treatments Restricted, and Rule 1864, Labeling of Medications. Board Rule 1840 states that no person other than a Board licensed Veterinarian may administer to any horse within the inclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except under the prescription of a veterinarian licensed by the Board. Rule 1864 states no veterinarian or vendor shall dispense, sell or furnish any feed supplement, tonic, veterinary preparation, medication, or any substance containing a prohibited drug to any person within the inclosure unless there is a label specifying the name of the dispensing veterinarian, the name of the horse or the purpose for which the said preparation or medication is dispensed, and

the name of the person to which dispensed, or is otherwise labeled as required by law. Any substance containing a prohibited drug shall be labeled, "Caution. Contains Prohibited Drug. Not to be used on race day." Subsection 1890(b) is meant to address those who bring into the inclosure various substances, medications and veterinary treatments from the farm or private training facilities, as well as substances that have been bought from private vendors or on the Internet. It is not uncommon for the administration of medications or substances that have not been properly prescribed or labeled to result in a positive test sample because the owner or trainer did not know exactly what the veterinary treatment, medication or substance contained. To protect owners and trainers from the consequences of using veterinary treatments, medicines, medications or other substances that have not been properly prescribed or labeled, and to ensure the integrity of horse racing, such items that have not been properly prescribed or labeled will be considered contraband if they are brought into the inclosure by anyone other than a Board licensed veterinarian. Subsection 1890(b) does not prevent owners and trainers from bringing medications and other substances into the inclosure. However, if trainers or owners wish to bring such items into the inclosure, they must work with their veterinarians to ensure they are properly prescribed and labeled.

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 of the regulation.

The amendment of Rule 1890 has no significant adverse economic impact on small business.

The amendment of Rule 1890 has no significant adverse economic impact on business.

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.

PROPOSED TEXT AMENDMENT

1890. Possession of Contraband.

(a) No person other than a veterinarian licensed by the Board, shall have in his possession ~~on the premises during any recognized meeting~~ at a facility under the jurisdiction of the Board any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection.

(b) No person other than a veterinarian licensed by the Board, shall have in his possession at a facility under the jurisdiction of the Board any veterinary treatment or any medicine, medication, or other substance recognized as a medication, which has not been prescribed in accordance with Rule 1840 of this division and labeled in accordance with Rule 1864 of this division.

(c) No person shall have in his possession on the premises during any recognized meeting any electrical stimulating or shocking device commonly known as a battery, or any mechanical stimulating device, or any

other appliance, which might affect the speed or actions of a horse.

(d) The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

Authority: Sections 19420, 19440 and 19580, Business and Professions Code.

Reference: Sections 19460, 19580 and 19581, Business and Professions Code.