

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

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

NOTICE OF PROPOSAL TO AMEND  
RULE 1858, TEST SAMPLE REQUIRED

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

PROPOSED REGULATORY ACTION

The CHRB proposes to amend Board Rule 1858, Test Sample Required, to remove the upper limit of nine horses designated each day for testing by the Equine Medical Director, the stewards, or the official veterinarian. The proposed amendment adds language to include every horse registered to race at an inclosure, nominated, or pre-entered as subject to testing. For the purposes of the regulation the proposed amendment defines “registered to race at an inclosure,” as a horse that has papers on file with a racing association or racing fair under the jurisdiction of the Board.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, October 23, 2014**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, Baldwin Terrace Room, 285 West Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m. on October 20, 2014**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Leeland Turner, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6026  
Fax: (916) 263-6042  
E-mail: [ltturner@chrb.ca.gov](mailto:ltturner@chrb.ca.gov)

## AUTHORITY AND REFERENCE

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

Business and Professions Code sections 19440 and 19562 give the Board jurisdiction and supervision over meetings in California where horse races with wagering on their results are held, authorizes the Board to adopt, amend or repeal regulations, and allows for the Board to delegate any of its powers to the stewards. 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 horseracing in California.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 states that the Board shall have all powers necessary and proper to enable it to adopt rules and regulations for the protection of the public and the control of horse racing. Business and Professions Code section 19562 states that the Board may prescribe rules, regulations, and conditions on all California horse races with wagering on their results. 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 horseracing in California. Board Rule 1858, Test Sample Required, currently requires blood and urine samples to be collected from the winner of every race, horses placing second or third in a stakes race with a gross purse of \$75,000 or more, and not less than six or more than nine other horses selected by the Equine Medical Director, the stewards or the official veterinarian. Additionally, Rule 1858 provides that every horse within the inclosure or entered to race is subject to testing, and no person having care of a horse shall refuse to submit it for testing when directed by the stewards or official veterinarian.

The Board proposes amending Rule 1858 by reorganizing it into three subsections: 1858(a), which will define which and how many horses are tested daily; 1858(b), which will define what horses are subject to testing; and 1858(b)(1) which defines, for the purposes of the regulation, the phrase “registered to race at an inclosure.”

In subsection 1858(a), the proposed amendment removes the upper limit of nine horses designated for testing by the Equine Medical Director, the stewards, or the official veterinarian. Removing the upper limit is necessary to make Rule 1858 more effective and bring it in line with current testing practices. Rule 1858 currently provides that blood and urine samples shall be taken daily from specified horses; however, the Board also tests all claimed horses, and horses at unique events, such as the Breeders’ Cup and the Champion of Champions. The additional tests can put the number of horses tested beyond the current nine horse upper limit. Removing the upper limit will increase the effectiveness of Rule 1858 as a deterrent by giving more flexibility to the veterinarians and stewards in choosing which horses to test.

In subsection 1858(b), the proposed amendment provides that every horse registered to race at an inclosure, nominated, or pre-entered, in any race is subject to testing. This allows for testing horses located outside of the inclosure. This is necessary because a drug can be administered

well before a race, be undetectable in post-race testing, and still have a potentially profound performance enhancing effect at race time. Erythropoietin is an example of such a drug. Adding that nominated and pre-entered horses are subject to testing would provide the regulatory authority for the Board's out-of-competition (OOC) testing program for the Breeders' Cup and other stakes. Currently, the Board relies on the Breeders' Cup entry provisions for its OOC testing. The proposed amendment would provide authority to have test samples taken in other states for horses nominated to California stakes, and to sample horses for other states as the CHRB currently does for the Kentucky Horse Racing Commission for the Kentucky Derby.

The proposed amendment adds 1858(b)(1) which defines, for the purposes of the regulation, "registered to race at an inclosure" as when the horse's registration papers are on file with a racing association under the jurisdiction of the Board. Currently, horsemen must apply for stalls if they plan to run at a meeting – thus "registering" their horses that will occupy the stalls as potential entrants. However, under the proposed amendment to Rule 1858, "registering" a horse with a racing association regardless of the horse's location (off-site) is a new concept. Any horse that potentially may run at a race meeting could be required to register in advance with the association; thus, horses not located at the inclosure would be available for testing.

#### ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1858 promotes the protection of worker and equine safety, as well as the public's interest in a fair and honest race product, by increasing the efficiency and flexibility of the equine sample testing program. The proposed amendment would increase the effectiveness of Rule 1858 as a deterrent by removing the upper limit on the number of horses tested, and by allowing for horses outside the inclosure to be tested.

#### CONSISTENCY EVALUATION

During the process of developing this amendment, the CHRB conducted a search of any similar regulations on this topic and concluded that this amendment is neither inconsistent nor incompatible with existing state regulations.

#### DISCLOSURE REGARDING THE PROPOSED ACTION/RESULTS OF THE ECONOMIC IMPACT ANALYSIS

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 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.

The following studies/relevant data were relied upon in making the above determination: none.

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

Significant effect on housing costs: none.

The adoption of the proposed amendment to Rule 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. (4) The adoption of the proposed amendment will increase horseracing employee and equine safety.

Effect on small businesses: none. The proposal to amend Rule 1858 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610.

## CONSIDERATION OF ALTERNATIVES

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

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation at the scheduled hearing or during the written comment period.

## CONTACT 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:

Leeland Turner, Regulation Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6026  
Fax: (916) 263-6042  
E-mail: [ltturner@chr.ca.gov](mailto:ltturner@chr.ca.gov)

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

Andrea Ogden, Manager

Policy and Regulations  
Telephone: (916) 263-6033

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

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

#### AVAILABILITY OF MODIFIED TEXT

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

#### AVAILABILITY OF FINAL STATEMENT OF REASONS

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

#### INITIAL STATEMENT OF REASONS

1858. TEST SAMPLE REQUIRED

#### SPECIFIC PURPOSE OF THE REGULATION

The CHRB proposes to amend Board Rule 1858, Test Sample Required, to remove the upper limit of nine horses designated each day for testing by the Equine Medical Director, the stewards, or the official veterinarian. The proposed amendment adds language to include every horse registered to race at an inclosure, nominated, or pre-entered as subject to testing. For the purposes of the regulation the proposed amendment defines “registered to race at an inclosure,” as a horse that has papers on file with a racing association or racing fair under the jurisdiction of the Board.

## PROBLEM

Rule 1858’s current limit of nine horses that can be designated for testing does not allow for testing at unique events, such as the Breeders’ Cup, where every horse is tested. Officially limiting the number of horses tested prevents the Board from testing additional horses. Rule 1858 currently does not allow horses outside of the inclosure that are nominated or pre-entered in a race to be tested until they enter the inclosure.

## NECESSITY

The Board proposes amending Rule 1858 by reorganizing it into three subsections: 1858(a), which will define which and how many horses are tested daily; 1858(b), which will define what horses are subject to testing; and 1858(b)(1) which defines, for the purposes of the regulation, the phrase “registered to race at an inclosure.”

In subsection 1858(a), the proposed amendment removes the upper limit of nine horses designated for testing by the Equine Medical Director, the stewards, or the official veterinarian. Removing the upper limit is necessary to make Rule 1858 more effective and bring it in line with current testing practices. Rule 1858 currently provides that blood and urine samples shall be taken daily from specified horses; however, the Board also tests all claimed horses, and horses at unique events, such as the Breeders’ Cup and the Champion of Champions. The additional tests can put the number of horses tested beyond the current nine horse upper limit. Removing the upper limit will increase the effectiveness of Rule 1858 as a deterrent by giving more flexibility to the veterinarians and stewards in choosing which horses to test.

In subsection 1858(b), the proposed amendment provides that every horse registered to race at an inclosure, nominated, or pre-entered, in any race is subject to testing. This allows for testing horses located outside of the inclosure. This is necessary because a drug can be administered well before a race, be undetectable in post-race testing, and still have a potentially profound performance enhancing effect at race time. Erythropoietin is an example of such a drug. Adding that nominated and pre-entered horses are subject to testing would provide the regulatory authority for the Board’s out-of-competition (OOC) testing program for the Breeders’ Cup and other stakes. Currently, the Board relies on the Breeders’ Cup entry provisions for its OOC testing. The proposed amendment would provide authority to have test samples taken in other states for horses nominated to California stakes, and to sample horses for other states as the CHRB currently does for the Kentucky Horse Racing Commission for the Kentucky Derby.

The proposed amendment adds 1858(b)(1) which defines, for the purposes of the regulation, “registered to race at an inclosure” as when the horse’s registration papers are on file with a racing association under the jurisdiction of the Board. Currently, horsemen must apply for stalls if they plan to run at a meeting – thus “registering” their horses that will occupy the stalls as

potential entrants. However, under the proposed amendment to Rule 1858, “registering” a horse with a racing association regardless of the horse’s location (off-site) is a new concept. Any horse that potentially may run at a race meeting could be required to register in advance with the association; thus, horses not located at the inclosure would be available for testing.

#### BENEFITS ANTICIPATED FROM THE REGULATORY ACTION.

The proposed amendment to Rule 1858 promotes the protection of worker and equine safety, as well as the public’s interest in a fair and honest race product, by increasing the efficiency and flexibility of the equine sample testing program. The proposed amendment would increase the effectiveness of Rule 1858 as a deterrent by removing the upper limit on the number of horses tested, and by allowing for horses outside the inclosure to be tested.

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

The Board did not rely on any other technical, theoretical, and/or empirical study, reports or documents in proposing the amendment to Rule 1858.

#### ECONOMIC IMPACT ASSESSMENT/ANALYSIS.

Impact on Jobs/New Businesses: The Board has determined the proposed amendment to Rule 1858 will not have a significant impact on the creation of new jobs or businesses, the elimination of jobs or existing businesses, or the expansion of businesses in California. The jurisdiction of Rule 1858 is limited to the inclosures of racing associations and fairs, and as such only has an effect on horseracing and not any other type of California business.

Benefits of Proposed Regulation: The proposed amendment to Rule 1858 will benefit California by promoting the protection of worker and equine safety, as well as the public’s interest in a fair and honest race product.

#### ALTERNATIVE TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON AFFECTED PRIVATE PERSONS OR BUSINESSES.

The Board has determined that no reasonable alternative it considered, or that has otherwise been identified and brought its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

The proposed amendment to Rule 1858 was discussed at the January 15, 2014 Medication and Track Safety Committee meeting and the February 21, 2014 Regular Board Meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments which offer any alternative proposal.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1858. TEST SAMPLE REQUIRED

1858. Test Sample Required.

(a) 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.

(b) Every horse within the inclosure, every horse registered to race at an inclosure, or nominated, pre-entered 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.

(1) For the purposes of this regulation, a horse is “registered to race at an inclosure” when the horse’s registration papers are on file with a racing association under the jurisdiction of the Board.

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.