

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 1588, HORSE INELIGIBLE TO START IN A RACE
AND
RULE 1866. VETERINARIAN'S LIST

The California Horse Racing Board (Board or CHRB) 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 1588, Horse Ineligible to Start in a Race. The proposed amendment will add a new subsection 1588(a)(14) to provide that any horse that has not raced within 12 consecutive months since its previous start is ineligible to start in a race until such horse has performed satisfactorily in a workout or a standardbred qualifying race as provided in subsections (e) and (f) of Rule 1866, Veterinarian's List. In addition, the proposed amendment of Rule 1588 will add a new subsection 1588(a)(15) to provide that a horse that has never started in a race, and that is four years of age or older, is ineligible to start in a race until such horse has performed satisfactorily in a workout or a standardbred qualifying race as provided in Rule 1866(e) and (f). The proposed amendment to Rule 1866 will modify subsection 1866(e) to make it clear that qualifying races are standardbred events.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, June 20, 2019**, or as soon thereafter as business before the Board will permit, at the **Santa Anita Park Race Track, 285 Huntington Drive, Arcadia, California**. At the hearing, any person may present statements or arguments orally or in writing relevant to 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 June 10, 2019**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

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California Horse Racing Board
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Fax: (916) 263-6022
E-mail: haroldc@chrb.ca.gov
AUTHORITY AND REFERENCE

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

Reference: Sections 19440, 19562 Business and Professions Code.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Business and Professions Code section 19440 provides 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 under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19580 provides that the Board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the state.

The CHRB tracks horse fatalities that occur at any facility under its jurisdiction. Horses may suffer fatalities while racing, training, or due to other non-exercise related causes, including stable area accidents or medical maladies such as gastro-intestinal, respiratory, or neurological diseases. One of the primary purposes of tracking such fatalities is to identify health and safety risks for horse and rider, and to implement preventive or corrective actions. At the February 2017 CHRB Medication, Safety and Welfare Committee meeting, staff reported that a survey of California racehorse fatalities occurring 2013 through 2016 revealed that twenty percent of the losses were horses that raced after an extended lay-off. At the recommendation of the Board's Equine Medical Director, the Committee endorsed a proposal to amend Rule 1588 to require that horses returning from an extended layoff demonstrate their physical fitness prior to being entered to race. The proposed amendment will aid in the reduction of race horse injuries and fatalities by providing that a horse will not be allowed to start in a race after a 12-month layoff, unless it is found to be raceably sound and in fit physical condition to exercise its best efforts in a race.

The proposed amendment to Rule 1588 would add a new subsection 1588(a)(14), which provides that a horse that has not raced at a recognized race meeting within 12 consecutive months is ineligible to start in any race until such horse has performed satisfactorily in a workout or standardbred qualifying race as provided in Rule 1866(e) and (f). A "recognized race meeting" is the entire period of a race meeting conducted by an association within the inclosure of the designated grounds, for which the Board has granted a license. The term may include a meeting conducted by an association in another horse racing jurisdiction. As provided under Rule 1866(e),

the proposed amendment gives the official veterinarian the ability to have the horse perform satisfactorily in a workout or standardbred qualifying race to demonstrate its physical fitness. Post-work blood and urine test samples shall be taken from such horse and the provision of Article 6 shall apply to such official workouts in the same manner as a scheduled race. A demonstration of the horse's physical fitness is necessary because an extended layoff from racing removes the horse from racing-level training. Despite an owner's expectations, the horse may not be able keep up with the rigors of racing. In addition, the horse may have been laid off from racing because of injuries. The required workout will give the official veterinarian a chance to evaluate the horse to determine if it has fully recovered. The post-work test samples are necessary to ensure the horse is not running on medications or drug substances designed to mask its true condition. The proposed addition of subsection 1588(a)(14) is in line with the Association of Racing Commissioners International (ARCI) Model Rules of Racing, Rule ARCI-010-030 Horses Ineligible, which provides that a horse is ineligible to start in a race when it has not raced in 12 months since its previous start, until the horse has been subjected to an assessment of its racing condition, including the taking of post-workout blood and urine test samples. The ARCI is the only umbrella organization of the official governing rule making bodies for professional horse racing in North America. It sets standards for racing regulation, medication policy, drug testing and all other aspects of the sport. California's adoption of ARCI Model Rule guidelines brings the Board's regulations in line with ARCI recommendations and promotes uniformity in the various states' horse racing regulations. Such uniformity benefits horsemen who may race in more than one jurisdiction, as a similar regulatory scheme will apply from state to state.

A new subsection 1588(a)(15) provides that a horse that has never started in a race, and that is four years of age or older, is ineligible to start in a race until such horse has performed satisfactorily in a workout or a standardbred qualifying race as provided in Rule 1866(e) and (f). All race horses turn one year old on January 1 of the year following their birth. A horse may start its racing career at two years of age; however, in California, a horse must actually have reached its second birth date before it can enter into a race (For example: a horse born on May 9, 2016 would not be eligible to enter into a race until May 9, 2018.). Nationally, older horses have made up a large part of the racing population with an estimated one-third of the horse racing population at least five years old. Some states enforce age restrictions for Thoroughbreds, and the United States Trotting Association (USTA) enforces a Standardbred retirement age of 14 years.¹ California does not have an age cut off for racing (although it honors the USTA rule). Horses as old, or nearly as old, as 13 years of age regularly compete in North American races. However, it has been demonstrated that un-started four-year-old horses (and older) are at a greater risk of injury than horses that started racing earlier in their career. Although the reason for this is not clear, some horses may start later because of ongoing health issues, or confirmation or soundness issues. A report from the Equine Injury Database (EID), which looked at all California races during the study, states that first time starters four years old and older have an increased chance of injury. The EID found that four-year-old first-time starters were 33% more likely to have an injury than two-year olds. The proposed addition of subsection 1588(a)(15) is necessary to help ensure that horses four years old and older, that are first time starters, are raceably sound and in fit physical condition to exert their best effort

¹ USTA Rule 19-Racing Under Saddle, section 19.04. Age and Gait of Horse. No horse under the age of three (3) and no older than fourteen (14) years of age shall be eligible to start. Racing Under Saddle races shall be restricted to the trotting gait.

in a race. The proposed amendment is in line with the ARCI Model Rules of Racing, Rule ARCI-010-030 Horses Ineligible, which provides that a horse is ineligible to start in a race when it is a first-time starter four years of age or older, until the horse has been subjected to an assessment of its racing condition, including the taking of post-workout blood and urine test samples.

The proposed amendment to Rule 1866 will modify subsection 1866(e) to provide clarity regarding the term “qualifying race.” As used in Rules 1588 and 1866, the term refers to standardbred qualifying races. Qualifying races are purse-less races that are required for horses that break stride too often, behave badly before or during races, that fail to produce speed up to the local standard or that have been sidelined by illness or injury. Essentially, qualifying races assure the public that a horse permitted to start in an event with pari-mutuel wagering is fit for competition.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment to Rule 1588 would add a new subsection 1588(a)(14). The new subsection provides that a horse that has not raced at a recognized race meeting within 12 consecutive months is ineligible to start in any race until such horse has performed satisfactorily in a workout or standardbred qualifying race as provided in Rule 1866(e) and (f). Post-work blood and urine test samples shall be taken from such horse and the provisions of Article 6 shall apply to such official workouts in the same manner as a scheduled race.

The proposed addition of subsection 1588(a)(14) will promote the health and safety of racehorses and racetrack safety in general. The amendment will aid in the reduction of injuries to horses, or worse, catastrophic loss of racehorses, by requiring horses that have not raced within 12 consecutive months to be examined by the official veterinarian or racing veterinarian and declared raceably sound and in fit physical condition to exert their best effort, before being allowed to enter to race. In turn, the health and safety of jockeys will be advanced, as a reduction in equine injuries and sudden deaths may also mean lower jockey injury rates. The required examination provides an opportunity for the examining veterinarian to evaluate the condition of the horse, which by virtue of being off 12 consecutive months or longer, may have had physical challenges that required time to heal or recuperate. Blood and urine test samples taken after a workout or qualifying race will provide additional information as to the fit physical condition of a horse that has not raced within 12 consecutive months. The addition of subsection 1588(a)(14) serves to ensure that a horse that has not raced within 12 consecutive months is raceably sound and in fit physical condition to exert its best efforts in a race. Ensuring the health of race horses protects the financial interests of racing associations, horse owners, trainers and jockeys. Racing associations depend on an inventory of sound horses to fill races and generate handle; owners and trainers suffer financial losses when horses are unable to compete for a purse; and injured jockeys lose income when they are unable to ride.

The proposed amendment to Rule 1588 adds a new subsection 1588(a)(15) to provide that a horse that has never started in a race, and that is four years of age or older, is ineligible to start in a race until such horse has performed satisfactorily in a workout or a standardbred qualifying race as provided in Rule 1866(e) and (f). The addition of subsection 1588(a)(15) will promote the health and safety of race horses. It has been demonstrated that un-started four-year-old horses (and older) are at a greater risk of injury than horses that started racing earlier in their career. A report from

the Equine Injury Data Base, which looked at all California races during the study, states that first time starters four years old and older have an increased chance of injury. The health and safety of jockeys will also be advanced, as a reduction in equine injuries and sudden deaths may also mean lower jockey injury rates. Ensuring the health of race horses protects the financial interests of racing associations, horse owners, trainers and jockeys. Racing associations depend on an inventory of sound horses to fill races and generate handle; owners and trainers suffer financial losses when horses are unable to compete for a purse; and injured jockeys lose income when they are unable to ride.

The proposed amendment of Rule 1866 will change subsection 1866(e) to provide clarity regarding “qualifying races,” which are also referenced in Rule 1588. As used in the regulations, a qualifying race is a standardbred event. Qualifying races are purse-less races that are required for standardbred horses that break stride too often, behave badly before or during races, that fail to produce speed up to the local standard or that have been sidelined by illness or injury. Essentially, qualifying races assure the public that a standardbred horse permitted to start in an event with pari-mutuel wagering is fit for competition. The proposed amendment of Rule 1866 will work in conjunction with the amended Rule 1588 to provide clarity regarding the racing terms used in the regulations. Standardbred qualifying races ensure the soundness of horses entered to race. Sound racehorses help protect the health and safety of drivers, as well as the financial interests of racing associations, owners and trainers.

CONSISTENCY EVALUATION

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

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

Mandate on local agencies or 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 1588 and 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.

The following studies/relevant data were relied upon in making the above determination:

Association of Racing Commissioners International Model Rules of Racing Version 8.4.1.

Parkin, Tim (2015) Equine Injury Database – models, risk factor and prediction (PowerPoint slides)

Georgopoulos, Stamatis P., Parking, Tim D.H., “Risk factors for equine fractures in Thoroughbred flat racing in North America.” Preventive Veterinary Medicine 139 (2017) 99-104.

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.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment to Rule 1588 and Rule 1866 will not (1) impact the creation of, or eliminate jobs within the State of California; (2) impact the creation of new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

The proposed amendment to amendment to Rule 1588 and Rule 1866 is a benefit to the health and welfare of California residents who hold occupational licenses as jockey, apprentice jockeys or other licensees that require proximity to race horses, because the proposed regulations safeguard the health and safety of the California’s racing equines. Sound racehorses help prevent accidents and injuries to horse and rider. The proposed amendment will not benefit the state’s environment.

Effect on small businesses: none. The proposal to amend amendment to Rule 1588 and Rule 1866 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 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 provisions of law.

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

CONTACT PERSON

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

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California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
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If the person named above is not available, interested parties may contact:

Andrea Ogden, Manager
Policy, Regulations and Legislation
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 texts of the regulations, and the initial statement of reasons. Copies of these documents, or any of the information upon which the proposed rulemaking is based on, may be obtained by contacting Harold Coburn, or the alternative contact person at the address, phone number or e-mail address listed above.

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed 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 regulation for 15 days after the date on which it is made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

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

BOARD WEB ACCESS

The Board will have the entire rulemaking file available for inspection throughout the rulemaking process at its web site. The rulemaking file consists of 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.