

## **CALIFORNIA HORSE RACING BOARD - RULES NOTICED TO THE PUBLIC:**

**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 ADD  
RULE 1500.1. RANDOM DRUG TESTING  
AND TO AMEND  
RULE 1498. PHYSICAL EXAMINATION

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

### **PROPOSED REGULATORY ACTION**

The Board proposes to add Rule 1500.1, Random Drug Testing. The proposed regulation states that jockeys, apprentice jockeys and drivers are subject to random drug testing as well as testing for cause and that failure to submit to or to complete a drug test constitutes a refusal to be tested. Jockeys, apprentice jockeys or drivers who refuse a drug test shall immediately be prohibited from riding or driving in any race at a racetrack under the jurisdiction of the Board until a negative test result is achieved. The proposed regulation states random drug testing will be conducted on an unannounced basis, before or after the performance of duties. Persons to be tested will be chosen from among jockeys, apprentice jockeys or drivers whose names appear on the official program the day random drug tests are conducted. The frequency of random drug testing will depend on the duration of the race meeting. For race meeting of up to five months, random drug testing shall occur at least once during the meeting. If a race meeting lasts six months or more, random drug testing shall occur at least twice during the meet. For the purpose of the regulation, the Northern California Fair circuit shall be considered one race meeting. The proposed regulation provides for a split sample program, and a method of informing the jockey, apprentice jockey or driver if a positive finding of a prohibited drug is reported. The jockey, apprentice jockey or driver will have the option of requesting the testing of the split sample provided he or she pays for the transporting and testing of the split. The proposed amendment to Rule 1498, Physical Examination, provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1.

### **PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2011**, or as soon after that as business before the Board will permit, at the **Golden Gate Fields Race Track, 1100 Eastshore Highway, Albany, 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 May 16, 2011**. 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

## AUTHORITY AND REFERENCE

Rule 1498:

Authority cited: Sections 19420, 19440 and 19520, Business and Professions Code.  
Reference cited: Sections 19440, 19520 and 19521, Business and Professions Code.

Rule 1500.1:

Authority cited: Sections 19420, 19440 and 19520, Business and Professions Code.  
Reference cited: Sections 19440, 19520 and 19521, Business and Professions Code.

Business and Professions Code sections 19420, 19440 and 19520 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific sections 19440, 19520 and 19521, Business and Professions Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the 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, 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 19520 states every person not required to be licensed under Article 4 (commencing with section 19480) who participates in, or has anything to do with, the racing of horses shall be licensed by the board pursuant to rules and regulations that the board may adopt. Business and Professions Code section 19521 provides that an original license issued pursuant to this article shall be issued for a period of the calendar year in which it is issued, and shall be renewable for a period, not to exceed three years, which the Board may, by regulation establish. The license shall be valid at all horse racing meetings in this state during the period for which it is issued, unless it is suspended or revoked prior to the expiration of the period.

The Board proposes to add Rule 1500.1 to provide that jockeys, apprentice jockeys and drivers are subject to random drug testing, as well as testing based upon reasonable suspicion. The Board currently requires jockeys, apprentice jockeys and drivers to submit to drug testing for cause – if the facts or circumstances are sufficient to believe a jockey, apprentice jockey or driver is involved with illegal drug substances that may affect his or her performance in a race. The average jockey weighs between 108 and 118 pounds, and he or she must be able to control a horse that may weigh between 1,000 and 1,200 pounds and that runs at speeds between 36 and 38 miles an hour (for thoroughbreds). Harness drivers must have upper body physical strength and the ability and skill to maneuver the horse and sulky in a race. Under such circumstances it is imperative that the rider/driver is not impaired in any way. The Board has determined that a program of random drug testing will help to reduce or eliminate the potential for a jockey, apprentice jockey or driver to participate in a race meeting while using illicit drugs.

Subsection 1500.1(a) provides that jockeys, apprentice jockeys and drivers are subject to random drug testing, and that failure to submit to or to complete a drug test at the time, location and manner directed by the Board or its representatives shall constitute a refusal to be tested. Failure to submit to or to complete a drug test shall result in the jockey, apprentice jockey or driver being immediately prohibited from participating in a race until a negative test result is achieved. This provision is designed to ensure that the jockey/driver submits to the drug test, as directed. The consequence of not submitting to a test is the inability to ride/drive in a race, which equates to a potential loss of income.

Subsection 1500.1(a)(1) states that random drug testing shall be conducted at the direction of the Executive Director on an unannounced basis before or after the performance of duties. This means the decision to conduct random drug testing will not rest with anyone who works at the racetrack. This will help to ensure that a jockey, apprentice jockey or driver will not be forewarned of the drug test. Board Rule 1680, Jockeys and Drivers to Report, requires every jockey or driver engaged to ride in a race to report to the Jockey/Driver Room at least one hour before post time of the first race. After reporting, a jockey or driver shall not leave the Jockey/Driver Room except to ride in a race until all his or her engagements of the day have been fulfilled. This means the jockey/driver will be readily available to be notified of a drug test, and to provide a test sample before or after the performance of his or her duties. In addition, Board Rule 1926, Entrance to Jockey Room Prohibited, restricts entrance to the jockey room or driver room to only those who have a reason to interact with the jockeys/drivers. This will limit the possibility of anyone interfering with the testing process. To select those who will be subject to a drug test, the names of all jockeys, apprentice jockeys or drivers who appear on the official program the day random drug testing is conducted shall be placed in a secured container which shall be in the custody of the supervising investigator who before the first race shall draw not more than nine names. The supervising investigator is given custody of the container and has the task of drawing names for random drug testing, as he or she operates under the direction of the Executive Director. Furthermore, the Board's enforcement arm is the logical entity to ensure the integrity of the process. The Board set the number of names to be drawn at nine, as there is an average of 8.6 races on a card. This allows for the possibility of at least one jockey/driver from each race being selected for random drug testing.

Subsection 1500.1(a)(2) states representative of the Jockey's Guild (Guild) or the California Harness Horsemen's Association (CHHA) may attend and witness the random selection of names. The presence of a Guild or CHHA representative will serve to ensure the interests of the jockeys or drivers are represented, and that there are no questions regarding the conduct of the supervising investigator when the names are drawn for random drug testing.

California race meetings may last from one week – in the case of racing fairs – to twelve months – in the case of the quarter horse meeting at Los Alamitos and the harness meeting at Cal-Expo. In addition, many thoroughbred jockeys ride at multiple meetings throughout California. The Board has determined that at least one random drug test shall occur at a race meeting. However, that would mean that jockeys who participate in longer meetings, such as the quarter horse meeting at Los Alamitos, or drivers who ride at Cal-Expo, would be subject to testing a minimum of one time over twelve months, while a thoroughbred jockey who participates in the Southern California thoroughbred racing circuit for a year would be subject to testing at any of the five race meetings. There are five Southern California thoroughbred meetings lasting from a little over three months to one month. On the other hand, a jockey who rides in the Northern California fair circuit, where a meeting may last only one week, would be subject to testing on a weekly basis. To address this issue, subsections 1500.1(a)(3) and 1500.1(a)(4) state how often random drug testing will occur in the course of a race meeting. The Board determined random drug testing shall occur at least once during race meetings lasting up to five months, and it shall occur at least twice for race meeting of six or more months. In addition, subsection 1500.1(a)(3) provides that the California Fair Circuit shall be considered one meeting. This will prevent the weekly random testing of jockeys who participate in the fair circuit, but guarantees that at least once during the five month period such jockeys may be tested. Because names are randomly drawn for testing, it is possible that a jockey or driver may be selected more than once during a race meeting. Subsection 1500.1(a)(1) provides that if a jockey or driver's name is selected more than once it shall be eliminated and another selection made. The Board has determined that given the short duration of most race meetings, it has a greater interest in testing a larger number of jockeys/drivers than in testing some jockeys/drivers multiple times.

To provide for a split sample, subsection 1500.1(b) states that each urine specimen shall be divided into two separate parts. One part is the official jockey/driver test sample, and shall be tested by a Board approved official laboratory. The remaining portion is the jockey/driver split sample, which will be available for testing at a Board approved independent laboratory upon the request of the individual who provided the specimen. The purpose of the split sample is to allow the jockey, apprentice jockey or driver the opportunity to have the specimen retested at a different laboratory.

Subsection 1500.1(b)(1) provides a definition of “Board approved laboratory” and “Board approved independent laboratory.” These are laboratories that are certified by the United States Department of Health and Human Services under the National Laboratory Certification Program as meeting the minimum standards to engage in urine drug testing for federal agencies. This provides a standard that ensures the laboratories adhere to strict federal guidelines. The list of qualified laboratories is updated monthly on the federal register. Laboratories that do not continue to meet the federal criteria are dropped.

Subsection 1500.1(b)(2) lists the prohibited drugs or classes of drugs that each urine specimen will be tested for. The drugs or classes of drugs are: marijuana metabolites; cocaine metabolites; amphetamines; opiate metabolites; and phencyclidine (PCP). These are the classes of prohibited drugs for which the United States Department of Transportation (DOT) tests. Guild representative and staff met in January 2011 to discuss the proposed regulation. At that time the parties agreed to the Guild's recommendation to use the DOT list of prohibited drugs.

Subsection 1500.1(c) provides that the Board approved official laboratory shall immediately and confidentially report to the Executive Director or his designee any positive findings for any of the prohibited drugs. The Board approved laboratory shall also transmit a confidential written report of the findings to the Executive Director within five working days after the notification is made. Subsection 1500.1(d) sets forth the procedure

to be followed in notifying a jockey, apprentice jockey or driver of a positive finding. The Executive Director or his designee shall notify the supervising investigator, who shall confidentially notify the jockey or driver. The Board wishes to be able to notify a jockey or driver of a positive finding as quickly as possible, so that jockey or driver can be prevented from participating in any races. This is why the laboratory notifies the Executive Director prior to issuing a written report. Timely notification also allows the jockey or driver to request testing of the jockey/driver split, so the process can be expeditiously moved forward. The results of the drug test and the split sample test are confidential and will remain confidential unless or until the Board files an official complaint or accusation.

Under subsection 1500.1(d)(1), a report of a positive test will result in the jockey, apprentice jockey or driver being immediately prohibited from riding/driving in any race at a facility under the jurisdiction of the Board. This is a necessary precaution to ensure the jockey/driver is not participating in any race while impaired. This provision was supported by the Guild representative and the CHHA.

Subsection 1500.1(d)(2) states the jockey, apprentice jockey or driver shall have 72 hours from the date he or she is notified to request that the split sample be tested by a Board approved independent laboratory. The 72 hour limit is consistent with federal regulations, and allows for a three-day window in which the jockey may make his or her decision. This is necessary to inform the jockey/driver of the timeline in which they may act to refute the official test results.

Subsections 1500.1(e)(1) through 1500.1(e)(3) provide the steps necessary for a jockey, apprentice jockey or driver to request testing of the jockey/driver split sample, and the consequences of failing to request testing of the jockey/driver split sample in a timely manner. To request testing of the jockey/driver split sample, the jockey, apprentice jockey or driver must complete the form CHRB-217 (New 3/11) Request to Release Jockey/Driver Split Sample. The form notifies the Board that the jockey/driver wishes to have the split tested. The form also names the Board approved independent laboratory at which the jockey/driver wishes the split to be tested, and certifies that he or she has made arrangements to pay the costs of shipping and testing the split. In completing the form, the jockey/driver acknowledges that if he or she does not make such payment, the split will not be released, and any hearing will be based on the original confirmation report from the board approved official laboratory. This keeps the jockey/driver informed of the actions he or she must take to ensure testing of the split, and it provides the Board with documentation of the request to test the split sample, and that the jockey/driver understands the consequences of not following through.

Subsection 1500.1(f) provides that upon receipt of a valid form CHRB-217, the form CHRB-217A (New 3/11) Authorization to Release Jockey/Driver Split Sample Evidence, shall be completed and the jockey/driver split sample shall be sent to the designated Board approved independent laboratory for testing. This form provides the CHRB with a paper trail that verifies the date the Board approved official laboratory was notified to release the jockey/driver split sample for testing at a Board approved independent laboratory.

Subsection 1500.1(f)(1) provides that if the Board approved independent laboratory fails to confirm the findings of a prohibited drug as reported by the Board approved official laboratory, it shall be presumed that a prohibited drug was not present in the official jockey/driver test sample. The Board carries the burden of proof, and in disciplining a licensee this requires accuracy of the evidence. If the split sample does not confirm the presence of a prohibited drug substance, Rule 1500.1 gives the licensee the benefit of the assumption that there is no evidence to support the findings of the Board approved official laboratory.

Subsection 1500.1(g) provides that if a jockey, apprentice jockey or driver fails to request testing of the jockey/driver split sample, he or she shall be deemed to have waived his or her right to have the sample tested. This lets the jockey/driver know the consequences of failure to act. Rule 1500.1 allows for the opportunity to refute the findings of the Board approved official laboratory, and it provides for a three day period in which the jockey/driver may decide to have the split sample tested.

Subsection 1500.1(h) states that unless or until the Board files an official complaint or accusation, results of the official jockey/driver test sample and the jockey/driver split sample shall be, and shall remain confidential. The release of a test result must be explicitly required under Rule 1500.1, and only specified individuals shall receive results. It is necessary to exercise confidentiality to allow the Board the opportunity to determine what it will do regarding the test results, and to maintain the licensee's fundamental right to privacy.

Subsection 1500.1(i) provides that the Board may take into consideration the possession of a valid and current Medical Marijuana Program Identification Card issued in accordance with the California Department of Public Health in determining whether or not it will file an official complaint or accusation against a jockey or apprentice jockey who tests positive for marijuana metabolites. The Board does not condone a jockey or driver's use of marijuana; however, it recognizes that in 1996 Proposition 215 added California Health and Safety Code section 11362.5, to ensure that Californians have the right to obtain and use marijuana for medical purposes, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. Subsection 1500.1(i) provides some leeway for the jockey, apprentice jockey or driver who can demonstrate a valid medical reason for the presence in the test sample of the otherwise prohibited drug. At the same time, subsection 1500.1(i) does not prohibit the Board from taking action.

Subsection 1500.1(j) of the proposed regulation reserves the right to direct a jockey, apprentice jockey or driver to submit to a drug test by methods including, but not limited to, blood, hair follicle or skin. This provides the Board with flexibility in testing methods should it determine it wishes to go beyond urine – especially when testing for cause.

The proposed amendment to Rule 1498 provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1, subsection (b)(2)(A) through (b)(2)(E). This is the list of prohibited drugs the Board will test for under its random drug testing program. The proposed amendment to Rule 1498 also states that a positive finding for the drugs described in Rule 1500.1, subsection (b)(2)(A) through (b)(2)(E) shall result in the jockey/driver not being cleared to ride/drive until he or she passes the physical examination. This means the jockey/driver would be required to achieve a negative test result to be cleared to ride/drive in a race. Annual jockey physicals currently include drawing blood for a comprehensive blood panel – of the type one normally experiences during routine physical examinations. The race track physician have indicated the additional work of drawing blood or taking urine to test for drug use would be considered minimal.

The proposed amendment to Rule 1498 would result in every jockey and apprentice jockey being tested for illicit drug use at least once a year.

#### DISCLOSURE REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: The proposed addition of Rule 1500.1 may cost the CHRB approximately \$3,132 per year.

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 addition of Rule 1500.1 and the proposed amendment to Rule 1498 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 addition of Rule 1500.1 and the proposed amendment of rule 1498 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 add Rule 1500.1 and the proposal to amend Rule 1498 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

Andrea Ogden, Regulation Analyst  
Telephone: (916) 263-6033  
E-mail: [andreao@chr.ca.gov](mailto:andreao@chr.ca.gov)

#### 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 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 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](http://www.chrb.ca.gov).

## **INITIAL STATEMENT OF REASONS**

RULE 1500.1. RANDOM DRUG TESTING.

RULE 1498. PHYSICAL EXAMINATION.

### **SPECIFIC PURPOSE OF THE REGULATION**

The Board proposes to add Rule 1500.1, Random Drug Testing. The proposed regulation states that jockeys, apprentice jockeys and drivers are subject to random drug testing as well as testing for cause and that failure to submit to or to complete a drug test constitutes a refusal to be tested. Jockeys, apprentice jockeys or drivers who refuse a drug test shall immediately be prohibited from riding or driving in any race at a racetrack under the jurisdiction of the Board until a negative test result is achieved. The proposed regulation states random drug testing will be conducted on an unannounced basis, before or after the performance of duties. Persons to be tested will be chosen from among jockeys, apprentice jockeys or drivers whose names appear on the official program the day random drug tests are conducted. The frequency of random drug testing will depend on the duration of the race meeting. For race meeting of up to five months, random drug testing shall occur at least once during the meeting. If a race meeting lasts six months or more, random drug testing shall occur at least twice during the meet. For the purpose of the regulation, the Northern California Fair circuit shall be considered one race meeting. The proposed regulation provides for a split sample program, and a method of informing the jockey, apprentice jockey or driver if a positive finding of a prohibited drug is reported. The jockey, apprentice jockey or driver will have the option of requesting the testing of the split sample provided he or she pays for the transporting and testing of the split. The proposed amendment to Rule 1498, Physical Examination, provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1.

### **NECESSITY**

The Board proposes to add Rule 1500.1 to provide that jockeys, apprentice jockeys and drivers are subject to random drug testing, as well as testing based upon reasonable suspicion. The Board currently requires jockeys, apprentice jockeys and drivers to submit to drug testing for cause – if the facts or circumstances are sufficient to believe a jockey, apprentice jockey or driver is involved with illegal drug substances that may affect his or her performance in a race. The average jockey weighs between 108 and 118 pounds, and he or she must be able to control a horse that may weigh between 1,000 and 1,200 pounds and that runs at speeds between 36 and 38 miles an hour (for thoroughbreds). Harness drivers must have upper body physical strength and the ability and skill to maneuver the horse and sulky in a race. Under such circumstances it is imperative that the rider/driver is not impaired in any way. Jockeys and drivers who participate in a race under the influence of drugs risk injuring themselves, other jockeys or drivers and the horses. The Board has determined that a program of random drug testing will help to reduce or eliminate the potential for a jockey, apprentice jockey or driver to participate in a race meeting while using illicit drugs.

Subsection 1500.1(a) provides that jockeys, apprentice jockeys and drivers are subject to random drug testing, and that failure to submit to or to complete a drug test at the time, location and manner directed by the Board or its representatives shall constitute a refusal to be tested. Failure to submit to or to complete a drug test shall result in the jockey, apprentice jockey or driver being immediately prohibited from participating in a race until a negative test result is achieved. This provision is necessary to ensure that the jockey/driver submits to the drug

test, as directed. The consequence of not submitting to a test is the inability to ride/drive in a race, which equates to a potential loss of income.

Subsection 1500.1(a)(1) states that random drug testing shall be conducted at the direction of the Executive Director on an unannounced basis before or after the performance of duties. This means the decision to conduct random drug testing will not rest with anyone who works at the racetrack. This will help to ensure that a jockey, apprentice jockey or driver will not be forewarned of the drug test. Board Rule 1680, Jockeys and Drivers to Report, requires every jockey or driver engaged to ride in a race to report to the Jockey/Driver Room at least one hour before post time of the first race. After reporting, a jockey or driver shall not leave the Jockey/Driver Room except to ride in a race until all his or her engagements of the day have been fulfilled. This means the jockey/driver will be readily available to be notified of a drug test, and to provide a test sample before or after the performance of his or her duties. In addition, Board Rule 1926, Entrance to Jockey Room Prohibited, restricts entrance to the jockey room or driver room to only those who have a reason to interact with the jockeys/drivers. This will limit the possibility of anyone interfering with the testing process. To select those who will be subject to a drug test, the names of all jockeys, apprentice jockeys or drivers who appear on the official program the day random drug testing is conducted shall be placed in a secured container which shall be in the custody of the supervising investigator who before the first race shall draw not more than nine names. The supervising investigator is given custody of the container and has the task of drawing names for random drug testing, as he or she operates under the direction of the Executive Director. The Board's enforcement arm is the logical entity to ensure the integrity of the process. Placing the names of jockeys/drivers who appear on the official program ensures that the jockey/driver is on the grounds of the race track. This method of selection is much less cumbersome than one that might involve instructing jockeys/drivers to appear at another location to undergo drug testing. The Board set the number of names to be drawn at nine, as there is an average of 8.6 races on a card. This allows for the possibility of at least one jockey/driver from each race being selected for random drug testing.

Subsection 1500.1(a)(2) states representative of the Jockey's Guild (Guild) or the California Harness Horsemen's Association (CHHA) may attend and witness the random selection of names. The presence of a Guild or CHHA representative will serve to ensure the interests of the jockeys or drivers are represented, and that there are no questions regarding the conduct of the supervising investigator when the names are drawn for random drug testing.

California race meetings may last from one week – in the case of racing fairs – to twelve months – in the case of the quarter horse meeting at Los Alamitos and the harness meeting at Cal-Expo. In addition, many thoroughbred jockeys ride at multiple meetings throughout California. The Board has determined that at least one random drug test shall occur at a race meeting. However, that would mean that jockeys who participate in longer meetings, such as the quarter horse meeting at Los Alamitos, or drivers who ride at Cal-Expo, would be subject to random testing a minimum of one time over twelve months, while a thoroughbred jockey who participates in the Southern California thoroughbred racing circuit for a year would be subject to testing at any of the five race meetings. There are five Southern California thoroughbred meetings lasting from a little over three months to one month. On the other hand, a jockey who rides in the Northern California fair circuit, where a meeting may last only one week, would be subject to testing on a weekly basis. To address this issue, subsections 1500.1(a)(3) and 1500.1(a)(4) state how often random drug testing will occur in the course of a race meeting. The Board determined random drug testing shall occur at least once during race meetings lasting up to five months, and it shall occur at least twice for race meeting of six or more months. In addition, subsection 1500.1(a)(3) provides that the California Fair Circuit shall be considered one meeting. This will prevent the

weekly random testing of jockeys who participate in the fair circuit, but guarantees that at least once during the five month period such jockeys may be tested. Because names are randomly drawn for testing, it is possible that a jockey or driver may be selected more than once during a race meeting. Subsection 1500.1(a)(1) provides that if a jockey or driver's name is selected more than once it shall be eliminated and another selection made. The Board has determined that given the short duration of most race meetings, it has a greater interest in testing a larger number of jockeys/drivers than in testing some jockeys/drivers multiple times.

To provide for a split sample, subsection 1500.1(b) states that each urine specimen shall be divided into two separate parts. One part is the official jockey/driver test sample, and shall be tested by a Board approved official laboratory. The remaining portion is the jockey/driver split sample, which will be available for testing at a Board approved independent laboratory upon the request of the individual who provided the specimen. The purpose of the split sample is to allow the jockey, apprentice jockey or driver the opportunity to have the specimen retested at a different laboratory, the result of which may provide a defense against the official test results.

Subsection 1500.1(b)(1) provides a definition of "Board approved laboratory" and "Board approved independent laboratory." These are laboratories that are certified by the United States Department of Health and Human Services under the National Laboratory Certification Program as meeting the minimum standards to engage in urine drug testing for federal agencies. This provides a standard that ensures the laboratories adhere to strict federal guidelines. The list of qualified laboratories is updated monthly on the federal register. Laboratories that do not continue to meet the federal criteria are dropped.

Subsection 1500.1(b)(2) lists the prohibited drugs or classes of drugs that each urine specimen will be tested for. The drugs or classes of drugs are: marijuana metabolites; cocaine metabolites; amphetamines; opiate metabolites; and phencyclidine (PCP). These are the classes of prohibited drugs for which the United States Department of Transportation (DOT) tests. Guild representative and staff met in January 2011 to discuss the proposed regulation. At that time the parties agreed to the Guild's recommendation to use the DOT list of prohibited drugs.

Subsection 1500.1(c) provides that the Board approved official laboratory shall immediately and confidentially report to the Executive Director or his designee any positive findings for any of the prohibited drugs. The Board approved laboratory shall also transmit a confidential written report of the findings to the Executive Director within five working days after the notification is made. Subsection 1500.1(d) sets forth the procedure to be followed in notifying a jockey, apprentice jockey or driver of a positive finding. The Executive Director or his designee shall notify the supervising investigator, who shall confidentially notify the jockey or driver. The Board wishes to be able to notify a jockey or driver of a positive finding as quickly as possible, so that jockey or driver can be prevented from participating in any races. This is why the laboratory notifies the Executive Director prior to issuing a written report. Timely notification also allows the jockey or driver to request testing of the jockey/driver split, so the process can be expeditiously moved forward. The results of the drug test and the split sample test are confidential and will remain confidential unless or until the Board files an official complaint or accusation. This is necessary to protect the jockey/driver's right to privacy.

Under subsection 1500.1(d)(1), a report of a positive test will result in the jockey, apprentice jockey or driver being immediately prohibited from riding/driving in any race at a facility under the jurisdiction of the Board. This is a necessary precaution to ensure the jockey/driver is not participating in any race while impaired. This

provision was supported by the Guild representative and the CHHA. Jockeys and drivers do not wish to participate in races in which another jockey/driver may present a threat to their physical well being.

Subsection 1500.1(d)(2) states the jockey, apprentice jockey or driver shall have 72 hours from the date he or she is notified to request that the split sample be tested by a Board approved independent laboratory. The 72 hour limit is consistent with federal regulations, and allows for a three-day window in which the jockey may make his or her decision.

Subsections 1500.1(e)(1) through 1500.1(e)(3) provide the steps necessary for a jockey, apprentice jockey or driver to request testing of the jockey/driver split sample, and the consequences of failing to request testing of the jockey/driver split sample in a timely manner. To request testing of the jockey/driver split sample, the jockey, apprentice jockey or driver must complete the form CHRB-217 (New 3/11) Request to Release Jockey/Driver Split Sample. The form notifies the Board that the jockey/driver wishes to have the split tested. The form also names the Board approved independent laboratory at which the jockey/driver wishes the split to be tested, and certifies that he or she has made arrangements to pay the costs of shipping and testing the split. In completing the form, the jockey/driver acknowledges that if he or she does not make such payment, the split will not be released, and any hearing will be based on the original confirmation report from the board approved official laboratory.

Subsection 1500.1(f) provides that upon receipt of a valid form CHRB-217, the form CHRB-217A (New 3/11) Authorization to Release Jockey/Driver Split Sample Evidence, shall be completed and the jockey/driver split sample shall be sent to the designated Board approved independent laboratory for testing. This form provides the CHRB with a paper trail that verifies the date the Board approved official laboratory was notified to release the jockey/driver split sample for testing at a Board approved independent laboratory.

Subsection 1500.1(f)(1) provides that if the Board approved independent laboratory fails to confirm the findings of a prohibited drug as reported by the Board approved official laboratory, it shall be presumed that a prohibited drug was not present in the official jockey/driver test sample. The Board carries the burden of proof, and in disciplining a licensee this requires accuracy of the evidence. If the split sample does not confirm the presence of a prohibited drug substance, Rule 1500.1 gives the licensee the benefit of the assumption that there is no evidence to support the findings of the Board approved official laboratory.

Subsection 1500.1(g) provides that if a jockey, apprentice jockey or driver fails to request testing of the jockey/driver split sample, he or she shall be deemed to have waived his or her right to have the sample tested. This lets the jockey/driver know the consequences of failure to act. Rule 1500.1 allows for the opportunity to refute the findings of the Board approved official laboratory, and it provides for a three day period in which the jockey/driver may decide to have the split sample tested.

Subsection 1500.1(h) states that unless or until the Board files an official complaint or accusation, results of the official jockey/driver test sample and the jockey/driver split sample shall be, and shall remain confidential. The release of a test result must be explicitly required under Rule 1500.1, and only specified individuals shall receive results. It is necessary to exercise confidentiality to allow the Board the opportunity to determine what it will do regarding the test results, and to maintain the licensee's fundamental right to privacy.

Subsection 1500.1(i) provides that the Board may take into consideration the possession of a valid and current Medical Marijuana Program Identification Card issued in accordance with the California Department of Public

Health in determining whether or not it will file an official complaint or accusation against a jockey or apprentice jockey who tests positive for marijuana metabolites. The Board does not condone a jockey or driver's use of marijuana; however, it recognizes that in 1996 Proposition 215 added California Health and Safety Code section 11362.5, to ensure that Californians have the right to obtain and use marijuana for medical purposes, and to ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction. Subsection 1500.1(i) provides some leeway for the jockey, apprentice jockey or driver who can demonstrate a valid medical reason for the presence in the test sample of the otherwise prohibited drug. At the same time, subsection 1500.1(i) does not prohibit the Board from taking action.

Subsection 1500.1(j) of the proposed regulation reserves the right to direct a jockey, apprentice jockey or driver to submit to a drug test by methods including, but not limited to, blood, hair follicle or skin. This provides the Board with flexibility in testing methods should it determine it wishes to go beyond urine – especially when testing for cause.

The proposed amendment to Rule 1498 provides that the annual jockey/driver physical examination shall include a drug test to screen for substances as described in Rule 1500.1, subsection (b)(2)(A) through (b)(2)(E). This is the list of prohibited drugs the Board will test for under its random drug testing program. The proposed amendment to Rule 1498 also states that a positive finding for the drugs described in Rule 1500.1, subsection (b)(2)(A) through (b)(2)(E) shall result in the jockey/driver not being cleared to ride/drive until he or she passes the physical examination. This means the jockey/driver would be required to achieve a negative test result to be cleared to ride/drive in a race. Annual jockey physicals currently include drawing blood for a comprehensive blood panel – of the type one normally experiences during routine physical examinations. The race track physician have indicated the additional work of drawing blood or taking urine to test for drug use would be considered minimal.

The proposed amendment to Rule 1498 would result in every jockey and apprentice jockey being tested for illicit drug use at least once a year. The Board has determined it wishes every jockey/driver to be screened for drugs at least once a year due to the necessity for each jockey/driver to be mentally and physically sound in the performance of his or her job. The occupation of jockey/driver is dangerous and the potential for physical injury to oneself and others is present in each race.

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

The Board did not rely on any technical, theoretical, and/or empirical studies, reports or documents in proposing the addition of the regulations.

The adoption of Rule 1500.1 and Rule 1498 has no significant adverse economic impact on small business.

The adoption of Rule 1500.1 and Rule 1498 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.

California Horse Racing Board  
April 1, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 4. OCCUPATIONAL LICENSES  
PROPOSED AMENDMENT OF  
RULE 1498. PHYSICAL EXAMINATION

1498. Physical Examination.

(a) All jockeys, apprentice jockeys, and drivers must pass a physical examination at least once a year before the commencement of the first race meeting of the year in which such jockey, apprentice jockey or driver intends to participate, or at such other time as the Board may direct. Such examination will be given by a doctor designated or approved by the Board, and the examination shall include a visual acuity examination, and a hearing examination.

(b) In addition to subsection (a) above, the examination shall include a drug test to screen for such substances as described in subsections (b)(2)(A) through (b)(2)(E) of Rule 1500.1 of this article.

(1) A positive finding for any of the drugs or classes of drugs described in subsections (b)(2)(A) through (b)(2)(E) of Rule 1500.1 of this article shall result in the jockey/driver not being cleared to ride/drive until he or she has successfully passed such examination.

(c) The Board or the stewards may require that any jockey, apprentice jockey or driver be re-examined at any time, and the Board or the stewards may refuse to allow any jockey, apprentice jockey or driver to ride or drive until he or she has successfully passed such examination.

Authority:     Sections 19420, 19440 and 19520,  
                  Business and Professions Code.

Reference:    Sections 19440, 19520 and 19521,  
                  Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 4. OCCUPATIONAL LICENSES  
PROPOSED ADDITION OF  
RULE 1500.1. RANDOM DRUG TESTING

1500.1. Random Drug Testing.

(a) To ensure the safety and integrity of horse racing, jockeys, apprentice jockeys and drivers are subject to random drug testing, as well as testing based upon reasonable suspicion, as provided in this Division. Failure to submit to or to complete a drug test at the time, location, and manner directed by the Board or its representatives shall constitute a refusal to be tested. A jockey, apprentice jockey or driver who fails to submit to or to complete a drug test shall immediately be prohibited from riding in any race at a facility under the jurisdiction of the Board until a negative test result is achieved.

(1) Random drug testing shall be conducted at the direction of the Executive Director on an unannounced basis before or after the jockey's or driver's performance of duties. The names of all jockeys, apprentice jockeys or drivers who appear on the official program the day random drug testing is conducted shall be placed in a secured container which shall be in the custody of the supervising investigator. Prior to the first

race of the program, the supervising investigator shall draw not more than nine names. If a name is selected more than once during a race meeting, it shall be eliminated and another selection made.

(2) Representatives of the Jockey's Guild or the California Harness Horsemen's Association may attend and witness the random selection of names.

(3) For race meetings with duration of up to five months, random drug testing shall occur at least once during the course of the meeting. For the purposes of this regulation, the Northern California fair circuit shall be considered as one race meeting.

(4) For race meetings with duration of six or more months, random drug testing shall occur at least twice during the course of the meeting.

(b) Each urine specimen received from a jockey, apprentice jockey or driver shall be divided into two separate parts. One portion shall be designated as the official jockey/driver test sample and shall be tested by a Board approved official laboratory. The remaining portion of the specimen shall be known as the jockey/driver split sample and shall be available for testing at a Board approved independent laboratory upon the request of the individual who provided the specimen. The Board makes no guarantees as to the amount of the specimen that will be available for the jockey/driver split sample. All specimens taken by representatives of the Board are under the jurisdiction of and shall remain the property of the Board at all times.

(1) For the purposes of this regulation "Board approved official laboratory" and "Board approved independent laboratory" means a California laboratory certified by the United States Department of Health and Human Services under the National Laboratory Certification Program as meeting the minimum standards to engage in urine drug testing for federal agencies. A list of certified laboratories shall be available at the CHRB headquarters office.

(2) Each urine specimen shall be tested for the following prohibited drugs or classes of drugs:

(A) Marijuana metabolites.

(B) Cocaine metabolites.

(C) Amphetamines.

(D) Opiate metabolites.

(E) Phencyclidine (PCP).

(c) The Board approved official laboratory shall immediately and confidentially report to the Executive Director or his designee any positive finding for any of the drugs or classes of drugs described in subsection (b)(2)(A) through (b)(2)(E) of this regulation. The Board approved official laboratory shall also transmit a confidential written report of the finding to the Executive Director within five working days after the notification is made.

(d) When the Executive Director or his designee is notified of a positive finding by the Board approved official laboratory, the Executive Director or his designee shall notify a supervising investigator. The supervising investigator shall confidentially notify the jockey, apprentice jockey or driver who shall:

(1) Immediately be prohibited from riding in any race at a facility under the jurisdiction of the Board, and

(2) Shall have 72 hours from the date he or she is notified to request that the jockey/driver split sample of the official jockey/driver test sample that was found to contain a prohibited drug or class of drug, be tested by an Board approved independent laboratory.

(e) If the jockey, apprentice jockey or driver wishes to have the jockey/driver split sample tested, he or she shall comply with the following procedures:

(1) The request shall be made on the form CHRB-217 (New 3/11) Request to Release Jockey/Driver Split Sample, which is hereby incorporated by reference. Form CHRB-217 shall be made available at all CHRB offices, and at the CHRB website.

(2) The jockey, apprentice jockey or driver requesting to have the jockey/driver split sample tested shall be responsible for all charges and costs incurred in transporting and testing the jockey/driver split sample. By signing CHRB-217 the jockey, apprentice jockey or driver certifies he or she has made arrangements for payment to the designated independent Board approved laboratory for laboratory testing services.

(3) Verification of payment for costs incurred in transporting and testing the jockey/driver split sample must be received by the CHRB within five working days from the CHRB receipt of CHRB-217. If such verification of payment is not received, the jockey/driver split sample will not be released or shipped to the designated Board approved independent laboratory and the jockey, apprentice jockey or driver will have relinquished his/her right to have the split sample tested. If a complaint issues, the only test results that will be considered will be the results from the Board approved official laboratory.

(f) Upon receipt of a valid request on CHRB-217, CHRB-217A (New 3/11) Authorization to Release Jockey/driver Split Sample Evidence, which is hereby incorporated by reference, shall be completed and the Board shall ensure that the jockey/driver split sample is sent to the designated Board approved independent laboratory for testing.

(1) If the findings by the Board approved independent laboratory fail to confirm the findings of a prohibited drug or class of drug as reported by the Board approved official laboratory, it shall be presumed that a prohibited drug or class of drug was not present in the official jockey/driver test sample.

(g) A jockey, apprentice jockey or driver who fails to request the testing of the jockey/driver split sample in accordance with the procedures specified in this rule shall be deemed to have waived his or her right to have the split sample tested.

(h) Unless or until the Board files an official complaint or accusation, results of the official jockey/driver test sample and the jockey/driver split sample shall be, and shall remain confidential. No test results may be released to any person or organization unless such release is explicitly required under this regulation. Only the

Executive Director or the Executive Director's designee, the Board, and the jockey, apprentice jockey or driver shall receive the results.

(i) The Board may take into consideration the possession of a valid and current Medical Marijuana Program Identification Card issued in accordance with the Medical Marijuana Program of the California Department of Public Health in determining whether or not to file an official complaint or accusation against a jockey, apprentice jockey or driver who tests positive for marijuana metabolites.

(j) For the purposes of this regulation, random drug testing shall be accomplished by the taking of urine specimens; however, the Board retains the right to direct a jockey, apprentice jockey or driver to submit to a drug test by methods including, but not limited to, blood, hair follicle or skin.

Authority: Sections 19420, 19440 and 19520,  
Business and Professions Code.

Reference: Sections 19440, 19520 and 19521,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO AMEND  
1606. COUPLING OF HORSES  
RULE 1974. WAGERING INTEREST  
RULE 1954.1. PARLAY WAGERING ON WIN, PLACE OR SHOW  
RULE 1957. DAILY DOUBLE  
RULE 1959. SPECIAL QUINELLA (EXACTA)  
1976. UNLIMITED SWEEPSTAKES  
1976.8. PLACE PICK (N)  
1976.9. PICK (N) POOL  
1977. PICK THREE  
1978. SELECT FOUR  
1979. TRIFECTA  
1979.1. SUPERFECTA

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 1606, Coupling of Horses, to delete the requirement that two or more horses shall be coupled as a single wagering interest when the horses are owned in whole or in part by the same person or persons. The proposed amendment also deletes the exemptions to coupling contained in subsections 1606(b) and 1606(c), changes the title of the regulation, and provides that if two or more horses entered in the same race are owned in whole or in part by the same person or persons, or are trained by the same trainer, the racing association shall take all actions necessary to adequately inform the public. The proposed amendment to Rule 1606 affects Rule 1974, Wagering Interest; therefore, the Board proposes to amend Rule 1974. The proposed amendment of Rule 1974 removes references to coupled entries from the definition of "wagering interest," and provides for the circumstances under which a horse may start in a race as a non-wagering interest and be disregarded for pari-mutuel purposes. The Board also proposes to amend pari-mutuel wagering rules to delete references to coupled entries, and to provide direction in cases where horses are designated to run as a non-wagering interest for purse only. The pari-mutuel regulations the Board proposes to amend are: Rule 1954.1, Parlay Wagering on Win, Place or Show; Rule 1957, Daily Double; Rule 1959, Special Quinella (Exacta); Rule 1976, Unlimited Sweepstakes; Rule 1976.8, Place Pick (n); Rule 1976.9, Pick (n) Pool; Rule 1977, Pick Three; Rule 1978, Select Four; Rule 1979, Trifecta, and Rule 1979.1, Superfecta.

#### PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 28, 2011**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, 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 at the hearing.

## WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit to the Board written comments about the proposed regulatory action. The written comment period closes at **5:00 p.m. on April 18, 2011**. 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  
Email: [HaroldC@chr.ca.gov](mailto:HaroldC@chr.ca.gov)

## AUTHORITY AND REFERENCE

Rule 1606: 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.

Rule 1974: Authority Cited: sections 19420 and 19440, Business and Professions Code. Reference: section 19562, Business and Professions Code.

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

Rule 1954.1: Authority Cited: section 19590, Business and Professions Code. Reference: sections 19594 and 19597, Business and Professions Code.

Business and Professions Code section 19590 authorizes the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19594 and 19597, Business and Professions Code.

Rules 1957, 1959, 1976, 1977, 1978, 1979 & 1979.1: Authority Cited: sections 19440 and 19590, Business and Professions Code. Reference: section 19594, Business and Professions Code.

Business and Professions Code sections 19440 and 19590 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific section 19594, Business and Professions Code.

Rules 1976.8 & 1976.9: Authority Cited: sections 19440 and 19590, Business and Professions Code. Reference: sections 19593 and 19594, Business and Professions Code.

Business and Professions Code sections 19440 and 19590 authorize the Board to adopt the proposed regulations, which would implement, interpret or make specific section 19593 and 19594, Business and Professions Code.

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 and providing uniformity of regulation for each type of horse racing. Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are 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 states the Board shall have all powers necessary and proper to enable it to carry out the purposes of Chapter 4, Business and Professions Code. Responsibilities of the Board include adopting rules and regulations for the protection of the public and the control of horse racing with pari-mutuel wagering, and administration and enforcement of all laws, rules and regulations affecting 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 Chapter 4, Business and Professions Code, under which all horse races with wagering on their results shall be conducted in California. Business and Professions Code section 19563 states the Board may adopt any rules and regulations of the United States Trotting Association, not inconsistent with Chapter 4, Business and Professions Code, for the regulation of harness racing. Business and Professions Code section 19590 provides that 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. Pari-mutuel wagering shall be conducted only by a person licensed under Chapter 4 to conduct a horse racing meeting. Business and Professions Code section 19593 states no method of betting, pool making, or wagering other than by the pari-mutuel method shall be permitted or used by any person licensed under this chapter to conduct a horse racing meeting. Business and Professions Code section 19594 states any person within the inclosure where a horse racing meeting is authorized may wager on the result of a horse race held at that meeting by contributing his money to the pari-mutuel pool operated by the licensee under Chapter 4, Business and Professions Code. Business and Professions Code section 19597 provides that a person licensed under Chapter 4 to conduct a horse racing meeting shall, as to any payment made to a person who has wagered by contributing to a pari-mutuel pool operated by such licensee, also deduct the applicable breakage, as defined by section 19405.

Rule 1606 currently requires two or more horses to 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. Subsections 1606(b) and 1606(c) provide exemptions to the coupling requirement for certain partnerships and for quarter horses. The Board has determined that it wishes to amend Rule 1606 to delete the coupling requirement. This renders subsections 1606(b) and 1606(c) unnecessary, as without a coupling requirement, exemptions for partnerships and quarter horses are not necessary. Because the coupling of horses will no longer occur, the Board believes it is necessary to fully inform the public when horses owned in whole or in part by the same person or persons are entered to race. The proposed amendment to Rule 1606 adds a new subsection 1606(a) to require the association to notify the public if horses owned in whole or in part by the same person or persons are entered in the same race, or if horses entered to race are trained by the same trainer. The addition of trainers to the notification requirement will further inform the public about the horses entered to race, and it will help patrons make informed decisions when they wager.

Rule 1974 provides a definition of wagering interest, which may be any one horse entered in a race, or one or more horses coupled as a single wagering interest. However, the proposed amendment to Rule 1606 deletes the requirement that horses owned in whole or in part by the same person or persons be coupled. This necessitates

a change in the definition of wagering interest. The proposed amendment to Rule 1974 modifies subsection 1974(a) so that a wagering interest is defined solely as any one horse in a race.

When a horse is declared or scratched from a race, information regarding the declaration or scratch must be entered into the totalizator system to inform the public. Occasionally, errors will happen, and false information will be entered in the totalizator system. This will cause the public to believe a horse other than the scratched or declared horse has been withdrawn. To protect the public, and owners and trainers whose horse has been removed from the wagering pool in error, a new subsection 1974(b) provides that if a horse is improperly removed from a wagering pool due to a totalizator error or another unjustified reason, and the owner and trainer are not at fault, the horse shall compete as a non-wagering interest for the purse only, and shall be disregarded for pari-mutuel purposes. The horse will be allowed to run for a purse, which could mean income for the owner, the trainer and the jockey. In accordance with the type of wager, patrons who hold tickets that selected such horses will receive the favorite as a substitute selection, have the opportunity to choose an alternative wagering interest, or they will receive a refund. A new subsection 1974(c) requires the racing association to inform the public if a horse runs as a non-wagering interest by making an announcement over the public address system and by informing off-track wagering outlets. This is intended to adequately inform the public regarding the status of the horse and to minimize confusion.

Board rules governing specific types of pari-mutuel wagers contain subsections that address horses coupled as an entry or the field in accordance with Rule 1606 and Rule 1974. In each case the rules provide that wagers selecting entries comprised of multiple horses will not be affected if a horse from such a wagering interest is declared or withdrawn from a race. This is because under the current Rule 1974 a wager on a coupled entry or the field is considered a wager on the remaining part of the entry if any part of the entry starts for pari-mutuel purposes. The proposed amendment to Rule 1606 and Rule 1974 would eliminate coupling of horses. In addition, the proposed amendment to Rule 1974 provides for horses to run as non-wagering interests for purse only under specified circumstances. Therefore, the Board has determined it is necessary to amend a number of rules governing pari-mutuel wagering. The Board proposes to amend Rule 1954.1, Parlay Wagering on Win, Place or Show, to provide that if a wagering interest is designated to run for purse only in accordance with Rule 1974, the parlay shall consist of the remaining legs. In addition, subsection 1954.1(h) has been deleted because the amendment to Rule 1606 and Rule 1974 eliminates coupling of horses. Rule 1957, Daily Double, subsection (h), has been amended to provide that if a horse is designated to run for purse only before the first race is run, any tickets selecting the entry will be deducted from the pool and refunded. In addition, subsection 1957(i) has been amended to provide that if a horse is designated to run for purse only after the first race is completed, all tickets selecting such horses shall be deducted from the pool, and if they combine the winner of the first race with the designated horse, they shall be paid as a straight pool. These changes are consistent with how the rule treats entries that are scratched, excused by the stewards or prevented from racing. Subsection 1957(j) has been deleted, as the amendment of Rule 1606 and Rule 1974 will eliminate coupling of horses. Rule 1959, Special Quinella (Exacta) has been amended to delete subsection 1959(d), as the subsection pertains to coupled entries, which will be eliminated under the amendment of Rule 1606 and Rule 1974. A new subsection 1959(d) has been amended to provide that if a horse entered in a Special Quinella race is designated to run as a non-wagering interest for purse only after the wagering has commenced, tickets selecting the horse shall be deducted from the pool and refunded. Subsection 1959(h) has been deleted, as under the amendment of Rule 1606 and Rule 1974, coupling of horses will not occur. Rule 1976, Unlimited Sweepstakes, subsection (g), has been amended to provide that the actual favorite will be substituted for any selection that is designated to run as a non-wagering interest for purse only in a race comprising the Unlimited Sweepstakes. In addition subsection 1976(e) has been deleted because the amendment to Rule 1606 and Rule 1974 eliminates the

coupling of horses. Rule 1976.8, Place Pick (n), has been amended to delete subsection (d) and subsection 1976.8(e)(1), as the amendment to Rule 1974 and Rule 1606 eliminates coupling of horses. The new subsection 1976.8(d) provides that the racing association or the patron may substitute an alternate wagering interest if a ticket in any Place Pick (n) race selects a horse that is designated to run for purse only. Rule 1976.9, Pick (n) Pool, has been amended to delete subsection (c)(1) because the amendment to Rule 1606 and 1974 eliminates the coupling of horses. Subsection 1976.9(c)(2) has also been amended to delete references to coupled horses. Subsection 1976.9(d) has been amended to allow the racing association to substitute the favorite for a horse in a Place Pick (n) race that has been designated to run as a non-wagering interest for purse only. Rule 1977, Pick Three, has been amended to delete subsection (c) because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. Subsection 1977(g) has been amended to provide that if a horse is designated to run for purse only from any leg of the Pick Three prior to the running of the first leg, tickets selecting such horse shall be refunded. In addition, subsections 1977(h), 1977(i) and 1977(j) have been modified to provide for consolation payouts if a wagering interest is designated to run for purse only in the second or the third leg of the wager, or in both the second and the third legs of the wager. Rule 1978, Select Four, has been amended to delete subsection (e) because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. Subsection 1978(l) has been amended to allow the racing association to substitute the actual favorite for any horse that is designated to run for purse only in any of the races comprising the Select Four wager. Rule 1979, Trifecta, has been amended to modify subsection (c) to delete references to coupled horses because the amendment to Rule 1606 and Rule 1974 eliminates coupling. Subsection 1979(g) has been amended to state the racing association may exchange any ticket that includes a horse designated to run for purse only if such designation takes place before wagering is closed. If a horse is designated to run for purse only after wagering on the Trifecta is closed, any ticket selecting the designated horse shall be eliminated from the pool and the purchase price refunded. Subsection (c) of Rule 1979.1, Superfecta, has been amended to delete references to coupled horses because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. An amended subsection 1979.1(g) provides that before wagering on the Superfecta closes the racing association may exchange any ticket selecting a horse that is designated to run for purse only. If wagering on the Superfecta has closed, tickets selecting a horse that is designated to run for purse only shall be eliminated from the pool and refunded. Additional changes to the regulations are for purposes of renumbering, consistency and clarity.

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

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

The Board has made an initial determination that the proposed amendment of Rule 1606, and Rule 1974, and the amendment of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 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 business: 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, and Rule 1974, and of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 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 proposed amendment of Rule 1606, and Rule 1974, and of Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 does not affect small businesses because horse racing associations in California are not classified as small businesses under Government Code Section 11342.610. Rule 1606, and Rule 1974 addresses coupling of horses and the definition of wagering interest. Rules 1954.1; 1957; 1959; 1976; 1976.8; 1976.9; 1977; 1978; 1979 and 1979.1 authorize specific types of pari-mutuel wagering in California.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative that is 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 regulations 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  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 263-6397  
E-Mail: [HaroldC@chr.ca.gov](mailto:HaroldC@chr.ca.gov)

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

Andrea Ogden,  
Policy and Regulation Unit  
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 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 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 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 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 Internet address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

## **INITIAL STATEMENT OF REASONS**

RULE 1606. COUPLING OF HORSES

RULE 1974. WAGERING INTEREST

RULE 1954.1. PARLAY WAGERING ON WIN, PLACE OR SHOW

RULE 1957. DAILY DOUBLE

RULE 1959. SPECIAL QUINELLA (EXACTA)

RULE 1976. UNLIMITED SWEEPSTAKES

RULE 1976.8. PLACE PICK (N)

RULE 1976.9. PICK (N) POOL

RULE 1977. PICK THREE

RULE 1978. SELECT FOUR

RULE 1979. TRIFECTA

RULE 1979.1. SUPERFECTA

## **SPECIFIC PURPOSE OF THE REGULATIONS**

The Board proposes to amend Rule 1606, Coupling of Horses, to delete the requirement that two or more horses shall be coupled as a single wagering interest when the horses are owned in whole or in part by the same person or persons. The proposed amendment to Rule 1606 also deletes the exemptions to coupling contained in subsections 1606(b) and 1606(c), changes the title of the regulation, and it adds a new subsection 1606(a) to require that if two or more horses entered in the same race are owned in whole or in part by the same person or persons, or are trained by the same trainer, the racing association shall take all actions necessary to adequately inform the public. The Board Proposes to amend Rule 1974, Wagering Interest, to provide change the definition of wagering interest in recognition of the elimination of coupling. The proposed amendment to Rule 1974 will also state the circumstances under which a horse may be designated to run in a race for purse only and disregarded for pari-mutual purposes. The Board also proposes to amend pari-mutuel wagering rules to provide direction when a horse that is entered in a race that comprises a particular pari-mutuel wager is designated to run for purse only and disregarded for pari-mutuel purposes. The amendments to the pari-mutuel regulations will also remove references to coupling of horses. The pari-mutuel regulations the Board proposes to amend are: Rule 1954.1, Parlay Wagering on Win, Place or Show; Rule 1957, Daily Double; Rule 1959, Special Quinella (Exacta); Rule 1976, Unlimited Sweepstakes; Rule 1976.8, Place Pick (n); Rule 1976.9, Pick (n) Pool; Rule 1977, Pick Three; Rule 1978, Select Four; Rule 1979, Trifecta and Rule 1979.1, Superfecta.

## **NECESSITY**

The Board has determined that it wishes to amend Rule 1606 to delete the coupling requirement. Rule 1606 currently requires two or more horses to 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. Subsections 1606(b) and 1606(c) exempt certain partnerships and quarter horses from coupling. Horses that are trained by the same trainer are not coupled (unless there is an ownership issue). One of the original purposes of coupling was to deter owners and trainers from using a “lesser” horse to run interference for a second horse in a race. If horses were coupled, it would not matter which horse placed, as the horses were considered one entry. When private stables were common, it was believed horse owners could instruct their trainers on how to running their horses in a race. That is a primary reason horses owned by the same person or persons were coupled. With the advent of public stables, which are stables run by trainers who work for multiple owners, the influence of owners was greatly

diminished. Today, trainers are considered to have much more influence over how a horse runs, yet horses are not coupled if they are trained by the same trainer. Prior to the 1982, Rule 1606 required coupling of horses if a trainer had an ownership interest in any horse in a race in which they also trained a horse. In 1982 Rule 1606 was amended to only require coupling of horses if two or more horses were owned in whole or in part by the same person or persons. The issue of coupling horses trained by the same trainers was raised in 1990, but the industry believed it was not necessary, would lead to short fields, and was not in the best interests of racing. Furthermore, the racing public had not expressed a concern about trainers. In 2006, after a lengthy examination of the issue, the Board amended Rule 1606 to exempt the quarter horse industry from coupling. In 2007 and in 2008 the Board further amended Rule 1606 to provide exemptions for thoroughbred partnerships, as specified. The narrowing of coupling under Rule 1606 has resulted in fewer instances of coupling without a real adverse reaction from the industry or the racing public. In 2010, when the issue of coupling was raised, industry representatives suggested that coupling should be eliminated. The industry reasoned that racing associations had the ability to inform the racing public about the ownership and the training of horses entered to race, and was currently doing so in the official program and by other means. In addition, eliminating coupling would result in larger fields by increasing the number of wagering interests. The proposed amendment to Rule 1606 deletes the existing subsection 1606(a), which requires the coupling of horses owned in whole or in part by the same person or persons. This has the effect of eliminating coupling of horses in California. This renders subsections 1606(b) and 1606(c) unnecessary, as without a coupling requirement, exemptions for partnerships and quarter horses are not necessary. Because the coupling of horses will no longer occur, the Board believes it is necessary to fully inform the public when horses owned in whole or in part by the same person or persons are entered to race. The proposed amendment to Rule 1606 adds a new subsection 1606(a) to require the association to notify the public if horses owned in whole or in part by the same person or persons are entered in the same race, or if horses entered to race are trained by the same trainer. The addition of trainers to the notification requirement will further inform the public about the horses entered to race, and it will help patrons make informed decisions when they wager. Because California will no longer couple horses, but will require that the racing associations inform the public about horse ownership and trainers, it is necessary to change the title of Rule 1606, Coupling of Horses. The Board proposes to change the title of Rule 1606 to “Association to Disclose Ownership.”

Board rules governing specific types of pari-mutuel wagers contain subsections that address horses coupled as an entry or the field in accordance with Rule 1606 and Rule 1974. The rules provide that wagers selecting entries comprised of multiple horses will not be affected if a horse from such a wagering interest is declared or withdrawn from a race. This is because under the current Rule 1974 a wager on a coupled entry or the field is considered a wager on the remaining part of the entry if any part of the entry starts for pari-mutuel purposes. The proposed amendment to Rule 1606 and Rule 1974 would eliminate coupling of horses. In addition, the proposed amendment to Rule 1974 provides for horses to run as non-wagering interests for purse only. These scenarios are currently not addressed in the pari-mutuel regulations. Therefore, the Board has determined it is necessary to amend a number of rules governing pari-mutuel wagering.

The Board proposes to amend Rule 1954.1, Parlay Wagering on Win, Place or Show, subsection (g), to provide that if a wagering interest is designated to run for purse only in accordance with Rule 1974, the parlay shall consist of the remaining legs. This is consistent with how Rule 1954.1 treats entries that are scratched, or declared non-starters for wagering purposes. In addition, subsection 1954.1(h) has been deleted because it is no longer necessary, as the amendment to Rule 1606 and Rule 1974 eliminates coupling of horses.

Rule 1957, Daily Double, subsection (h), has been amended to provide that if a horse is designated to run for purse only before the first race is run, any tickets selecting the entry will be deducted from the pool and refunded. This is consistent with how Rule 1957 treats entries that are scratched, excused by the stewards, or prevented from racing prior to the first race of the wager. Subsection 1957(i) has been amended to provide that if a horse is designated to run for purse only after the first race is completed, all tickets selecting such horses shall be deducted from the pool, and if they combine the winner of the first race with the designated horse, they shall be paid as a straight pool. This is consistent with how the subsection deals with entries that are scratched, excused by the stewards, or prevented from racing in the second leg of the wager. Subsection 1957(j) has been deleted. This is necessary, as the amendment of Rule 1606 and Rule 1974 will eliminate coupling of horses.

Rule 1959, Special Quinella (Exacta) has been amended to delete subsection 1959(d), this is necessary, as the subsection pertains to coupled entries, which will be eliminated under the amendment of Rule 1606 and Rule 1974. A new subsection 1959(d) has been amended to provide that if a horse entered in a Special Quinella race is designated to run as a non-wagering interest for purse only after the wagering has commenced, tickets selecting the horse shall be deducted from the pool and refunded. This is consistent with how subsection 1959(d) treats scratched or excused horses, and horses prevented from racing because of the failure of the starting gates to open. Subsection 1959(h) has been deleted. This is necessary, as under the amendment of Rule 1606 and Rule 1974, coupling of horses will not occur. All other changes to the regulation are for the purposes of clarity, consistency and renumbering.

Rule 1976, Unlimited Sweepstakes, subsection (e), which addresses horses coupled as an entry has been deleted. This is necessary because the amendment to Rule 1974 and rule 1606 eliminates coupling of horses. Subsection 1976(g), has been amended to provide that the actual favorite will be substituted for any selection that is designated to run as a non-wagering interest for purse only in a race comprising the Unlimited Sweepstakes. This is consistent with the manner in which the subsection treats entries that are scratched, excused or determined by the stewards to be nonstarters in the race. All other changes to the regulation are for purposes of clarity, consistency and renumbering.

Rule 1976.8, Place Pick (n), has been amended to delete subsection (d) and subsection 1976.8(e)(1), which address horses coupled as an entry. This is necessary, as the amendment to Rule 1974 and Rule 1606 eliminates coupling of horses. The new subsection 1976.8(d) provides that the racing association or the patron may substitute an alternate wagering interest if a ticket in any Place Pick (n) race selects a horse that is designated to run for purse only. This is consistent with the manner in which the subsection addresses selections that are scratched, excused or determined by the stewards to be nonstarters. All other changes to the regulation are for purposes of clarity, consistency and renumbering.

Rule 1976.9, Pick (n) Pool, has been amended to delete subsection (c)(1), which address coupled horses in a dead heat. This is necessary because the amendment to Rule 1606 and 1974 eliminates the coupling of horses. Subsection 1976.9(c)(2) has also been amended to delete references to coupled horses. Subsection 1976.9(d) has been amended to allow the racing association to substitute the favorite for a horse in a Place Pick (n) race that has been designated to run as a non-wagering interest for purse only. This is consistent with the manner in which the subsection treats entries that are scratched

Rule 1977, Pick Three, has been amended to delete subsection (c), which addresses horses coupled as an entry. This is necessary because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. Subsection 1977(g) has been amended to provide that if an entry is designated to run for purse only from any

leg of the Pick Three prior to the running of the first leg, tickets selecting such horse shall be refunded. This is consistent with the manner in which subsection 1977(g) addresses entries that are scratched. In addition, subsections 1977(h), 1977(i) and 1977(j) have been modified to provide for consolation payouts if a wagering interest is designated to run for purse only in the second or the third leg of the wager, or in both the second and the third legs of the wager. This is consistent with how the subsections address entries that have been scratched. All other changes to the regulation are for purposes of clarity, consistency and renumbering.

Rule 1978, Select Four, has been amended to delete subsection (e), which addresses horses coupled as an entry. This is necessary because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. Subsection 1978(l) has been amended to allow the racing association to substitute the actual favorite for any entry that is designated to run for purse only in any of the races comprising the Select Four wager. This is consistent with the manner in which subsection 1978(l) treats entries that are scratched, excused or determined by the stewards to be non-starters. All other changes to the regulation are for purposes of clarity, consistency and renumbering.

Rule 1979, Trifecta, has been amended to modify subsection (c), which addresses horses coupled as an entry. This is necessary, as the amendment to Rule 1606 and Rule 1974 eliminates coupling. Subsection 1979(g) has been amended to state the racing association may exchange any ticket that includes a horse designated to run for purse only if such designation takes place before wagering is closed. If a horse is designated to run for purse only after wagering on the Trifecta is closed, any ticket selecting the designated horse shall be eliminated from the pool and the purchase price refunded. This is consistent with the manner in which subsection 1979(g) treats horses that are scratched or declared a non-starter by the stewards.

Subsection (c) of Rule 1979.1, Superfecta, has been amended to delete references to coupled horses. This is necessary because the amendment to Rule 1606 and Rule 1974 eliminates the coupling of horses. An amended subsection 1979.1(g) provides that before wagering on the Superfecta closes the racing association may exchange any ticket selecting a horse that is designated to run for purse only. If wagering on the Superfecta has closed, tickets selecting a horse that is designated to run for purse only shall be eliminated from the pool and refunded. This is consistent with the manner in which subsection 1979.1(g) treats horses that are scratched, or declared by the stewards to be a non-starter.

#### 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 repeal and amendment of these of these regulations.

#### ALTERNATIVE TO THE PROPOSED REGULATORY ACTIONS 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.

California Horse Racing Board  
March 4, 2011

**PROPOSED TEXTS**

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 6. ENTRIES AND DECLARATIONS  
PROPOSED AMENDMENT OF  
RULE 1606. ~~COUPLING OF HORSES~~ ASSOCIATION TO DISCLOSE OWNERSHIP

1606. ~~Coupling of Horses~~. Association to Disclose Ownership.

~~(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.~~

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

(a) If two or more horses that are entered in the same race are owned in whole or in part by the same person or persons, or are trained by the same trainer, the racing association shall take such actions as are necessary to adequately inform the public, including publishing the name of the owners and trainer in the official program as required under Rule 1461 of this division, and announcing the circumstances over the public address system.

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

Reference: Section 19401,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1974. WAGERING INTEREST

1974. Wagering Interest.

(a) A wagering interest ~~may be~~ is any one horse in a race, ~~or may be two or more horses coupled as a single wagering interest as an "Entry" or the "Field."~~ ~~A declaration or withdrawal of one horse from a wagering interest which consists of more than one horse shall have no effect on any wagers made on such wagering interest.~~

(b) If a horse is removed from the wagering pool due to a totalizator error, or due to any other error, and neither the trainer nor the owner is at fault, the horse shall start in the race as a non-wagering interest for the purse only, and shall be disregarded for pari-mutuel purposes.

(c) If a horse is removed from the wagering pool to start in a race as a non-wagering interest for purse only and is disregarded for pari-mutuel purposes, the circumstances shall be announced over the public address system at the time the action is taken and thereafter to adequately inform the public. The racing association shall also inform off-track wagering outlets at the time such action is taken.

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

Reference:    Section 19562,  
                  Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1954.1. PARLAY WAGERING ON WIN, PLACE OR SHOW

1954.1. Parlay Wagering on Win, Place or Show.

(a) The parlay is not a separate pari-mutuel pool, it is a series of wagers (consisting of legs) combining wagering entries in Win, Place or Show pools. The initial amount wagered constitutes the wager on the first leg, and if successful, the payout from the first leg constitutes the wager on the second leg, etc.

(b) A parlay wager is limited to Win, Place or Show which have a corresponding pool conducted on the race selected. The wager must combine at least two races but not more than six races. The races in a parlay must be in chronological order but do not need to be consecutive races or combine the same type pool.

(c) A parlay wager may only be on one pool and one wagering interest per leg and cannot combine wagers on races on other days.

(d) Payouts included as wagers in subsequent races and the final payout to the parlay wagerer shall be broken to the nearest dime. Parlay breakage shall be reported separately and added to regular breakage at the end of the day for the purpose of taxation and distribution.

(e) Parlay payouts will be included as wagers in subsequent pools by the track operator so the amount of such wagers, including their impact on the wagering odds, will be displayed. Wager totals in such pools shall be displayed in truncated fashion, to the lowest dollar.

(f) Parlay wagers may be cancelled by the ticket holder, in accordance with track policy, only before the start of the first parlay leg in which a parlay selection starts. Parlay wagers not cancelled must be completed or terminated by operation of these rules in order to be entitled to a payout.

(g) If a ~~race, pool or wagering entry~~ wagering interest in a parlay is scratched, which includes ~~an entry~~ being declared a non-starter for wagering purposes, or if a wagering interest is designated to run for purse only in

accordance with Rule 1974 of this article, or a race or pool is scratched or cancelled, the parlay shall consist of the remaining legs. The parlay terminates if there are no remaining legs.

~~(h) A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of the coupled entry or field starts for parimutuel purposes in accordance with Rule 1974 of this Article.~~

Authority: Section 19590,  
Business and Professions Code.

Reference: Sections 19594, 19597 and 19598,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1957. DAILY DOUBLE

1957. Daily Double.

(a) The Daily Double is a separate ~~parimutuel~~ pari-mutuel pool established on two (2) races. The pool consists of amounts wagered on the selection of the winning horse of both races. It is not a parlay and has no connection with or relation to other pools conducted by the association or to rules governing the distribution of other pools.

(b) A valid Daily Double ticket shall be evidence of a binding contract between the holder of the ticket and the association and shall constitute an acceptance of Daily Double provisions and rules contained in this Article.

(c) The association shall distribute the net pool to holders of valid tickets that correctly selected the winner of both races. If no ticket selected the winner of both races, the net pool shall be distributed as a place pool among tickets that included the winner of the first race and tickets that included the winner of the second race.

(d) If no ticket included the winner of the first race the net pool shall be distributed equally among tickets that included the winner of the second race; and, if no ticket included the winner of the second race the net pool shall be distributed equally among tickets that included the winner of the first race.

(e) If no ticket included the winner of either race the net pool shall be distributed equally among tickets selecting the second place finishers of both races.

(f) The association shall refund the entire pool if no ticket requires a payout or if the first race is cancelled.

(g) If the second race is cancelled after the first race has been completed, the net pool shall be distributed as a single price pool among tickets selecting the winner of the first race.

(h) Before the first race is run, any money wagered on a horse in either race that is scratched, excused by the ~~stewards~~ Stewards, or prevented from racing or is designated to run for purse only in accordance with Rule 1974 of this article shall be deducted from the pool and refunded.

(i) If, after the first race is completed, any horse is scratched, excused by the ~~Stewards~~ stewards or prevented from racing because of the failure of the stall doors or starting gate to open in the second race, or designated to run in the second race for purse only in accordance with Rule 1974 of this article, ~~after the first race has been completed~~, all tickets including such horse(s) shall be deducted from the pool, and the pool(s), thus formed shall be distributed as a straight pool(s) among tickets combining the winner of the first race with such horse(s).

~~(j) A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of such entry starts for parimutuel purposes in accordance with Rule 1974.~~

~~(k)~~(j) If a dead heat occurs in either race the net pool is figured as a place pool. Example: Number eight (8) and five (5) dead heat in the first race, and number three (3) wins the second race, the pool would be divided and apportioned to tickets bearing eight (8) and three (3), and five (5) and three (3).

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

Reference: Section 19590,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1959. SPECIAL QUINELLA (EXACTA)

1959. Special Quinella (Exacta).

(a) The Special Quinella is not a parlay and has no connection with or relation to the win, place and show pools shown on the totalizator board. All tickets on the Special Quinella will be calculated in a separate pari-mutuel pool.

(b) A Special Quinella race shall be given a distinctive name to be selected by the association conducting such race, such as "Perfecta" or "Exacta," subject to the approval of the Board.

(c) All Special Quinella tickets will be for the win and place combination only. Each person purchasing a Special Quinella ticket shall designate the exact order in which the first two horses will finish in a Special Quinella race. For example, if number 3 is selected to finish first and number 6 is selected to finish second, they must come in number 3, first and number 6 second in order to win.

~~(d) Entries or field horses in a race comprising the Special Quinella shall race as single wagering interests for the purposes of mutuel pool calculations and payouts to the public. If, in the event that any part of the entry or the field is a starter, there shall be no refund to persons wagering on such entry or field. In the event any part of an entry or the field finishes first, the order of finish of all other horses making up such entry or field will be disregarded in determining which horse finished second for the purpose of this rule.~~

~~(e)~~(d) Should any horse or horses entered in a Special Quinella race be scratched or excused by the ~~Stewards~~ stewards after wagering has commenced or should any horse or horses be prevented from racing

because of the failure of the stall doors of the starting gate to open, or if a horse is designated to run for purse only in accordance with Rule 1974 of this article, all tickets including such horse or horses shall be deducted from the Special Quinella Pool and money refunded to the purchasers of tickets on the horse or horses so designated, excused or prevented from racing.

(~~f~~)(e) In the event that no ticket is sold on the winning combination of a Special Quinella Pool, the net pool shall be distributed equally among holders of tickets selecting the winning horse to finish first and holders of tickets selecting the second place horse to finish second.

(~~g~~)(f) In the event of a dead-heat between two horses for first place, the net pool shall be calculated and distributed as a place pool to holders of the winning combinations.

~~(h)(g) In the event of a dead-heat between two or more horses for place, all tickets designating the proper first horse to win which are coupled with any of the place horses involved in a dead-heat shall be the winners of the Special Quinella race and payouts calculated according to their respective interest in the net pool.~~

(~~i~~)(h) In the event of a dead-heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combinations. If no tickets combine the winning horse with either of the place horses in the dead-heat the Special Quinella Pool shall be calculated and distributed to holders of tickets designating the winning horse or either of the place horses according to their respective interest in the net pool.

(~~j~~)(i) In the event of a dead-heat among three or more horses for first place, the net pool shall be calculated and distributed to holders of tickets designating any two of the horses participating in the dead-heat according to their respective interest in the net pool.

(~~k~~)(j) In the event that no ticket is sold that would require distribution to any winner as above defined the Special Quinella shall be deemed "No Contest" and all money in the Special Quinella shall be promptly refunded.

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

Reference: Section 19590,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1976. UNLIMITED SWEEPSTAKES

1976. Unlimited Sweepstakes.

(a) The Unlimited Sweepstakes ~~parimutuel~~ pari-mutuel pool is not a parlay and has no connection with or relation to any other ~~parimutuel~~ pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator, nor to the rules governing the distribution of such other pools.

(b) An Unlimited Sweepstakes ~~parimutuel~~ pari-mutuel ticket shall be evidence of a binding contract between the holder of the ticket and the association and the said ticket shall constitute an acceptance of the Unlimited Sweepstakes provisions and rules contained in article ~~Article~~ 18.

(c) An Unlimited Sweepstakes may be given a distinctive name by the association conducting the meeting, subject to approval of the Board.

(d) The Unlimited Sweepstakes ~~parimutuel~~ pari-mutuel pool consists of amounts contributed for a selection for win only in each of nine races designated by the association with the approval of the Board. Each person purchasing an Unlimited Sweepstakes ticket shall designate the winning horse in each of the nine races comprising the Unlimited Sweepstakes.

~~(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Unlimited Sweepstakes shall race as a single wagering interest for the purpose of the Unlimited Sweepstakes parimutuel pool calculations and payouts to the public. However if any part of either an entry or the field racing as a single wagering interest is a starter in a race the entry or the field selection shall~~

~~remain as the designated selection to win in that race for the Unlimited Sweepstakes calculation and the selection shall not be deemed a scratch.~~

~~(f)(e)~~ The Unlimited Sweepstakes ~~parimutuel~~ pari-mutuel pool shall be calculated as follows:

(1) One hundred percent (100%) of the net amount in the ~~parimutuel~~ pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the official winner in each of the nine races comprising the Unlimited Sweepstakes.

(2) In the event there is no ~~parimutuel~~ pari-mutuel ticket properly issued which correctly designates the official winner in each of the nine races comprising the Unlimited Sweepstakes, twenty-five percent (25%) of the net amount in the ~~parimutuel~~ pari-mutuel pool shall be distributed among the holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Unlimited Sweepstakes, and the remaining seventy-five percent (75%) of the net amount in the ~~parimutuel~~ pari-mutuel pool shall not be distributed as provided above but shall be retained by the association as distributable amounts and shall be carried over and included in the Unlimited Sweepstakes ~~parimutuel~~ pari-mutuel pool for the next succeeding racing date as an additional net amount to be distributed as provided in subsection ~~(f)(e)~~(1).

~~(g)(f)~~(1) Except as provided in subsection ~~(k)(j)~~ and subsection ~~(m)(l)~~, should no distribution be made pursuant to subsections ~~(f)(e)~~(1), then the distributable pool and all monies accumulated therein shall be carried over until that amount equals or exceeds five million dollars (\$5,000,000) or such lesser amount as the racing association designates to the Board at the time it files its license application with the Board.

(2) Once the pool and all monies accumulated therein equals or exceeds five million dollars, or such lesser amount designated by the racing association pursuant to subsection ~~(g)(f)~~(1), that amount shall be distributed on the next racing day as provided in subsection ~~(f)(e)~~(1); but if no holder of ~~parimutuel~~ pari-mutuel

tickets correctly designates the official winner in each of the nine races comprising the Unlimited Sweepstakes, then seventy-five percent (75%) of the pool shall be distributed among the holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Unlimited Sweepstakes. The remaining twenty-five percent (25%) of the pool shall be distributed to those holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the next greatest number of official winners.

~~(h)~~(g) In the event an Unlimited Sweepstakes ticket ~~designates~~ includes a selection in any one or more of the races comprising the Unlimited Sweepstakes ~~and that selection is scratched, excused or determined by the Stewards~~ stewards to be a nonstarter in the race, or if in a race comprising the Unlimited Sweepstakes any selection is designated to run for purse only in accordance with Rule 1974 of this article, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the nonstarting ~~or the designated~~ selection for all purposes, including pool calculations and payouts.

~~(i)~~(h) In the event of a dead heat for win between two or more horses in any Unlimited Sweepstakes race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

~~(j)~~(i)(1) In the event that all nine races comprising the Unlimited Sweepstakes are cancelled or declared as no contest, all ~~parimutuel~~ pari-mutuel tickets held on the Unlimited Sweepstakes for that day or night shall be refunded and the Unlimited Sweepstakes shall be cancelled in its entirety for that day or night and any retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection ~~(f)~~(e)(2) shall be carried over to the next succeeding racing date of that meeting.

(2) In the event that fewer than nine, but no more than three, races comprising the Unlimited Sweepstakes are completed due to the cancellation of one or more races or the ~~Stewards~~ stewards declaring one

or more races as no contest, the pool for that racing day shall be refunded and the Unlimited Sweepstakes shall be cancelled in its entirety as provided in subsection ~~(j)~~(i)(1).

(3) In the event that fewer than nine, but no fewer than four, races comprising the Unlimited Sweepstakes are completed due to the cancellation of one or more races or the ~~Stewards~~ stewards declaring one or more races as no contest, one hundred percent (100%) of the net amount in the ~~parimutuel~~ pari-mutuel pool for that day or night, exclusive of any retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection ~~(f)~~(e)(2), shall be subject to distribution among holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the most winners in the completed races of the Unlimited Sweepstakes. The retained distributable amounts carried over from any prior Unlimited Sweepstakes pool pursuant to subsection ~~(f)~~(e)(2) shall be carried over to the next succeeding racing date of that meeting.

~~(k)~~(j)(1) Should no distribution be made pursuant to subsection ~~(f)~~(e)(1) on the last day of the association's race meeting, then the distributable pool and all monies accumulated therein shall be distributed on that day. Seventy-five percent (75%) of the pool shall be distributed among holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the most official winners, but less than nine, in each of the nine races comprising the Unlimited Sweepstakes. The remaining twenty-five percent (25%) of the pool shall be distributed to those holders of ~~parimutuel~~ pari-mutuel tickets which correctly designate the next greatest number of official winners.

(2) In the event that an association is unable to distribute the retained distributable amount carried over from any prior Unlimited Sweepstakes pool established pursuant to subsection ~~(f)~~(e)(2) by the end of its race meeting due to cancellation of the final day(s) or night(s) of racing or any other reason, the retained distributable amount shall be carried forward to the next race meeting having an Unlimited Sweepstakes at the same location and of the same breed of horse as the racing association that generated the retained distributable

amount. The retained distributable amount shall be included in the Unlimited Sweepstakes pool for the first day or night of racing at the subsequent race meeting.

~~(k)~~ No ~~parimutuel~~ pari-mutuel ticket for the Unlimited Sweepstakes pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the nine races comprising the Unlimited Sweepstakes, except for such refunds on Unlimited Sweepstakes tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Unlimited Sweepstakes pool or the number or amount of tickets selecting winners of Unlimited Sweepstakes races until such time as the ~~Stewards~~ stewards have determined the last race comprising the Unlimited Sweepstakes each day to be official.

~~(m)~~(l) The racing association may, at its election, designate to the Board, at the time it files its license application with the Board, one or more racing days (nights) during its racing meeting on which the retained distributable amount carried over from any prior Unlimited Sweepstakes pool established pursuant to subsection ~~(e)~~(e)(2), shall be distributed as provided in subsection ~~(g)~~(f)(2), even though the retained amount is less than the amount specified in or designated by the racing association pursuant to subsection ~~(g)~~(f)(1).

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

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1976.8. PLACE PICK (N)

1976.8. Place Pick (n).

(a) The Place Pick (n) is a separate pari-mutuel pool established by the association on a designated number of races. The pool consists of amounts wagered on a horse to finish first or second in each of the races. It is not a parlay and has no connection with or relation to other pools conducted by the association, except for the provisions in subsection (e), or to rules governing the distribution of other pools.

(b) A valid Place Pick (n) ticket shall be evidence of a binding contract between the holder of the ticket and the association and shall constitute an acceptance of Place Pick (n) provisions and rules contained in this Article.

(c) A Place Pick (n) may be given a distinctive name by the association conducting the meeting, subject to Board approval.

~~(d) A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of such entry starts for pari-mutuel purposes in accordance with Rule 1974 of this article.~~

~~(e)~~(d) If a ticket in any Place Pick (n) race designates a selection that is scratched, excused or determined by the ~~Stewards~~ stewards to be a nonstarter in the race, or designates a selection that runs for purse only in accordance with Rule 1974 of this article, the association may substitute ~~designate~~ the actual favorite, which is determined by the amounts wagered in the win pool at the time of the start of the race, or may allow patrons the option of selecting an alternate ~~betting~~ wagering interest. The actual favorite or the alternate ~~betting~~ wagering interest will be substituted for the ~~nonstarting~~ non-starting selection or the selection designated to run for purse only for all purposes.

~~(f)~~(e) ~~Except as provided in subsection (f)(1), in~~ In a dead heat for win between two or more horses, only the horses in such dead heat shall be considered winning horses.

~~(1) In a dead heat for win between two or more coupled horses, all such horses together with the horse(s) which finishes next in order shall be considered winning horses.~~

(2) Except as provided in subsection ~~(f)~~(e), a dead heat for second between two or more horses, all such horses together with the horse which finished first shall be considered winning horses.

~~(g)~~(f) The association shall distribute the net pool to holders of valid tickets that correctly selected the most first or second place finishers.

~~(h)~~(g) All tickets shall be refunded if all races comprising the Place Pick (n) are cancelled or declared as no contest. The entire pool shall be refunded if less than four races are completed and if four or more races are completed the net pool shall be distributed pursuant to subsection ~~(e)~~(f).

~~(i)~~(h) After wagering closes on the first race comprising the Place Pick (n) no ticket shall be sold, exchanged or cancelled. No person shall disclose the number of tickets sold in the Place Pick (n) or the number or amount of tickets that selected winners of Place Pick (n) races until the ~~Stewards~~ stewards declare the last race official.

~~(j)~~(i) If the racing surface changes from turf to dirt or dirt to turf in any race of a Place Pick (n), and such change is not announced to the public before the close of wagering on the Place Pick (n) pool, all wagers on such race shall be considered winning wagers for the purposes of the Place Pick (n).

Authority: Sections 19440 and 19590,  
Business and Professions Codes.

Reference: Sections 19593 and 19594,  
Business and Professions Code.

TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1976.9. PICK (N) POOL

1976.9. Pick (n) Pool.

(a) The Pick (n) requires selection of the first-place finisher in each of a number of races designated by the association. The association shall designate the percentage of the net pool considered the major share, and the percentage of the net pool considered the minor share, if any. The number of races comprising a Pick (n) must be at least four but no more than ten. Subsequent changes to the Pick (n) shall be requested in writing by the association. The Board or its designated representative shall respond in writing to requests within five

working days of their receipt at Board headquarters.

(b) The major share of the net Pick (n) pool, along with the Pick (n) carryover, shall be distributed to ticket holders that selected the first-place finisher in each of the Pick (n) races, based upon the official order of finish, and the minor share of the net Pick (n) pool shall be distributed as a win pool to ticket holders whose selection finished first in the second greatest number of Pick (n) races; if there are no wagers selecting the first place finisher in each of the Pick (n) races, then:

(1) The minor share of the net pool shall be distributed as a win pool to ticket holders whose selection finished first in the greatest number of Pick (n) races, and

(2) The major share of the net Pick (n) pool shall be retained by the association and added to the corresponding Pick (n) pool of the next performance. The additional Pick (n) pool resulting from such a carryover shall be termed the "Pick (n) carryover."

(c) In a dead heat for first in any of the Pick (n) races ~~involving:~~

~~(1) Coupled horses or horses coupled to constitute the field, the Pick (n) pool shall be distributed as if a dead heat had not occurred, or~~

~~(2) Horses representing two or more wagering interests, all horses in the dead heat for win shall be considered winning horses to calculate the pool.~~

(d) If a wagering interest in any of the Pick (n) races is scratched, or is designated to run for purse only in accordance with Rule 1974 of this article, the association may ~~designate~~ substitute the favorite for the scratched or designated wagering interest, determined by total amounts wagered in the win pool at the close of wagering on that race, or allow patrons the option of selecting an alternate wagering interest. The favorite or alternate wagering interest shall be substituted for the scratched wagering interest, or horse designated to run for purse only, for all purposes. If the association elects to ~~designate~~ substitute the favorite and the win pool total is identical for two or more horses, the horse with the lowest program number is used. The totalizator shall

produce written reports showing each of the wagering combinations with substituted wagering interests that became winners as a result of the substitution, in addition to the normal winning combination, at the end of each race where substitutions occur.

(e) The Pick (n) pool shall be canceled and all Pick (n) wagers for the individual performance shall be refunded if:

(1) Three or more races included as part of a Pick 4, Pick 5 or Pick 6 are canceled or declared no contest; or

(2) Four or more races included as part of a Pick 7, Pick 8 or Pick 9 are canceled or declared no contest; or

(3) Five or more races included as part of a Pick 10 are canceled or declared no contest.

(f) If at least one race included as part of a Pick (n) is canceled or declared no contest, but fewer than the number specified in subsection (e), the net pool shall be distributed as a win pool to ticket holders whose selection finished first in the greatest number of Pick (n) races for that performance. Such distribution shall include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances.

(g) The Pick (n) carryover may be capped at an amount designated by the association, with Board approval. If, at the close of any performance, the carryover equals or exceeds the designated cap, it will be frozen until it is won or distributed under other provisions of this rule. After the carryover is frozen, 100% of the net pool shall be distributed to ticket holders whose selection finished first in the greatest number of Pick (n) races for that performance.

(h) Permission to distribute the Pick (n) carryover on a specific date and performance shall be obtained from the Board. The mandatory payout request must contain the intended date and performance for the distribution.

(i) If the Pick (n) carryover is designated for distribution on a specified date and performance in which no wager selects the first-place finisher in each of the Pick (n) races, the entire pool including the carryover shall be distributed as a win pool to ticket holders whose selection finished first in the greatest number of Pick (n) races. The Pick (n) carryover shall be designated for distribution on a specified date and performance only under the following circumstances:

(1) With written approval from the Board as provided in subsection (h); or

(2) With written approval from the Board when there is a change in the carryover cap, a change from one type of Pick (n) wagering to another, or when the Pick (n) is discontinued; or

(3) On the closing performance of the meet or split meet.

(j) If the Pick (n) carryover must be carried over to the corresponding Pick (n) pool of a subsequent meet, it shall be deposited in an interest-bearing account approved by the Board. The Pick (n) carryover plus accrued interest shall then be added to the net Pick (n) pool of the following meet on a date and performance designated by the association, with Board approval.

(k) With Board approval, the association may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap.

(l) No ticket for the Pick (n) pool shall be sold, exchanged or canceled after the close of wagering in the first race comprising the Pick (n), except for refunds required by this rule.

(m) Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is prohibited. The totalizator will be programmed to suppress all information related to Pick (n) wagering activity until the conclusion of the final race except for the following:

(1) Total amount of the net pool at the close of Pick (n) wagering.

(2) Information regarding possible Pick (n) payouts for each of the runners when the last race of the Pick (n) pool is the only race remaining to be run.

(n) If the racing surface changes from turf to dirt or dirt to turf in any race of a Pick (n) pool, and such change was not announced to the public before the close of wagering on the Pick (n) pool, all wagers on such race shall be considered winning wagers for the purposes of the Pick (n) pool.

Authority: Sections 19440 and 19590,  
Business and Professions Code.  
Reference: Sections 19440, 19590 and 19593,  
Business and Professions Code.

TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1977. PICK THREE

1977. Pick Three.

(a) The Pick Three is a separate pari-mutuel pool established on three consecutive races. The pool consists of amounts wagered on the winning horse in each of the races. It is not a parlay and has no connection with or relation to other pools conducted by the association, or to rules governing the distribution of other pools.

(b) A valid Pick Three ticket shall be evidence of a binding contract between the holder of the ticket and the association and shall constitute an acceptance of Pick Three provisions and rules contained in this article.

~~(e) A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of such entry starts for pari-mutuel purposes in accordance with Rule 1974.~~

~~(d)~~(c) The association shall distribute the net pool to holders of valid tickets that correctly selected the winners in all three races.

~~(e)~~(d) In a dead heat for win between two or more horses in any of the Pick Three races, all such horses shall be considered winning horses in that race for calculating the pool. The payout shall reflect the proportionate amount of money wagered on each winning combination.

~~(f)~~(e) If no ticket selected the winner in all three races, the net pool shall be paid for tickets that selected the winner in any two races; and if no ticket selected two winners the net pool shall be paid for tickets that selected the winner of any one race. The association shall refund the entire pool if no ticket selected the winner of any one race.

~~(g)~~(f) If one of the races is cancelled, the net pool shall be distributed as provided in subsection ~~(f)~~(e). If more than one race is cancelled the association shall refund the entire pool.

~~(h)~~(g) If a wagering interest is scratched (which hereinafter includes being declared a non-starter) from any leg of the Pick Three prior to the running of the first leg, or if a wagering interest is designated to run for purse only in accordance with rule 1974 of this article, all wagers containing such scratched or designated wagering interests shall be refunded.

~~(i)~~(h) If a wagering interest is scratched or designated to run for purse only from the second leg after the start of the first leg, a consolation payout shall be computed for those wagers combining the winners of the first and third legs with such scratched or designated horse(s) as follows: The amount represented by wagers on combinations involving horse(s) scratched or designated to run for purse only from the second leg shall be deducted from the gross pool. The resulting pool, net of takeout, shall be distributed as a win pool among tickets combining the winners of the first and third legs with horse(s) designated to run for purse only or scratched from the second leg.

~~(j)~~(i) If a wagering interest is designated to run for purse only or scratched from the third leg after the start of the second leg, a consolation payout shall be computed for those wagers combining the winners of the first and second legs with such designated or scratched horse(s) as follows: The amount represented by wagers on combinations involving horse(s) designated to run for purse only or scratched from the third leg shall be deducted from the gross pool. The resulting pool, net of takeout, shall be distributed as a win pool among

tickets combining the winners of the first and second legs with horse(s) designated to run for purse only or scratched from the third leg.

~~(j)~~(j) If wagering interests are designated to run for purse only or scratched from both the second and third legs after the start of the first leg, a consolation payout shall be computed for those wagers combining the winner of the first leg with horse(s) designated to run for purse only or scratched from both the second and third legs as follows: The amount wagered on the winner of the first leg combined with all other horse(s) designated or scratched from the second and third legs shall be deducted from the gross pool. The resulting pool, net of takeout, shall be distributed as a win pool among tickets combining the winner of the first leg with horse(s) designated to run for purse only or scratched from both the second and third legs.

~~(k)~~(k) After wagering closes on the first race of the Pick Three no ticket shall be sold, exchanged or cancelled. No person shall disclose the number of tickets sold in the Pick Three races or the number or amount of tickets that selected winners of Pick Three races until the stewards declare the last race official. After the second of the three races, the association may display potential distributions dependent upon the outcome of the third race.

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

Reference: Section 19590,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1978. SELECT FOUR

1978. Select Four.

(a) The Select Four ~~parimutuel~~ pari-mutuel pool is not a parlay and has no connection with or relation to any other ~~parimutuel~~ pari-mutuel pool conducted by the association, nor to any win, place and show pool shown on the totalizator board, nor to the rules governing the distribution of such other pools.

(b) A valid Select Four ticket shall be evidence of a binding contract between the holder of the ticket and the racing association, and the said ticket shall constitute an acceptance of Select Four provisions and rules contained in ~~Article~~ article 18.

(c) A Select Four may be given a distinctive name to be selected by the association conducting such races, such as "PICK 4", subject to the approval of the Board.

(d) The Select Four ~~parimutuel~~ pari-mutuel pool consists of amounts contributed for a selection for win only in each of four races designated by the association with the approval of the Board. Each person purchasing a Select Four ticket shall designate the winning horse in each of the four races comprising the Select Four.

~~(e) Those horses constituting an entry of coupled horses or those horses coupled to constitute the field in a race comprising the Select Four shall race as a single wagering interest for the purpose of the Select Four parimutuel pool calculations and payouts to the public. However, if any part of either an entry or the field racing as a single interest is a starter in a race, the entry or the field selection shall remain as the designated selection to win in that race for the Select Four calculation, and the selection shall not be deemed a scratch.~~

~~(f)~~(e) The net amount in the ~~parimutuel~~ pari-mutuel pool subject to distribution among winning ticket holders shall be distributed among the holders of tickets which correctly designate the winners in all four races comprising the Select Four.

~~(e)~~(f) If no ticket is sold combining the four winners of the Select Four, the net amount in the ~~parimutuel~~ pari-mutuel pool shall be distributed among the holders of tickets which include the winners of any three of the four races comprising the Select Four.

~~(h)~~(g) If no ticket is sold combining at least three winners of the Select Four, the net amount in the ~~parimutuel~~ pari-mutuel pool shall be distributed among holders of tickets which include the winner of any two races comprising the Select Four.

~~(i)~~(h) If no ticket is sold combining at least two winners of the Select Four, the net amount in the ~~parimutuel~~ pari-mutuel pool shall be distributed among holders of tickets which include the winner of any one race comprising the Select Four.

~~(j)~~(i) If no ticket is sold that would require distribution of the Select Four pool to a winner under this rule, the association shall make a complete and full refund of the Select Four pool.

~~(k)~~(j) If for any reason one of the races comprising the Select Four is cancelled, the net amount of the ~~parimutuel~~ pari-mutuel pool shall be distributed as provided above in subsections (f), (g), (h); and (i) ~~and (j)~~.

~~(l)~~(k) If for any reason two or more of the races comprising the Select Four is cancelled, a full and complete refund will be made of the Select Four pool.

~~(m)~~(l) In the event a Select Four ticket ~~designates~~ includes a selection in any one or more of the races comprising the Select Four ~~and that selection~~ is scratched, excused or determined by the Stewards to be a non-starter in the race, or if the Select Four ticket includes a selection that is designated to run for purse only in accordance with Rule 1974 of this article, the actual favorite, as evidenced by the amounts wagered in the win pool at the time of the start of the race, will be substituted for the non-starting or designated selection for all purposes, including pool calculations and payouts.

(n)(m) In the event of a dead heat for win between two or more horses in any Select Four race, all such horses in the dead heat for win shall be considered as winning horses in the race for the purpose of calculating the pool.

(n) No ~~parimutuel~~ pari-mutuel ticket for the Select Four pool shall be sold, exchanged or cancelled after the time of the closing of wagering in the first of the four races comprising the Select Four, except for such refunds on Select Four tickets as required by this regulation, and no person shall disclose the number of tickets sold in the Select Four pool or the number or amount of tickets selecting winners of Select Four races until such time as the Stewards have determined the last race comprising the Select Four to be official. Notwithstanding the above, at the conclusion of the third of the four races comprising the Select Four, an association may with the approval of the Board display potential distribution to ticket holders depending upon the outcome of the fourth race of the Select Four.

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

Reference: Section 19594 19590,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1979. TRIFECTA

1979. Trifecta.

(a) The Trifecta is a separate pari-mutuel pool established on a single race. The pool consists of amounts wagered on horses to finish first, second and third in that exact order. It is not a parlay and has no connection with or relation to other pools conducted by the association or to rules governing the distribution of other pools.

(b) A valid Trifecta ticket is evidence of a binding contract between the holder of the ticket and the association and constitutes acceptance of Trifecta provisions and rules contained in this article.

(c) No Trifecta pool shall be established for a race with less than four wagering interests scheduled to start when the Trifecta pool opens for wagering in California. ~~A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of such entry starts for pari-mutuel purposes in accordance with Section 1974.~~

(d) After the stewards' official order of finish is posted, the association shall distribute the net pool to holders of valid tickets that correctly selected the first, second and third finishers.

(e) In a dead heat for first or second position, only tickets selecting the correct order of finish for the first three finishers shall be winning tickets; that is, two horses in a dead heat for first shall be first and second, in either position; and two horses in a dead heat for second shall be second and third, in either position. In a triple dead heat for first, the three horses shall be the winning combination regardless of the order of selection. In a triple dead heat for second, tickets with the correct first selection and two of the three horses shall be winning tickets. In a triple dead heat for third, tickets with the correct first and second selection and one of the three horses shall be winning tickets.

(f) If no ticket correctly selected the first, second and third position, the net pool shall be paid for tickets that selected first and second. If no ticket selected first and second the net pool shall be paid for tickets that selected first. The association shall refund the entire pool if no ticket selected first.

(g) If the stewards scratch a horse or designate a horse to run for purse only in accordance with Rule 1974 of this article before wagering is closed, the association may exchange any ticket that includes the scratched or designated horse. After wagering is closed, tickets selecting a scratched or designated horse, or a horse the stewards declared a nonstarter, shall be eliminated from the pool and the purchase price refunded.

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

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 18. PARI-MUTUEL WAGERING  
PROPOSED AMENDMENT OF  
RULE 1979.1. SUPERFECTA

1979.1. Superfecta.

(a) The Superfecta is a separate pari-mutuel pool established on a single race. The pool consists of amounts wagered on horses to finish first, second, third, and fourth in that exact order. It is not a parlay and has no connection with other pools conducted by the association or to rules governing the distribution of other pools.

(b) A valid Superfecta ticket is evidence of a binding contract between the holder of the ticket and the association and constitutes acceptance of Superfecta provisions and rules contained in this article.

(c) No Superfecta pool shall be established for a race with less than six wagering interests scheduled to start when the Superfecta pool opens for wagering in California. ~~A wager on a coupled entry or field is considered a wager on the remaining part of the coupled entry or field if any part of the entry starts for pari-mutuel purposes under Rule 1974 of this division.~~

(d) After the stewards' official order of finish is posted, the association shall distribute the net pool to holders of valid tickets that select the first, second, third, and fourth finishers.

(e) In a dead heat for first, second, or third position, only tickets selecting the correct order of finish for the first four finishers shall be winning tickets; that is, two horses in a dead heat for first shall be first and second, in either position; two horses in a dead heat for second shall be second and third, in either position; and two horses in a dead heat for third shall be third and fourth, in either position. In a dead heat for fourth, tickets with the correct first, second, and third selection and one of the two horses in the dead heat for fourth shall be winning tickets. In a triple dead heat for first, tickets selecting the three horses in the dead heat, regardless of the order of selection, and the horse finishing fourth shall be winning tickets. In a triple dead heat for second, tickets with the correct first selection and all three horses in the dead heat shall be winning tickets. In a triple

dead heat for third, tickets with the correct first and second selection and two of the three horses in the dead heat shall be winning tickets. In a triple dead heat for fourth, tickets with the correct first, second, and third selection and one of the horses in the dead heat shall be winning tickets.

(f) If no ticket selects the first, second, third, and fourth position, the net pool shall be paid for tickets that select first, second, and third. If no ticket selects first, second, and third position, the net pool shall be paid for tickets that select first and second. If no ticket selects first and second, the net pool shall be paid for tickets that select first. The association shall refund the entire pool if no ticket selects first.

(g) If the stewards scratch a horse or designate a horse to run for purse only in accordance with Rule 1974 of this article before wagering is closed, the association may exchange any ticket that includes the scratched or designated horse. After wagering is closed, tickets selecting a scratched or designated horse, or a horse the stewards declared a nonstarter, shall be eliminated from the pool and the purchase price refunded.

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

Reference: Section 19590,  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO AMEND  
RULE 1658. VESTING OF TITLE TO CLAIMED HORSE

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

**PROPOSED REGULATORY ACTION**

The Board proposes to amend Rule 1658, Vesting of Title to Claimed Horse. The proposed regulation would require the stewards to void a claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled.

**PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 21, 2011**, 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 July 18 2011**. 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

**AUTHORITY AND REFERENCE**

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

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

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the 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, 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 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.

The Board proposes to amend Rule 1658 to provide that a claim will be voided by the stewards if the claimed horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled. Subsection 1658(a) has been modified to delete the phrase “alive or dead” from the first sentence of the paragraph. This is necessary because title to the claimed horse will no longer be vested in the successful claimant if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled. A new subsection 1658(b) has been added to the rule to provide that the stewards shall void the claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled. The claim would automatically be voided, so the claimant would not have to take any action if the horse suffers a fatality, as specified.

## 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 1658 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 1658 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 amendment of Rule 1658 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

Andrea Ogden, Regulation Analyst  
Telephone: (916) 263-6033  
E-mail: [andreao@chr.ca.gov](mailto:andreao@chr.ca.gov)

#### 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 FINAL 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](http://www.chrb.ca.gov).

## INITIAL STATEMENT OF REASONS

RULE 1658. VESTING OF TITLE TO CLAIMED HORSE.

## SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment of Rule 1658, Vesting of Title to Claimed Horse, would require the stewards to void a claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled.

## NECESSITY

The Board proposes to amend Rule 1658 to provide that the stewards shall void a claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled. A claiming race is a horse race in which each horse entered is made available for purchase, or claiming, at a fixed price which a buyer must agree to pay before the race is run. Claiming allows lesser quality horses to compete equally, as horses are entered for a price at which the owner or trainer feels is reasonable to lose it. A claiming race is a venue through which a new owner may buy his first horse. It is also a venue where owners find bargains by claiming horses they believe can compete at higher levels. Claiming races can also be used by owners and trainers to rid themselves of horses whose performance is not what they expect, so the terms "*Caveat Emptor*" or "*Buyer Beware*" apply. The claimant does not get to examine the horse prior to submitting a claim, and the horse actually belongs to a successful claimant from the time the horse becomes a starter. Rule 1658 currently states that title to a horse which is claimed shall be vested in the successful claimant from the time the field has been

dispatched from the starting gate and the horse becomes a starter. The successful claimant becomes the owner of the horse whether it is alive or dead, sound or unsound, or injured during the race or after it. If anything happens to the horse, the claimant still must take ownership, regardless of its condition. One effect of the proposed amendment to Rule 1658 is that it may eliminate the need for horsemen to purchase claiming insurance. Horsemen who wish to claim a horse without the risk of a fatality can purchase claiming insurance. Such insurance covers the horse once the race starts until the horse crosses the finish line. The contract can be extended so there is no lapse in coverage as the horse finishes the race. The value of the claiming race determines the value of the horse. If one can obtain claiming insurance it will generally cost from 0.85 percent to 1 percent of the claiming price. If the horse suffers a fatality during the race, both owners are protected. Yet, this does not protect the horse from an owner or trainer who enters the horse knowing it may not be sound. Many horsemen dispute the idea that trainers routinely drop unsound horses into cheap claiming races just to rid themselves of non-performing horses. The Board agrees that the vast majority of trainers are skilled horsemen who care about the horses in their stables. In the 2008 race year there were 4,495 claiming races in California with 35,002 starters. In the 2009 race year there were 4,394 claiming races with 33,439 starters. During that period there were only 15 horses claimed and marked "did not finish" while from January 2007 through September 2010 only six claimed horses suffered fatalities. However, the Board is not proposing to amend Rule 1658 because it believes every trainer is purposely running unsound horses; rather it is proposing to amend the rule as a deterrent to the few who may. Any trainer with an unsound horse, who purposely drops levels in claiming races hoping to have the horse claimed, puts the safety and lives of the horse and rider at risk – as well as the health and safety of every other horse and rider in the race. The Board is also aware that public perception begets reality. Horse racing fans and the wagering public are rightfully concerned with the welfare of the horse. Such concern may cause the racing public to see evidence of an unscrupulous trainer where that may not be the case. It is difficult to convince the racing public that nothing is amiss when it sees a horse claimed for \$25,000; run for \$16,000; and then dropped to a \$2,000 claiming event only to suffer a fatality in the final race. In the current world of Internet Blogs and social networking sites, such public perception is quickly circulated to the detriment of all horsemen and the industry. The Board has determined that to remove an incentive for running a compromised horse in a claiming race, and to address the damage to horse racing's image that may occur when such a horse suffers a fatality, it must amend Rule 1658 to require the stewards to void a claim if a horse suffers a fatality during the running of the race or before it is returned to be unsaddled. A new subsection 1658(b) provides that the stewards shall void the claim if the horse suffers a fatality during the running of a race or before the horse is returned to be unsaddled. The stewards are the body charged with voiding the claim as they are appointed by the Board, and under Rule 1527, General Authority of Stewards, have general authority and supervision over all licensees and others attendant on horses, as well as over the inclosure of any recognized meeting. This includes the conduct of claiming races. The proposed amendment to Rule 1658 states that if the horse suffers a fatality during the running of a race or before the horse is returned to be unsaddled the stewards shall void the claim. It is entirely possible for a horse to suffer an injury during a race that will cause it to be euthanized subsequent to the race. However, the Board has determined that only fatalities suffered during the race or before the horse is returned to be unsaddled will be cause to void a claim. This narrows the focus of the proposed regulation, and helps to avoid potential disputes regarding the true post-race condition of a horse that has been euthanized after leaving the track.

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

In proposing the amendment of the regulation the Board relied on a report from Equibase of horses claimed but marked as Did not Finish (DNF), and the Jockey Club's Equine Injury Database on horses claimed, injured and horses claimed, fatalities.

The adoption of Rule 1658 has no significant adverse economic impact on small business.

The adoption of Rule 1658 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.

California Horse Racing Board  
June 3, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 7. CLAIMING RACES.  
PROPOSED AMENDMENT OF  
RULE 1658. VESTING OF TITLE TO CLAIMED HORSE.

1658. Vesting of Title to Claimed Horse.

(a) Title to a horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the horse becomes a starter; and said successful claimant becomes the owner of the horse whether it ~~is be alive or dead~~, sound or unsound, or injured during the race or after it. Only a horse which is officially a starter in the race may be claimed. A subsequent disqualification of the horse by order of the stewards or the Board shall have no effect upon the claim.

(b) The stewards shall void the claim if the horse suffers a fatality during the running of the race or before the horse is returned to be unsaddled.

~~(b)~~ (c) The claim shall be void if the race is called off, canceled, or declared no contest in accordance with Rule 1544 of this division.

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

Reference: Section 19562,  
Business and Professions Code.

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

NOTICE OF PROPOSAL TO AMEND  
RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

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 1843.3, Penalties for Medication Violations, to change the minimum allowable level for flunixin from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. In addition, the proposed amendment would provide for a penalty schedule for low level violations involving phenylbutazone by creating new Category "D" penalties for the drug substance, while the existing Category "C" penalties remain unchanged. The proposed amendment adds new Category "D" penalties for drugs other than phenylbutazone.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 21, 2011**, 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 July 18, 2011**. 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) 263-6042  
E-Mail: [haroldc@chr.ca.gov](mailto:haroldc@chr.ca.gov)

## AUTHORITY AND REFERENCE

Authority cited: Sections 19440, 19461 and 19580, Business and Professions Code. Reference: 19461, 19580, 19581 and 19582, Business and Professions Code, and section 11425.50, Government 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 19461 states every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. Business and Professions Code section 19580 provides 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 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 the composition thereof. Business and Professions Code section 19582 states violations of Section 19581, as determined by the Board are punishable as set forth in regulations adopted by the Board. The Board may classify violations of section 19581 based on each class of prohibited drug substances, prior violations within the previous three years, and prior violations within the violator's lifetime. The Board may provide for the suspension of a license for not more than three years, except as provided in subdivision (b), or a monetary penalty of not more than one hundred thousand dollars, or both, and disqualification from purses, for a violation of Section 19581. The actual amount of the monetary penalty imposed pursuant to this paragraph shall be determined only after due consideration has been given to all the facts, circumstances, acts, and intent of the licensee, and shall not be solely based on the trainer-insurer rule, as established in Section 1843 and 1887 of Title 4 of the California code of Regulations. The punishment for second and subsequent violations of section 19581 shall be greater than the punishment for a first violation of section 19581 with respect to each class of prohibited drug substances, unless the administrative law judge, in findings of fact and conclusions of law filed with the Board, concludes that a deviation from this general rule is justified. A third violation of section 19581 during the lifetime of the licensee, determined by the Board to be at a class I or class II level, may result in the permanent revocation of the person's license. The administrative law judge shall, after consideration of the circumstances surrounding a violation specified in paragraph (1), file a decision with the Board that includes findings of fact and conclusions of law. Any person whose license is suspended or revoked pursuant to this section shall not be entitled to receive any material benefit or remuneration in any capacity or from any business activity permitted or allowed by the license during any period of its suspension or revocation. The penalties provided by this section are in addition to any other civil, criminal, and administrative penalties or sanctions provided by law, and do not supplant, but are cumulative to, other penalties or sanctions. Business and Professions Code section 19461 provides that every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the Board affecting it has been broken or violated. All proceedings to revoke a license shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code. Government Code section 11425.50 states the decision shall be in writing and shall include a statement of the factual and legal basis for the decision.

In February 2011 the Board initiated an amendment of Rule 1844, Authorized Medication, to lower the allowable level of phenylbutazone from five nanograms per milliliter of blood plasma or serum to two nanograms per milliliter of blood plasma or serum, and to reduce the permitted level of flunixin in an official test sample from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. During its discussions about the proposed amendment to Rule 1844, the Board recognized the necessity of amending Rule 1843.3, Penalties for Medication Violations, to provide penalties consistent with the lower phenylbutazone and flunixin levels. The proposed amendment to Rule 1843.3 modifies subsection 1843.3(d) by changing the minimum allowable level for flunixin, which is a Category “C” penalty, from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. This is consistent with the minimum allowable level in the proposed amendment of Rule 1844. The Category “C” penalties for violations due to flunixin overages have not been changed.

Under the current subsection 1843.3(d) phenylbutazone violations warrant a Category “C” penalty. However, the proposed amendment to Rule 1843.3 modifies subsection 1843.3(e) to provide for new Category “D” penalties for low level violations involving phenylbutazone. The new Category “D” penalties address overages of 2.1 milliliters to 5.0 milliliters of phenylbutazone in the official test sample, while the existing Category “C” penalties at the higher levels of 5.1 to greater than 10.0 micrograms of phenylbutazone per milliliter of blood plasma or serum have not changed. This will create a “two tier” penalty schedule for phenylbutazone violations with overages up to 5.0 milliliters receiving anywhere from a written warning to a \$250 fine for first offenses, to a minimum \$500 fine and a maximum \$750 fine for third offenses.

In addition to the new subsection 1843.3(e) Category “D” penalties for low level phenylbutazone violations, the proposed amendment introduces Category “D” penalties for drug substances in an official test sample which the CHRB categorizes as warranting a Category “D” penalty. Subsection 1843.3(e) currently states a Category “D” penalty is a written warning to the licensed trainer or owner. The proposed amendment creates new Category “D” penalties for drugs other than phenylbutazone. The penalties range from a written warning to a maximum fine of \$250 for a first offense, and a minimum fine of \$500 and a maximum fine of \$750 for a third offense. In addition, the proposed amendment provides that Category “D” violations will remain on the licensee’s record for a period of two years. If, after two years, the licensee has not had additional Category “D” violations of Rule 1843, the record will be expunged for penalty purposes.

#### 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 1843.3 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 1843.3 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 1843.3 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](mailto: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 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 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 regulations in their 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](http://www.chrb.ca.gov).

## INITIAL STATEMENT OF REASONS

### RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS.

#### SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1843.3, Penalties for Medication Violations, to change the minimum allowable level for flunixin from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. In addition, the proposed amendment would provide for a penalty schedule for low level violations involving phenylbutazone by creating new Category "D" penalties for the drug

substance, while the existing Category “C” penalties remain unchanged. The proposed amendment adds new Category “D” penalties for drugs other than phenylbutazone.

## NECESSITY

In February 2011 the Board initiated an amendment of Rule 1844, Authorized Medication, to lower the allowable level of phenylbutazone from five nanograms per milliliter of blood plasma or serum to two nanograms per milliliter of blood plasma or serum, and to reduce the permitted level of flunixin in an official test sample from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. During its discussions about the proposed amendment to Rule 1844, the Board recognized the necessity of amending Rule 1843.3, Penalties for Medication Violations, to provide penalties consistent with the lower phenylbutazone and flunixin levels. The proposed amendment to Rule 1843.3 modifies subsection 1843.3(d) by changing the minimum allowable level for flunixin, which is a Category “C” penalty, from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum. This is consistent with the minimum allowable level in the proposed amendment of Rule 1844. The Category “C” penalties for violations due to flunixin overages have not been changed.

Under the current subsection 1843.3(d) phenylbutazone violations warrant a Category “C” penalty. However, the proposed amendment to Rule 1843.3 modifies subsection 1843.3(e) to provide for new Category “D” penalties for low level violations involving phenylbutazone. The new Category “D” penalties address overages of 2.1 milliliters to 5.0 milliliters of phenylbutazone in the official test sample, while the existing Category “C” penalties at the higher levels of 5.1 to greater than 10.0 micrograms of phenylbutazone per milliliter of blood plasma or serum have not changed. This will create a “two tier” penalty schedule for phenylbutazone violations with overages up to 5.0 milliliters receiving anywhere from a written warning to a \$250 fine for first offenses, to a minimum \$500 fine and a maximum \$750 fine for third offenses. The Board created the Category “D” penalties for low level phenylbutazone violations to ensure that penalties for such violations would not be as onerous as those in the 5.1 to 10 microgram Category “C” level.

In addition to the new subsection 1843.3(e) Category “D” penalties for low level phenylbutazone violations, the proposed amendment introduces Category “D” penalties for drug substances in an official test sample which the CHRB categorizes as warranting a Category “D” penalty. Subsection 1843.3(e) currently states a Category “D” penalty is a written warning to the licensed trainer or owner. The proposed amendment creates new Category “D” penalties for drugs other than phenylbutazone. The new Category “D” penalties continue to provide the stewards with the opportunity to issue a written warning for a first offense. In addition, the penalties allow for the trainer’s record to be expunged for penalty purposes if there are no further Category “D” violations within a two year period. This will encourage trainers who may be concerned about a low level violation compromising their records to be more vigilant in the administration of medication and drug substances that may result in a Category “D” violation.

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

The Board did not rely on any technical, theoretical, and/or empirical studies, reports or documents in proposing the addition of the regulations.

The adoption of Rule 1843.3 has no significant adverse economic impact on small business.

The adoption of Rule 1843.3 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.

California Horse Racing Board  
June 3, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4, CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15, VETERINARY PRACTICES  
RULE 1843.3. PENALTIES FOR MEDICATION VIOLATIONS

1843.3. Penalties for Medication Violations.

(a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum.

(b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to:

- (1) The past record of the licensee regarding violations of Business and Professions Code section 19581;
- (2) The potential of the drug(s) to influence a horse's racing performance;
- (3) The legal availability of the drug;

(4) Whether there is reason to believe the responsible party knew of the administration of the drug or intentionally administered the drug;

(5) The steps taken by the trainer to safeguard the horse;

(6) The steps taken by an owner to safeguard against subsequent medication violations including, but not limited to, the transfer of the horse(s) to an unaffiliated trainer;

(A) For the purpose of this regulation “unaffiliated trainer” means a trainer or an assistant trainer who is not related by blood, marriage or domestic partnership, or who is not or was never employed by the trainer from whose care such horse(s) were transferred.

(7) The probability of environmental contamination or inadvertent exposure due to human drug use or other factors;

(8) The purse of the race;

(9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment as determined through the process described in Rule 1842 of this division;

(10) Whether there was any suspicious wagering pattern on the race;

(11) Whether the licensed trainer was acting under the advice of a licensed veterinarian.

(c) For the purpose of this regulation, the Board shall consider the classification of a drug substance as referred to in Rule 1843.2 of this division and the California Horse Racing Board (CHRB) Penalty Categories Listing By Classification, (1/08), which is hereby incorporated by reference, if a determination is made that an official test sample from a horse contained:

(1) Any drug substance, medication, metabolites or analogues thereof foreign to the horse, whose use is not expressly authorized in this division, or

(2) Any drug substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in the article.

(d) Penalties for violation of each classification level are as follows:

## CATEGORY “A” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHR B drug classification is categorized as warranting a Category A penalty are as follows:

<b>LICENSED TRAINER:</b>		
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> LIFETIME offense</b>	<b>3<sup>rd</sup> LIFETIME offense</b>
<ul style="list-style-type: none"> <li>◦ Minimum one - year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension.</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$10,000 or 10% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$25,000 or 25% of purse (greater of the two).</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ May be referred to the Board for any further action deemed necessary by the Board.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum two-year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a three-year suspension.</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$20,000 or 25% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$50,000 or 50% of purse (greater of the two).</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ May be referred to the Board for any further action deemed necessary by the Board.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum three -year suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of permanent license revocation.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$25,000 or 50% of gross purse (greater of the two) absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of \$100,000 or 100% of purse (greater of the two).</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ May be referred to the Board for any further action deemed necessary by the Board.</li> </ul>
<b>LICENSED OWNER:</b>		
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> LIFETIME offense in owner’s stable</b>	<b>3<sup>rd</sup> LIFETIME offense in owner’s stable</b>
<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse may be placed on the veterinarian’s list for up to 90 days and must pass a Board - approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse shall be placed on the veterinarian’s list for up to 120 days and must pass a Board - approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse, loss of purse and absent mitigating circumstances, minimum fine of \$10,000. The presence of aggravating factors could be used to impose a maximum fine of \$50,000.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse shall be placed on the veterinarian’s list for up to 180 days and must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul> <p><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Referral to the Board with a recommendation of a suspension of owners license for a minimum of 90 days.</li> </ul>

## CATEGORY “B” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category B penalty are as follows:

<b>LICENSED TRAINER:</b>		
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
<ul style="list-style-type: none"> <li>◦ Minimum 30 -day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$20,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$50,000 or 10% of purse (greater of the two).</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ May be referred to the Board for any further action deemed necessary by the Board.</li> </ul>
<b>LICENSED OWNER:</b>		
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense in stable (365-day period)</b>	<b>3<sup>rd</sup> offense in stable (365-day period)</b>
<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse, loss of purse and absent mitigating circumstances minimum fine of \$5,000. The presence of aggravating factors could be used to impose a maximum fine of \$20,000.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Horse shall be placed on the veterinarian’s list for up to 45 days and must pass a Board-approved examination pursuant to Rule 1846 before becoming eligible to be entered.</li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>◦ Be subject to drug testing at the owner’s expense and be negative for prohibited drug substances as defined in Rule 1843.1.</li> </ul>

**CATEGORY “B” PENALTIES FOR RULE 1843.6 TOTAL CARBON DIOXIDE (TCO<sub>2</sub>) TESTING**

Penalties for violations due to exceeding permitted levels of TCO<sub>2</sub> as defined in Rule 1843.6 are as set forth below. All concentrations are for measurements in serum or plasma.

<b>LICENSED TRAINER:</b>		
<b>1<sup>st</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>	<b>2<sup>nd</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>	<b>3<sup>rd</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>
<ul style="list-style-type: none"> <li>◦ Up to a 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$1,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$5,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 120-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$5,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$15,000.</li> </ul>
<b>LICENSED OWNER:</b>		
<b>1<sup>st</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>	<b>2<sup>nd</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>	<b>3<sup>rd</sup> offense TCO<sub>2</sub> (&gt; 37.0mmol/l- &lt;39mmol/l)</b>
<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse, loss of purse and in the absence of mitigating circumstances, \$2,500 fine.</li> </ul>
<b>LICENSED TRAINER:</b>		
<b>1<sup>st</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>	<b>2<sup>nd</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>	<b>3<sup>rd</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>
<ul style="list-style-type: none"> <li>◦ Minimum 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 60-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$10,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$5,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$15,000.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 365-day suspension.</li> </ul> <p style="text-align: center;"><b>AND/OR</b></p> <ul style="list-style-type: none"> <li>◦ Minimum fine of \$10,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of \$25,000.</li> </ul>
<b>LICENSED OWNER:</b>		
<b>1<sup>st</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>	<b>2<sup>nd</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>	<b>3<sup>rd</sup> offense TCO<sub>2</sub> (≥ 39.0mmol/l)</b>
<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse and loss of purse.</li> </ul>	<ul style="list-style-type: none"> <li>◦ Disqualification of horse, loss of purse and a fine ranging from a minimum of \$5,000, up to a maximum of \$20,000.</li> </ul>

## CATEGORY “C” PENALTIES

Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category C penalty and for the presence of more than one non-steroidal anti-inflammatory (NSAID) in a plasma/serum sample, as defined in Rule 1844 of this division, and furosemide as defined in Rule 1845 of this division in an official test sample are as set forth below. All concentrations are for measurements in serum or plasma.

<b>LICENSED TRAINER:</b>		
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
<ul style="list-style-type: none"><li>◦ Minimum fine of \$500 to a maximum fine of \$1,000 absent mitigating circumstances.</li></ul>	<ul style="list-style-type: none"><li>◦ Minimum fine of \$1,000 to a maximum fine of \$2,500, and up to a 15 - day suspension absent mitigating circumstances.</li></ul>	<ul style="list-style-type: none"><li>◦ Minimum fine of \$2,500 and up to a 30 - day suspension absent mitigating circumstances</li></ul>

**CATEGORY “C” PENALTIES FOR RULE 1844, AUTHORIZED MEDICATION (C)  
(1), (2), (3)**

Penalties for violations due to overages for permitted non-steroidal anti-inflammatory drug substances (NSAIDs) as defined in Rule 1844 (c) (1), (2) and (3) of this division. All concentrations are for measurements in serum or plasma.

The official veterinarian shall consult with the treating veterinarian in all violations of 1844 (c). With permission of the official veterinarian the trainer may elect to pay the minimum fine in lieu of a stewards’ hearing. If the trainer has not had an 1844 (c) violation within the previous three years, the official veterinarian or the board of stewards may issue a warning in lieu of a fine for violations of 1844

<b>LICENSED TRAINER:</b>	<b>Phenylbutazone (5.1-&lt;10.0mcg/ml) Flunixin (20 <del>50</del>-100 ng/ml) Ketoprofen (11-49 ng/ml)</b>	<b>Phenylbutazone (5.1-&lt;10.0mcg/ml) Flunixin (20 <del>50</del>-100 ng/ml) Ketoprofen (11-49 ng/ml)</b>
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
◦ Minimum fine of \$500 to a maximum fine of \$1,000.	◦ Minimum fine of \$1,000 to a maximum fine of \$2,500.	◦ Minimum fine of \$2,500 to a maximum fine of \$5,000.
<b>LICENSED OWNER:</b>	<b>Phenylbutazone (5.1-&lt;10.0mcg/ml) Flunixin (20 <del>50</del>-100 ng/ml) Ketoprofen (11-49 ng/ml)</b>	<b>Phenylbutazone (5.1-&lt;10.0mcg/ml) Flunixin (20 <del>50</del>-100 ng/ml) Ketoprofen (11-49 ng/ml)</b>
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
No penalty administered.	No penalty administered.	No penalty administered.
<b>LICENSED TRAINER:</b>	<b>Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)</b>	<b>Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)</b>
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
◦ Minimum fine of \$1,000 to a maximum fine of \$2,500.	◦ Minimum fine of \$2,500 to a maximum fine of \$5,000.	◦ Minimum fine of \$5,000 to a maximum fine of \$10,000.
<b>LICENSED OWNER:</b>	<b>Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)</b>	<b>Phenylbutazone (≥ 10.0 mcg/ml) Flunixin (≥ 100 ng/ml) Ketoprofen (≥ 50 ng/ml)</b>
<b>1<sup>st</sup> offense</b>	<b>2<sup>nd</sup> offense (365-day period)</b>	<b>3<sup>rd</sup> offense (365-day period)</b>
◦ Horse must pass Board-approved examination pursuant to Rule 1846 before being eligible to run.	◦ Disqualification of horse and loss of purse. If same horse, placed on veterinarian’s list for up to 45-days, must pass Board-approved examination pursuant to Rule 1846 before being eligible to run.	◦ Disqualification of horse and loss of purse. Minimum \$5,000 fine. If same horse, placed on veterinarian’s list for 60 days, must pass Board-approved examination pursuant to Rule 1846 before being eligible to run

(c)(1), phenylbutazone, provided the reported level is below ~~7.5~~ 5.1 mcg/ml.

(e) Violations due to the presence of a drug substance in an official test sample, which

CHRB drug classification is categorized as warranting a Category “D” penalty, may result in a

written warning to the licensed trainer and owner. ~~A Category “D” penalty is a written warning to the licensed trainer or owner.~~ A Category “D” penalty may result in a written warning or fine that will remain on the licensee’s record for a period of two years. After the two year period, if the licensee has had no further violations of CHRB Rule 1843, the Category “D” penalty will be expunged from the licensee’s record for penalty purposes.

**CATEGORY “D” PENALTIES**

<u>1<sup>ST</sup> offense (365 day period)</u>	<u>2<sup>nd</sup> offense (365 day period)</u>	<u>3<sup>rd</sup> offense (365 day period)</u>
<u>Minimum of an official written warning to a maximum fine of \$250.</u>	<u>Minimum of a \$250 fine to a maximum fine of \$500.</u>	<u>Minimum of a \$500 fine to a maximum fine of \$750.</u>

**CATEGORY “D” PENALTIES FOR RULE 1844(C)(1) VIOLATIONS**

<b><u>Phenylbutazone 2.1ug/ml to 5.0 ug/ml</u></b>		
<u>1<sup>st</sup> offense (365 day period)</u>	<u>2<sup>nd</sup> offense (365 day period)</u>	<u>3<sup>rd</sup> offense (365 day period)</u>
<u>Minimum of an official written warning to a maximum fine of \$250.</u>	<u>Minimum of a \$250 fine to a maximum fine of \$500.</u>	<u>Minimum of a \$500 fine to a maximum fine of \$750.</u>

(f) Any drug or its metabolite or analogue thereof found to be present in an official test sample that is not classified in Rule 1843.2 of this division shall be classified as a Class 1 substance and a Category “A” penalty until classified by the Board.

(g) The administration of a drug substance to a race horse must be documented by the treating veterinarian through the process described in Rule 1842 of this division.

(h) Any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the licensed trainer and his presence may be required at any and all hearings relative to the case.

(1) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category “A” shall be referred to the California Veterinary Medical Board (CVMB) for consideration of further disciplinary action.

(2) Any veterinarian found to be involved in the administration of any drug substance resulting in a positive test in Penalty Category “B” or “C” may be referred to the CVMB for consideration of further disciplinary action upon the recommendation of the Equine Medical Director, the board of stewards or hearing officers.

(i) A licensee who is suspended, or whose license is revoked, because of a medication violation is not able to benefit financially during the period of suspension or revocation. This includes, but is not limited to, ensuring that horses are not transferred to licensed family members.

(j) For the purpose of this regulation “licensed family members” means any person who holds an occupational license issued by the CHRB and who is related to the suspended licensee, or the licensee whose license is revoked, by blood, or by marriage or domestic partnership, or who is related by blood to the spouse or domestic partner of such licensee.

(l) For the purpose of this regulation, licensed trainers suspended 60 days or more, or whose license is revoked, shall be banned from all inclosures under the jurisdiction of the CHRB. In addition, during the period of suspension, or revocation, such trainer shall forfeit all assigned stall space and shall remove from the inclosures all signage, advertisements, training-related equipment, tack, office equipment, and any other property.

Authority: Sections 19440, 19461 and 19580,  
Business and Professions Code.

Reference: Sections 19461, 19580, 19581 and 19582,  
Business and Professions Code.

Section 11425.50,  
Government Code.

NOTICE OF PROPOSAL TO AMEND  
RULE 1844. AUTHORIZED MEDICATION

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 1844, Authorized Medication. The proposed amendment would change the allowable levels of phenylbutazone in an official test sample from 5 micrograms to 2 micrograms of the drug substance per milliliter of blood plasma or serum. It further will change the allowable levels of flunixin in the official test sample from 50 nanograms to 20 nanograms per milliliter of blood plasma or serum.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, May 26, 2011**, or as soon after that as business before the Board will permit, at **Golden Gate Fields, 1100 Eastshore Highway, Albany, 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 May 16, 2011**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Rebecca Salazar

California Horse Racing Board

1010 Hurley Way, Suite 300

Sacramento, CA 95825

Telephone (916) 274-6049

Fax (916) 263-6022

E-Mail: [rsalazar@chrh.ca.gov](mailto:rsalazar@chrh.ca.gov)

AUTHORITY AND REFERENCE

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

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

Business and Professions Code section 19440 and 19562 authorizes the Board to adopt the proposed regulations which would implement, interpret, or make specific sections 19580 and 19581, 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, 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 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 requires the Board to adopt regulations to establish policies, guidelines, and penalties

relating to equine medication to preserve and enhance the integrity of horse racing in the State. 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 proposes to amend Rule 1844, Authorized Medication. The proposed amendment would change the allowable levels of phenylbutazone in an official test sample from 5 micrograms to 2 micrograms of the drug substance per milliliter of blood plasma or serum. It further will change the allowable levels of flunixin in an official test sample from 50 nanograms to 20 nanograms per milliliter of blood plasma or serum.

Phenylbutazone and flunixin are nonsteroidal anti-inflammatory drugs (NSAID) used for horses to target inflamed tissue and alleviate pain. The racing industry has reviewed and discussed extensively the effect of phenylbutazone and flunixin, because of the concern that higher permissive non-steroidal anti-inflammatory (NSAID) policies are compromising the examining veterinarian's ability to identify horses at risk for catastrophic injury. The concerns are the NSAIDS levels at the time of the pre-race examination mask the clinical signs of inflammation and pain, thus compromising the pre-race examination, which in turn, places the horse and rider at risk.

The CHRB conducts a postmortem examination of every horse that suffers a fatal injury on the racetrack under the jurisdiction of the Board. Overtime these postmortems have shown a large majority of horses suffering fatal musculoskeletal racing fatalities have pre-existing pathology at the site of the fatal injury. This affects both horse and rider, as many of the jockey's injuries/fatalities occur when a horse sustains one of these fatal musculoskeletal injuries. The current permitted levels of phenylbutazone and flunixin may be a contributing factor to these racing fatalities due to the potential masking effect of phenylbutazone and flunixin.

Therefore it is necessary to amend Rule 1844 to lower the allowable levels of phenylbutazone and flunixin in an official test sample. This will assist the examining veterinarians by reducing the potential of these permitted NSAIDS to mask the true condition of the horse.

The CHRB 2009-2010 Annual Report indicated 220 horses died while in training or racing with the most common cause of fatality due to musculoskeletal injuries. The Annual Report states that the J.D. Wheat Equine Orthopedic Research Laboratory at the School Veterinary Medicine at UC Davis is studying these injuries and the role of undiagnosed stress fractures that may be contributing to catastrophic fatalities.

A press release from the Racing Commissioners International (RCI), on October 22, 2010, states that RCI voted to lower the threshold levels for phenylbutazone. The RCI action changed the phenylbutazone levels from 5 micrograms per milliliter of plasma or serum to 2 micrograms. The RCI promulgates model regulations that are used by the various racing jurisdictions as guidelines when writing or amending their own regulations. The proposed amendments to Board Rule 1844 will bring the CHRB's allowable level of phenylbutazone and flunixin in line with the RCI Model Rule 011-020 Medications and Prohibited Substances; section (E) Non-Steroidal Anti-Inflammatory Drugs (NSAIDS).

As of January 1, 2012, the American Graded Stakes Committee will require races to be run under a 2 milliliter threshold for phenylbutazone to maintain their graded stakes eligibility. Graded stakes have a significant impact in the prestige of a race and the subsequent value of graded stakes winners. The proposed amendment to Rule 1844 will bring California's allowable level of phenylbutazone into line with the American Graded Stakes Committee requirements.

**DISCLOSURE REGARDING THE PROPOSED ACTION**

Mandate on local agencies and school district: 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 1844 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 1844 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 1844 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:

Rebecca Salazar, Regulation Analyst

California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Telephone: (916) 274-6049  
E-mail: [rlsalazar@chrb.ca.gov](mailto:rlsalazar@chrb.ca.gov)

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

Harold Coburn, Regulation Analyst  
Telephone: (916) 263-6397  
E-mail: [HaroldC@chrb.ca.gov](mailto:HaroldC@chrb.ca.gov)

#### 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 Rebecca Salazar, or the alternate 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 Rebecca Salazar at the address 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 REASON

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 Rebecca Salazar 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 website. The rulemaking file consists of the notice, the proposed text of the regulation and the initial statement of reasons. The Board's website address is: [www.chrb.ca.gov](http://www.chrb.ca.gov).

#### INITIAL STATEMENT OF REASONS

RULE 1844, AUTHORIZED MEDICATION.

SPECIFIC PURPOSE OF THE REGULATION

The Board proposes to amend Rule 1844, Authorized Medication. The proposed amendment would change the allowable levels of phenylbutazone in an official test sample from 5 micrograms to 2 micrograms of the drug substance per milliliter of blood plasma or serum. It further will change the allowable levels of flunixin in an official test sample from 50 nanograms to 20 nanograms per milliliter of blood plasma or serum.

## NECESSITY

Rule 1844 provides the authority to administer identified medications to horses as a means to safeguard the health of the horse entered into a race. The proposed amendment to CHRB Rule 1844 will reduce the permitted levels of phenylbutazone and flunixin.

CHRB regulations prohibit the administration of drugs, substances and medications after entry time with a small number of specific exceptions. Three non-steroidal anti-inflammatory drugs (NSAID's) are one of those exceptions allowed under Rule 1844 (c) for phenylbutazone (Bute), flunixin or ketoprofen.

The proposed amendment to CHRB Rule 1844 will change subsection 1844(c) (1) to reduce the permitted level of phenylbutazone in an official test sample from 5 nanograms per milliliter of blood plasma or serum to 2 nanograms per milliliter of blood plasma or serum, and subsection 1844(c) (2) to reduce the permitted level of flunixin in an official test sample from 50 nanograms per milliliter of blood plasma or serum to 20 nanograms per milliliter of blood plasma or serum.

Phenylbutazone and flunixin are nonsteroidal anti-inflammatory drugs (NSAID) used for horses to target inflamed tissue and alleviate pain. The racing industry has reviewed and discussed extensively the effect of phenylbutazone and flunixin, because of the concern that higher permissive non-steroidal anti-inflammatory (NSAID) policies are compromising the examining veterinarian's ability to identify horses at risk for catastrophic injury. The concerns are the NSAIDS levels at the time of the pre-race examination mask the clinical signs of inflammation and pain, thus compromising the pre-race examination, which in turn, places the horse and rider at risk.

The CHRB conducts a postmortem examination of every horse that suffers a fatal injury on the racetrack under the jurisdiction of the Board. Overtime these postmortems have shown a large majority of horses suffering fatal musculoskeletal racing fatalities have pre-existing pathology at the site of the fatal injury. This affects both horse and rider, as many of the jockey's injuries/fatalities occur when a horse sustains one of these fatal musculoskeletal injuries. The current permitted levels of phenylbutazone and flunixin may be a contributing factor to these racing fatalities due to the potential masking effect of phenylbutazone and flunixin.

The CHRB 2009-2010 Annual Report indicated 220 horses died while in training or racing with the most common cause of fatality due to musculoskeletal injuries. The Annual Report states that the J.D. Wheat Equine Orthopedic Research Laboratory at the School Veterinary Medicine at UC Davis is studying these injuries and the role of undiagnosed stress fractures that may be contributing to catastrophic fatalities.

A press release from the Racing Commissioners International (RCI), on October 22, 2010, states that RCI voted to lower the threshold levels for phenylbutazone. The RCI action changed the phenylbutazone levels from 5 micrograms per milliliter of plasma or serum to 2 micrograms. The RCI promulgates model regulations that are used by the various racing jurisdictions as

guidelines when writing or amending their own regulations. The proposed amendments to Board Rule 1844 will bring the CHRB's allowable level of phenylbutazone and flunixin in line with the RCI Model Rule 011-020 Medications and Prohibited Substances; section (E) Non-Steroidal Anti-Inflammatory Drugs (NSAIDS).

As of January 1, 2012, the American Graded Stakes Committee will require races to be run under a 2 milliliter threshold for phenylbutazone to maintain their graded stakes eligibility. Graded stakes have a significant impact in the prestige of a race and the subsequent value of graded stakes winners. The proposed amendment to Rule 1844 will bring California's allowable level of phenylbutazone into line with the American Graded Stakes Committee requirements.

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

- CHRB Annual Report 2009-2010 (pages 30-31)
- The Review of Phenylbutazone in the Horse, Dr. Lawrence R. Soma, VMD. University of Pennsylvania, School of Medicine.
- Nonsteroidal Anti-inflammatory Agents and Musculoskeletal Injuries in Thoroughbred Racehorses in Kentucky, T. Tobin et al.

The adoption of Rule 1844 has no significant adverse economic impact on small business.

The adoption of Rule 1844 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.

California Horse Racing Board  
April 1, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1844. AUTHORIZED MEDICATION

1844. Authorized Medication.

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

(a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.

(b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.

(c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances:

(1) Phenylbutazone in a dosage amount that the test sample shall contain not more than ~~5~~ 2 micrograms of the drug substance per milliliter of blood plasma or serum.

(2) Flunixin in a dosage amount that the test sample shall contain not more than ~~50~~ 20 nanograms of the drug substance per milliliter of blood plasma or serum.

(3) Ketoprofen in a dosage amount that the test sample shall contain not more than 10 nanograms of the drug substance per milliliter of blood plasma or serum.

(4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.

(d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.

(e) Official urine test samples may contain one of the following drug substances, their metabolites or analogs, in an amount that does not exceed the specified levels:

(1) Acepromazine; 25 nanograms per milliliter

(2) Mepivacaine; 10 nanograms per milliliter

(3) Promazine; 25 nanograms per milliliter

(4) Albuterol; 1 nanograms per milliliter

(5) Atropine; 10 nanograms per milliliter

(6) Benzocaine; 50 nanograms per milliliter

(7) Procaine; 50 nanograms per milliliter

(8) Salicylates; 750 micrograms per milliliter

(9) Clenbuterol; 5 nanograms per milliliter

(10) Stanozolol; 1 nanograms per milliliter

(11) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.

(12) Boldenone; 15 nanograms per milliliter in males other than geldings.

(13) Testosterone; 20 nanograms per milliliter in geldings.

(A) Testosterone at any level in males other than geldings is not a violation of this regulation.

(14) Testosterone; 55 nanograms per milliliter in fillies or mares

(f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per milliliter of serum or plasma.

(g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)(1)-(8), and (e)(10)-(14).

(h) Procaine, following administration of procaine penicillin, is an authorized medication provided:

(1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter.

(2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division,

(3) procaine penicillin was not administered after entry to race,

(4) the horse was under surveillance for a minimum of six hours prior to racing.

(i) All expenses related to surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse.

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

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

CALIFORNIA HORSE RACING BOARD  
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO ADD  
RULE 1844.1. SUSPENSION OF AUTHORIZED MEDICATION

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

**PROPOSED REGULATORY ACTION**

The Board proposes to add Rule 1844.1. Suspension of Authorized Medication. The proposed regulation would allow the Board to temporarily suspend the authorized administration to a horse entered to race of any drug, substance or medication (medications). The temporary suspension may occur only after a public meeting that has been noticed in accordance with Government Code section 11125(a). Suspension of authorized medications may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions. Temporary suspensions of authorized medications shall not exceed 12 months and shall be memorialized in writing.

**PUBLIC HEARING**

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 28, 2011**, or as soon after that as business before the Board will permit, at the **Hollywood Park Race Track, 1050 South Prairie Avenue, Inglewood, 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 April 25, 2011**. 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

## AUTHORITY AND REFERENCE

Authority cited: Sections 19420, 19440 19562 and 19581, Business and Professions Code.  
Reference: Sections 19420, 19440 and 19580, Business and Professions Code.

Business and Professions Code sections 19420, 19440, 19562 and 19581 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19420, 19440 and 19581, Business and Professions Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Business and Professions Code section 19420 provides that jurisdiction and supervision over meetings in California where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the 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, 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 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 requires the Board to adopt regulations to establish policies, guidelines, and penalties relating to equine medication to preserve and enhance the integrity of horse racing in the State. 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 proposes to add Rule 1844.1 to provide that it may for any cause temporarily suspend the authorized administration to a horse entered to race of any medication that is otherwise permitted under Rule 1844, Authorized Medication. The suspension of an authorized medication may take place after a public meeting that has been noticed in accordance with Government Code section 11125(a). Subsection 1844.1(a) would allow the Board to temporarily suspend the use of authorized medications. The Board has determined that there are occasions wherein the original premise for authorizing the administration of a medication, or the level at which a

medication may be present in a test sample, may be called into question. The science surrounding equine medicine is not static. Over time scientific information and practical experience in managing the threshold levels for authorized medications change, as unintended consequences become apparent. New information regarding the efficacy of a medication may be published, or it may be discovered that a therapeutic medication is being used to achieve an effect other than healing the horse. The Board wishes its regulations to promote the health and welfare of the horse and rider, so it desires the ability to move quickly with regards to medications that are authorized for administration to horses entered to race. The proposed subsection 1844(a) allows this to happen. Subsection 1844.1(a) requires the Board to hold a public meeting that has been noticed in accordance with Government Code section 11125(a) prior to suspending the use of an authorized medication. Before the Board takes any action, a public meeting will allow it to notify the racing public of its intentions, to explain its reasons for wishing to suspend an authorized medication, and to hear from interested parties regarding the proposed action.

Subsection 1844.1(b) provides that the suspension of an authorized medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions. This gives the Board a range of options when determining if it wishes to suspend the use of an authorized medication. These options are important because of the need for swift action that may arise. Authorized medications may appear in different formulations, such as liquids, pastes, powders, etc. In addition, the source of the medications may render them suspect. On occasion the Board has confiscated substances, or horsemen provide medication for testing. The results of such tests can reveal that the medication has little relation to the United States Food and Drug Administration approved compound. The Board may wish to suspend the use of the authorized medication at a particular race meeting or for a particular breed because that is where the problem has been identified. To ensure the integrity of its races, any suspension of authorized medication would apply to all horses entered to race, so the competition would occur under the same conditions for each entry. This would mean that in addition to any other conditions, all horses would run without the suspended authorized medication.

Subsection 1844.1(c) provides that the Board shall notify in writing the racing association and the trainer's organization of any suspension of an authorized medication. This will ensure that trainers will be adequately notified of the suspension. Racing associations promulgate condition books that include medication information. These condition books are used by owners and trainers who participate in the race meeting. Subsections 1844.1(c)(1) through 1844.1(c)(3) state the minimum information that must be present in the written notification. This will ensure the racing associations and the trainer organizations are fully informed and that they can inform their constituents.

Subsection 1844.1(d) states the temporary suspension of authorization to administer a medication shall not exceed 12 months. This provides the Board with enough time to determine the effect of the temporary suspension, and amend its medication regulations, if necessary. In addition, this sets boundaries so that those affected will know when the temporary suspension will end.

#### 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 addition of Rule 1844.1 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 addition of Rule 1844.1 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 addition of Rule 1844.1 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

Andrea Ogden, Regulation Analyst  
Telephone: (916) 263-6033  
E-mail: andreao@chr.ca.gov

## 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](http://www.chrb.ca.gov).

## **INITIAL STATEMENT OF REASONS**

### **RULE 1844.1. SUSPENSION OF AUTHORIZED MEDICATION.**

#### **SPECIFIC PURPOSE OF THE REGULATION**

The proposed addition of Rule 1844.1, Suspension of Authorized Medication, would allow the Board to temporarily suspend the authorized administration to a horse entered to race of any drug, substance or medication (medications). The temporary suspension may occur only after a public meeting that has been noticed in accordance with Government Code section 11125(a). Suspension of authorized medications may be for a race, breed, or race meeting, provided all

horses in the same race compete under the same conditions. Temporary suspensions of authorized medications shall not exceed 12 months and the Board shall notify in writing the racing association and the trainer's organization.

## NECESSITY

The Board proposes to add Rule 1844.1 to provide that it may for any cause temporarily suspend the authorized administration to a horse entered to race of any medication that is otherwise permitted under Rule 1844, Authorized Medication. The suspension of an authorized medication may take place after a public meeting that has been noticed in accordance with Government Code section 11125(a). Subsection 1844.1(a) would allow the Board to temporarily suspend the use of authorized medications. The Board has determined that there are occasions wherein the original premise for authorizing the administration of a medication, or the level at which a medication may be present in a test sample, may be called into question. The science surrounding equine medicine is not static. Over time scientific information and practical experience in managing the threshold levels for authorized medications change, as unintended consequences become apparent. New information regarding the efficacy of a medication may be published, or it may be discovered that a therapeutic medication is being used to achieve an effect other than healing the horse. The Board wishes its regulations to promote the health and welfare of the horse and rider, so it desires the ability to move quickly with regards to medications that are authorized for administration to horses entered to race. The proposed subsection 1844(a) allows this to happen. Subsection 1844.1(a) requires the Board to hold a public meeting that has been noticed in accordance with Government Code section 11125(a) prior to suspending the use of an authorized medication. Before the Board takes any action, a public meeting will allow it to notify the racing public of its intentions, to explain its reasons for wishing to suspend an authorized medication, and to hear from interested parties regarding the proposed action.

Subsection 1844.1(b) provides that the suspension of an authorized medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions. This gives the Board a range of options when determining if it wishes to suspend the use of an authorized medication. These options are important because of the need for swift action that may arise. Authorized medications may appear in different formulations, such as liquids, pastes, powders, etc. In addition, the source of the medications may render them suspect. On occasion the Board has confiscated substances, or horsemen provide medication for testing. The results of such tests can reveal that the medication has little relation to the United States Food and Drug Administration (FDA) approved compound. The Board may wish to suspend the use of the authorized medication at a particular race meeting or for a particular breed because that is where the problem has been identified. To ensure the integrity of its races, any suspension of authorized medication would apply to all horses entered to race, so the competition would occur under the same conditions for each entry. This would mean that in addition to any other conditions, all horses would run without the suspended authorized medication.

Subsection 1844.1(c) provides that the Board shall notify in writing the racing association and the trainer's organization of any suspension of an authorized medication. This will ensure that trainers will be adequately notified of the suspension. Racing associations promulgate condition books that include medication information. These condition books are used by owners and trainers who participate in the race meeting. Subsections 1844.1(c)(1) through 1844.1(c)(3) state the minimum information that must be present in the written notification. This will ensure the racing associations and the trainer organizations are fully informed and that they can inform their constituents. Under subsection 1844.1(c)(1) the notification must state the authorized

medication whose use is temporarily suspended. This ensures there is no question regarding which medication is suspended. Subsection 1844.1(c)(2) states the notification must provide the period of time for which the use of the authorized medication is temporarily suspended. The proposed regulation allows the suspension to be for as little time as a single race, or for up to a 12-month period. Such notification will allow owners, trainers and veterinarians to plan for the veterinary care of their equines and to avoid medication violations. It also allows the Board to react to specific medication issues, or to look at amending its regulations. Subsection 1844.1(c)(3) requires that the notification state whether the temporary suspension is for a particular breed or race meeting. This is necessary because there have been instances where non-FDA approved formulations of medications have appeared at a specific race meeting. With the exception of racing fairs, which are generally mixed-breed meetings, race meetings are for specific breeds.

Subsection 1844.1(d) states the temporary suspension of authorization to administer a medication shall not exceed 12 months. This provides the Board with enough time to determine the effect of the temporary suspension, and amend its medication regulations, if necessary. In addition, this sets boundaries so that those affected will know when the temporary suspension will end.

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

The Board did not rely on any technical, theoretical, and/or empirical studies, reports or documents in proposing the addition of the regulation.

The adoption of Rule 1844.1 has no significant adverse economic impact on small business.

The adoption of Rule 1844.1 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.

California Horse Racing Board  
March 11, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED ADDITION OF  
RULE 1844.1. SUSPENSION OF AUTHORIZED MEDICATION

#### 1844.1 Suspension of Authorized Medication

(a) After a public meeting that has been noticed in accordance with Government Code section 11125(a), the Board may for any cause temporarily suspend the authorized

administration to a horse entered to race of any drug, substance or medication that is otherwise permitted under Rule 1844, Authorized Medication.

(b) The temporary suspension of the authorized administration of a drug, substance or medication may be for a race, breed, or race meeting, provided all horses in the same race compete under the same conditions.

(c) The Board shall notify in writing the racing association and the trainer's organization of any temporary suspension of authorization to administer a drug, substance or medication to a horse entered to race. The written notification shall at minimum:

(1) State the authorized medication whose use is temporarily suspended,

(2) The period of time for which the use of the authorized medication is temporarily suspended, and

(3) Whether the temporary suspension is for a specific breed or a race meeting.

(d) A suspension of authorization to administer a drug, substance or medication to a horse entered to race shall not exceed 12 months.

Authority: Sections 19420, 19440, 19562 and 19581,  
Business and Professions Code.

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

CALIFORNIA HORSE RACING BOARD  
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO AMEND  
RULE 1846.5. POSTMORTEM EXAMINATION

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

PROPOSED REGULATORY ACTION

The Board proposes to amend Rule 1846.5, Postmortem Examination. The proposed regulation would require the owner's or trainer's veterinarian to provide the California Horse Racing Board (CHRB) official veterinarian with the preceding six months of veterinary records that pertain to

the horse submitted for a postmortem examination. The records must be submitted within 48 hours of the submission of the Necropsy Submission Form CHRB-72 (Rev. 06/04).

## PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, July 21, 2011**, 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 July 18 2011**. 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

## AUTHORITY AND REFERENCE

Authority cited: Section 19440, Business and Professions Code. Reference: Section 4857 and 19444(c), Business and Professions Code.

Business and Professions Code section 19440 authorizes the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 4857 and 19444(c), 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, 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 4857 provides that a veterinarian licensed under the provisions of this chapter shall not disclose any information concerning an animal receiving veterinary services, the client responsible for the animal receiving veterinary services, or the veterinary care provided to an animal except as may be required to ensure compliance with any federal, state, county, or city law or regulation. Business and Professions Code section 19444(c) states in performing its responsibilities pursuant to this chapter, the Board may conduct research to determine more fully the cause and prevention of horse racing accidents, the effects of drug substances on the race horses, and the means for detection of foreign drug substances.

Board Rule 1846.5, Postmortem Examination, requires that every horse which suffers a fatal injury on the racetrack, or which dies or is euthanized within an area under the jurisdiction of the Board, shall undergo a postmortem examination. The regulation is silent on whether a copy of the horse's veterinary records may be required by the Board. However, such records may provide valuable information and insight in conjunction with the postmortem examination. The Board proposes to amend Rule 1846.5 to add a new subsection 1846.5(e)(1), which would require the owner's or trainer's veterinarian to provide the CHRB official veterinarian with the veterinary medical history for the preceding six months of any horse which suffers a fatal injury on the racetrack, or which dies or is euthanized on the grounds of a facility under the jurisdiction of the Board. The documents, which must be delivered to the CHRB official veterinarian within 48 hours of submitting the CHRB-72, Necropsy Submission Form, will assist in understanding some of the factors that led to the horse's demise, and allow for the correlation of postmortem data with medical records to look for causal relationships. Under the proposed amendment the documents would be considered confidential and their contents would not be disclosed except in a proceeding before the stewards or the Board in exercise of the Board's jurisdiction, or except in the analysis of injuries or illness causing fatalities, as approved by the Executive Director of the Equine Medical Director, as specified under a new subsection 1846.5(e)(2).

#### 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 1846.5 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 1846.5 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 amendment of Rule 1846.5 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

Andrea Ogden, Regulation Analyst  
Telephone: (916) 263-6033  
E-mail: [andreao@chr.ca.gov](mailto:andreao@chr.ca.gov)

#### 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 FINAL 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](http://www.chrb.ca.gov).

### **INITIAL STATEMENT OF REASONS**

#### RULE 1846.5. POSTMORTEM EXAMINATION.

#### SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment of Rule 1846.5, Postmortem Examination, would require the owner's or trainer's veterinarian to provide the California Horse Racing Board (CHRB) official veterinarian with the preceding six months of veterinary records that pertain to the horse submitted for a postmortem examination. The records must be submitted within 48 hours of the submission of the Necropsy Submission Form CHRB-72 (Rev. 6/04). The proposed regulation would also declare the veterinary records confidential and prohibits the disclosure of their contents unless before a proceeding of the stewards or the Board in exercise of the Board's jurisdiction, or the analysis of injuries and illness causing fatalities as approved by the Executive Director and the Equine Medical Director.

#### NECESSITY

Board Rule 1846.5, Postmortem Examination, requires that every horse which suffers a fatal injury on the racetrack, or which dies or is euthanized within an area under the jurisdiction of the Board, shall undergo a postmortem examination. The regulation is silent on whether a copy of the horse's veterinary records may be required by the Board. However, such records may provide valuable information and insight in conjunction with the postmortem examination. The Board proposes to amend Rule 1846.5 to add a new subsection 1846.5(e)(1), which would require the owner's or trainer's veterinarian to provide the CHRB official veterinarian with the veterinary medical history for the preceding six months of any horse which suffers a fatal injury on the racetrack, or which dies or is euthanized on the grounds of a facility under the jurisdiction of the Board. Under Rule 1846.5 the official veterinarian is the racing official who receives the Necropsy Submission Form, CHRB 72. This makes the official veterinarian the logical official to also receive the veterinary records. The Board has determined that requiring the preceding six months of veterinary records will provide enough of a medical history to assist in understanding factors that may have contributed to the fatality while not placing an onerous burden on the owner or trainer. It is not unusual to expect that a race horse may have had more than one owner within the course of a year. Owners who sell a horse in a private sale or in a

claiming race generally do not provide the new owner with the horse's medical records. To require more than six months medicals records could prove impossible for certain owners or trainers. The documents, which must be delivered to the CHRB official veterinarian within 48 hours of submitting the CHRB-72, Necropsy Submission Form, will assist in understanding some of the factors that led to the horse's demise, and allow for the correlation of postmortem data with medical records to look for causal relationships. The Board determined that a 48 hour period was sufficient time to allow the owner or trainer to notify his veterinarian, and to deliver the records to the CHRB official veterinarian. Under the proposed amendment the documents would be considered confidential and their contents would not be disclosed except in a proceeding before the stewards or the Board in exercise of the Board's jurisdiction. The Board has, in the past, subpoenaed veterinarian records, which have played a role in hearings before the stewards. CHRB licensed veterinarians are not immune from action by the Board in cases involving medication and drug substance issues. The veterinary records might also be disclosed in the analysis of injuries or illness causing fatalities, as approved by the Executive Director and the Equine Medical Director, as specified under a new subsection 1846.5(e)(2).

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

The Board did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the amendment to these regulations.

The adoption of Rule 1846.5 has no significant adverse economic impact on small business.

The adoption of Rule 1846.5 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.

California Horse Racing Board  
June 3, 2011

**CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED AMENDMENT OF  
RULE 1846.5. POSTMORTEM EXAMINATION**

**1846.5. Postmortem Examination.**

(a) Every horse which suffers a fatal injury on the racetrack in training or in competition, or which dies or is euthanized within an area under the jurisdiction of the Board, shall

undergo a postmortem examination at a diagnostic laboratory which is under contract with the Board to determine the injury or sickness which resulted in euthanasia or natural death.

(b) Test samples may be obtained from the carcass upon which the postmortem examination is to be conducted and sent to the diagnostic laboratory for testing for foreign substances or their metabolites, and natural substances at abnormal levels. When practical, test samples shall be procured prior to euthanasia.

(c) The costs associated with transportation to the diagnostic laboratory of any horse which has died under the provisions of subparagraph (a) shall be the responsibility of the racing association conducting the meeting where the death occurred or the training center or racetrack where death occurred when no meeting is in progress. The services of the official veterinarian and the laboratory testing of postmortem samples for standard necropsy and special equine necropsy examinations shall be made available by the Board without charge to the owner. The cost of any additional necropsy examination(s) requested by the owner or trainer are the responsibility of the requesting individual.

(d) Requests for each postmortem shall be filed with the official veterinarian by the owner's or trainer's veterinarian within one hour of the death and shall be submitted on a Necropsy Submission Form, CHRB-72, (Rev. 06/04), hereby incorporated by reference, and which is available at all official veterinarian offices. The trainer is co-responsible to supply all information to complete CHRB-72.

(e) If the official veterinarian is not available, the owner's or trainer's veterinarian must phone the diagnostic laboratory within one hour of the death and fax CHRB-72 to the laboratory as notification that the horse is due for necropsy. On the official veterinarian's next scheduled work day, the owner's or trainer's veterinarian shall give the original CHRB-72 to the official veterinarian.

(1) Within 48 hours of the submission of the CHRB-72, the owner's or trainer's veterinarian shall provide the official veterinarian with the preceding six months of veterinary records that pertain to the horse submitted for the postmortem examination.

(2) Any veterinary medical records provided to the Board shall be considered confidential and their contents shall not be disclosed except in a proceeding before the stewards or the Board, in exercise of the Board's jurisdiction or in the analysis of injuries and illnesses causing fatalities as approved by the Executive Director and the Equine Medical Director.

(f) The racing association, racetrack or training center will notify the transporter within one hour of death to have the horse conveyed to the designated laboratory for necropsy.

(g) Upon completion of the postmortem examination the diagnostic laboratory shall file a written report with the Executive Director, the Equine Medical Director and the official veterinarian.

(h) Each owner and trainer accepts responsibility for the postmortem examination provided herein as a requisite for maintaining an occupational license.

Authority: Section 19440,  
Business and Professions Code.

Reference: Section 4857 and 19444(c),  
Business and Professions Code.

CALIFORNIA HORSE RACING BOARD  
TITLE 4, CALIFORNIA CODE OF REGULATIONS  
NOTICE OF PROPOSAL TO AMEND  
RULE 1876. FINANCIAL RESPONSIBILITY

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 1876, Financial Responsibility, to provide that financial responsibility complaints from equine medical hospitals and Board authorized horse auctions will be considered if the debts are directly related to the California horse racing operations of a person licensed by the Board. The proposed amendment will also provide that financial responsibility complaints from horse farms will be considered if the debts are related to the horse

operations of a person licensed by the Board, and are for not less than one thousand dollars. In addition, the proposed amendment to Rule 1876 provides for the acceptance of financial responsibility complaints that are horse racing related wage disputes originating between persons licensed by the Board.

## PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, April 28, 2011**, or as soon after that as business before the Board will permit, at the **Santa Anita Park Race Track, 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 representatives, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on April 18, 2011**. 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@chr.ca.gov](mailto:haroldc@chr.ca.gov)

## AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19460, Business and Professions Code.  
Reference: Sections 19440, 19460 and 19461, Business and Professions Code.

Business and Professions Code sections 19440 and 19460 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19440, 19460 and 19461, 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 19460 provides that all licenses granted under this chapter are subject to all rules, regulations, and conditions from time to time prescribed by the Board and shall contain such conditions as are deemed necessary or desirable by the Board for the purposes of this chapter. Business and Professions Code section 19461 states Every license granted under this chapter is subject to suspension or revocation by the Board in any case where the Board has reason to believe that any condition regarding it has not been complied with, or that any law, or any rule or regulation of the board affecting it has been broken or violated.

The Board proposes to amend Rule 1876 to clarify the circumstances under which a financial responsibility complaint will be accepted. Board Rule 1876 provides that no licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies or fees related to his or her operations as a licensee. The proposed amendment to Rule 1876 amends subsection 1876(a) to describe the type of debts that may result in a licensee gaining the attention of the Board. The debts must be directly related to the licensee's California racetrack operations. This is in keeping with the Board's jurisdiction over horse racing and persons who are required to obtain an occupational license to participate in horse racing. A new subsection 1876(e) provides that financial responsibility complaints submitted by equine medical hospitals and authorized horse auction sales authorized by the Board in accordance with Rule 1807, Authorized Horse Sales, will be considered. Subsection 1876(e) requires that financial responsibility complaints submitted by equine medical hospitals and thoroughbred horse auction sales must comply with subsections (b), (c) and (d) (1) through (d) (2) of Rule 1876. This will ensure that the entities provide the correct documentation, and that they will follow the timelines provided under Rule 1876. Subsection 1876(e) also states the financial responsibility complaints must be directly related to the licensee's California horse racing operations. This ensures the Board will only receive financial responsibility complaints regarding services provided to race horses.

A new subsection 1876(e)(1) provides that financial responsibility complaints submitted by horse farms will be considered if the complaints are for not less than one thousand dollars and are related to the horse operations of the licensee. The one thousand dollar limit is not a high level for the boarding and training of horses at farms, but it does put in place a minimum so the Board is not inundated with financial responsibility complaints from such facilities. In addition, under subsection 1876(e)(1), the financial complaint does not have to be "directly" related to a licensee's "horse racing" operation. Rather, the financial complaint must be "related to the horse operations" of a licensee. This allows for consideration of financial complaints for horses that are turned out, or horses standing at the farm for breeding purposes, such as brood mares, where the licensee intends to race the foal.

The Board determined it wished to add subsection 1876(e) and 1876(e)(1) to ensure financial responsibility complaints submitted by such businesses will be accepted. In the past, there has been confusion as to whether the services provided by such enterprises were required to be heard. The addition of subsection 1876(e) and 1876(e)(1) provides clarity.

The Board understands that many persons licensed to work within the restricted areas of the inclosure, including grooms, stable employees, stable assistants and exercise riders may be reluctant to go outside of the horse racing world to obtain relief for unpaid wages. Subsection 1876(f) has been added to make it clear that financial responsibility complaints that are horse racing related wage disputes between persons licensed by the Board will be heard. This will allow persons licensed by the Board who might otherwise refrain from using the civil courts to seek the help of the Board in obtaining unpaid wages.

#### 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 sections 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 1876 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 1876 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 1876 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  
Fax: (916) 263-6022  
E-mail: [haroldc@chr.ca.gov](mailto:haroldc@chr.ca.gov)

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

Andrea Ogden, 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 regulations for 15 days after the date on which they are 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](http://www.chrb.ca.gov).

#### **INITIAL STATEMENT OF REASONS**

##### RULE 1876, FINANCIAL RESPONSIBILITY

##### SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment of Rule 1876 will clarify the circumstances under which a financial responsibility complaint will be accepted. Board Rule 1876 provides that no licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies or fees related to his or her operations as a licensee. The proposed amendment to Rule 1876 amends subsection 1876(a) to describe the type of debts that may result in a licensee gaining the attention of the Board. The debts must be directly related to the licensee's California racetrack operations. This is in keeping with the Board's jurisdiction over horse racing and persons who

are required to obtain an occupational license to participate in horse racing. A new subsection 1876(e) provides that financial responsibility complaints submitted by equine medical hospitals and horse auction sales authorized by the Board in accordance with Rule 1807, Authorized Horse Sales, will be considered. Subsection 1876(e) requires that financial responsibility complaints submitted by equine medical hospitals and authorized horse auction sales must comply with subsections (b), (c) and (d) (1) through (d) (2) of Rule 1876. This will ensure that the entities provide the correct documentation, and that they will follow the timelines provided under Rule 1876. Subsection 1876(e) also states the financial responsibility complaints must be directly related to the licensee's California horse racing operations. This ensures the Board will only receive financial responsibility complaints regarding services provided to race horses. A new subsection 1876(e)(1) provides that financial responsibility complaints will be received from horse farms if the debt is for at least one thousand dollars and the debt is related to the horse operations of the licensee.

## NECESSITY

The Board proposes to amend Rule 1876 to clarify the circumstances under which a financial responsibility complaint will be accepted. Board Rule 1876 provides that no licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies or fees related to his or her operations as a licensee. The proposed amendment to Rule 1876 amends subsection 1876(a) to describe the type of debts that may result in a licensee gaining the attention of the Board. The debts must be directly related to the licensee's California racetrack operations. This is in keeping with the Board's jurisdiction over horse racing and persons who are required to obtain an occupational license to participate in horse racing. The Board does not wish its investigators and stewards to assume the role of bill collectors for any and all debts its licensees may incur. A new subsection 1876(e) provides that financial responsibility complaints submitted by equine medical hospitals and horse auction sales authorized by the Board in accordance with Rule 1807, Authorized Horse Sales, will be considered. The Board determined it wished to add subsection 1876(e) to ensure financial responsibility complaints submitted by such businesses will be accepted. In the past, there has been confusion as to whether the services provided by such enterprises were required to be heard. The addition of subsection 1876(e) is necessary to provide clarity. Subsection 1876(e) requires that financial responsibility complaints submitted by equine medical hospitals and authorized horse auction sales must comply with subsections (b), (c) and (d) (1) through (d) (2) of Rule 1876. This will ensure that the entities provide the correct documentation, and that they will follow the timelines provided under Rule 1876. Subsection 1876(e) also states the financial responsibility complaints must be directly related to the licensee's California horse racing operations. This ensures the Board will only receive financial responsibility complaints regarding services provided to race horses, and for horse racing related functions.

A new subsection 1876(e)(1) provides that financial responsibility complaints submitted by horse farms will be considered if the complaints are for not less than one thousand dollars and are related to the horse operations of the licensee. The one thousand dollar limit is not a high level for the boarding and training of horses at farms, but it does put in place a minimum so the Board is not inundated with financial responsibility complaints from such facilities. In addition, under subsection 1876(e)(1), the financial complaint does not have to be "directly" related to a licensee's "horse racing" operation. Rather, the financial complaint must be "related to the horse operations" of a licensee. This allows for consideration of financial complaints for horses that are turned out, or horses standing at the farm for breeding purposes, such as brood mares, where the licensee intends to race the foal.

The Board understands that many persons licensed to work within the restricted areas of the inclosure, including grooms, stable employees, stable assistants and exercise riders may be reluctant to go outside of the horse racing industry to obtain relief for unpaid wages. English is not the first language of many backstretch workers. In addition, such persons may not understand how the civil court system works, or trust that they will be heard. Backstretch workers are familiar with the racetrack environment, and may place more trust in the stewards. The Board has added subsection 1876(f) to state that financial responsibility complaints involving horse racing related wage disputes between licensees will be heard. This makes it clear that such financial responsibility complaints will be heard, and it will allow persons licensed by the Board to seek the help of the stewards in resolving wages disputes.

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 1876 has no significant adverse economic impact on small business.

The amendment of Rule 1876 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.

California Horse Racing Board  
March 4, 2011

CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 16. GENERAL CONDUCT  
PROPOSED AMENDMENT OF  
RULE 1876. FINANCIAL RESPONSIBILITY

1876. Financial Responsibility.

(a) No licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies or fees ~~connected with~~ directly related to his or her California horse racing operations as a licensee, nor shall he or she falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due.

(b) Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a civil court which has been issued within one year of the date of the complaint.

(c) The Board will not consider a financial responsibility complaint made by the complainant against the same accused within twenty-four months of the filing of the instant complaint.

(d) The Board will consider only those financial responsibility complaints which meet the following criteria:

(1) The complaint involves services, supplies or fees that are directly related to the licensee's California racetrack operations; and

(2) The debt or cause for action originated, or the civil court judgment was issued, in this State within one year of the filing of the complaint.

(e) Financial responsibility complaints submitted by equine medical hospitals, and horse auction sales authorized by the Board in accordance with Rule 1807 of this Division, will be considered provided such complaints comply with subsections (b), (c) and (d) (1) through (d) (2) of this regulation, and are directly related to the California horse racing operations of a person licensed by the Board.

(1) Financial responsibility complaints submitted by horse farms will be considered provided the complaint is for not less than one thousand dollars and is related to the horse operations of a person licensed by the Board.

(f) Financial responsibility complaints that are horse racing related wage disputes originating between persons licensed by the Board will be considered.

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

Reference: Sections 19440, 19460 and 19461,  
Business and Professions Code.

