

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

CALIFORNIA HORSE RACING BOARD
TITLE 4, DIVISION 4, CALIFORNIA CODE OF REGULATIONS
NOTICE OF PROPOSAL TO AMEND
RULE 1734. WHIPPING

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 proposed amendment of Board Rule 1734, Whipping, would clarify what is acceptable use of a whip by a harness driver. The purpose of the amendment to Rule 1734 is to curtail and prevent any excessive use of the whip. The proposed amendment divides Rule 1734 into four subsections. Subsection (a) provides that no driver shall use unreasonable force in whipping a horse, nor whip any horse causing any welts or breaks in the skin. Subsection (b) restricts the motion of the driver's arm when using the whip to elbow and wrist action only and lists prohibited actions by a driver when using the whip on a horse. Subsection (b)(1) prohibits a driver from raising the elbow above the driver's shoulder height, and subsection (b)(2) prohibits the driver's hand holding the whip to reach behind the driver during use of the whip. Subsections (b)(3) and (b)(4) describe the areas on the horse that drivers may not whip, including above the level of the shafts of the sulky and between the sulky shafts, as well as under the arch or shafts of the sulky. Subsection (b)(5) further prohibits using the whip as a goading or poking device between the legs of the horse. Proposed subsection (b)(6) provides that use of the whip is prohibited when the horse does not appear to be advancing through the field of horses or is no longer in contention for purse money. Subsection (c) provides that all drivers must keep a line in each hand beginning when the horse is behind the starting gate and until the one-eighth of a mile prior to the finish line, and may not whip while holding two lines in one hand until then. Subsection (d) prohibits drivers from using the whip more than three times in succession without giving the horse a chance to respond.

PUBLIC HEARING

The Board will hold a public hearing starting at **9:30 a.m., Thursday, August 25, 2016**, or as soon after that as business before the Board will permit, at the **Del Mar Surfside Race Place, 2260 Jimmy Durante Blvd., Del Mar, California**. At the hearing, any person may present statements or arguments orally or in writing about the proposed action described in the informative digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony.

WRITTEN COMMENT PERIOD

Any interested persons, or their authorized representative, may submit written comments about the proposed regulatory action to the Board. The written comment period closes at **5:00 p.m., on August 8, 2016**. The Board must receive all comments at that time; however, written comments may still be submitted at the public hearing. Submit comments to:

Laurel Houle, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
E-mail: lahoule@chr.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19420 and 19440, Business and Professions Code. Reference: Section 19563, Business and Professions Code.

Business and Professions Code section 19420 provides jurisdiction and supervision over meetings in this State where horse races with wagering on their results are held or conducted, and over all persons or things having to do with the operation of such meetings, is vested in the 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 for horse racing and parimutuel wagering. Business and Professions Code section 19563 provides that the Board may adopt any rules and regulations of the United States Trotting Association (USTA) for the regulation of harness racing.

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 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 are not limited to, adopting rules and regulations for the protection of the public and the control of horse racing and parimutuel wagering.

The Board proposes to amend Rule 1734 to clarify what is acceptable use of a whip by a driver during a harness race. The proposed amendment to subsection (a) provides that no driver shall use unreasonable force in whipping a horse, nor whip any horse causing welts or breaks in the skin. Subsection (a) identifies welts or breaks in the skin as visible confirmation of improper

whipping on a horse. The proper use of a whip is meant to encourage a horse; the force it takes to cause welts or breaks in the skin is beyond the limit necessary to receive a positive response from the horse and may even produce a negative reaction. Subsection (b) restricts the driver's arm when using the whip to elbow and wrist action only and lists actions that are prohibited use of the whip. By limiting the motion of the driver's arm holding the whip, the maximum force applied to the whip is greatly reduced, which will ensure the whip is used to encourage, rather than punish the horse. The list of prohibited actions gives each driver a clear, measurable standard to determine proper whipping etiquette during a harness race.

Subsections (b)(1) through (b)(6) bar actions in order to curtail and prevent unreasonable use of the whip. Subsection (b)(1) prohibits a driver from raising the elbow above the driver's shoulder height, and subsection (b)(2) disallows the driver's hand holding the whip to reach behind the driver during use of the whip. Subsections (b)(1) and (b)(2) indicate the level of movement by a driver where use of the whip would become unreasonable; the additional force from a driver raising his arm above the shoulder height to whip the horse is excessive. The exaggerated motion alters the intention of whip use from a tool to a weapon. Subsections (b)(3) and (b)(4) describe the areas on the horse that drivers may not whip, including above the level of the shafts of the sulky (a two-wheeled one-passenger vehicle that is pulled by a horse) and between the sulky shafts, as well as under the arch or shafts of the sulky. Subsections (b)(3) and (b)(4) clarify where a whip may not be used for the safety and welfare of the horse and driver. Generally, horses move away from sound or touch. Common proper practice of using a whip is to tap a horse near the rear, or for drivers, on the side of the harness near the rear of the horse. Tapping in this area naturally encourages the horse to move forward, away from the sound or touch. A horse is a prey animal by nature and whipping a horse on other areas of the body such as the underside or near the head may cause the horse to experience fear and react unexpectedly. Such actions include breaking stride, or moving laterally, both of which can cause the horse and driver its placing in the race. Lateral movement may cause harm or lost placing to an additional horse and driver if the latter horse is blocked by the former horse crossing into its path. Subsection (b)(5) prohibits using the whip as a goading or poking device or placing the whip between the legs of the horse. Subsection (b)(5) maintains a level of safety for the horse and driver. The whip could get caught between the horse's legs if used this way and cause it to trip or fall. Subsection (b)(5) prohibits goading and poking to further clarify what is considered unreasonable force in whipping for the humane treatment of the horse. Goading and poking a horse is not the intended use of the whip; the whip is meant to encourage the horse to move forward willingly. Subsection (b)(6) provides that use of the whip is prohibited when the horse does not appear to be advancing through the field of horses or is no longer in contention for purse money. Subsection (b)(6) prevents unnecessary whipping of a horse by a driver. A horse can become dull to the whip if it is used more than necessary, which may cause a problem if the whip is needed in the future to control or encourage the horse. There is no need for a driver to push a horse to exert more energy to complete a race quickly if it is out of contention; the extra energy can put needless strain on a horse's joints, muscles and lungs causing undue risk to its wellbeing. Subsection (b)(6) is consistent with racing jurisdictions including: the USTA, Association of Racing Commissioners International (ARCI), Indiana, Michigan and Pennsylvania.

Subsection (c) requires that all drivers must keep a line in each hand beginning when the horse is behind the starting gate until the one-eighth of a mile prior to the finish line, and may not whip while holding two lines in one hand until then. The lines must remain reasonably taut during the entire race. Subsection (c) ensures a driver maintain reasonable control of the horse. Keeping the lines taut and one line in each hand naturally limits the driver's shoulder wrist and hand movement, preventing the driver from creating too much force during the whipping motion. Maximum effort from the horse is generally needed as a final push to the finish line. It is standard practice to convey this to the horse with the whip. The driver must make it clear to the horse when the final effort is needed to conclude the race. Placing the lines together in one hand gives the driver the freedom to slightly exaggerate movement with the arm holding the whip, without creating the additional force that would be created with the movement prohibited in subsection (b). Allowing the driver to hold two lines in a single hand at the one-eighth of a mile prior to the finish line is a subtle, yet distinct cue by the driver and the lines that a horse can identify. A horse in training will quickly learn the way it feels when the lines are placed into one hand by a driver, and can be taught that the final effort is needed after such movement. Proper use of the whip would be to encourage a horse that fails to notice or react to the cue.

Subsection (d) limits the use of the whip to no more than three times in succession without giving the horse a chance to respond. This will allow the driver time to show the horse the whip, and provide the horse with enough time to respond. It is crucial for the driver to give the horse time to respond so that he or she can tell whether or not the horse is responsive to the initial usage of the whip. There are outward signs a driver can look for to determine if a horse is responding to the use of the whip such as the relative position of the horse to other horses in the race over time, whether or not the horse increases or decreases speed when the whip is used and whether the horse flags (swats) its tail.

In addition to ensuring the humane treatment of the horse, the Board has determined it is necessary to amend Rule 1734 to conform to similar changes of policy in other jurisdictions. Rule 1734 is not currently consistent with USTA rules, the ARCI Model Rules of Racing or with the policies and regulations of other racing jurisdictions. Michigan, Pennsylvania and Indiana have adopted rules similar to the proposed amendment to Rule 1734. The amendment of Rule 1734 is necessary to clarify what is acceptable use of a whip by harness drivers and update the rule to be consistent with similar changes adopted by other jurisdictions.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed amendment of Rule 1734 promotes the protection of driver and horse health and safety. The Board considers animal welfare and good sportsmanship fundamental for the success of horse racing. The proposed amendment of Rule 1734 provides direction on the appropriate use of the whip so that it will be used for safety, correction, or to encourage the horse without causing pain. If the safety practices of drivers improve, the public will see harness racing as a sport that cares, which may result in an increase of attraction to the sport. An increase of attraction to the sport could result in an increase in wagering which will have a positive economic impact on the industry.

Consistency with existing state regulations: During the process of developing these regulations and amendments, the California Horse Racing Board conducted a search of any similar regulations on this topic and concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

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 to Rule 1734 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states.

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

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

Significant effect on housing costs: none.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The adoption of the proposed amendment of Rule 1734 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. The amendment is a benefit to California because it promotes the protection of driver and horse health and safety. The CHRB considers animal welfare and good sportsmanship fundamental for the success of horse racing. The proposed amendment of Rule 1734 provides direction on the appropriate use of the whip by a harness driver so that it will be used for safety, correction, or to encourage the horse without causing pain. If the safety practices of drivers improve, the public will see horse racing as a sport that cares, which may result in an increase of attraction to the sport. An increase of attraction to the sport could result in an increase in wagering which will have a positive economic impact on the industry.

Effect on small businesses: none. The proposal to amendment of Rule 1734 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 has determined that no reasonable alternative it considered or that has otherwise been identified and brought its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

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

CONTACT 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:

Laurel Houle, Regulations Analyst
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 274-6043
Fax: (916) 263-6022
E-mail: lahoule@chr.ca.gov

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

Nicole Lopes-Gravely, Regulations Analyst
Telephone: (916) 263-6397
E-mail: nlgravely@chr.ca.gov

AVAILABILITY OF FINAL 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 and all available information of which this

proposal is based on. Copies may be obtained by contacting Laurel Houle, 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 Laurel Houle 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 Laurel Houle at the address stated above.

BOARD WEB ACCESS

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

INITIAL STATEMENT OF REASONS

RULE 1734. WHIPPING.

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendment of Board Rule 1734, Whipping, would clarify what is acceptable use of a whip by a harness driver. The purpose of the amendment to Rule 1734 is to curtail and prevent any excessive use of the whip. The proposed amendment divides Rule 1734 into four subsections. Subsection (a) provides that no driver shall use unreasonable force in whipping a horse, nor whip any horse causing any welts or breaks in the skin. Subsection (b) restricts the motion of the driver's arm when using the whip to elbow and wrist action only and lists prohibited actions by a driver when using the whip on a horse. Subsection (b)(1) prohibits a driver from raising the elbow above the driver's shoulder height, and subsection (b)(2) prohibits the driver's hand holding the whip to reach behind the driver during use of the whip. Subsections (b)(3) and (b)(4) describe the areas on the horse that drivers may not whip, including above the level of the shafts of the sulky and between the sulky shafts, as well as under the arch or shafts of the sulky. Subsection (b)(5) further prohibits using the whip as a goading or poking device between the legs of the horse. Proposed subsection (b)(6) provides that use of the whip is prohibited when the horse does not appear to be advancing through the field of horses or is no longer in contention for purse money. Subsection (c) provides that all drivers must keep a line in each hand beginning when the horse is behind the starting gate and until the one-eighth of a mile prior to the finish line, and may not whip while holding two lines in one hand until then. Subsection (d) prohibits drivers from using the whip more than three times in succession without giving the horse a chance to respond.

PROBLEM

Rule 1734 currently provides that no driver shall use unreasonable or unnecessary force in the whipping of a horse. The present Rule 1734 does not go into detail regarding what is considered unreasonable or unnecessary, leaving the rule open to flawed interpretation. This lack of clarity can be confusing to the driver on what is considered acceptable use of the whip. The amendment to Rule 1734 will clarify what is considered acceptable use of the whip during a harness race. The proposed amendment to Rule 1734 outlines the prohibited use of a whip for a harness driver to ensure the welfare of the horse. The proposed amendment to Rule 1734 also clarifies the maximum time a whip may be used in succession. The proposed amendment to Rule 1734 also provides instruction on how the lines should be held during a harness race while using the whip; such directions are currently absent from the regulation.

Rule 1734 is not currently consistent with United States Trotting Association rules (USTA), the Association of Racing Commissioners International (ARCI) Model Rules of Racing or with the policies and regulations of other racing jurisdictions. Michigan, Pennsylvania and Indiana have adopted rules similar to the proposed amendment to Rule 1734. The amendment of Rule 1734 is necessary to update the rule to be consistent with similar changes adopted by other jurisdictions.

NECESSITY

The Board proposes to amend Rule 1734 to clarify what is acceptable use of a whip by a driver during a harness race. The proposed amendment to subsection (a) provides that no driver shall use unreasonable force in whipping a horse, nor whip any horse causing welts or breaks in the skin. Subsection (a) identifies welts or breaks in the skin as visible confirmation of improper whipping on a horse. The proper use of a whip is meant to encourage a horse; the force it takes to cause welts or breaks in the skin is beyond the limit necessary to receive a positive response from the horse and may even produce a negative reaction. Subsection (b) restricts the driver's arm when using the whip to elbow and wrist action only and lists actions that are prohibited use of the whip. By limiting the motion of the driver's arm holding the whip, the maximum force applied to the whip is greatly reduced, which will ensure the whip is used to encourage, rather than punish the horse. The list of prohibited actions gives each driver a clear, measurable standard to determine proper whipping etiquette during a harness race.

Subsections (b)(1) through (b)(6) bar actions in order to curtail and prevent unreasonable use of the whip. Subsection (b)(1) prohibits a driver from raising the elbow above the driver's shoulder height, and subsection (b)(2) disallows the driver's hand holding the whip to reach behind the driver during use of the whip. Subsections (b)(1) and (b)(2) indicate the level of movement by a driver where use of the whip would become unreasonable; the additional force from a driver raising his arm above the shoulder height to whip the horse is excessive. The exaggerated motion alters the intention of whip use from a tool to a weapon. Subsections (b)(3) and (b)(4) describe the areas on the horse that drivers may not whip, including above the level of the shafts of the sulky (a two-wheeled one-passenger vehicle that is pulled by a horse) and between the sulky shafts, as well as under the arch or shafts of the sulky. Subsections (b)(3) and (b)(4) clarify where a whip may not be used for the safety and welfare of the horse and driver. Generally, horses move away from sound or touch. Common proper practice of using a whip is to tap a horse near the rear, or for drivers, on the side of the harness near the rear of the horse. Tapping in this area naturally encourages the horse to move forward, away from the sound or touch. A horse is a prey animal by nature and whipping a horse on other areas of the body such as the underside or near the head may cause the horse to experience fear and react unexpectedly. Such actions include breaking stride, or moving laterally, both of which can cause the horse and driver its placing in the race. Lateral movement may cause harm or lost placing to an additional horse and driver if the latter horse is blocked by the former horse crossing into its path. Subsection (b)(5) prohibits using the whip as a goading or poking device or placing the whip between the legs of the horse. Subsection (b)(5) maintains a level of safety for the horse and driver. The whip could get caught between the horse's legs if used this way and cause it to trip or fall. Subsection (b)(5) prohibits goading and poking to further clarify what is considered unreasonable force in whipping for the humane treatment of the horse. Goading and poking a horse is not the intended use of the whip; the whip is meant to encourage the horse to move forward willingly. Subsection (b)(6) provides that use of the whip is prohibited when the horse does not appear to be advancing through the field of horses or is no longer in contention for purse money. Subsection (b)(6) prevents unnecessary whipping of a horse by a driver. A horse can become dull to the whip if it is used more than necessary, which may cause a problem if the whip is needed in the future to control or encourage the

horse. There is no need for a driver to push a horse to exert more energy to complete a race quickly if it is out of contention; the extra energy can put needless strain on a horse's joints, muscles and lungs causing undue risk to its wellbeing. Subsection (b)(6) is consistent with racing jurisdictions including: the USTA, ARCI, Indiana, Michigan and Pennsylvania.

Subsection (c) requires that all drivers must keep a line in each hand beginning when the horse is behind the starting gate until the one-eighth of a mile prior to the finish line, and may not whip while holding two lines in one hand until then. The lines must remain reasonably taut during the entire race. Subsection (c) ensures a driver maintain reasonable control of the horse. Keeping the lines taut and one line in each hand naturally limits the driver's shoulder wrist and hand movement, preventing the driver from creating too much force during the whipping motion. Maximum effort from the horse is generally needed as a final push to the finish line. It is standard practice to convey this to the horse with the whip. The driver must make it clear to the horse when the final effort is needed to conclude the race. Placing the lines together in one hand gives the driver the freedom to slightly exaggerate movement with the arm holding the whip, without creating the additional force that would be created with the movement prohibited in subsection (b). Allowing the driver to hold two lines in a single hand at the one-eighth of a mile prior to the finish line is a subtle, yet distinct cue by the driver and the lines that a horse can identify. A horse in training will quickly learn the way it feels when the lines are placed into one hand by a driver, and can be taught that the final effort is needed after such movement. Proper use of the whip would be to encourage a horse that fails to notice or react to the cue.

Subsection (d) limits the use of the whip to no more than three times in succession without giving the horse a chance to respond. This will allow the driver time to show the horse the whip, and provide the horse with enough time to respond. It is crucial for the driver to give the horse time to respond so that he or she can tell whether or not the horse is responsive to the initial usage of the whip. There are outward signs a driver can look for to determine if a horse is responding to the use of the whip such as the relative position of the horse to other horses in the race over time, whether or not the horse increases or decreases speed when the whip is used and whether the horse flags (swats) its tail.

In addition to ensuring the humane treatment of the horse, the Board has determined it is necessary to amend Rule 1734 to conform to similar changes of policy in other jurisdictions. Rule 1734 is not currently consistent with USTA rules, the ARCI Model Rules of Racing or with the policies and regulations of other racing jurisdictions. Michigan, Pennsylvania and Indiana have adopted rules similar to the proposed amendment to Rule 1734. The amendment of Rule 1734 is necessary to clarify what is acceptable use of a whip by harness drivers and update the rule to be consistent with similar changes adopted by other jurisdictions.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Rule 1734 provides direction on the appropriate use of the whip so that it will be used for safety, correction or to encourage the horse without causing pain. If the safety practices of drivers improve, the public will see harness drivers as sportsmen that care, which may result in an increase of attraction to the sport. This increase in attraction to the

sport, could result in an increase in wagering, which will have a positive economic impact on the industry. The proposed amendment to Rule 1734 will align the Board's rule with those of the USTA and ARCI Model Rules of Racing and by other racing jurisdictions such as Michigan, Pennsylvania and Indiana that have adopted similar rules. The proposed amendment will also make it more consistent with Rule 1688, Use of Riding Crop.

Effect on small businesses: none. The proposal to amendment of Rule 1734 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

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 Rule 1734.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The results of the Board's Economic Impact Assessment as required by Government Code Section 11346.3(b) are as follows:

- The proposed regulation will not impact the creation or elimination of jobs within the State of California.
- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.
- The proposed regulation will not have an impact on the expansion of existing businesses in the State of California.
- The proposed regulation will benefit California by promoting the safety and welfare of horse and driver and will not benefit the State's environment.

The Board has made the initial determination that the proposed amendment of Rule 1734 will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states. The amendment of Rule 1734 is intended to update the rule and provide an additional measure of safety.

Purpose:

The purpose of the proposed amendment of Rule 1734 is to curtail and prevent excessive use of the whip for harness racing. The proposed amendment to Rule 1734 will align the Board's rule with those of the USTA and the ARCI Model Rules of Racing and by other racing jurisdictions that have adopted similar rules.

The Creation or Elimination of Jobs Within the State of California

The proposed amendment of Rule 1734 will only affect drivers and owners and as such only has an effect on horseracing and not any other type of California business. Therefore, CHRB

has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California

The proposed amendment of Rule 1734 will only affect drivers and owners and as such only has an effect on horseracing and not any other type of California business. Therefore, CHRB has determined this regulatory proposal will not have an impact on the creation of new businesses or the elimination of existing businesses in the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The proposed amendment of Rule 1734 will not impact the expansion of business currently doing business in California. This regulation will only affect drivers and owners, and as such only has an effect on horseracing and not any other type of California business. Therefore, CHRB has determined that the proposed regulatory action is not relevant to the expansion of businesses currently doing business in the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The proposed amendment of Rule 1734 is a benefit to the health and welfare of drivers who are residents of California, but will not benefit the state's environment. For additional benefit analysis, please see page 3 under heading titled, "Benefits Anticipated from the Regulatory Action."

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

The Board has determined that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed amendment of Rule 1734 was discussed at the March 24, 2016 Regular Board Meeting. No alternatives to the recommendation were proposed by the Board or by any other individual or entity at the meeting. No subsequent alternative recommendations were made prior to the notice. The Board invites any interested party to submit comments which offer any alternative proposal.

California Horse Racing Board
June 24, 2016

CALIFORNIA HORSE RACING BOARD
TITLE 4. CALIFORNIA CODE OF REGULATIONS
ARTICLE 9. HARNESS RACING RULES
PROPOSED AMENDMENT OF
SECTION 1734. WHIPPING

1734. Whipping

(a) No driver shall use unreasonable or unnecessary force in the whipping of a horse, nor whip any horse causing welts or breaks in the skin-visible injury, nor whip any horse about the head, nor whip any horse after the finish line has been crossed except when necessary to control the horse.

(b) Whipping shall be restricted to elbow and wrist action only, and the following actions regarding the use of the whip are prohibited:

(1) Raising the elbow above the driver's shoulder height.

(2) Allowing the hand holding the whip to reach behind the driver during the use of the whip.

(3) Use of the whip other than on the area inside and above the level of the shafts of the sulky and between the sulky shafts.

(4) Whipping under the arch of the shafts of the sulky.

(5) Use of the whip as a goading or poking device between the legs of the horse.

(6) Use of the whip when the horse does not appear to be advancing through the field of horses or is no longer in contention for purse money.

(c) For the purpose of whipping, all drivers must keep a line in each hand beginning when the horse is behind the starting gate and until the one-eighth of a mile prior to the finish line, and may not whip while holding two lines in one hand until then. The lines must remain reasonably taut during the entire race.

(d) Drivers may not use the whip more than three times in succession without giving the horse a chance to respond.

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

Reference: Section 19563,
Business and Professions Code.