

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 1846.6. POSTMORTEM EXAMINATION REVIEW

The California Horse Racing Board (Board/CHRB) 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 1846.6, Postmortem Examination Review, to require that a postmortem examination review panel, consisting of a steward, a safety steward, and the Equine Medical Director or his designee, be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer and veterinarian of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director and the owner and trainer of the expired horse detailing their findings. The postmortem examination review is intended for education and research purposes only, and will be conducted separate and apart from any CHRB investigations or enforcement actions.

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, in 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:

Philip Laird, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone (916) 263-6025
Fax: (916) 263-6022

E-Mail: pjlaird@chrb.ca.gov

AUTHORITY AND REFERENCE

Authority cited: Sections 19440 and 19444(c), Business and Professions Code. Reference: Sections 19345 and 19444(c), Business and Professions Code.

Business and Professions Code section 19440 authorize the Board to adopt the proposed regulation, which would implement, interpret or make specific sections 19440 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 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 19444(c) states that the Board may, in performing its responsibilities under this chapter, conduct research to determine more fully the cause and prevention of horse racing accidents.

The proposed addition of Rule 1846.6, Postmortem Examination Review, will require that a postmortem examination review panel be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer and veterinarian of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director as well as the owner and trainer of the expired horse detailing their findings. The rule is intended to be a mechanism for the continuing education of trainers and veterinarians, and will also serve as an important research opportunity "to determine more fully the cause and prevention of horse racing accidents" as permitted by Business and Professions Code section 19444(c).

Specifically, the proposed addition of Rule 1846.6 will require in subsection (a) that the Board conduct a postmortem examination review to determine the circumstances behind all equine fatalities occurring within a CHRB inclosure. This creates a blanket requirement that the Board will investigate the circumstances behind every equine death that occurs within a CHRB licensed inclosure using the postmortem examination review process. Such consistent review will ensure that all equine fatalities occurring at a racetrack are thoroughly and equally investigated so that future accidents may be prevented. Furthermore, the requirement affords the trainers and veterinarians who cared for the deceased horse an opportunity to receive case-specific recommendations from panel members for how to better train and treat their horses in the future.

The proposed rule will also require in subsection (b) that the postmortem examination review panel be conducted by a member of the board of stewards, a safety steward, and the Equine Medical Director or his designee. This is necessary because it clearly defines the composition of the panel so that a complete and thorough review may be conducted for each fatality. Each of the designated panel members is necessary to the review because they represent various areas of

expertise, including equine medicine and health, track safety, and horsemanship. By virtue of the positions they hold, the steward, safety steward, and Equine Medical Director all possess substantial knowledge of race horse care that is essential to the analysis and education aspects of the review.

The proposed rule will further require in subsection (c) that the trainer, as well as any other licensee the panel deems necessary, appear at the postmortem examination review. This is necessary because it is the trainer who, by regulation, insures the condition of the horse, and is responsible for how the horse is trained, medicated, and cared for while racing in California. Accordingly, it is the trainer who will have the most knowledge of the horse when the panel has specific questions about its training and health. Depending on the nature of the accident, other licensees—such as the horse’s veterinarian or jockey—may also be needed to appear to answer questions about the circumstances surrounding the horse’s death. The subsection will also require that licensees have at least ten days written notice before the date of the postmortem examination review. This is necessary because it ensures that all licensees who are required to attend the review have sufficient notice so that they can ensure their availability and have ample time to collect the appropriate records.

The proposed rule will require in subsection (d) that the trainer make available at the postmortem examination review the training records for the expired horse, which shall include exercise, medication and shoeing histories for a minimum of 60 days prior to the date of death of the horse. This is necessary because in order for the review panel to fully assess all circumstances surrounding the horse’s death, the panel must be able to review details of the horse’s recent training regime, including medications it received and when and how it was shod. A 60 day overview provides the panel with two complete months of insight into the daily care of the horse, which is a long enough period to identify any unique or recurring events that may have led to the horse’s death. Because many trainers tend to oversee multiple horses, review of their actual records is the best way to ensure the most accurate and specific training histories are analyzed. By reviewing these records, the panel will have the opportunity to identify specific training sessions, medication administrations, and/or shoeing decisions that may have contributed to the horse’s fatality. Any one of these aspects of a horse’s care, if mistakenly or negligently carried out, can substantially increase the chance that an accident will occur while the horse is racing. Training records may reveal that the horse was run too hard in the days leading up to its accident. Medication records may show that the horse accidentally received too much of a certain drug. Shoeing histories may reveal that the horse was shod to correct a misdiagnosed problem. Any of these discoveries will greatly assist the panel in determining what led to the horse’s death. Moreover, by looking at the training histories of deceased horses over time, the panel may be able to newly discover specific training practices, medications, and shoeing choices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track.

In subsection (e)(1) through (7), the proposed rule will require that all CHRB licensed veterinarians attending or treating a horse having died within a CHRB inclosure make available at the postmortem examination review a summary medical record covering a minimum of 60 days prior to the date of death of the horse, or longer if requested by the postmortem review panel. The summary record shall include history of the horse’s medical status, data from physical examination, treatment plans, medications prescribed and dispensed, daily progress and disposition of the case, laboratory data, and diagnostic images. These are necessary because a horse’s veterinary medical condition, including physical examination findings, certain veterinary

treatments and procedures, medications and medication levels, have all been linked to racing injuries, catastrophic and lesser injuries in various peer reviewed studies. In-depth necropsy analyses conducted as part of the CHRB/UC Davis School of Veterinary Medicine racing safety program have repeatedly shown many pre-existing injuries that should have been detectable by diagnostic imaging techniques. In the small number of cases where diagnostic imaging was reviewed as part of a formal investigation, pre-existing pathology was clearly present. Some veterinary treatments and medications may adversely affect a horse's health and increase their risk of accident or fatality. By reviewing the horse's complete medical history, the Equine Medical Director will have the opportunity to identify specific veterinary treatments that may have led to the horse's fatality. Furthermore, by looking at the medical history of deceased horses over time, the panel may be able to discover certain medications or treatments that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track for horses and riders.

The proposed rule will require in subsection (f) that all documents provided to the postmortem examination review panel under subsections (d) and (e) not be retained by the CHRB, and that they be returned to the licensee(s) at the conclusion of the review. This is necessary because it prevents the public dissemination of certain private information that is conveyed during the course of the review. By restricting the panel from retaining documents they inspect, such documents will not be subject to a Public Records Act request. This is important to trainers and veterinarians because the training and treatment regimes they use are often unique, and contribute largely to their professional value in their occupations.

The proposed rule will additionally require in subsection (g) that the postmortem examination review panel file a written report detailing their findings with the Executive Director and the owner and trainer of the expired horse within 90 days of the postmortem examination review. This is necessary because one of the major purposes of this regulation is to study and understand the cause of horse racing accidents so that they may be prevented in the future. By recording the determined cause of an accident leading to the death of each horse with the Executive Director, such reports can be reviewed in bulk to identify certain training and veterinary practices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track. Furthermore, by requiring the panel to also provide copies of their report to the trainer and owner of the horse, the rule also completes the intended education element by informing the parties what the determined cause of death was. Such information will help trainers, veterinarians, and other involved licensees improve their own practices in how they work with and treat horses. Finally, by requiring the report to be filed within 90 days, the proposed rule prevents the possibility of unreasonable backlog, and encourages a degree of expediency in conducting these reviews.

The proposed rule will finally explain in subsection (h) that the intent behind the rule is purely for education and research purposes. It further requires that the review be conducted separate and apart from any disciplinary investigation conducted by the CHRB Enforcement Division, and explains that in the event a disciplinary investigation is initiated, the postmortem examination review shall be postponed, to the extent possible, until such investigation is complete. Finally, the proposed rule requires that the postmortem examination review panel's report not be the basis for any disciplinary investigation. This is necessary because if the review is to successfully educate licensees and facilitate accurate research into horse racing accidents, there must be transparency and honesty between the panel and the licensees. If a licensee is aware that something they say in the course of the postmortem examination review could directly cause

them to be fined or suspended, they are not likely to cooperate with the review or be forthcoming about how they trained and/or treated the expired horse. While the CHRB maintains the right to investigate any violation of the Horse Racing Laws and Regulations, this subsection facilitates the separation of that process from the postmortem examination review to every extent possible. By postponing the review until all related investigations are concluded, and by prohibiting use of the panel's final report from being the basis for a disciplinary investigation, these provisions help assure licensees that the postmortem examination review will be a research and education focused process that is meant for their benefit and not their detriment.

POLICY STATEMENT OVERVIEW OF ANTICIPATED BENEFITS OF PROPOSAL

The proposed addition of Rule 1846.6 promotes the safety and welfare of horses racing in California by facilitating in-depth research and review into the training and medical histories of expired horses prior to their deaths. Presently, CHRB Rule 1846.5, Postmortem Examination, requires that every horse that dies within an area under the jurisdiction of the Board undergo a postmortem examination in a diagnostic laboratory to determine the injury or sickness which resulted in euthanasia or natural death. While such examinations are useful in determining the cause of death, they rarely provide any information about what triggered the cause of death. For instance, while a horse may suffer a fatal accident due to a broken leg, no further information is obtained to determine why the leg broke. The purpose of the postmortem examination review is to conduct an investigation into the circumstances surrounding an equine fatality in order to gain an understanding of all events that may have contributed to the incident. By exploring the training and medical histories of expired horses, the postmortem examination review panel will be obtaining new and unique information that can better assist the CHRB in identifying correlations between common training and medical practices and fatal accidents on and off the racetrack. Consequently, these reviews will benefit the Board by indicating which specific practices carry such an increased risk of fatality that they need to be regulated. Such information will also benefit trainers and veterinarians because they too will be able to adjust their practices to better reduce the chance that a horse in their care has a fatal accident.

The proposed rule additionally benefits trainers and veterinarians by creating an opportunity for their continued and personalized education. By exploring training and medical records with the deceased horse's trainer and veterinarian, the panel will be able to provide case-specific recommendations to prevent future injuries. This will improve the quality of training and veterinary services being provided by CHRB licensed trainers and veterinarians, and will ultimately increase the safety of the sport for both human and equine athletes.

Finally, the proposed rule will benefit the horseracing industry in general by improving public perception of the sport. Implementing an in-depth review process that considers the specific circumstances behind each horse fatality within the inclosure signals to the public that the CHRB takes animal welfare very seriously. Furthermore, by engaging trainers and veterinarians with case-specific reviews that aim to educate the parties involved, safety on and off of the racetrack is bound to improve, which will also heighten public perception by reducing those instances when the public is audience to a racing accident.

CONSISTENCY EVALUATION

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

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

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district that must be reimbursed in accordance with Government Code 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 addition of Rule 1846.6, will not have a significant statewide adverse economic impact directly affecting businesses 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: none.

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.

RESULT OF ECONOMIC IMPACT ANALYSIS

The adoption of the proposed addition of Rule 1846.6 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 proposed addition of Rule 1846.6 is a benefit to the health and welfare of both human and equine athletes, as well as the public. The proposed addition will allow the CHRB to review and analyze training and veterinary records of deceased race horses so that it can better understand and prevent equine racing accidents and fatalities through education and regulation. Such efforts will increase safety in horse racing, and decrease the rate of accidents occurring both on and off of the racetrack. This will not only improve the health and welfare of equine athletes, but also the human athletes that ride the horses. Furthermore, an increase in safety and decrease in accidents will likely improve public perception of horse racing, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions.

Effect on small businesses: none. The proposal to add Rule 1846.6 does not affect small businesses because horse racing is not a small business under Government Code Section 11342.610.

CONSIDERATION OF ALTERNATIVES

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

Philip Laird, Staff Counsel
California Horse Racing Board
1010 Hurley Way, Suite 300
Sacramento, CA 95825
Telephone: (916) 263-6025
E-mail: pjlaird@chr.ca.gov

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

Andrea Ogden, Manager
Policy, Regulations and Legislation
Telephone: (916) 263-6033

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

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

AVAILABILITY OF MODIFIED TEXT

After holding a hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulation substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text, with changes clearly marked, shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulation should be sent to the attention of Philip Laird 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 Philip Laird 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 1846.6. POSTMORTEM EXAMINATION REVIEW

SPECIFIC PURPOSE OF THE REGULATION

The proposed addition of Rule 1846.6, Postmortem Examination Review, will require that a postmortem examination review panel, consisting of a steward, a safety steward, and the Equine Medical Director or his designee, be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer and veterinarian of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director and the owner and trainer of the expired horse detailing their findings. The postmortem examination review is intended for education and research purposes only, and will be conducted separate and apart from any CHRB investigations or enforcement actions.

PROBLEM

Presently, CHRB Rule 1846.5, Postmortem Examination, requires that every horse that dies within an area under the jurisdiction of the Board undergo a postmortem examination in a diagnostic laboratory to determine the injury or sickness which resulted in euthanasia or natural death. While such examinations are useful in determining the cause of death, they rarely provide any information about what triggered the cause of death. For instance, while a horse may suffer a fatal accident due to a broken leg, no further information is obtained to determine why the leg broke. A thorough review of a horse's recent training and medication history to determine causation is almost never conducted unless there are suspicious or illegal circumstances surrounding the horse's death. Consequently, there is little opportunity for the CHRB to identify trends and behaviors in training that could help prevent future injuries through education and regulation.

NECESSITY

The proposed addition of Rule 1846.6, Postmortem Examination Review, will require that a postmortem examination review panel be convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer and veterinarian of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director as well as the owner and trainer of the expired horse detailing their findings. The rule is intended to be a mechanism for the continuing education of trainers and veterinarians, and will also serve as an important research opportunity "to determine more fully the cause and prevention of horse racing accidents" as permitted by Business and Professions Code section 19444(c).

Specifically, the proposed addition of Rule 1846.6 will require in subsection (a) that the Board conduct a postmortem examination review to determine the circumstances behind all equine fatalities occurring within a CHRB inclosure. This is necessary because it creates a blanket requirement that the Board will investigate the circumstances behind every equine death that

occurs within a CHRB licensed inclosure using the postmortem examination review process. Such consistent review will ensure that all equine fatalities occurring at a racetrack are thoroughly and equally investigated so that future accidents may be prevented. Furthermore, the requirement affords the trainers and veterinarians who cared for the deceased horse an opportunity to receive case-specific recommendations from panel members for how to better train and treat their horses in the future.

The proposed rule will also require in subsection (b) that the postmortem examination review panel be conducted by a member of the board of stewards, a safety steward, and the Equine Medical Director or his designee. This is necessary because it clearly defines the composition of the panel so that a complete and thorough review may be conducted for each fatality. Each of the designated panel members is necessary to the review because they represent various areas of expertise, including equine medicine and health, track safety, and horsemanship. By virtue of the positions they hold, the steward, safety steward, and Equine Medical Director all possess substantial knowledge of race horse care that is essential to the analysis and education aspects of the review.

The proposed rule will further require in subsection (c) that the trainer, as well as any other licensee the panel deems necessary, appear at the postmortem examination review. This is necessary because it is the trainer who, by regulation, insures the condition of the horse, and is responsible for how the horse is trained, medicated, and cared for while racing in California. Accordingly, it is the trainer who will have the most knowledge of the horse when the panel has specific questions about its training and health. Depending on the nature of the accident, other licensees—such as the horse’s veterinarian or jockey—may also be needed to appear to answer questions about the circumstances surrounding the horse’s death. The subsection will also require that licensees have at least ten days written notice before the date of the postmortem examination review. This is necessary because it ensures that all licensees who are required to attend the review have sufficient notice so that they can ensure their availability and have ample time to collect the appropriate records.

The proposed rule will require in subsection (d) that the trainer make available at the postmortem examination review the training records for the expired horse, which shall include exercise, medication and shoeing histories for a minimum of 60 days prior to the date of death of the horse. This is necessary because in order for the review panel to fully assess all circumstances surrounding the horse’s death, the panel must be able to review details of the horse’s recent training regime, including medications it received and when and how it was shod. A 60 day overview provides the panel with two complete months of insight into the daily care of the horse, which is a long enough period to identify any unique or recurring events that may have led to the horse’s death. Because many trainers tend to oversee multiple horses, review of their actual records is the best way to ensure the most accurate and specific training histories are analyzed. By reviewing these records, the panel will have the opportunity to identify specific training sessions, medication administrations, and/or shoeing decisions that may have led to the horse’s fatality. Any one of these aspects of a horse’s care, if mistakenly or negligently carried out, can substantially increase the chance that an accident will occur while the horse is racing. Training records may reveal that the horse was run too hard in the days leading up to its accident. Medication records may show that the horse accidentally received too much of a certain drug. Shoeing histories may reveal that the horse was shod to correct a misdiagnosed problem. Any of these discoveries will greatly assist the panel in determining what led to the horse’s death. Moreover, by looking at the training histories of deceased horses over time, the panel may be

able to newly discover specific training practices, medications, and shoeing choices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track.

In subsection (e)(1) through (7), the proposed rule will require that all CHRB licensed veterinarians attending or treating a horse having died within a CHRB inclosure make available at the postmortem examination review a summary medical record covering a minimum of 60 days prior to the date of death of the horse, or longer if requested by the postmortem review panel. The summary record shall include history of the horse's medical status, data from physical examination, treatment plans, medications prescribed and dispensed, daily progress and disposition of the case, laboratory data, and diagnostic images. These are necessary because a horse's veterinary medical condition, including physical examination findings, certain veterinary treatments and procedures, medications and medication levels, have all been linked to racing injuries, catastrophic and lesser injuries in various peer reviewed studies. In-depth necropsy analyses conducted as part of the CHRB/UC Davis School of Veterinary Medicine racing safety program have repeatedly shown many pre-existing injuries that should have been detectable by diagnostic imaging techniques. In the small number of cases where diagnostic imaging was reviewed as part of a formal investigation, pre-existing pathology was clearly present. Some veterinary treatments and medications may adversely affect a horse's health and increase their risk of accident or fatality. By reviewing the horse's complete medical history, the Equine Medical Director, will have the opportunity to identify specific veterinary treatments that may have led to the horse's fatality. Furthermore, by looking at the medical history of deceased horses over time, the panel may be able to discover certain medications or treatments that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track for horses and riders.

The proposed rule will require in subsection (f) that all documents provided to the postmortem examination review panel under subsections (d) and (e) not be retained by the CHRB, and that they be returned to the licensee(s) at the conclusion of the review. This is necessary because it prevents the public dissemination of certain private information that is conveyed during the course of the review. By restricting the panel from retaining documents they inspect, such documents will not be subject to a Public Records Act request. This is important to trainers and veterinarians because the training and treatment regimes they use are often unique, and contribute largely to their professional value in their occupations.

The proposed rule will additionally require in subsection (g) that the postmortem examination review panel file a written report detailing their findings with the Executive Director and the owner and trainer of the expired horse within 90 days of the postmortem examination review. This is necessary because one of the major purposes of this regulation is to study and understand the cause of horse racing accidents so that they may be prevented in the future. By recording the determined cause of an accident leading to the death of each horse with the Executive Director, such reports can be reviewed in bulk to identify certain training and veterinary practices that correlate with an increased risk of fatality. Identifying such practices will allow the CHRB to better regulate horse racing, and increase safety on the race track. Furthermore, by requiring the panel to also provide copies of their report to the trainer and owner of the horse, the rule also completes the intended education element by informing the parties what the determined cause of death was. Such information will help trainers, veterinarians, and other involved licensees improve their own practices in how they work with and treat horses. Finally, by requiring the

report to be filed within 90 days, the proposed rule prevents the possibility of unreasonable backlog, and encourages a degree of expediency in conducting these reviews.

The proposed rule will finally explain in subsection (h) that the intent behind the rule is purely for education and research purposes. It further requires that the review be conducted separate and apart from any disciplinary investigation conducted by the CHRB Enforcement Division, and explains that in the event a disciplinary investigation is initiated, the postmortem examination review shall be postponed, to the extent possible, until such investigation is complete. Finally, the proposed rule requires that the postmortem examination review panel's report not be the basis for any disciplinary investigation. This is necessary because if the review is to successfully educate licensees and facilitate accurate research into horse racing accidents, there must be transparency and honesty between the panel and the licensees. If a licensee is aware that something they say in the course of the postmortem examination review could directly cause them to be fined or suspended, they are not likely to cooperate with the review or be forthright about how they trained and/or treated the expired horse. While the CHRB maintains the right to investigate any violation of the Horse Racing Laws and Regulations, this subsection facilitates the separation of that process from the postmortem examination review to every extent possible. By postponing the review until all related investigations are concluded, and by prohibiting use of the panel's final report from being the basis for a disciplinary investigation, these provisions help assure licensees that the postmortem examination review will be a research and education focused process that is meant for their benefit and not their detriment.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed addition of Rule 1846.6 will benefit the safety and welfare of horses racing in California by facilitating in-depth research and review into the training and medical histories of expired horses prior to their deaths. Presently, CHRB Rule 1846.5, Postmortem Examination, requires that every horse that dies within an area under the jurisdiction of the Board undergo a postmortem examination in a diagnostic laboratory to determine the injury or sickness which resulted in euthanasia or natural death. While such examinations are useful in determining the cause of death, they rarely provide any information about what triggered the cause of death. For instance, while a horse may suffer a fatal accident due to a broken leg, no further information is obtained to determine why the leg broke. The purpose of the postmortem examination review is to conduct an investigation into the circumstances surrounding an equine fatality in order to gain an understanding of all events that may have contributed to the incident. By exploring the training and medical histories of expired horses, the postmortem examination review panel will be obtaining new and unique information that can better assist the CHRB in identifying correlations between common training and medical practices and fatal accidents on and off the racetrack. Consequently, these reviews will also benefit the Board by indicating which specific practices carry such an increased risk of fatality that they need to be regulated. Such information will also benefit trainers and veterinarians because they too will be able to adjust their practices to better reduce the chance that a horse in their care has a fatal accident.

The proposed rule additionally benefits trainers and veterinarians by creating an opportunity for their continued and personalized education. By exploring training and medical records with the deceased horse's trainer and veterinarian, the panel will be able to provide case-specific recommendations to prevent future injuries. This will improve the quality of training and veterinary services being provided by CHRB licensed trainers and veterinarians, and will ultimately increase the safety of the sport for both human and equine athletes.

Finally, the proposed rule will benefit the horseracing industry in general by improving public perception of the sport. Implementing an in-depth review process that considers the specific circumstances behind each horse fatality within the inclosure signals to the public that the CHRB takes animal welfare very seriously. Furthermore, by engaging trainers and veterinarians with case-specific reviews that aim to educate the parties involved, safety on and off of the racetrack is bound to improve, which will also heighten public perception by reducing those instances when the public is audience to a racing accident.

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.

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 rider and will not benefit the State's environment.

The Board has made the initial determination that the proposed addition of Rule 1846.6 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 addition of Rule 1846.6 will facilitate a formal review process for every equine fatality that occurs within a CHRB inclosure, and will require attendance by the deceased horse's trainer and any other requested licensee. The proposed addition of Rule 1846.6 is a benefit to the health and welfare of both human and equine athletes, as well as the public. The proposed addition will allow the CHRB to review and analyze training and veterinary records of deceased race horses so that it can better understand and prevent equine racing accidents and fatalities through education and regulation. Such efforts will increase safety in horse racing, and decrease the rate of accidents occurring both on and off of the racetrack. This will not only improve the health and welfare of equine athletes, but also the human athletes that ride the horses. Furthermore, an increase in safety and decrease in accidents will likely improve public perception of horse racing, which may result in increased wagering. An increase in wagering will have a positive economic impact on the industry by increasing handle, which in turn increases purses and commissions.

PURPOSE

The proposed addition of Rule 1846.6 will require that a postmortem examination review panel, consisting of a steward, a safety steward, and the Equine Medical Director or his designee, be

convened to determine the circumstances of each equine fatality occurring within a CHRB inclosure. The review will require the appearance of the trainer and veterinarian of the expired horse before the panel, as well as the production of the horse's training and medical records for the 60 days prior to its date of death. The rule will also require that the panel prepare and file a written report with the Executive Director and the owner and trainer of the expired horse detailing their findings. The postmortem examination review is intended for education and research purposes only, and will be conducted separate and apart from any CHRB investigations or enforcement actions.

THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed addition of Rule 1846.6 will create an official review process for all equine fatalities occurring within a CHRB inclosure, and will require certain licensees to attend the review and produce relevant training and veterinary records for inspection. This regulation will only affect trainers, veterinarians, and other licensees connected to horses that expires within a CHRB inclosure, 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 addition of Rule 1846.6 will create an official review process for all equine fatalities occurring within a CHRB inclosure, and will require certain licensees to attend the review and produce relevant training and veterinary records for inspection. This regulation will only affect trainers, veterinarians, and other licensees connected to horses that expires within a CHRB inclosure, 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 addition of Rule 1846.6 will create an official review process for all equine fatalities occurring within a CHRB inclosure, and will require certain licensees to attend the review and produce relevant training and veterinary records for inspection. This regulation will only affect trainers, veterinarians, and other licensees connected to horses that expires within a CHRB inclosure, 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 addition of Rule 1846.6 is a benefit to the health and welfare of California residents because it facilitates in-depth research into the causes behind race horse fatalities. This will allow the CHRB to better understand and prevent equine racing accidents and fatalities through education and regulation. Such efforts will increase safety in horse racing, and decrease

the rate of accidents occurring both on and off of the racetrack. This will not only improve the health and welfare of equine athletes, but also the human athletes that ride the horses. Furthermore, an increase in safety and decrease in accidents will likely improve public perception of horse racing. The regulation does not benefit the state's environment.

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 addition of Rule 1846.6 was discussed at the May 27, 2015 Medication and Track Safety Committee Meeting, the September 16, 2015 Regular Board Meeting, and the October 22, 2015 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 15. VETERINARIAN PRACTICES.
PROPOSED ADDITION OF
RULE 1846.6. POSTMORTEM EXAMINATION REVIEW

1846.6. Postmortem Examination Review.

(a) The Board shall conduct a postmortem examination review to determine the circumstances of each equine fatality within a California Horse Racing Board (CHRB) inclosure.

(b) The postmortem examination review shall be conducted by a member of the board of stewards, a safety steward and the Equine Medical Director or an official veterinarian designated by the Executive Director and Equine Medical Director.

(c) The trainer of the expired horse will be required to appear before the postmortem examination review panel. Additional licensees may also be required to appear at the discretion of the postmortem examination review panel. All licensees required to come before the postmortem examination review panel shall receive at least ten days written notice before the date of the review panel.

(d) The trainer shall make available at the postmortem examination review the training records for the expired horse, which shall include exercise, medication and shoeing histories for a minimum of 60 days prior to the date of death of the horse.

(e) All CHRB licensed veterinarians attending or treating a horse having died within a CHRB inclosure shall make available at the postmortem examination review a summary medical record covering a minimum of 60 days prior to the date of death of the horse, or longer if requested by the postmortem review panel. The summary medical record shall include:

(1) A history or pertinent information as it pertains to the horse's medical status, including an interpretation of all diagnostic imaging and laboratory findings.

(2) Data, including that obtained by instrumentation, from the physical examination.

(3) Treatment and intended treatment plan, including medications, dosage and frequency of use.

(4) All medications and treatments prescribed and dispensed, including strength, dosage, route of administration, quantity, and frequency of use.

(5) Daily progress and disposition of the case.

(6) Copies of laboratory data, if requested by the postmortem review panel.

(7) Copies of diagnostic images including but not limited to radiographs, ultrasounds and nuclear scintigraphies, if requested by the postmortem review panel.

(f) All documents provided by licensees under subsections (d) and (e) for purposes of conducting the postmortem examination review shall not be retained by the CHRB beyond the duration of the postmortem examination review, and shall be promptly returned to the licensee providing them.

(g) Upon completion of the postmortem examination review, the postmortem examination review panel shall file a written report detailing their findings with the Executive Director and the owner and trainer of the expired horse within 90 days of the postmortem examination review.

(h) It is the intent of the CHRB that the postmortem examination review be conducted for education and research purposes only. The postmortem examination review shall be conducted separate and apart from any disciplinary investigation conducted by the CHRB Enforcement Division. In the event a disciplinary investigation into the circumstances surrounding a horse fatality is initiated by the CHRB Enforcement Division, the postmortem examination review shall be postponed, to the extent possible, until such investigation is complete. The postmortem examination review panel's report shall not be the basis for any disciplinary investigation.

Authority: Section 19440 and 19444(c),

Business and Professions Code.

Reference: Sections 19345 and 19444(c),

Business and Professions Code.