

INITIAL STATEMENT OF REASONS

RULE 1846.5. POSTMORTEM EXAMINATION.

RULE 1846.6. POSTMORTEM EXAMINATION REVIEW.

SPECIFIC PURPOSE OF THE REGULATION

California Horse Racing Board (Board) Rule 1846.5, Postmortem Examination, sets forth the requirement 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 proposed amendment of Board Rule 1846.5 will expand the scope of authority to require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. Board Rule 1846.6, Postmortem Examination Review, sets forth the requirement for the Board to conduct a postmortem examination review to determine the circumstances of each equine fatality within a Board inclosure. The proposed amendment of Board Rule 1846.6 will expand the scope of authority to require a postmortem examination review on each equine fatality in California within 72 hours of leaving a facility under the jurisdiction of the Board.

PROBLEM

Presently, Board Rule 1846.5, Postmortem Examination, requires and captures the postmortem examination of every horse that dies within an area under the jurisdiction of the Board. Postmortem examinations are performed in a diagnostic laboratory to determine the injury or sickness that resulted in euthanasia or natural death. In addition, presently Board Rule 1846.6, Postmortem Examination Review, requires and captures an in-depth thorough review of every equine fatality that occurs within a Board inclosure to determine the circumstances of the fatality. Both rules collaborate and support the Board's focus and efforts to reduce equine fatalities. However, presently Board Rules 1846.5 and 1846.6 are not requiring a postmortem examination or postmortem examination review of horses that die or are euthanized shortly after leaving a Board regulated facility. Invaluable knowledge is being lost and not being collected that could be used to help reduce and prevent equine fatalities in California. The proposed amendments to Board Rules 1846.5 and 1846.6 will better protect California race horses by ensuring that all horses that die or are euthanized at a facility under the jurisdiction of the Board, or shortly after leaving a facility under jurisdiction of the Board, undergo an autopsy and an autopsy review.

NECESSITY

The Board in partnership with the California Animal Health and Food Safety Laboratory System (CAHFS) has operated the Postmortem Examination Program (the Program) since February 1990.¹ Presently the criteria of the data collection is 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. Since the inception of the Program, from February 1990 to June 30, 2019, a total of 7,205 equine necropsies had been performed.² In October 2020, the Program's 2018-2019 Annual Report was presented to the Board, the Program's objectives then and now are:

1. to determine the nature of injuries occurring in racehorses,
2. to determine the reasons for these injuries, and
3. to develop injury prevention strategies.

According to the report:

The partnership with CAHFS and the Board has become a national and international model for the racing industry in an effort to improve the safety and welfare of racehorses. [...] A broad range of specimens are collected and shared with veterinary scientists in other departments of the School of Veterinary Medicine, UC Davis. Specimens from the selected cases [...] are frequently shipped to the J.D. Wheat Veterinary Orthopedic Research Laboratory at UC Davis for in-depth analyses. This helps to more precisely determine the cause and risk factors that led up to the catastrophic injuries in racehorses resulting in their deaths or euthanasia. [...] Information from test and data gathered are analyzed in order to elucidate the specific cause of catastrophic injuries.²

Overall, unquestionable, helpful, and important facts are reported in the 2018-2019 Annual Report of the Program. The proposed amendment to Board Rules 1846.5 and 1846.6 are supported by the following statement:

During the 2018-2019 fiscal year, 144 horses were submitted to CAHFS as part of the CHRB Postmortem Program. With only six cases over the 138 horses received during fiscal year 2017-2018, the numbers continue to show a significant reduction in fatalities compared to several years ago. This was also the second lowest number of fatalities since the beginning of the Program.²

¹ California Horse Racing Board, Action Item 1 of the Medication, Safety, and Welfare Committee Meeting, October 21, 2020, "Staff Analysis, Report and Discussion on CHRB/CAHFS Postmortem Program For Fiscal Year 2018-2019"

²Postmortem Examination Program, 2018-2019 (July 1, 2018-June 30, 2019) Annual Report Conducted for the California Horse Racing Board, "Postmortem Examination Program" California Animal Health and Food Safety Laboratory System, School of Veterinary Medicine, University of California, Davis (UC Davis), Davis, CA 95616, Published May 2020

Despite the continued decline in fatalities, and the overall success that the Program has in conjunction with the Board, there is still room for improvement. CAHFS and the Board believe that there is invaluable data that can be captured by racehorses that are not subject to autopsies, and thus autopsy reviews, because they die or are euthanized shortly after leaving a Board licensed facility. The proposed amendments to Board Rules 1846.5 and 1846.6 seek to remedy this issue as these horses could provide invaluable information which would improve the safety of racehorses and lead to a further decline in equine fatalities.

Board Rule 1846.5, Postmortem Examination, requires 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 proposed amendment of Board Rule 1846.5, is necessary to expand the scope of authority of the rule to require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board.

Currently subsection (a), of Board Rule 1846.5, states “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.” The proposed amendment, will strike the current language of subsection (a) and add/replace the current language with the following new language “(a) the following shall be required to undergo a postmortem examination at a diagnostic laboratory which is under contract with the Board in order to determine the injury or sickness which resulted in euthanasia or natural death:”.

Additionally, new subsections (1) through (3) will be added to better define and clarify the requirements of subsection (a). While (a)(1) and (a)(2) are not new requirements, the numbering is added to provide additional clarity to the section to make clear the requirements when obtaining a postmortem examination. Specifically, (a)(1) states, “(1) Every horse which suffers a fatal injury on the racetrack in training or in competition;” (a)(2) states, “(2) Every horse which dies or is euthanized within an area under the jurisdiction of the Board;”. The addition of “every horse” was added to capture all horses which die or are euthanized outside of training or racing, such as horses being boarded at a Board-licensed facility. New subsection (a)(3) states, “and (3) Every horse which dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board.” This new section is necessary to capture the horses that are euthanized or die within 72-hours after leaving a facility under jurisdiction of the Board. The proposed change of subsection (a), and (a)(1)-(3) is needed to clearly define and describe the horses that shall undergo a postmortem examination, including horses which die or are euthanized within 72 hours of leaving a facility under the jurisdiction of Board.

The proposed amendment of Board Rule 1846.5 (c) will add new language, after the first sentence of subsection (c), to state the following “In the case of a horse which dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the

Board, the costs associated with transportation to the diagnostic laboratory shall be the responsibility of the racing association or training facility where the horse resided." The proposed new language to subsection (c) is necessary to clearly designate the responsibility of paying for the cost associated with the transporting a horse, after it has died, to the diagnostic laboratory.

Furthermore, the proposed amendment to Board Rule 1846.5, will add new language, after the first sentence of subsection (d), "In the case of a horse which dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board, a request for a postmortem shall be filed with the official veterinarian within one hour of death and the request shall be submitted on a CHRB-72 which is available at all official veterinarian offices. The trainer is the absolute insurer of the horse and responsible for the timely submission of CHRB-72 to the extent that the trainer exercised care and control at the time of death. The owner of the horse is the joint-absolute insurer and is equally responsible for ensuring CHRB-72 is filed." The proposed new language to subsection (d) is necessary to clearly define affirmative duties to the trainer and owner, for the timely submission of CHRB-72.

Moreover, currently the first sentence of subsection (e) of Board Rule 1846.5, states that the CHRB-72 must be submitted via fax to the laboratory, if the official veterinarian is not available as notification that the horse is due for necropsy. The Board proposes to add "or email" to this, to allow for the owner or trainer's veterinarian to submit the CHRB-72 via email to the laboratory in order to comply with this Rule. The proposed two words are necessary to provide veterinarians another option to submit CHRB-72. Furthermore, the proposed amendment will add new language, after the second sentence of subsection (e), "In the case of a horse which dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board, the owner or trainer must phone the diagnostic laboratory within one hour of death and fax or email CHRB-72 to the laboratory as notification that the horse is due for necropsy. On the official veterinarian's next scheduled work day of the racing association or training facility where the horse last resided, the owner or trainer shall give the original CHRB-72 to the official veterinarian." The new language for subsection (e) is necessary to provide, the owner's or trainer's veterinarian, a process to follow when notifying the diagnostic laboratory of an incoming horse necropsy for a horse that has died or was euthanized within 72 hours after leaving a facility under jurisdiction of the Board.

Board Rule 1846.6, Postmortem Examination Review, requires the Board to conduct a postmortem examination review to determine the circumstances of each equine fatality within a Board inclosure. The proposed amendment to Board Rule 1846.6, is necessary to expand the scope of authority of the rule to require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. The purpose of the postmortem examination and the postmortem examination review will remain the same, to investigate the circumstances surrounding an equine fatality, to gain an understanding of all events that may have contributed to the incident, and to utilize that information to making positive changes which will lead to an overall decline in equine fatalities.

It is necessary to update and amend Board Rule 1846.6 to reflect the proposed changes of Board Rule 1846.5. Presently, Board Rules 1846.5 and 1846.6 promote the safety and welfare of horses racing in California. The proposed changes to Board Rule 1846.6 would further promote the efforts of the Board, to reduce equine fatalities, by allowing the Board to gather and analyze additional data that is currently available.

The proposed amendment of Board Rule 1846.6, will add new language to expand the sentence to state “and each equine fatality in California within 72 hours of leaving a CHRB inclosure.” This amendment aligns with the proposed changes in Board Rule 1846.5 and provides the authority for postmortem examination reviews to be conducted on horses that are euthanize or die within 72 hours of leaving a facility under jurisdiction of the Board.

The proposed amendment to Board Rule 1846.6 will add new language to the first sentence of subsection (e) to state “or in California within 72 hours of leaving a CHRB inclosure.” The proposed amendment is necessary to align with the proposed amendments of Board Rules 1846.5 and 1846.6(a), and is current and consistent with the Board’s mission and endeavor to foster safe racing through the development and enforcement of track safety standards and regulations for the health and welfare of all participants.

BENEFITS ANTICIPATED FROM THE REGULATORY ACTION

The proposed amendment to Board Rules 1846.5 and 1846.6 will continue to promote the safety and welfare of horses racing in California. The amendment to the Board Rules 1846.5 and 1846.6 will further support obtaining in-depth knowledge and research for continuous development of strategies to reduce equine fatalities in California. The valuable knowledge to be gained will support horseracing safety and prevention of catastrophic horse injuries. Overall, the proposed amendment will benefit the horseracing industry as whole by continuing to make California a national and international model for the racing industry in an effort to improve the safety and welfare of racehorses.²

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Board relied upon the Postmortem Examination Program, 2018-2019 (July 1, 2018-June 30, 2019) Annual Report Conducted for the California Horse Racing Board, California Animal Health and Food Safety Laboratory System, School of Veterinary Medicine, University of California, Davis (UC Davis), Davis, CA 95616, Published May 2020, pages 1-2. Additionally, California Horse Racing Board, Action Item 1 of the Medication, Safety, and Welfare Committee Meeting, October 21, 2020, Staff Analysis, Report and Discussion on CHRB/CAHFS Postmortem Program For Fiscal Year 2018-2019, provided useful information.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

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

- The proposed regulation may impact the creation or elimination of jobs within the state.
- The proposed regulation will not have an impact on the creation of new businesses or the elimination of existing businesses within the state.
- The proposed regulation will not have an impact on the expansion of businesses currently doing business within the state.
- The proposed regulation will not benefit the health and welfare of California residents, worker safety, or the state's environment.

The Board has made the determination that the proposed amendment to Board Rules 1846.5 and 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 proposed amendment to Board Rules 1846.5 and 1846.6 will expand the scope of authority for each rule and will continue to promote the safety and welfare of horses racing in California. The proposed amendments will add in-depth knowledge and research for continuous development of strategies to reduce equine fatalities in California. The proposed amendments does not impact business in any way.

PURPOSE

The purpose of the proposed amendment to Board Rule 1846.5, Postmortem Examination, is to expand the scope of authority of the rule to require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. The purpose of the proposed amendment to Board Rule 1846.6, Postmortem Examination Review, is to expand the scope of authority of the rule to require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. The objectives of both rules will remain the same, to investigate the circumstances surrounding an equine fatality and to gain an understanding of all events that may have contributed to the incident. The proposed amendment to Board Rules 1846.5 and 1846.6 will lead to the continued support regarding the safety and welfare of horses that race in California by expanding the scope of authority of each rule to horses that die or are euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. The amendment to postmortem examination and postmortem examination review will increase the critical information of in-depth research of racehorses that die or are euthanized in California. The invaluable information to be gained will help obtain a better understanding of equine racetrack related fatalities and to decrease equine fatalities as a whole.

CREATION OR ELIMINATION OF JOBS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Board Rule 1846.5 will require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility

under the jurisdiction of the Board. The proposed amendment to Board Rule 1846.6 will require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. As such, we expect a small increase in jobs and/or occupations for veterinarians and/or horse trainers in the California horse racing industry. The proposed regulations may result in the creation of jobs within the state.

CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Board Rule 1846.5 will require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. The proposed amendment to Board Rule 1846.6 will require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. As such, the proposed regulation will not result in the creation of new businesses or the elimination of existing businesses within the state.

EXPANSION OF BUSINESSES CURRENTLY DOING BUSINESS WITHIN THE STATE OF CALIFORNIA

The proposed amendment to Board Rule 1846.5 will require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. The proposed amendment to Board Rule 1846.6 will require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. As such, the proposed regulation will not result in the expansion of businesses currently doing business within the state.

BENEFITS OF THE REGULATIONS TO THE HEALTH AND WELFARE OF CALIFORNIA RESIDENTS, WORKER SAFETY, AND THE STATE'S ENVIRONMENT

The proposed amendment to Board Rule 1846.5 will require a postmortem examination of every horse that dies or is euthanized in California within 72 hours of leaving a facility under the jurisdiction of the Board. The proposed amendment to Board Rule 1846.6 will require a postmortem examination review on each equine fatality in California within 72 hours of leaving a Board inclosure. As such, the proposed regulation will not result in benefits to the health and welfare of California residents, worker safety, or 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, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective and equally effective in implementing the statutory policy or other provision of law.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION

The proposed amendment to Board Rule 1846.5 and Board Rule 1846.6 was discussed at the September 15, 2022 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 that offer any alternative proposal.

CALIFORNIA HORSE RACING BOARD

April 14, 2023