

CALIFORNIA HORSE RACING BOARD
TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS
RULE 1845. AUTHORIZED BLEEDER MEDICATION
FINAL STATEMENT OF REASONS

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws from the laws described in the Notice. Regarding changes in the effect of the regulation from the effect described in the Notice, see below.

The California Horse Racing Board (Board) adopted Board Rule 1845, Authorized Bleeder Medication, at the March 26, 2020, regular Board meeting. The adopted language included an amendment to the prior proposed language, resulting in a 15-day public comment period that ran from March 27, 2020 through April 11, 2020. Notice to the public regarding the 15-day public comment period was published on March 27, 2020. Following the 15-day notice period, the final rulemaking package was submitted to the Office of Administrative Law (OAL) where the Board was directed to make additional clarifying changes to the text. A second 15-day notice was published on June 22, 2020 resulting in a 15-day public comment period that ran from June 11, 2020 through July 7, 2020. The Board adopted Board Rule 1845, Authorized Bleeder Medication, following the second 15-day notice at the July 16, 2020, regular Board meeting.

The amendments to the proposed language modified the text from stating “Furosemide is prohibited for foals of the 2018 crop year and thereafter”, first to stating, “Furosemide is prohibited for two-year-olds”, as specified in the initial 15-day notice. Following direction from OAL, a subsequent 15-day notice was issued and the proposed language was ultimately modified to state “Furosemide is prohibited for two-year-olds entered to race as specified in Board Rule 1843.5(a)”. The change was necessary to ensure workability and clarity regarding how the regulation would be applied, and also was necessary to preserve integrity in the sport.

The originally proposed language would have provided that horses born in the 2018 crop year and thereafter could not be administered furosemide, but of those horses, those who were older than two years potentially would have raced against horses born before the 2018 crop year. Therefore, horses in the same race would be running with different rules regarding the administration of furosemide. This would potentially have created a perception of unfairness among horsemen and the wagering public, and would have been challenging for racetrack officials to implement because officials would have had to apply different rules to horses in the same race.

The second proposed alternative, approved by the Board at the March 26, 2020 regular Board meeting, would have provided that furosemide administration was prohibited for two-year-old race horses. While this alternative language eliminates the difficulty in implementing the prior language and also eliminates any perceptions of unfairness by

ensuring that horses in any given race are all held to the same rules and standards, the language was unclear about when the prohibition for two-year-old race horse was to take effect. Specifically, it was not the Board's intent to make the prohibition of furosemide for two-year-old race horses apply during training. To rectify this lack of clarity, the Board approved language that specified that furosemide is prohibited for two-year-old race horses once entered to race. Additionally, the new language clarifies that "entered" was meant as it is specified in Board Rule 1843.5, Medication, Drugs and Other Substances Permitted After Entry in a Race, subsection (a). Board Rule 1843.5(a) defines "entered" as "48 hours before post time of the running of the race".

The approved language avoids the challenges of perceived unfairness, difficult implementation, and lack of clarity while still adhering to the Board's and the racing industry's shared goal of progressing toward a zero-tolerance policy toward race-day medication. The Board amended the language to provide that furosemide administration is prohibited in two-year old's entered to race as specified in Board Rule 1843.5(a) at the July 24, 2020 regular Board meeting.

CORRECTION TO THE AMENDED NOTIFICATION OF POSTPONEMENT OF REGULATORY HEARING FOR THE PROPOSED AMENDMENT OF RULE 1845, AUTHORIZED BLEEDER MEDICATION, PUBLISHED AND SENT ON MARCH 20, 2020

The Board issued an Amended Notification of Postponement of Regulatory Hearing for the Proposed Amendment of Rule 1845, Authorized Bleeder Medication on March 20, 2020. The Notification was in response to the emerging COVID-19 pandemic and subsequent health department guidance to maintain social distancing. The notification amended a March 17, 2020 Notice of Change of Date and Location that provided that the public hearing for the proposed amendment to Board Rule 1845 would take place at the California Horse Racing Board Headquarters and also by teleconference on March 26, 2020. The original notice published on January 21, 2020 had a public hearing date of March 19, 2020 but due to COVID-19 the hearing and regular Board meeting was rescheduled. The March 20, 2020 amendment to the Notification modified the Notice to provide that only teleconference participation would be provided, and no public physical location would be used to maintain social distancing.

Within the March 20, 2020 Notice was a clerical error. In the final paragraph of the March 20, 2020 Notice there is a reference to Board Rule 1503. This was a clerical error and should have referenced Board Rule 1845, as the rest of the March 20, 2020 document does. Similarly, all other related documents, including the March 17, 2020 Notice and the original January 21, 2020 Notice of Proposed Action reference the correct California Code of Regulations Section 1845.

LOCAL MANDATE DETERMINATION

The adoption of Board Rule 1845 does not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 45-DAY NOTICE PERIOD OF JANUARY 24, 2020 THROUGH MARCH 9, 2020.

Letter from the Pacific Coast Quarter Horse Racing Association dated February 28, 2020:

Comment: The Pacific Coast Quarter Horse Racing Association (PCQHRA) has a concern with the proposed language for Board Rule 1845, Authorized Bleeder Medication, specifically subsection (a)(1) which states: "Furosemide is prohibited for foals of the 2018 crop year and thereafter". At the beginning of its ongoing 2020 race meet, it only agreed to the reduction of maximum allowable dosage of furosemide from 500mg to 250mg, but did not agree to the prohibition of furosemide administration for foals of 2018.

Response: Board Rule 1845, Authorized Bleeder Medication, does not contain any provisions that mandate that the racing association or horsemen's organization need agree to the provisions of the regulation. Board Rule 2040, Horsemen's Organizations for Owners or Trainers, provides that trainers, owners, and racing associations can negotiate a binding covenant regarding the conditions for each race meeting, but these agreements are between the horsemen's organizations and the racing associations, not between the horsemen's organization and the Board.

Comment: PCQHRA states that "Los Alamitos Race Course (LARC) has several futurities throughout the year with nominations from across the nation. To prohibit the use of furosemide in the middle of the year without proper notification would be devastating to our current race meet and stakes schedule. PCQHRA respectfully requests the California Horse Racing Board wave this portion of the amendment for quarter horses until the 2021 race meet. This temporary waiver would give LARC and PCQHRA proper time to notify all participants of the amendment".

Response: Board Rule 1845 was initially noticed to the public on January 24, 2020, and the PCQHRA 2020 race meet runs from December 27, 2019 through December 20, 2020. As such, the PCQHRA 2020 race meet was ongoing when Board Rule 1845 was noticed to the public, and it is possible that the proposed regulation will become effective during PCQHRA's ongoing race meet. The Board recognizes the discomfort and strain placed on horsemen caused by a change to the Board rules governing the administration of furosemide during an ongoing race meet, and in an effort to curtail some of this strain, the Board chose to amend the proposed regulation to only prohibit the administration of furosemide in two-year old's. Narrowing the scope of the prohibition of furosemide administration to only affect two-year old's avoids the challenge of having races in which horses born in the crop year 2018 and thereafter race against horses born prior to the 2018 crop year, meaning that horses with different rules governing furosemide administration would race against one another. To avoid such a situation, the prohibition has been limited to two-year old's. Two-year old horses

only race against other two-year olds, so there will be no differing regulations between two horses running the same race.

Additionally, the initiative to push toward a zero-tolerance for race-day medication is an important step in increasing the safety of race horses and their riders, and to protect the integrity of the sport from perceptions of performance-enhancing practices. The Board has determined that the need to safeguard race horse wellbeing and the integrity of the sport are urgent enough that postponing the implementation of Board Rule 1845 due to concerns about the strain it will place on horsemen would be to the detriment of horseracing.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE MARCH 26, 2020 REGULATORY HEARING.

Comment: (Transcript pages 128 – 131) Staff, in response to the unworkability of prior proposed language, proposed amending the text of the proposed regulation from “furosemide is prohibited for foals of the 2018 crop year and thereafter” to “furosemide is prohibited for two-year-olds”. The initially proposed language allowed for horses to whom furosemide administration was prohibited to run against horses who were allowed furosemide administration, lending an unfair advantage to those horses running on furosemide.

Response: The Board agreed with the commenters and moved to amend the proposed text to read “furosemide is prohibited for two-year-olds”. The proposed regulation was noticed for a 15-day public comment period beginning March 27, 2020 and closing on April 11, 2020.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF MARCH 27, 2020 THROUGH APRIL 11, 2020.

Letter from Patrick McBurney dated April 8, 2020:

Comment: “The California Horse Racing Board (CHRB) approved language that would prohibit the administration of Furosemide in 2 year olds beginning this year. The move comes as part of a desire outlined by the Thoroughbred Safety Coalition (Stronach Group and Del Mar are members).

The theory behind the coalitions desired furosemide restrictions is that they would allow trainers to get a real sense for whether their horses needed the bleeder medication or not after racing a horse’s first season without it. If a 2 year old does bleed in a race they would have time to take a rest and come back with the drug in their 3 year old season”.

Response: Language for the proposed amendment to Board Rule 1845, Authorized Bleeder Medication, was approved by the Board at the March 26, 2020 regular Board meeting. The final rulemaking package has yet to be reviewed by the Office of Administrative Law (OAL) and receive final approval. Accordingly, the effective date of the proposed rulemaking is uncertain. The amended language of the proposed

amendment does prohibit the administration of furosemide in 2-year old's, and the Board is monitoring closely the developments from the Thoroughbred Safety Coalition. Exercise Induced Pulmonary Hemorrhage (EIPH) is a progressive condition, meaning that the condition worsens with age. Therefore, two-year old racehorses are the group least affected by EIPH because they are the youngest racehorses. Additionally, two-year old's only race against other two-year old's, so the proposed regulation prohibits the administration of furosemide in a way that will be consistently applied to every horse participating in the race. This not only makes for a fairer application of the rule, but also allows for a better evaluation of the rule because it is being applied to a uniform and isolated test group.

Comment: "Exercise Induced Pulmonary Hemorrhage is a common condition of intensely exercising horses, and occurs in up to 75% of horses that race. This is a fact, and it is undisputed".

Response: EIPH is indeed common among racehorses and other horses participating in equine sports.

Comment: "The research has been exhaustive and conclusive. All racehorses bleed to some degree at some point during their careers. The American Association of Equine Practitioners 'Supports the administration of Furosemide (Lasix) on race day to mitigate the adverse effects of Exercise Induced Pulmonary Hemorrhage'".

Response: EIPH is common among racehorses, and furosemide is the only authorized bleeder medication currently permitted by the Board to treat EIPH. According to a review conducted by the American College of Veterinary Internal Medicine (ACVIM) of the veterinary literature regarding EIPH, there is high quality evidence that furosemide administered before strenuous exercise decreases the severity and incidence of EIPH. However, the attendant loss of bodily fluid before a race due to increased urination may give some horses an unfair advantage by allowing them to race with less weight than they otherwise would naturally.

Comment: "Therefore, why would a board or track operator decide to ban the use of this medication in our two year old racehorses? Coming to the racetrack for the first time, two year olds are exposed to a much larger and age diverse population. They are akin to children, off to grade school, and susceptible to a host of new allergens and bacteria. Consequently, it is typical to see fevers, coughs and snotty noses run thru the two year olds in a barn. This absolutely effects and burdens their respiratory systems".

Response: The prohibition of furosemide administration in two-year old's is a component of a larger industry-wide initiative to eliminate the use of race day medication in racehorses. The Board supports the industry's initiative, and the prohibition of furosemide administration to two-year old's is a first step as the Board gathers data and looks forward to an eventual phase-out of furosemide at all age levels in racing horses. The Board is beginning with the prohibition for two-year old's because EIPH is a progressive condition, so of all groups of racehorses, it is the least

problematic for two-year olds because they are the youngest age group of racehorses. Additionally, at the two-year old level, two-year old racehorses only race against other two-year olds. To the contrary, all other ages of race horses race against a mixture of horses from different age ranges, so two-year olds are the only uniform group in which the Board can implement a regulation on a trial basis to test whether expanding that regulation to all age groups would be beneficial. This uniformity of the type of horse is beneficial for evaluation of the effects of the regulation. It is true that horses in the inclosure are susceptible to a host of allergens and bacteria and may develop various illnesses in the inclosure. However, it is the duty of the racing veterinarian and the official veterinarian to conduct a racing soundness examination to determine whether a horse is fit to race. If any of the illnesses or conditions mentioned are deemed to be a threat to the horse's health or safety, that horse must be placed on the Veterinarian's List and prevented from running a race or working out when strenuous exercise may be overly burdensome, per Board Rule 1866, Veterinarian's List. In such a case, if a condition leads to an overly taxed respiratory system, the official veterinarian or racing veterinarian may place the horse on the Veterinarian's List for infirmity.

Comment: "Although they are two year olds, they also are "intensely exercising horses", and therefore, susceptible to Exercise Induced Pulmonary Hemorrhage".

Response: This is undisputed. Two-year olds indeed do experience EIPH from intense exercise, though it may not be enough to cause an official veterinarian to determine that the horse experiencing it is doing so severely enough to render it unsafe or unfit to run.

Comment: "The welfare of our two year olds, would be better served, by veterinary endoscopic examinations, and then deciding if rest or Furosemide would be required if Exercise Induced Pulmonary Hemorrhage were present".

Response: Attending veterinarians still have at their disposal the ability to test for bleeding due to EIPH through endoscopic examinations, and if they determine that the horse is unsound or physically unfit to race or workout, rest will be required via placing that horse on the Veterinarian's List. However, in an effort to move toward a zero-tolerance for race-day medication, the Board is prohibiting the use of furosemide to treat EIPH in two-year olds. If a two-year old is unable to compete with its natural ability, unaided by furosemide, and bleeds to such an extent that continuing to race or train would be a danger to the horse and rider, the official veterinarian or racing veterinarian will place that horse on the Veterinarian's List until that horse can demonstrate that it is sound and in good enough physical condition to workout and race.

Comment: "I believe this to be a wiser course for our two year olds, rather than basing their health and futures on "desire" and "theory".

Response: The Board has determined that there is precedent for the "theory" of prohibiting race-day administration in race horses, as California would not be the first major racing jurisdiction to implement such a practice. Internationally, countries like South Africa, Australia, Malaysia, Brazil, Ireland, Germany, and Switzerland all prohibit

race day administration of furosemide. In addition to aligning the Board's rules with many major international racing jurisdictions, the proposed regulation is also in alignment with a Californian racing industry-led initiative to ban race-day medication. The Board supports this initiative, and prohibiting furosemide administration in two-year old's is a first step in moving toward the shared goal. However, the proposed regulation is also necessary to protect the safety of racehorses and their riders, and the integrity of the sport.

Letter from the Pacific Coast Quarter Horse Racing Association dated April 8, 2020:

Comment: PCQHRA has a concern with the proposed language for Board Rule 1845, Authorized Bleeder Medication, specifically subsection (a)(1) which states: "Furosemide is prohibited for two-year-olds". At the beginning of its ongoing 2020 race meet, it only agreed to the reduction of maximum allowable dosage of furosemide from 500mg to 250mg, but did not agree to the prohibition of furosemide administration for foals of 2018.

Response: Board Rule 1845, Authorized Bleeder Medication, does not contain any provisions that mandate that the racing association or horsemen's organization need agree to the provisions of the regulation. Board Rule 2040, Horsemen's Organizations for Owners or Trainers provides that trainers, owners and racing associations can negotiate a binding covenant regarding the conditions for each race meeting, but these agreements are between the horsemen's organizations and the racing associations, not between the horsemen's organization and the Board.

Comment: PCQHRA states that "Los Alamitos Race Course (LARC) has several futurities throughout the year with nominations from across the nation. To prohibit the use of furosemide in the middle of the year without proper notification would be devastating to our current race meet and stakes schedule. PCQHRA respectfully requests the California Horse Racing Board wave this portion of the amendment for quarter horses until the 2021 race meet. This temporary waiver would give LARC and PCQHRA proper time to notify all participants of the amendment".

Response: Board Rule 1845 was initially noticed to the public on January 24, 2020, and the PCQHRA 2020 race meet runs from December 27, 2019 through December 20, 2020. As such, the PCQHRA 2020 race meet was ongoing when Board Rule 1845 was noticed to the public, and it is possible that the proposed regulation will become effective during PCQHRA's ongoing race meet. The Board recognizes the discomfort and strain placed on horsemen caused by a change to the Board rules governing the administration of furosemide during an ongoing race meet, and in an effort to curtail some of this strain, the Board chose to only prohibit the administration of furosemide in two-year old's. However, the initiative to push toward a zero-tolerance for race-day medication is an important step in increasing the safety of race horses and their riders, and to protect the integrity of the sport from perceptions of performance-enhancing practices. The Board has determined that the safeguarding of race horse wellbeing and

the integrity of the sport take precedence over postponing the implementation of Board Rule 1845 due to concerns of the strain it will place on horsemen.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF JUNE 22, 2020 THROUGH JULY 7, 2020.

Comment: The PCQHRA has a concern with the proposed language for Board Rule 1845, Authorized Bleeder Medication, specifically subsection (a)(1) which states: “Furosemide is prohibited for two-year-olds entered to race as specified in Board Rule 1843.5(a)”. At the beginning of its ongoing 2020 race meet, PCQHRA only agreed to the reduction of maximum allowable dosage of furosemide from 500mg to 250mg, but did not agree to the prohibition of furosemide administration for two-year-old horses on race day.

Response: Board Rule 1845, Authorized Bleeder Medication, does not contain any provisions that mandate that the racing association or horsemen’s organization need agree to the provisions of the regulation. Board Rule 2040, Horsemen’s Organizations for Owners or Trainers, provides that trainers, owners, and racing associations can negotiate a binding covenant regarding the conditions for each race meeting, but these agreements are between the horsemen’s organizations and the racing associations, not between the horsemen’s organization and the Board.

Comment: Horses experience EIPH at peak exercise, pulmonary hemorrhage leads to serious respiratory infections, the intensity of the hemorrhaging worsens with unchecked repeated episodes, blood in the airways interferes with the function of the lungs, and treatment with furosemide lessens the severity of the hemorrhaging.

Response: EIPH is indeed common among horses when performing strenuous exercise. EIPH does result in pulmonary hemorrhaging from heavy exertion, even among horses in the wild, but certainly when horses experiencing EIPH exert themselves during racing or training. EIPH is a progressive condition that worsens with age. According to a review conducted by the American College of Veterinary Internal Medicine (ACVIM) of the veterinary literature regarding EIPH, there is high quality evidence that furosemide administered before strenuous exercise decreases the severity and incidence of EIPH. Therefore, it is necessary to allow for some administration of furosemide to race horses experiencing EIPH, particularly older horses in which the conditions are more pronounced. The amendment to Board Rule 1845, Authorized Bleeder Medication allows for horses placed on the Authorized Bleeder Medication List to be treated with furosemide, excepting two-year-old horses once entered to race. The amendment allows for treatment with furosemide during training for horses of all ages, and allows for furosemide treatment for horses older than two on the Authorized Bleeder Medication List up to four hours prior to post time of a race for which the treated horse is registered to run.

Comment: Furosemide is an inexpensive, highly effective, very short acting, specifically targeted medication. Alternatives are less effective. Horses experiencing EIPH that are

not treated with furosemide experience discomfort and disease. There are no scientific arguments in favor of preventing the administration of furosemide in two-year-old race horses. The arguments in favor of prohibiting the administration of furosemide in two-year-old race horses are based on political, cultural, economic, or conjectural reasoning.

Response: Furosemide is the only authorized and Board-approved medication allowed in California for the treatment of EIPH in race horses. Two-year-old race horses are the youngest cohort of race horses, and they are also the least impacted by EIPH. EIPH is a progressive condition, meaning its impacts worsen with time, so the impacts among two-year-old race horses are the lowest among age groups. Two-year-old race horses suffering from EIPH do benefit from treatment with furosemide. However, the administration of furosemide to race horses is associated with performance enhancing effects by some in the racing industry and in the wagering public. It is in the interest of horse racing that an image of unfairness and lack of integrity is not allowed to pervade the perception of horse racing among the wagering public. Two-year-old race horses, due to their less severe symptoms and fewer instances of EIPH, are the optimal group of race horses to begin the transition away from race-day administration of furosemide.

Comment: The only benefit rendered by furosemide is the lessening of the pulmonary hemorrhaging.

Response: Furosemide does indeed lessen the instance and severity of pulmonary hemorrhaging in horses. However, furosemide is a diuretic and causes horses to whom it is administered to urinate approximately 10 to 15 liters of urine. The loss of bodily fluid before a race, if the horse is not allowed to rehydrate, results in the horse weighing 10 to 20 pounds lighter by the start of the race. This loss of water weight before a race leads many in the racing industry and the wagering public to assert that furosemide gives horses an unfair advantage by allowing them to race with less weight than they otherwise would naturally. The international racing community has largely banned the use of any race day medication, including furosemide. The United States is one of the few major racing jurisdictions that still allows for race day administration of furosemide.

Comment: There is no evidence that EIPH does not occur in two-year-old race horses. Two-year-old race horses experience EIPH just as older horses do. If EIPH is not controlled in two-year-old race horses, the severity of EIPH as they age is worsened.

Response: EIPH does occur in two-year-old race horses. EIPH is, however, a progressive condition, meaning it worsens with age. Therefore, older horses experience EIPH more frequently and with more severity than two-year-old race horses. Furthermore, EIPH in two-year-old race horses can still be treated during training. Treatment is only prohibited once they are entered to race to preserve the integrity of the race and avoid potential performance enhancing effects.

Comment: Elimination of furosemide therapy exposes race horses to disease and suffering. It is inhumane to withhold inexpensive and effective medicine from race horses.

Response: The amendment to Board Rule 1845 allows for the administration of furosemide to treat EIPH for all race horse during training, and all race horse older than two years up to four hours before the post time of the race that they are entered to run. Two-year-old race horses are prohibited from being administered furosemide once entered to race, but they are allowed the treatment at all other times. If a race horse of any age experiences disease or suffering such that they are unfit to exert their full effort in the running of a race, that horse will be placed on the Veterinarian's List per Board Rule 1866, Veterinarian's List, and only allowed to resume racing or training once it has been deemed fit and sound for racing by an Official Veterinarian.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED AT THE JULY 16, 2020 REGULATORY HEARING.

Comment: Furosemide should be prohibited for all horses, not just two-year-olds. Professional human athletes do not use furosemide to prevent bleeding, and the same should be true for race horses.

Response: EIPH is a condition that is specific to horses. The human circulatory system is different from horses', and most other animals' circulatory systems differ from horses' also because horses commonly experience pulmonary bleeding from heavy exertion even in the wild. Horses, such as race horses that exert themselves frequently while training and racing, can experience EIPH. EIPH is also a progressive condition, meaning that it gets worse over time. Furosemide is effective at decreasing the incidence and severity of EIPH. Therefore, it is necessary to allow for some administration of furosemide to horses experiencing EIPH, particularly older horses in which the conditions are more pronounced.

Comment: Furosemide should be prohibited to all ages of race horses because horses do not need it and furosemide is only administered to horses for its performance enhancing effects.

Response: EIPH is common among race horses and other horses participating in equine sports. EIPH is a condition wherein pulmonary bleeding occurs when capillaries in horses' lungs burst as a result of the exertion from intense exercise or racing. According to a review conducted by the ACVIM of the veterinary literature regarding EIPH, there is high quality evidence that furosemide administered before strenuous exercise decreases the severity and incidence of EIPH. EIPH is also a progressive condition, so it worsens with age. Therefore, it is necessary to allow for some administration of furosemide to race horses experiencing EIPH, particularly older horses in which the conditions are more pronounced. Furthermore, furosemide is the only authorized bleeder medication used to treat EIPH in California, and the treatment can only be administered to treat EIPH to a horse placed on the Authorized Bleeder Medication List by the Official Veterinarian. Despite the diuretic effect resulting from the treatment, associated by some with a performance enhancing effect due to the loss of water weight, furosemide can only be administered to treat EIPH, and for no other

reason. The Board has determined that the need for treatment of EIPH in race horses older than two years outweighs the possible negative associations with performance enhancing effects.

Comment: Two-year-old horses bleed just as older horses do. Prohibition of furosemide in two-year-old horses sanctions bleeding in those horses. Furosemide is a safe, inexpensive and reliable treatment for EIPH and there is no scientific or health reason not to use furosemide to treat EIPH in two-year-old horses.

Response: EIPH is common among race horses and other horses participation in equine sports, including two-year-old horses. However, EIPH is a progressive condition, so it increases in severity with age. Furosemide is an effective treatment for reducing the instance and severity of EIPH in horses. However, the Board acknowledges an industry-wide initiative to move to a zero-tolerance for race-day medication, including the administration of furosemide. The Board has determined that prohibiting race-day administration of furosemide in all ages of race horses would be a sudden and possibly reckless shift. By prohibiting the administration of race-day furosemide only in two-year-old horses, the horse racing industry can begin the transition away from race-day administration of furosemide beginning with the youngest race horses and the Board can monitor the results of the transition among a homogenous control group. Two-year-old horses only race against other two-year-old horses, so the prohibition of race-day furosemide in two-year-old horses creates an opportunity for Board staff to monitor the results of the policy change in a controlled and standardized group of horses. Because the group of horses affected by the policy change are more homogenous, the Board can more effectively make comparisons to other groups of race horses that are unaffected by the change and evaluate the effects of the policy change over time.

Additionally, the Board has determined that the administration of race-day furosemide could impact the public's perception of integrity in horse racing. Some in the horse racing industry and the wagering public associate the administration of furosemide with a performance enhancing effect because furosemide is a diuretic that causes a horse to shed water weight through urination, making the horse lighter and presumably faster during the race. It is one of the Board's responsibilities to safeguard the integrity of horse racing in the eyes of the public, and the prohibition of race-day furosemide in two-year-old horses is a necessary step to safeguard that integrity.

ALTERNATIVE DETERMINATION

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. The proposed amendment of Board Rule 1845, Authorized Bleeded Medication, prohibits the use of furosemide in two-year-olds and lowers the maximum allowable dose in horses older than two from 500mg to

250mg. The proposed amendment to Board Rule 1845 provides that all horses running a race will have the same furosemide regulations applied, whether that be two-year old's running with no furosemide, or older horse that are all allowed to be administered furosemide within the minimum and maximum allowable dose.

The Board invited 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.

Set forth below are the alternatives which were considered and the reason the alternative was rejected or adopted:

- “Furosemide is prohibited for foals of the 2018 crop year and thereafter” is problematic language, and a proposal to change the language instead to “Furosemide is prohibited for two-year-olds” was submitted. This Board agreed to adopt the suggested changes to the language and submitted a 15-day notice. The Board determined it was in the best interest to change the language to “Furosemide is prohibited for two-year-olds” to avoid challenges regarding horses of different ages running the same race but being held to different rules, while still adhering to the Board’s and the racing industry’s shared goal of progressing toward a zero-tolerance policy toward race-day medication.
- Waving the implementation of Board Rule 1845, regarding no furosemide for two-year-olds until 2021 was proposed. This proposal was rejected because, while the Board recognizes the discomfort and strain placed on horsemen caused by a change to the Board rules governing the administration of furosemide during an ongoing race meet, it is in the best interest of the horse and their riders to continue pushing toward a zero-tolerance policy for race-day medication and an important step in increasing the safety of race horses and their riders, as well as to protect the integrity of the sport from perceptions of performance-enhancing practices. The Board has determined that the safeguarding of race horse wellbeing and the integrity of the sport take precedence over postponing the implementation of Board Rule 1845 due to concerns of the strain it will place on horsemen.

No alternatives that would lessen any adverse economic impact on small businesses were proposed.