

**CALIFORNIA HORSE RACING BOARD  
15-DAY NOTICE OF MODIFICATION TO THE TEXT OF THE  
PROPOSED ADDITION OF  
RULE 1867.1, USE OF BISPHOSPHONATES PROHIBITED**

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations, the California Horse Racing Board (Board) is providing notice of changes that have been made to the text of the proposed addition of Board Rule 1867.1, Use of Bisphosphonates Prohibited.

The Board is also providing notice that a document incorporated by reference is available for public inspection and comment.

**CHANGES TO THE PROPOSED TEXT**

The originally proposed text was noticed to the public on October 18, 2019 and was subject of a public hearing on December 12, 2019. The proposed regulation was brought before the Board again at the February 20, 2020, regular Board meeting. The modifications reflected in this Notice are in response to recommendations made by the Office of Administrative Law (OAL) and to proposed modifications adopted by the Board at the February 20, 2020 regular Board meeting.

A copy of the full text of the regulations with the proposed changes indicated is attached for your review. Additions to the originally proposed text appear in double underlined text and deletions are shown in ~~double~~ strikethrough.

§ 1867.1 Use of Bisphosphonates Prohibited

Proposed subsection (b) has been amended from “No licensee shall bring into a CHRB inclosure a horse that has been administered a bisphosphonate within the previous six months” to “No licensee shall bring into a CHRB inclosure a horse known to have been administered a bisphosphonate within the previous six months”. The amendment to the proposed text is necessary to avoid punishing trainers or owners who unknowingly bring a horse into a Board inclosure that has been administered a bisphosphonate within the previous six months. Such a situation can arise when an owner buys a horse that has been administered a bisphosphonate by the previous owner, but the previous owner does not disclose to the new owner that the administration of a bisphosphonate occurred.

A new subsection (c) has been added to the proposed Board Rule 1867.1. New subsection (c) provides that if a horse tests positive for a bisphosphonate, that horse is not permitted to enter a Board inclosure until a Board-approved official laboratory determines there is no longer a bisphosphonate present in that horse’s system. The new subsection is necessary to provide that no horses train or run races in a Board inclosure while a bisphosphonate is in their system.

Proposed subsection (c) has been re-labeled subsection (d) and modified to add clarity. Specifically, “Notwithstanding subsections (a), (b), and (c) above,” have been added to subsection (d) to clarify that methylene diphosphonate may be administered when used in combination with the radionuclide technetium 99m in spite of subsections (a), (b), and (c). This modification will clarify that this is the only exception to the use of bisphosphonates within a CHRB inclosure.

## WRITTEN COMMENT PERIOD

Any interested person may submit a written statement relating to the modified language during the public comment period from **February 26, 2020 to March 11, 2020**. All written comments must be submitted to the Board no later than **5:00 p.m. on March 11, 2020**. The Board will only consider comments received at the Board's office by that time. Submit written comments to:

Zachary Voss, Policy and Regulations Analyst  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825  
Email: [zavoss@chr.ca.gov](mailto:zavoss@chr.ca.gov)

All written comments received by March 11, 2020, which pertain to the indicated text changes will be reviewed and responded to by the Board's staff as part of the completion of the rulemaking file. Please limit your comments to the modifications to the text and form incorporated by reference. Text proposed to be added to the rulemaking in this comment period is displayed in double underline and proposed deletions to the rulemaking in this comment period is displayed in ~~double strikethrough~~.

Questions concerning the proposed amendments may be addressed to Zachary Voss at (916) 263-6036, emailed to [zavoss@chr.ca.gov](mailto:zavoss@chr.ca.gov), or mailed to the address above. If Zachary Voss is not available, questions concerning the proposed amendment may be directed to Amanda Drummond, Policy and Regulations Manager, at (916) 263-6033 or [amdrummond@chr.ca.gov](mailto:amdrummond@chr.ca.gov).

## AVAILABILITY OF RULEMAKING DOCUMENTS ON THE INTERNET

Copies of this notice, the original Notice of Proposed Rulemaking, the Initial Statement of Reasons, the original proposed text of the regulations, additional documents and information to the record, and the revisions to the proposed text of the regulations can be accessed via the Board website at: [http://www.chrb.ca.gov/rules\\_law.asp](http://www.chrb.ca.gov/rules_law.asp).

CALIFORNIA HORSE RACING BOARD  
February 26, 2020

**CALIFORNIA HORSE RACING BOARD  
TITLE 4. CALIFORNIA CODE OF REGULATIONS  
ARTICLE 15. VETERINARY PRACTICES  
PROPOSED ADDITION OF  
RULE 1867.1. USE OF BISPHOSPHONATES PROHIBITED**

*Text of Modified Proposed Regulations*

Changes are illustrated with double underline for proposed additions and by ~~double  
strike through~~ for proposed deletions.

1867.1. Use of Bisphosphonates Prohibited.

(a) Bisphosphonates may not be administered to any horse within a CHRB inclosure.

(b) No licensee shall bring into a CHRB inclosure a horse ~~known to have~~ that has been administered a bisphosphonate within the previous six months.

(c) A horse that tests positive for a bisphosphonate is not permitted within a CHRB racing inclosure until a Board approved official laboratory determines that there is no longer a bisphosphonate in the horse's system.

(d)~~(e)~~ Notwithstanding subsections (a), (b), and (c) above, ~~f~~For nuclear imaging purposes, methylene diphosphonate may be administered when used in combination with the radionuclide technetium 99m.

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

Reference: 19440, 19580, and 19581,  
Business and Professions Code.



APPEARANCES

COMMITTEE MEMBERS

Gregory Ferraro, Chairman

Oscar Gonzalez, Vice Chairman

Alex Solis, Commissioner

Wendy Mitchell, Commissioner

STAFF

Rick Baedeker, Executive Director

Cynthia Alameda, Assistant Executive Director

Robert Brodnik, Staff Counsel

Amanda Brown, Staff Counsel

Mike Marten, Associate Analyst

Rick Arthur, Equine Medical Director

ALSO PRESENT

Tweed Conrad

Bonnie Crocker, Horse Racing Wrongs

## INDEX

PAGEAction Item:

8. Public hearing and action by the Board regarding the proposed addition of CHRB Rule 1867.1, Use of Bisphosphonates Prohibited, to prohibit the administration of bisphosphonates to any horse within a CHRB inclosure. (Note: This concludes the 15-day public comment period. The Board may adopt the proposal as presented).

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P R O C E E D I N G S

10:41 A.M.

SACRAMENTO, CALIFORNIA, THURSDAY, FEBRUARY 20, 2020

AGENDA ITEM 8

CHAIRMAN FERRARO: Item number eight is public hearing and action by the Board regarding proposed addition of CHRB Rule 1867.1, Use of Bisphosphonates Prohibited, to prohibit the administration of bisphosphonates to any horse within a CHRB inclosure. Note: This concludes the 15-day public comment period. The Board may adopt the proposal as presented.

But we have changed the language, so it's not -- is that correct? So --

MS. BROWN: That's correct. It will go --

CHAIRMAN FERRARO: -- so it would go back out for 15 days again?

MS. BROWN: -- another 15-day.

CHAIRMAN FERRARO: Yeah.

MS. BROWN: I don't know if Dr. Arthur can speak to the concerns of subsection (b)?

EQUINE MEDICAL DIRECTOR ARTHUR: Yeah. The issue was -- and certainly with the variability and the testing ability for bisphosphonates that I'll address a little bit later at the Medication Committee meeting -- the real issue

1 is somebody could get a horse that they don't know had been  
2 administered bisphosphonates. And owners and trainers  
3 don't want to be held responsible for something they don't  
4 know.

5 So what we've proposed is to add language in  
6 that's very similar to what we just passed that, basically,  
7 says that,

8 "No licensee shall bring into a CHRB inclosure a horse  
9 known to have been administered bisphosphonates within  
10 the previous six months."

11 My interpretation is that that puts the onerous  
12 on us to prove is somebody violated that. Someone who  
13 innocently bought a horse that had been treated with  
14 bisphosphonates, let's say a two-year-old-in-training sale  
15 or a yearling sale that was deceived themselves, shouldn't  
16 be held accountable. And I think that kind of should solve  
17 a lot of the problems.

18 Did I explain that adequately?

19 MS. BROWN: Yes. Thank you.

20 So just to review, subsection (a) would stay the  
21 same. Subsection (b), as Dr. Arthur said, would read,

22 "No licensee shall bring into a CHRB inclosure a horse  
23 known to have been administered a bisphosphonate  
24 within the previous six months."

25 Then we're proposing a new subsection (c) which

1 would read,

2 "A horse that tests positive for bisphosphonates is  
3 not permitted within a CHRB racing inclosure until a  
4 Board-approved official laboratory determines that  
5 there are no longer bisphosphonates in the horse's  
6 system."

7 And then subsection (c) would become subsection  
8 (d).

9 CHAIRMAN FERRARO: The goal is that we don't want  
10 horses within the inclosure training for racing with  
11 bisphosphonates, because they could just as easily get hurt  
12 in the morning as they can in the afternoon, so that's the  
13 goal. If they've been treated with bisphosphonates, they  
14 don't come in the racing inclosure and they're not training  
15 for racing. That's the goal. That's the change in the  
16 wording.

17 Any another -- any questions from the Board? Do  
18 we have a motion to approve this? It goes out for 15 days;  
19 right?

20 EXECUTIVE DIRECTOR BAEDEKER: Public comments?

21 CHAIRMAN FERRARO: Do you have a public comment  
22 card?

23 MR. MARTEN: Yes, we do.

24 CHAIRMAN FERRARO: Tweed.

25 MS. CONRAD: Tweed Conrad. And at the last

1 meeting, Dr. Ferraro, you explained to me that the owner  
2 has the option to be able to test for bisphosphonates at  
3 the purchase; is that correct? Did I understand that  
4 correctly?

5 CHAIRMAN FERRARO: That's correct. Any of the  
6 recognized thoroughbred sales, you can request. It costs  
7 money. But one of the things that this rule adoption will  
8 do is force almost every owner that purchases a horse to  
9 get the horse tested because, if they can't come in a  
10 racing inclosure, there's no sense in them having a horse.

11 So not only are we controlling what's going on in  
12 our own racing inclosure but we're, basically, mandating to  
13 the ownership that they get their horses tested at the  
14 sale. So it's an expenditure, I think it's \$400 at the  
15 sale, but a person would be foolish -- for example, now the  
16 British rule is that any horse that's been treated with  
17 bisphosphonates can never race in a race in England. So all  
18 the British purchasers, all the British people that  
19 purchase horses at, say, the Keeneland September sale, they  
20 test every one of them for that reason. So we're kind of  
21 driving everything that way.

22 MS. CONRAD: So my question, another question,  
23 the vet also said, I mean, and I've read this, that they're  
24 undetectable after two months, so if the owner -- is that  
25 correct?

1 CHAIRMAN FERRARO: Rick?

2 MS. CONRAD: How long do they stay in the system?

3 EQUINE MEDICAL DIRECTOR ARTHUR: There is  
4 considerable variability in how bisphosphonates test and it  
5 appears to be a function of bone turnover in that  
6 particular individual. I'll talk about a case when I give  
7 the presentation on the Welfare and Safety Committee  
8 meeting about how long, under certain circumstances, they  
9 can be detected. There's no certainty as to how long they  
10 can be detected. But we've improved our sensitivity for  
11 bisphosphonate testing rather dramatically in the last six  
12 months. That's changing all the time and will continue to  
13 change.

14 MS. CONRAD: So it's questionable whether or not  
15 you'll be able to detect it at this point? If the owner  
16 has bought the horse one or two years ago, it may still be  
17 undetected, so it would be hard to ban them from the race.

18 CHAIRMAN FERRARO: Well, if it's six months prior  
19 to his entry into the racing inclosure, that could very  
20 well be, yeah. Yeah. Nothing's perfect, unfortunately.

21 MS. CONRAD: Well --

22 CHAIRMAN FERRARO: Okay?

23 MS. CONRAD: -- thank you for your efforts.

24 CHAIRMAN FERRARO: Thank you.

25 I move that we accept --

1 EXECUTIVE DIRECTOR BAEDEKER: He's --

2 CHAIRMAN FERRARO: Hmm?

3 EXECUTIVE DIRECTOR BAEDEKER: Did you fill out a  
4 card, sir?

5 CHAIRMAN FERRARO: Oh, I'm sorry. Did you fill  
6 out a card?

7 MR. SAGE: Procedural question, sir. The  
8 agendas, I believe, have run out, but the agenda for this  
9 meeting is available online.

10 Can you hear me?

11 The agenda is available online. Is there wi-fi  
12 here available that we can use?

13 CHAIRMAN FERRARO: Do you know?

14 EXECUTIVE DIRECTOR BAEDEKER: I don't know.

15 CHAIRMAN FERRARO: We don't know.

16 MR. SAGE: And, if so, could we have the username  
17 and password that we would use to log in to it?

18 EXECUTIVE DIRECTOR BAEDEKER: We need somebody  
19 from Cal Expo to answer that question.

20 CHAIRMAN FERRARO: Okay. My motion, again, is to  
21 accept this rule as written and discussed. Do I have a  
22 second?

23 VICE CHAIRMAN GONZALEZ: Second.

24 CHAIRMAN FERRARO: Commissioner Solis?

25 COMMISSIONER SOLIS: Yes.

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CHAIRMAN FERRARO: Gonzalez?

VICE CHAIRMAN GONZALEZ: Yes.

CHAIRMAN FERRARO: Yes.

Mitchell?

COMMISSIONER MITCHELL: Yes.

(Agenda Item 8 concluded at 10:50 a.m.)

## CERTIFICATE OF REPORTER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were reported by me, a certified electronic court reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of February, 2020.



MARTHA L. NELSON, CERT\*\*367

## CERTIFICATE OF TRANSCRIBER

I do hereby certify that the testimony in the foregoing hearing was taken at the time and place therein stated; that the testimony of said witnesses were transcribed by me, a certified transcriber and a disinterested person, and was under my supervision thereafter transcribed into typewriting.

And I further certify that I am not of counsel or attorney for either or any of the parties to said hearing nor in any way interested in the outcome of the cause named in said caption.

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.



MARTHA L. NELSON, CERT\*\*367

February 21, 2020