

CALIFORNIA HORSE RACING BOARD  
TITLE 4. DIVISION 4. CALIFORNIA CODE OF REGULATIONS  
RULE 1867.1. USE OF BISPHOSPHONATES PROHIBITED  
FINAL STATEMENT OF REASONS

UPDATED INFORMATIVE DIGEST

There have been no changes in applicable laws or to the effect of the proposed regulation from the laws and effects described in the Notice of Proposed Action.

The California Horse Racing Board (Board) approved language for Board Rule 1867.1, Use of Bisphosphonates Prohibited, at the February 20, 2020 regular Board meeting following a 15-day notice after withdrawing the file from the Office of Administrative Law (OAL) to make minor amendments to the proposed text. At the February 20, 2020 Regular Board meeting, the Board adopted further changes in the language and directed staff to initiate a second 15-day notice and comment period. The original withdrawn rulemaking file (OAL regulatory file number 2019-1220-02S) was incorporated by reference as part of the updated rulemaking file. The initial 15-day notice was published February 3, 2020, and the public comment period opened on February 3, 2020 and closed on February 18, 2020. No comments were received. The initial 15-day notice described a change to subsection (c) of the proposed text for Board Rule 1867.1 which specified “Notwithstanding subsections (a) and (b) above”, to clarify that methylene diphosphonate may be administered when used in combination with radionuclide technetium 99m despite prohibitions against bisphosphonate uses outlined in subsections (a) and (b).

The second 15-day notice was published February 26, 2020 and the public comment period opened February 26, 2020 and closed March 11, 2020. No comments were received. This second regulatory action amended subsection (b) of the text to read “No licensee shall bring into a CHRB inclosure a horse known to have been administered a bisphosphonate within the previous six months”. The notice also described new subsection (c) of the proposed text for Board Rule 1867.1 which provides that a horse that tests positive for a bisphosphonate is not permitted within a Board inclosure until a Board approved official laboratory determines that there are no bisphosphonates in the horse’s system. The Board maintains a list of all Board-approved official laboratories used for such testing, which can be obtained by contacting Board staff.

Due to the addition of a new subsection (c), the prior subsection (c) was relabeled subsection (d) for clarity. Subsection (d) was also amended to read “notwithstanding subsection (a), (b), and (c) above” to include new subsection (c) in the exception for the use of methylene diphosphonate in combination with radionuclide technetium 99m for nuclear imaging purposes.

NECESSITY

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.

#### LOCAL MANDATE DETERMINATION

The adoption of Board Rule 1867.1 does not impose any mandate on local agencies or school districts.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE ORIGINAL NOTICE PERIOD OF OCTOBER 18, 2019 TO DECEMBER 2, 2019.

No comments were received at the December 12, 2019 regulatory public hearing, nor during the 45-day public comment period.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on small business.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on business.

#### SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF FEBRUARY 3, 2020 TO FEBRUARY 18, 2020.

No comments were received during the 15-day public comment period.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on small business.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on business.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE FEBRUARY 20, 2020 REGULATORY HEARING.

Comment: (Transcript pages 45 – 46) An issue with the proposed language for Board Rule 1867.1 that reads “No licensee shall bring into a CHRB inclosure a horse that has been administered a bisphosphonate within the previous six months” is that an owner or trainer could purchase a horse that they are unaware has been administered bisphosphonates in the previous six months and bring that horse unknowingly onto Board inclosure grounds, thereby violating the proposed Board Rule 1867.1. It is recommended that the proposed language be amended to read “No licensee shall bring into a CHRB inclosure a horse known to have been administered bisphosphonates within the previous six months”.

Response: The Board agreed with the comment and subsequently directed staff to issue a 15-day notice of regulatory action to amend the proposed Board Rule 1867.1 to reflect the suggested language. The notice was published February 26, 2020, and the public comment period ran from February 26, 2020 to March 11, 2020. No further comments were received.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on small business.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on business.

## SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY NOTICE PERIOD OF FEBRUARY 26, 2020 TO MARCH 11, 2020.

No comments were received during the 15-day public comment period.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on small business.

The adoption of Board Rule 1867.1 has no significant adverse economic impact on business.

## ALTERNATIVE DETERMINATION

The Board has determined that no alternative would be more effective in carrying out the purpose for which the regulation was proposed, 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 provision of law. The addition of Board Rule 1867.1, Use of Bisphosphonates Prohibited, will prohibit the administration of bisphosphonates to any horse within a Board inclosure. Additionally, Board Rule 1867.1 will prohibit any horse that has been administered a bisphosphonate within the previous six months from entering a Board inclosure. The Board invited interested persons to present statements

or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment periods. No alternatives were proposed.

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