

### TITLE 3. FOOD AND AGRICULTURE

**NOTICE IS HEREBY GIVEN** that the Department of Food and Agriculture (herein after referred to as "Department") is proposing to take the action described in the Informative Digest. A public hearing is not scheduled for this proposal. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Department no later than 15 days prior to the close of the written comment period. Any person interested may present statements or arguments in writing relevant to the action proposed to the person designated in this Notice as the contact person **beginning December 1, 2017 and ending at 5:00 p.m. on January 15, 2018**. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 407 and 24013, Food and Agricultural Code, and to implement, interpret or make specific sections 24002, 24003, 24004, 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24011.6, 24012, and 24015 of the Food and Agricultural Code, the Department is proposing to make various changes to Chapter 6, Division 2, of Title 3 of the California Code of Regulations, to read as follows:

#### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

Existing law, section 407 of the Food and Agricultural Code, provides that the Secretary may adopt such regulations as are reasonably necessary to carry out the provisions of the code which she is directed or authorized to administer or enforce.

Existing law, Chapter 8 (commencing with section 24000) of Division 11 of the Food and Agricultural Code authorizes the Department of Food and Agriculture (Department) to implement the Equine Medication Monitoring Program (EMMP) to prevent the misuse of drugs and medications in equines.

Existing law, section 24006 of the Food and Agricultural Code states that administration of a prohibited substance is a violation of the chapter.

Existing law, section 24007 of the Food and Agricultural Code authorizes the Department to implement civil penalties for violations pertaining to the administration of a prohibited substance or non-steroidal anti-inflammatory drugs (NSAIDs) to a horse in violation of Chapter 8. In addition to civil penalties, the Department is authorized to suspend the owner, trainer or both from equine competitions.

Existing law, section 24009 of the Food and Agricultural Code makes it a violation for refusal to submit a horse in an event for examination or for failure to cooperate with the licensed veterinarian.

Existing law, section 24011.6 of the Food and Agricultural Code requires the Department to establish, by regulation, an approved therapeutic medications list and maximum detectable plasma levels.

Existing law, section 24013 of the Food and Agricultural Code authorizes the Department to adopt regulations necessary to carry out the provisions of the chapter. It also specifies that in making and adopting regulations, the Department must first consult with the advisory committee appointed pursuant to section 24013.5.

Existing regulations, section 1280.11 of Title 3 of the California Code of Regulations establishes the level of severity of a violation with a corresponding range of fines and penalties in the form of a “violations matrix” for failure to comply with the provisions of Chapter 8 (commencing with section 24000) of Division 11 of the Food and Agricultural Code, and any regulations adopted pursuant thereto.

This regulatory proposal amends the Department’s existing “violations matrix” in section 1280.11 of Title 3 of the California Code of Regulations by proposing to increase the minimum violation penalties for specified violations of the EMMP codes and regulations to better protect horse welfare and safety at equine events and sales in the State of California and to better align EMMP penalties with the penalty guidelines of national equestrian oversight organizations.

The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with existing State regulations. The Department is the sole State authority over specified public equine events and sales pursuant to Chapter 8 (commencing with section 24000) of Division 11 of the Food and Agricultural Code.

Anticipated Benefits of the Proposal:

The California equine industry produces goods and services valued at approximately \$4.1 billion and includes approximately 698,000 horses, over 70 percent of which are involved in showing, sales, and recreation. This proposal benefits the equine industry by promoting the safety of the horse and rider in competition and horses at public sales by preventing any potential misuse of drugs or medications that could fraudulently mask a disease, condition, or injury of the horse which could place the rider and/or the horse in jeopardy. This proposal is necessary to make amendments to existing penalty and fine regulations and the existing violations matrix which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

Consistency and Compatibility with Existing State Regulations:

The Department has evaluated this proposal and believes that it is not inconsistent or incompatible with the Department’s existing State regulations regarding public equine events and sales. There are other State regulations dealing with the proper use of drugs and medications in equines under the California Horse Racing Board (Board) [Division 4 (commencing with section 1400) of Title 4 of the California Code of Regulations] which is separate and distinct from the Department’s equine program. The Department has no jurisdiction over horse racing in the State, yet work together with veterinarians of the Board to ensure a consistency of the programs within the State.

Documents Incorporated by Reference: None.

Technical, Theoretical, and Empirical Study, Report, or Similar Documents

- 1) United States Equestrian Federation, 2017 Guidelines for Drugs and Medications.

- 2) United States Equestrian Federation, Drug & Medications Penalty Guidelines, January 1, 2016.
- 3) United States Equestrian Federation Horse Welfare & Safety Penalty Guidelines Effective September 1, 2017.
- 4) Comparison of Proposed Equine Medication Monitoring Program (EMMP), United States Equestrian Federation (USEF) and California Horse Racing Board (CHRB) Penalty Matrices, November 2017.
- 5) Minutes from the September 27, 2017 Equine Medication Monitoring Program Advisory Committee meeting.
- 6) Brochure dated January 2017, "Information for Exhibitors and Consignors".
- 7) Brochure dated January 2017, "Event Registration Instructions and Guidelines".
- 8) Brochure dated January 2017, "Equine Medication Monitoring Program, Drugs and Medication Guidelines".

### **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17500 et seq. Require Reimbursement: None.

#### Business Impact:

The Department of Food and Agriculture (Department) has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

The Department has made an initial determination that the proposed regulatory action will not have any significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

The Department has made an initial determination that this regulatory proposal will impact the equine industry in California. The proposal will impact persons required to register with the Department for any public horse event or sale held in California, and affect persons participating in public horse events and sales in accordance with Food and Agricultural Code sections 24001, 24012, and 24015. The Department's proposal affects small equine businesses as it requires them to monitor drugs administered and report use of prohibited medications.

The Department is not aware of any cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action.

Cost Impacts on Representative Private Persons or Businesses:

The Department is not aware of any cost impacts that representative private persons or businesses would necessarily incur in reasonable compliance with the proposed action. The proposed regulation does not impose any new fees or costs to persons or businesses. This proposal makes amendments to existing penalty and fine regulations and the existing violations matrix which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

The anticipated compliance requirements as a result of this proposal are as follows:

- Paperwork/reporting requirement: Paperwork/reporting requirement: There are no new fees or costs associated with the paperwork requirements and there are no new reporting requirements as a result of this proposal. Existing regulations require the use of various application, registration and reporting forms for participants and hosts of public equine events and sales in California.

Effect on Housing Costs: None.

Effect on Small Business:

The Department's proposal affects small equine businesses as it requires them to monitor drugs administered and report use of prohibited medications.

**RESULTS OF ECONOMIC IMPACT ASSESSMENT**

Impact on Jobs/New Businesses:

The Department has determined that this regulatory proposal will not have any impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in California.

The Department has made a determination that this regulatory proposal:

Persons/Businesses affected by this proposal:

- The California equine industry produces goods and services valued at approximately \$4.1 billion, and includes approximately 698,000 horses in California, over 70 percent of which are involved in public events, shows, competitions, sales, and recreation.
- California hosts approximately 1,500 registered horse events annually, ranging from small backyard schooling shows to internationally recognized endurance events, shows and other types of competition, as well as public horse sales.
- The proposed regulation does not impose any new fees or costs to persons or businesses. This proposal makes amendments to the existing penalty and fine regulations and amends the existing violations matrix which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance

with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

- This proposal will impact persons required to register with the Department any public horse events and sales held in California, and affect persons participating in public horse shows and sales in accordance with Food and Agricultural Code sections 24001, 24012, and 24015.

Benefits of the regulation to the health and welfare of California residents, worker safety, and the State's environment:

The Department is not aware of any specific benefits this proposal will have on the health of California residents, worker safety, or the State's environment.

The Department believes this proposal benefits the welfare of California residents by protecting the economic health of the affected equine industry. This proposal further benefits the equine industry by promoting the safety of the horse and rider in competition and horses at public sales to prevent any potential misuse of drugs or medications that could fraudulently mask a disease, condition, or injury of the horse that could place the rider in jeopardy. The proposal is needed to make amendments to existing penalty and fine regulations and the existing violations matrix which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

Equine industry organizations rely on the Department's Equine Medication Monitoring Program (EMMP) for the enforcement of standard drugs and medication rules to ensure the safety of rider and the welfare of the horse. The EMMP monitors horses in public events and sales through random blood or urine sample collection for chemical analysis. The intent is to ensure the integrity of public horse shows and sales through the control of performance and disposition enhancing drugs and permitting limited therapeutic use of drugs at horse shows and competitions. "Therapeutic drugs or medicines" mean drugs or medicines that are used with a prescription from a licensed veterinarian for the treatment of a diagnosed illness or injury. "Prohibited substances" are drugs or medicines used for non-therapeutic purposes, or any stimulant, depressant, tranquilizer, anesthetic, including local anesthetic, sedative, analgesic, corticosteroid excluding dexamethasone, anabolic steroid, or masking agent administered within 24 hours before competition or 72 hours before public sale. The misuse of drugs and medicines in a performance horse can mask a serious injury, or respiratory problem, or other serious health issue which could place the rider and/or the horse in jeopardy.

The above determinations are based on the fact that the proposed regulations serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

Occupations/Businesses Impacted:

This proposal will impact persons required to register with the Department any public horse events and sales held in California, and affect persons participating in public horse shows and sales in accordance with Food and Agricultural Code sections 24001, 24012, and 24015.

### Business Reporting Requirement:

There are no new fees or costs associated with the paperwork requirements and there are no new reporting requirements as a result of this proposal. Existing regulations require the use of various application, registration and reporting forms for participants and hosts of public equine events and sales in California.

### Comparable Federal Regulations:

This proposal does not duplicate or conflict with federal regulations because there are no federal regulations governing public equine events or sales. The Department of Food and Agriculture is the sole State authority over specified public equine events and sales pursuant to Chapter 8 (commencing with section 24000) of Division 11 of the Food and Agricultural Code.

### **CONSIDERATION OF ALTERNATIVES**

The Department must determine that no reasonable alternative considered or that has otherwise been identified and brought the attention of the Department 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. This proposal is necessary to make amendments to existing penalty and fine regulations and the existing violations matrix which serve to ensure the Department fulfills its mandate of the protection of both the horse and rider in public horse shows and sales in accordance with Food and Agricultural Code sections 24005, 24006, 24007, 24008, 24009, 24010, 24011, 24012, 24013, and 24015.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the hearing (if a hearing is requested) or during the written public comment period.

### **INITIAL STATEMENT OF REASONS AND INFORMATION**

The Department has prepared an initial statement of reasons for the proposed action and has available all the information upon which the proposal is based.

### **TEXT OF PROPOSAL**

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all the information upon which the proposal is based, may be obtained by contacting the persons named below or by accessing the Department of Food and Agriculture's website as indicated below in this Notice.

### **AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE**

All the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public inspection by contacting the persons named below.

Any person may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact persons named below or by accessing the website listed below.

## **CONTACT PERSONS**

Inquiries and any written comments concerning this proposal are to be addressed to the following:

Katie Flynn, BVMS, MRCVS  
Equine Staff Veterinarian  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Division/Administration  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5039  
E-mail: Katherine.flynn@cdfa.ca.gov

The backup contact person is:

Thamarah Rodgers, Legislation & Regulation Coordinator  
Department of Food and Agriculture  
Animal Health & Food Safety Services  
Division/Administration  
1220 N Street, Sacramento, CA 95814  
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Website Access: Materials regarding this proposal can be found by accessing the following Internet address: <http://www.cdfa.ca.gov/ahfss/regulations.html>