

DEPARTMENT OF FOOD AND AGRICULTURE
Animal Health Branch
INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation

Equine Medication Monitoring Program - Fees

Section Affected

Section 1280.2

Specific Purpose of Each Adoption, Amendment, or Repeal

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 ensure the integrity of public horse shows, horse competitions, and horse sales through the control of performance and disposition enhancing medications while limiting their permitted therapeutic usage. The Department's Animal Health Branch, Equine Medication Monitoring Program (EMMP) enforces the requirements of these sections of law.

Existing law, section 24012 of the Food and Agricultural Code requires an event manager to charge, collect, and remit fees to the Department for events registered with the Department, and establishes the authority to set the applicable fees by regulation, in consultation with the advisory committee appointed pursuant to section 24013.5. Fees are collected for each equine being entered in a public show/competition or being consigned to a public sale; fees collected are used to fund the EMMP.

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 and specifies that in making and adopting regulations, the Department must first consult with the advisory committee appointed pursuant to section 24013.5.

Existing section 1280.2 of Title 3 of the California Code of Regulations specifies the fees for each horse entered per event at horse shows and competitions are \$5.00.

This proposal amends section 1280.2 to increase the applicable fees from \$5.00 to \$8.00 for each horse entered in public events, competitions, and sales. As amended, this section also specifies the effective date of the fee increase to begin January 1, 2020.

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.

Problem(s) Intended to Address

The Equine Medication Monitoring Program (EMMP) is entirely industry funded and staff predict a deficit of its funding source by the end of the 2018-2019 fiscal year. Authorized by Food and Agricultural Code section 24013.5, the EMMP Advisory Committee at its September 27, 2018¹ meeting voted to increase EMMP testing fees to maintain current program operation and to stabilize the program's reserve account.

Statement of Factual Basis and Rationale

The Animal Health Branch (AHB) is the State's professional veterinary medical unit that protects livestock, consumers, and California's economy from catastrophic animal diseases and other health issues. It addresses diseases and other issues that cannot be successfully controlled on an individual animal or herd basis but require statewide coordinated efforts. The Branch is responsible for deterring any activities that have the potential to compromise California's abundant food supply or the safety of public and animal health.

California is the only state with a state-based industry-funded horse drug testing program that targets sample collections from horses entered in public equine events. The California equine industry sponsored legislation in 1971 to prevent misuse of drugs and medications in horses, ponies, mules and donkeys in public shows, competitions and sales. The intent of the Equine Medication Monitoring Program (EMMP) is to ensure the integrity of public horse shows, competitions and sales through the control of performance and disposition-enhancing drugs, and to allow limited therapeutic use of drugs at an equine event. The EMMP monitors equines in public shows, competitions, and sales through random collection of blood or urine for chemical analysis. The California Equine Medication Rule prohibits use of certain drugs or drug combinations yet accommodates specific legitimate therapeutic use of medications within specified parameters.

California hosts approximately 1,300 registered equine events annually, ranging from small backyard schooling shows to internationally recognized endurance events, as well

as other types of competition and public horse sales, totaling approximately 100,000 horses competing per year. Less than 25 percent of California's 1,300 events are registered with the national governing body, the United States Equestrian Federation (USEF), which enforces drugs and medication rules for nationally sanctioned events. Thus, most of the shows in the State are regulated by the Department's EMMP to ensure compliance with drugs and medication rules.

The EMMP is entirely industry funded. Event managers collect applicable fees from persons entering horses in shows and competitions or consigned to public sales. The event manager remits the fees to the Department of Food and Agriculture (Department), and they are deposited into the Department of Food and Agricultural Fund. The drug-testing fees are exclusive of any other fees charged by the industry for the administration and management of equine events, such as entry fees, stall fees, grounds fees, and training fees.

Event managers, in addition to collecting and remitting fees as discussed above, are required to register (advise and record) the event with the EMMP at least 60 days in advance of the scheduled event. Event managers failing to comply with EMMP regulations are subject to suspension from hosting or managing an event for a period of days for each violation. An event manager who violates a suspension by hosting or managing an event during the suspension period is subject to civil penalties for each violation.

As registered equine events approach, EMMP field personnel receive assignments to randomly select equines competing in or consigned to a registered event for sample collection. Any equine on an event premises is subject to random selection for sampling and testing, however at public shows and competitions, selection often focuses on animals that have placed in a class. EMMP field personnel are trained to collect urine samples, however when a California-licensed veterinarian is assigned to work with EMMP field staff, selected equines are subject to collection of a blood sample.

Equine Medication Monitoring Program personnel seal collected samples and submit the samples for chemical analysis to the Kenneth L. Maddy Equine Analytical Chemistry Laboratory. When the chemical analysis of a blood or urine specimen is positive for detection of a drug or medicine, an EMMP investigation begins. The owner/exhibitor/trainer or consignor of the equine with a sample found positive on chemical analysis will receive an initial EMMP investigatory letter requesting submission, within a designated timeframe, of relevant evidence or information about the detected substance. The EMMP considers submitted information in determining if a violation occurred. If it is determined that a violation of the rule has occurred, a notice of violation

will be issued in addition to a notification of their right to appeal. The assessment of the penalty/fine considers the type of drug detected and the background information provided in the investigation.

The EMMP has an advisory committee of members representing a broad range of equine disciplines regulated by the EMMP. Each California equine industry organization can nominate one representative and one alternate to the advisory committee. The advisory committee is responsible for addressing industry-related concerns about the EMMP and holds a minimum of one public meeting each year to review staffing and resources, and discuss various issues relating to the equine industry.

At the September 27, 2017 EMMP Advisory Committee meeting², committee members reviewed budget projections and determined the need for a \$3.00 increase in the testing fees. The fee increase is intended to maintain current program operations, but equally important to stabilize the program reserve account. Unfortunately, the Department rejected a proposed regulation change to increase the testing fees by \$3 until the program's reserve account decreased to a one-year operating expense level of approximately \$900,000. At that time, the estimated EMMP financial reserve was approximately \$1.1 million, and therefore a fee increase was rejected.

At the September 27, 2018 EMMP Advisory Committee meeting¹, committee members reviewed budget projections and again determined the need for a \$3 testing fee increase. At that time, the program's reserve account was projected to be below the one-year operating expense level of approximately \$900,000 by the end of the 2018/2019 fiscal year. Because projections revealed a significant drop in the program's reserve over the next three years, the EMMP Veterinarian Specialist overseeing the program presented to the committee a proposal for a two-tier increase in the testing fees where the fee would increase to \$8 in 2020 and then increase to \$10 in 2023. The committee discussed other group testing fees such as the USEF drugs and medication group testing fee which is currently \$15³. However, after discussing all options, the committee agreed only to the \$8 testing fee in 2020 and requested a yearly re-evaluation of the revenues and expenditures to determine future program needs. The committee members in attendance voted unanimously to recommend a \$3.00 fee increase, and that it should take effect January 1, 2020.

Therefore, based upon the recommendation of the EMMP Advisory Committee, the Department is proposing a \$3.00 increase to testing fees as stated in section 1280.2 of Chapter 6, Division 2 of Title 3, of the California Code of Regulations to read as follows:

Section 1280.2. Testing Fees.

Beginning January 1, ~~2005~~ 2020, the applicable fee is ~~\$58.00~~ per horse entered per event, except where a horse is entered in simultaneous multiple events held as single performances, the total applicable fee per horse shall be ~~\$58.00~~.

Note: Authority cited: Sections 407, 24012 and 24013, Food and Agricultural Code.
Reference: Sections 24012, Food and Agricultural Code.

In fiscal year 2017/18, there were 1,246 events registered with the EMMP. The annual program goal is to assign staff to sample horses for drug-testing at about 40% of those events held throughout the State. The program employs one full-time Veterinarian Specialist (\$7,802-\$9,729/month; beginning FY 2017/2018, 50% of salary from the EMMP, 50% from the AHB), one full-time Research Scientist I (\$5,762-\$7,161/month; beginning FY 2017/2018, 50% of salary from the EMMP, 50% from the AHB), one full-time Agriculture Program Supervisor (\$5,508-\$6,836/month), one full-time Management Services Technician (\$3,186-\$3,992/month), and 14 Agricultural Technicians (\$14.53-\$17.34/hour), as needed each year. The frequency of equine events varies throughout the year, with a higher number scheduled in the warmer, drier months, and usually on weekends.

To demonstrate the EMMP budgetary shortfall over the next three years, the Department prepared a fund condition statement (example #1 in the rulemaking file)⁴. The results showed that the reserve account would steadily decrease from \$937,314 in 2017 to (\$816,993) by July 2022. With the fee increased to \$8.00, the program reserve account is projected at (\$56,562) by July 2022 (example #2 in the rulemaking file)⁵ however program staff anticipate another fee increase in 2021 upon the approval of the EMMP Advisory Committee to raise the program's reserve account to an acceptable level.

The EMMP receives no revenue from the General Fund and must rely almost entirely on the drug-testing fee for funding. The EMMP budget provides annual funding for the program, but it is crucial that the program maintains a satisfactory reserve account to sustain the program should an unexpected event take place that would prohibit horse shows on a large scale such as an emergency disease outbreak, natural disaster, or other catastrophic occurrences. For example, a major earthquake or fire in the San Francisco Bay Area or Southern California would result in the cancellation of events for an extended period. This could easily result in a significant, or no program revenues for a period of several months to a year. Additionally, the potential for litigation and legal costs exists and is a major consideration that prompts the retention of an adequate program reserve. The proposed \$3.00 increase in the drug-testing fee is imperative to maintain and administer the continuity of service provided by the EMMP to the equine industry.

TECHNICAL, THEORETICAL, AND EMPIRICAL STUDY, REPORT, OR SIMILAR DOCUMENT

1. Minutes from the September 27, 2018 Equine Medication Monitoring Program Advisory Committee Meeting
2. Minutes from the September 27, 2017 Equine Medication Monitoring Program Advisory Committee Meeting
3. United States Equestrian Federation, 2018 USEF Guidelines & Rules for Drugs and Medications.
https://www.usef.org/forms-pubs/2Zp2C_YKs4s/drugs-medications-guidelines
4. Example #1 - Fund Condition Statement W/O Fee Increase
5. Example #2 - Fund Condition Statement W/ Fee Increase
6. Excerpts from the American Horse Council Foundation, Economic Impact of the Horse Industry in California, 2018
7. Brochure dated January 2019, Equine Medication Monitoring Program, Information for Exhibitors and Consignors
8. Brochure dated January 2019, Equine Medication Monitoring Program, Event Registration Instructions and Guidelines

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF REASONABLE ALTERNATIVES

The alternatives available to the Department of Food and Agriculture (Department) were to seek a fee increase measurably less than the proposed \$3.00, or not seek any fee increase.

- The existing fees specified in section 1280.2 at \$5.00, or any amount measurably less than the proposed \$8.00 will not fund the operation of services provided by the Equine Medication Monitoring Program (EMMP) with an adequate program reserve beyond the Fiscal year 2018-2019.
- The \$3.00 fee increase will ensure the continuity of program service until 2021 with an anticipated additional fee increase the same year.
- The \$3.00 fee increase is necessary to maintain and/or retain the current level of professional staffing that is necessary to administer the EMMP.

Professional staffing is essential to ensure comprehensive drug testing and monitoring services that are state-of-the-art. For example:

A Veterinarian Specialist must have obtained a Doctor of Veterinary Medicine degree, as well as having passed the California State Board of Examinations required for licensure. In addition to specific equine related skills associated with EMMP, they must plan, organize, and coordinate activities in animal health and emergency management. They must be able to perform tests and collect samples from all livestock, interpret laboratory test results, and review completed enforcement cases for appropriate action.

A Research Scientist must possess specific equine related skills associated with the EMMP. They must be able to plan, organize, and carry out equine research studies of limited scientific scope and complexity, serve as a team member on veterinary and livestock health projects and investigations, and act as a technical scientific consultant on more complex issues related to the EMMP.

An Agriculture Program Supervisor and Management Services Technician must possess specific equine related knowledge associated with the EMMP. They must be able to perform a variety of tasks related to agricultural program administration which may include agriculture-related scientific, field, and/or organizational work.

An Agricultural Technician must possess specific equine related skills associated with the EMMP. They must be able to conduct themselves in a professional manner at highly prestigious events, communicate well with the public, be competent at working safely with and among horses, and be able to effectively and efficiently collect, process, and arrange for transport of the collected specimens for laboratory analysis.

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Department would either 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 increase fees to ensure continuity of program services 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.

REASONABLE ALTERNATIVES THE DEPARTMENT HAS IDENTIFIED THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES

The Department of Food and Agriculture has not identified any reasonable alternatives to the proposed action and no adverse impacts to small businesses are expected as a result of this proposed action. This proposal is necessary to increase fees to ensure continuity of program services 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.

BENEFITS OF THIS REGULATORY ACTION

The California equine industry produces goods and services valued at approximately \$8.3 billion and includes approximately 550,000 horses. California horses are mostly used for recreation, the largest sector of the horse industry having nearly 40% of the horse population; sporting which consists of competitions, shows, and racing; and those used for therapeutic purposes. 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 increase fees to ensure continuity of program services which serve to ensure the Department of Food and Agriculture 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.

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY, OR OTHER EVIDENCE OF NO SIGNIFICANT ADVERSE IMPACT ON BUSINESS

No facts, evidence, documents, testimony, or other evidence of any significant adverse economic impact on business have been identified.

RESULTS OF ECONOMIC IMPACT ASSESSMENT

The Department of Food and Agriculture (Department) has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The proposal does

not affect the creation of new businesses or the elimination of existing businesses within the State of California and does not affect the expansion of businesses currently doing business within the State of California. This proposal does not impact multiple industries. This proposal is necessary to increase fees to ensure continuity of program services 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.

DUPLICATION OR CONFLICTS WITH 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.

ECONOMIC IMPACT ASSESSMENT

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; will impact persons required to register with the Department any public horse event and sales held in California, and affect persons choosing to participate in public horse events and sales in accordance with Food and Agricultural Code section 24001, 24012, and 24015. The Department's proposal affects small businesses.

This proposal affects individuals and businesses choosing to participate in equine events and public sales throughout California.

Persons/Businesses affected by this proposal:

- California's equine industry - The California horse industry is valued at approximately 8.3 billion dollars with approximately 550,000 horses in California⁶. California horses are mostly used for recreation, the largest sector of the horse industry having nearly 40% of the horse population; sporting which consists of competitions, shows, and racing; and those used for therapeutic purposes.
- Persons required to register equine events - California hosts approximately 1,300 registered equine events annually, ranging from small backyard schooling (practice) shows to internationally recognized endurance events, as well as other types of competition and public horse sales. This proposal will impact persons required to register with the Department any public horse event and sales held in California in accordance with Food and Agricultural Code sections 24001, 24012, and 24015.
- Persons choosing to participate in equine events - This proposed regulation increases drug testing fees collected by event managers of equine events and public horse sales from persons entering horses in their events. The event manager remits these fees to the Department and they are deposited into the Department of Food and Agricultural Fund. The fees are exclusive of any other fees charged by the industry for the administration and management of equine events. Equine events registered with the Department represent approximately 100,000 horse entries into completions annually. The Department is proposing a fee increase from \$5 to \$8. This proposal will impact persons choosing to participate in public horse shows and sales in accordance with Food and Agricultural Code sections 24001, 24012, and 24015.

Anticipated compliance requirements as a result of this proposal:

There are no new reporting requirements as a result of this proposal. This proposal increases drug testing fees collected from persons choosing to participate in in equine events and competitions, and equine sales held in California. Current testing fees are \$5 per horse at events; this proposal increases those fees collected to \$8. Existing regulations require the use of various application, registration and reporting forms for participants and hosts of public equine events and sales in the State.

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 regulatory proposal increases testing fees collected and remitted by event managers for horses entered at public shows and sales. The Department believes these changes are necessary to adjust the program's funding source to maintain current program operations and to stabilize the program's reserve account.

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.

Economic Impact Assessment Conclusion

The Department has made an initial determination that the proposed regulatory action will have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states by making it more costly to produce goods or services, and that it will not create or eliminate jobs or occupations. The proposal does not affect the creation of new businesses or the elimination of existing businesses within the State of California and does not affect the expansion of businesses currently doing business within the State of California. This proposal does not impact multiple industries. This proposal is necessary to increase fees to secure continuity of program services 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.