



Final Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5 - 70
Regulation title	Health Requirements Governing the Control of Equine Infectious Anemia in Virginia
Action title	Clarifies that testing requirements apply to all horses involved in activities on properties where horses belonging to different owners may come into contact with each other, and eliminates alternate testing requirements for horses assembled for sale or auction in Virginia.
Date this document prepared	June 2, 2010

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

This regulatory action amends the language of the regulation to clarify that testing requirements apply to all horses involved in activities on properties where horses belonging to different owners may come into contact with each other, and eliminates the alternate testing requirements for horses assembled for sale or auction in Virginia. The action also provides clarification to more precisely define the 12-month period for which a negative test report is valid.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On May 20, 2010, the Board of Agriculture and Consumer Services granted approval to the Department of Agriculture and Consumer Services to file 2 VAC 5-70, Health Requirements Governing the Control of Equine Infectious Anemia in Virginia, as a final regulation.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 3.2-6002 of the Code of Virginia authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary to prevent, control or eradicate infectious or contagious diseases in livestock and poultry in Virginia.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The current regulation establishes requirements for the control of Equine Infectious Anemia (EIA) in Virginia. EIA is a contagious and infectious disease of horses, ponies, jackasses, mules and other animals of the genus Equus. This regulation requires the testing of equine animals that are to be imported into the state and those that are to be assembled for sale, auction and other purposes.

Additionally, the current regulation authorizes the State Veterinarian to allow, as an alternative or option, the testing of horses at the market or auction where equines are sold rather than requiring the test before the animals are transported to market.

The purpose of this regulatory action is three-fold. First, the language requiring EIA testing clarifies that the testing requirements apply to any activity on properties where horses belonging to different owners may come into contact with each other, such as in state parks. This change is necessary to make it clear that horses that come into contact with horses owned by others must have the required testing to further control the spread of EIA. Second, the amended language more precisely defines the 12-month period for which a negative test report is valid. Third, Section 2 VAC 5-70-30, which addresses alternate testing requirements, will be eliminated as such alternate testing requirements are ineffective in controlling the spread of EIA.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The amendments are as follows: (1) clarifies that the EIA testing requirements identified in Section 2 VAC 5-70-20 apply to activities on properties where horses belonging to different owners may come into contact with each other, such as in state parks; (2) more precisely defines the 12-month period for which a negative test is valid; and (3) repeals Section 2 VAC 5-70-30 that provides the authority for the State Veterinarian to allow the EIA (Coggins AGID) test to be made at market or auction.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*
 3) *other pertinent matters of interest to the regulated community, government officials, and the public.*
If there are no disadvantages to the public or the Commonwealth, please indicate.

The predominant issue associated with this regulatory action is the control of Equine Infectious Anemia in animals of the genus Equus. The current regulation has been in effect since 1985 and has been effective in controlling the spread of EIA. However, instances have arisen where individuals who gather with their horses for the purpose of riding activities, such as in state parks, have argued that the testing requirements do not apply to them. Amended language in Section 2 VAC 5-70-20 clarifies that the regulation also applies to such activities, providing greater protection to Virginia’s horse industry, but also protecting the horses owned by those individuals who have argued that the testing requirements do not apply to them. Additionally, amended language that more clearly defines the 12-month period for which a negative test is valid removes any confusion over what actually constitutes the valid time period. Previously, individuals could easily be confused about whether the 12-month period began on the sample collection date, the date the sample was delivered to the laboratory, the date the laboratory reported the results, and any number of other dates. Finally, elimination of Section 2 VAC 5-70-30, which dealt with alternate testing requirements, has removed the allowance for alternate testing. The alternate testing identified by this section was ineffective in controlling the spread of EIA.

The advantage of these changes is much greater control of the spread of EIA within horse populations in Virginia. This advantage applies to anyone owning a horse, whether an individual horse owner, or a large horse operation. The agency does not see any disadvantages of the amended language.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
2 VAC 5-70-20	All horses assembled at a show, fair, race meet, or other such function, <u>or participating in any activity on properties where horses</u>	All horses assembled at a show, fair, race meet, or other such function, <u>or participating in any activity on properties where horses</u> owned by two or more belonging to	The Department of Planning and Budget was confused by the language “horses owned by two or more owners” and

	<p><u>owned by two or more owners may come into contact with each other</u> in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia conducted within 12 months prior to such event <u>or activity</u>.</p>	<p><u>different] owners may come into contact with each other</u> in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia[. <u>The test shall be] conducted [by an approved laboratory on a sample taken by an accredited veterinarian or a State-Federal Regulatory Veterinarian] within [365 days12 months] prior to such event <u>or activity</u>.</u></p>	<p>thought it referred to a single horse owned by multiple owners; the statement was changed to “horses belonging to different owners” to clarify this confusion. Additionally, Under the previous language, confusion sometimes existed as to what constituted the 12-month period; some felt it was based on the sample collection date, while others believed it was the date delivered to the lab or reported from the lab. This amendment defines the 12-month period, or 365 days, as beginning with the date the sample is collected.</p>
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Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
Peter and Jerry	Support for rights! Yes! We support very strongly!	The agency agrees with the commenter’s support for the regulation, although the agency is not certain that the commenter fully understood the regulation.
Smokeless Cigarette	I agree. Thanks for this informative post.	The agency agrees with the commenter’s support for the regulation, although the agency is not certain that the commenter fully understood the regulation.
Sue Wakefield	I agree. Coggins testing should be required for horses exhibited at shows, fairs, or other exhibitions, or coming into contact with horses owned by others in Virginia.	The agency agrees with the commenter’s support for the regulation.
Jacob Robertson	In support of - . . . By passing this regulation, Virginia will become more horse owner friendly to horse owners inside and outside the state. . . . I support this regulation and wish to see it come into effect in the near future.	The agency agrees with the commenter’s support for the regulation, although the agency is not certain that the commenter understands that there is already an EIA regulation in effect in Virginia.

Bette B. Brand Issues Chair Virginia Horse Council	VHC supports proposed regulation change regarding EIA testing. The Virginia Horse Council Board of Directors approved a motion to support the proposed regulation change regarding EIA testing.	The agency agrees with the commenter's support for the regulation.
Wendy W. Mathews, Board of Directors, Virginia Horse Show Association	I am in favor of the proposed change to the current law regarding Coggins tests for equines.	The agency agrees with the commenter's support for the regulation.
Cathette Plumer Virginia Quarter Horse Association	The Virginia Quarter Horse Association supports the updating to the Coggins regulation in the state of Virginia.	The agency agrees with the commenter's support for the regulation.

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
2 VAC 5-70-20	Same	All horses assembled at a show, fair, race meet, or other such function in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia conducted within 12 months prior to such event. The person in charge will ensure that a copy of the official negative test results accompanies each horse in the event, and shall make such reports available for inspection by a representative of the State Veterinarian upon request. The person in charge shall exclude any horse which is not accompanied by a negative test report.	The section is amended to read as follows "All horses assembled at a show, fair, race meet, or other such function, <u>or participating in any activity on properties where horses belonging to different owners may come into contact with each other</u> in Virginia, must be accompanied by a report of an official negative test for equine infectious anemia. <u>The test shall be conducted by an approved laboratory, on a sample taken by an accredited veterinarian or a State-Federal Regulatory Veterinarian within 365 days</u> prior to such event <u>or activity</u> . The person in charge will ensure that a copy of the official negative test results accompanies each horse in the event <u>or activity</u> , and shall make such reports available for inspection by a representative of the State Veterinarian upon request. The person in charge shall exclude any horse which is not accompanied by a negative test report." This language clarifies that other activities, where horses belonging

			<p>to different owners may come into contact with each other, are included in the events requiring a negative equine infectious anemia test. Those activities would include activities such as riding horses in State Parks. Additionally, amended language requires the negative test to be from an approved laboratory, one which is qualified to perform such tests, on a sample taken by an accredited veterinarian or a State/Federal regulatory veterinarian within 365 days prior to the event or activity. The rationale is that any assembly of horses belonging to different owners provides a considerable opportunity for the spread of equine infectious anemia. The consequences are that equine infectious anemia will be much more difficult to control if such requirements are not in place. Additionally, the language defines the time period for which a negative sample is valid, and that the sample must be collected by an accredited or State/Federal regulatory veterinarian to ensure the integrity of the sample and analysis. The new laboratory and veterinarian language is currently standard operating procedure within the horse industry; this language simply puts the standard operating procedure into written format.</p>
2 VAC 5-70-30	None	Identifies alternate testing requirements for horses assembled for sale or auction in Virginia.	This section is being eliminated because it has been determined that such alternate testing requirements are ineffective in controlling the spread of equine infectious anemia.

Enter any other statement here

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods. The amendments are necessary to continue an effective EIA control program in Virginia, and are consistent with, and no more stringent than, federal

requirements. The amendments should have a minimal impact on small businesses in Virginia. Failure to adopt the amendments could easily have a devastating impact on the horse industry in Virginia.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The agency estimates that overall the regulatory action will have a neutral impact on family and family stability across the state. The agency recognizes that lack of adequate animal disease control can have a devastating impact on a farm family that depends on the Commonwealth's protection of its animals in maintaining profitability and economic stability. To the extent that the regulatory changes will provide greater protection for horses on family farms, they will provide greater financial stability for hundreds of families who depend on their horses for income.