



Proposed 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 owned by two or more 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	August 7, 2009

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

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

This regulatory action proposes to amend language to clarify that testing requirements apply to all horses involved in activities on properties where horses owned by two or more owners may come into contact with each other and to eliminate the alternate testing requirements for horses assembled for sale or auction in Virginia.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

AGID – means the agar gel immunodiffusion test, the primary official laboratory test for diagnosis of Equine Infectious Anemia. Also know as the Coggins test.

EIA – means Equine Infectious Anemia

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 number(s), if applicable, and (2) promulgating entity, i.e., the 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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The current regulation establishes requirements for the control of 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 to be imported into the state and for those 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 two-fold. First, the language requiring EIA testing will be clarified to explain that the testing requirements apply to any activity on properties where horses owned by two or more 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, 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 briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Changes being proposed to the current regulation will (1) clarify that the EIA testing requirements identified in 2 VAC 5-70-20 apply to activities on properties where horses owned by two or more owners may come into contact with each other, such as in State Parks; and, (2) remove the authority of the State

Veterinarian in 2 VAC 5-70-30 to allow the EIA (Coggins AGID) test to be made at market or auction, rather than prior to horses being transported to these activities.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The predominant issue associated with the proposed regulatory action is the control of EIA in animals of the genus Equus. The current regulation was established in 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. Adding language to 2 VAC 5-70-20 will clarify that the regulation also applies to such activities; providing greater protection to Virginia’s horse industry and protecting the horses owned by those individuals who have argued that the testing requirements do not apply to them. Additionally, eliminating 2 VAC 5-70-30 that deals with alternate testing requirements will remove the allowance for alternate testing. The alternate testing identified by this section is ineffective in controlling the spread of EIA.

The advantage of these proposed 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 proposed changes.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

Federal regulations prohibit the interstate movement of known EIA positive horses and define the procedures that a federally licensed livestock market must follow if they are going to accept horses of unknown EIA status into the market for sale.

Most state regulations, including Virginia’s, are more restrictive than the federal requirements to prevent infected horses from coming into the state and to minimize the likelihood that a horse will be exposed to EIA while attending a co-mingling event in the state.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

The proposed changes should have no impact on any particular locality.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to **Doug Saunders, Deputy Director, Division of Animal and Food Industry Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 692-0601, FAX (804) 371-2380, or email doug.saunders@vdacs.virginia.gov**. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	The state should not incur any additional costs related to the implementation of the proposed changes.
Projected cost of the <i>new regulations or changes to existing regulations</i> on localities.	Localities should not incur any costs related to the implementation of the proposed changes.
Description of the individuals, businesses or other entities likely to be affected by the <i>new regulations or changes to existing regulations</i>.	Individuals or businesses owning horses within Virginia, whose horses may come into contact with horses owned by others. Individuals or businesses providing accommodations for co-mingled groups of horses will need to document that horse owners using these facilities have valid negative EIA test documentation prior to allowing them to use their facility.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses	The Agency estimates that a maximum of 1500 owners owning 2000 horses will be affected. The agency estimates that 100 or fewer are private

<p>affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Businesses, like horse camps or bed and breakfast establishments that accept horses, will be affected.</p>
<p>All projected costs of the <i>new regulations or changes to existing regulations</i> for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The agency estimates that 2,000 or fewer horses that are currently not already being tested by their owners will need to be tested. Assuming that veterinary practitioners charge \$30.00 for an EIA test, the maximum impact on horse owners in the state will be \$60,000.</p> <p>The costs to individuals operating horse camps and similar businesses should equate to the time needed to check customer horses for valid negative EIA test documentation. The time required should be no more than 1 hour per facility per month. If this labor is valued at \$25.00/ hour the maximum cost should be \$18,000.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The proposed changes to the regulation will enable much greater control over the spread of EIA within horse populations in Virginia. This is of tremendous benefit to Virginia’s horse industry by providing improved safeguards against the spread of this contagious and infectious disease.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

Alternatives to the proposal include the following:

Maintaining the regulation in its current form. This alternative is unacceptable because of individuals who currently believe that the testing requirements for EIA do not apply to them. If such individuals continue to argue that point and refuse to have their horses tested, and if those horses are undetected EIA reactors, they place Virginia’s entire horse industry at risk. Additionally, permitting the alternative testing requirement at market will continue to provide an opportunity for the spread of EIA by infected horses at market and will continue to create unnecessary challenges to the State Veterinarian and staff in performing more time-consuming disease trace-backs when horses at market are identified by the Coggins AGID test as reactors. (Removing the alternative testing requirement is expected to tempt some unscrupulous horse owners to present fraudulent EIA test certificates when they bring their horses to market or auction. The State Veterinarian will continue to refer these fraudulent acts to the local Commonwealth’s Attorney for prosecution.)

Removing all requirements for testing of horses for EIA. This alternative is not acceptable given the considerable economic value of the horses in the state that could be lost should they become infected with the disease.

The agency believes that the proposal is the least burdensome approach in controlling the spread of EIA.

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 proposed changes are necessary to continue an effective EIA control program in Virginia, and are consistent with and no more stringent than federal requirements. The proposed changes should have a minimal impact on small businesses in Virginia. Failure to adopt the proposed changes could easily have a devastating impact on the horse industry in Virginia.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response

No comments were received during the public comment period following the publication of the NOIRA.

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 proposed 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. The proposed regulatory changes will provide greater protection for horses on family farms, therefore, they will provide greater financial stability for hundreds of families who depend on their horses for income.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, rationale, and consequences
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 EIA conducted within 12 months prior to the event.	Adds language to clarify that other activities, where horses owned by two or more owners may come into contact with each other, are included in the events requiring a negative EIA test. Those activities would include activities such as riding horses in State Parks. The rationale is that any assembly of horses owned by two or more owners provides a considerable opportunity for the spread of EIA. The consequences are that equine infectious anemia will be much more difficult to control if such requirements are not in place.
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 EIA.