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Horses' Disease Control  
Equine Infectious Anemia  
7 MAR 1980

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August 29, 1977

To: John Smiley, Department of Agriculture  
From: Sarah Redfield, Assistant Attorney General

This is in response to your oral request for an opinion as to the effect of the enactment of Chapter 409 of the Public Laws of 1977 on the existing Rules and Regulations for the control of Equine Infectious Anemia. The revised statutory provisions alter the requisite procedures concerning equine infectious anemia and would necessitate corresponding changes in the Department's rules as further discussed herein.

DISCUSSION:

Prior to the enactment of Chapter 409, the statutory provision regarding equine infectious anemia read as follows:

"Any horse found by the commissioner, after testing, to be infected with equine infectious anemia (swamp fever) may be freeze branded, or otherwise permanently identified, in a manner prescribed by the commissioner. Upon notification of the results of such test, the owner, custodian or harbinger of any animal found by the commissioner to be infected with equine infectious anemia shall confine, present and restrain such animal for freeze branding or other permanent identification by any duly authorized agent of the commissioner at such time as he may direct.

"Notwithstanding any other provision of law, the owner, harbinger or custodian of any horse freeze branded, or permanently identified, pursuant to this section shall not be indemnified for any loss in value of such animal.

"The term 'horse' as used in this section shall apply to the entire family of equidae." 7  
M.R.S.A. Sec. 1819, as enacted by P.L. 1973,  
c. 74.

Pursuant to this provision and the rule-making authority of Title 7 M.R.S.A. Sec. 1752, the Commissioner enacted implementing regulations effective June 15, 1977. In general, these regulations provided for use of the Coggins test for equine infectious anemia, for confinement and permanent identification of reactors, and for disposal as directed where clinical signs are shown. Specifics are provided as to acceptable test locations, blood sampling, location and transportation of tested animals and the like.

The provisions of Chapter 409 in some respects enact as statute the preexisting regulatory provisions; however, certain procedures such as mandatory permanent external branding without clinical certification are prohibited. The following summarizes the effect on current regulation.\*

The provisions of Rules 2, 5, 6, 7, 9, 11, 13, 14 are not affected by c. 409. Revisions of other rules may be necessary consistent with the following:

(1) Paragraph 1 of this regulation complies with Sec. 1820.5. However, in view of the use of the term "all horses" in the first sentence of Sec. 1820.5, there is no basis for the exemption of dealers provided by the second paragraph. Nevertheless, it appears that the quarantine provision, contemplated by the second sentence of Sec. 1820.5, is available where a test, in addition to the 6-month test, is required by the Commissioner. Such a test might be administered by the provision of the last sentence of current Rule 1.

(3A) The first sentence of this section is consistent with Sec. 1820.2, and the definition of quarantine in Sec. 1820.1.C. The current statute provides no alternative to quarantine as defined; accordingly, a horse must be so quarantined and the second sentence as to boundaries under 200 yards is now inappropriate.

(3B) The statute contemplates that horses be quarantined until certified free from clinical symptoms, not after such certification as provided by this regulation. Also, see comments above.

(4) I assume that equines reacting to "equine infectious anemia" means reacting positively to the Coggins test. If so, this section is no longer correct. Pursuant to Sec. 1820.3 permanent freeze branding

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\* All references are to Title 7 M.R.S.A. Sec. 1820, as enacted by P.L. 1977, c. 409, unless otherwise indicated.

or other external disfigurement is not allowed unless there is clinical confirmation by a veterinarian. You have asked in this regard whether tattooing inside the horse's lip would be permissible under section 1820.3. (See Statement of Fact of H.P. 1138, Committee Amendment to L.D. 1380.) The general rule of statutory construction is that words are to be given their common meaning when possible consistent with the context of the statute. "External" means "outside" or "outward," Webster's New Collegiate Dictionary. It is apparent that the statute meant to preclude outward disfigurement. At the same time, the purpose of this section and Chapters 303 and 305 as a whole is to control livestock disease, see 7 M.R.S.A. Sec. 1753. Within this context, it would appear appropriate for the Commissioner to require "internal" marking such as you suggest in order to facilitate reporting and control of equine infectious anemia, see generally 7 M.R.S.A. Secs. 1752, 1753, 1756, 1801.

(8) Although this provision does not appear inconsistent with P.L. 1977, c. 409, I am curious as to what the requirements are that are imposed by the Commissioner. Are they spelled out in other regulations? If not, they should be indicated here.

(10) Presumably this does not include any permanent identification, see Sec. 1820.3. Also, do these "directions" appear in other regulations? See comments regarding #8.

(12) This provision is not consistent with Sec. 1820.5. which provides no such exemption; see also 1803.

(15) This section is probably consistent with Sec. 1820.4, though it might be preferable to use similar language. Again, however, the statute mandates a negative test and provides no exemption for nursing foals.

(16) To the extent that this regulation requires a negative Coggins test within 12 months from all horses as described in Sec. 1820.4 the regulation remains valid. It is my understanding that the Department currently operates on the basis of proof of a negative test within 12 months and considers this to be "screening." The language of section 1820.4 excepts such a requirement from the general screening prohibition; presumably the prohibition then must be against other more frequent use of the Coggins test. (Of course, the 6-month provision for horses entering Maine remains applicable.)

The above provides a general overview of the effect of P.L. 1977, c. 409 on the current regulations. I will be glad to discuss this and the adoption of revised regulations further.

*Sarah Redfield*

SARAH REDFIELD

Assistant Attorney General