

CGM



DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,120

FILE: B-193812

DATE: May 10, 1979

MATTER OF: State Matching Requirement - Brucellosis
Eradication Program

DIGEST: Since 1967, ^{the} Department of Agriculture has interpreted the annual appropriation provision requiring "minimum matching by any State of at least 40 per centum" as allowing accumulation of all contributions by a State since 1963 to determine if matching requirement for the brucellosis program has been met. For 1979, ^{the} provision was changed to require matching "by the States" on a 60/40 basis. Agriculture believes this change authorizes aggregation of all State contributions since 1963 rather than on State by State basis. Provisions in annual appropriation acts, unless otherwise provided, apply only to that fiscal year and neither language nor legislative history of these provisions support Agriculture's interpretation. However, in view of longstanding practice we will not object to this practice for this year.

[Method of Determining

whether

The Secretary of Agriculture has requested a decision on whether, to comply with the matching requirement imposed on the States by the act making appropriations for Agriculture, Rural Development and Related Agencies programs for fiscal year 1979, Pub. L. No. 95-448, October 11, 1978, 92 Stat. 1073, 1076, the contribution of all States from 1963 to date may be aggregated to determine whether, collectively, the States have contributed 40 percent of the total expenditures for the brucellosis eradication program.]

Beginning in 1967, identical language contained in annual appropriation acts for fiscal years 1963 through 1978 was interpreted as requiring each individual State to have contributed 40 percent of the cost of the program in that State on a cumulative basis over those years. The 1979 appropriation act made a change in the language of prior appropriation acts with regard to determining the required percentage of the States matching share. For the reasons discussed below, we agree that the effect of the new language is to authorize an aggregation of the contributions of all of the States for the years 1963 to 1979 inclusive in determining whether the requirement for State matching has been met.

Section 11 of the Act of May 29, 1884, as amended, 21 U.S.C. § 114a (1976), authorizes the Secretary of Agriculture, either independently or in cooperation with, among others, the States, to control and eradicate any communicable disease of livestock or poultry, including brucellosis. Pursuant to this authorizing legislation, the Animal and Plant Health Inspection Service of

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the Department of Agriculture participates with the States in a cooperative program to eradicate brucellosis. For fiscal years 1963 to 1978, Congress appropriated funds for the Department to engage in this program with the following limitation in the appropriation acts;

"Provided further, That no funds shall be used to formulate or administer brucellosis eradication programs for the current fiscal year that does not require a minimum matching by any State of at least 40 per centum." [Emphasis supplied]. See, e.g., Pub. L. No. 95-97, August 12, 1977, 91 Stat. 810.

The purpose of the matching funds provision was to accelerate the effort of States that were not contributing enough to the brucellosis eradication program. S. Rept. No. 1407, 86th Cong., 2d Sess., 4 (1960).

In his submission, the Secretary of Agriculture explains that in each State, the cooperative eradication program is a multi-year operation designed to continue until the disease is eradicated. The program's progress in one year directly affects its progress in subsequent years. Further, the disease is highly infectious, and its existence in one State is a threat to other States. Some States, including those with the greatest brucellosis problem, had contributed in early years of the program more than 40 percent of the program cost but were not able to continue 40 percent funding of accelerated programs in later years.

Initially, each State was required to provide its 40 percent matching share on the basis of the cost of the program in that State for each fiscal year. The Secretary states that in 1966 and 1967, several members of Congress initiated an exchange of letters regarding the method the Department should use to compute the matching requirement. In 1967, after a program and legal review, the Department agreed with the Congressmen's recommendations and began to compute the 60/40 cost sharing requirement on a cumulative basis for each State, beginning with fiscal year 1963 (the year the matching provision first became effective). Determining cost on a cumulative basis meant that the Department would consider each State's contributions from 1963 on. If a State had contributed in the aggregate from 1963 to the current fiscal year at least 40 percent of the cost of the brucellosis eradication program in that State, the matching requirement was considered satisfied.

Congress changed the language it had used in the proviso for fiscal years 1963 through 1978 in the appropriation act for 1979, supra, 92 Stat. at 1076, to read;

"Provided further, That no funds shall be used to formulate or administer a brucellosis eradication program for the current fiscal year that does not require minimum matching by the States of at least 40 per centum." (Emphasis supplied.)

The change in the language of the proviso from "by any State" to "by the States" was explained by the House Committee on Appropriations as follows:

"3. Animal and Plant Health Inspection Service. Language has been carried in the annual appropriation bill for a number of years to require that States provide funds for matching--not otherwise required by law--of at least 40 percent of the cost of the brucellosis eradication program. This provision assures more effective program operations through State cost-sharing, with resulting savings to the Federal budget. The usual language has been slightly modified this year to allow accelerated Federal effort in selected States without being delayed by waiting for State funding to catch up." H. R. Rep. No. 95-1290; 95th Cong., 2d Sess. 108 (1978).

The Secretary of Agriculture contends that the only purpose of the change is to require that the contributions of all States from 1963 to date be aggregated to determine whether collectively they have contributed at least 40 percent of the cost of the total eradication program. This means that as long as the 40 percent matching requirement is met by the States collectively, a State that contributed less than 40 percent, or even nothing at all in any given year could receive funding from the Department of Agriculture for its brucellosis eradication program.

The matching requirement has been contained in the Department's annual appropriation act which normally applies only to a single year's funds. There is no statutory provision which specifically authorizes cumulation or aggregation of the State's prior years contributions. In addition, the legislative history of the original appropriations act containing the first matching proviso does not indicate an intent to authorize aggregation of a State's contribution nor has the Department made us aware, formally or informally, of any significant legislative history (such as committee reports) in later years in which this practice is discussed and approved.

Nevertheless, the Department of Agriculture has been computing the States' contributions in this manner since 1967. As the Secretary points out, an established rule of statutory construction is that in determining the meaning of statutory language, great deference is to

be given to the consistent interpretation thereof by those individuals responsible for the administration of the statute in question. See, e.g., Udall v. Tallman 380 U.S. 1, 16 (1965). Further, according to the Secretary, since 1967, the Department of Agriculture has regularly informed Congress of its policy of cumulating matching funds under the proviso in the appropriation acts, and no objection was made.

The Department of Agriculture now proposes to continue its practice of cumulating matching funds from the inception of the program in 1963 to date except that it feels that it can now aggregate all State contributions as a result of the 1979 language instead of cumulating them on a State by State basis.

We have some difficulty with Agriculture's position. We agree with its view that the change in language in the 1979 appropriation act was intended to permit the Secretary to lump the contributions of all States together (rather than viewing each State's contribution separately) to meet the forty percent matching requirement. This view can be supported by the language and legislative history of that provision. However, nothing in the act or its history specifically indicates that this totaling of all State contributions is to include anything but contributions made in 1979.

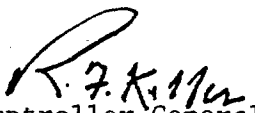
There is nothing in the language of the provision which was used for fiscal years 1963 to 1978 inclusive, or in the 1979 provision which authorizes aggregating matching funds over the entire period that the program has been in operation. Further, insofar as we are aware, there is nothing in the committee reports or other cognizable legislative history which indicates an intent that this be done. Although specific committees may have been aware of the practice, there is no evidence in the legislative history that the Congress as a whole was aware that, as a result of the Administration's interpretation, some States were not being required to meet the 40 percent matching requirement for each year that the program was in effect.

Again, we feel that the intent of the modified appropriation language for FY-1979, as expressed in House Report 95-1290, June 13, 1978, "to allow accelerated Federal effort in selected States without waiting for State funding to catch up", is satisfied by aggregating all State contributions for the fiscal year in question instead of requiring each State to supply a full 40 percent of its own program costs in a year when State funds for this purpose may be in short supply.

On the other hand, we recognize that the literal interpretation we are suggesting should be followed, in the absence of evidence of a contrary congressional intent, does not take into account the contributions, over and above the required matching share, which various

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States may have made in prior years. Under the proposed interpretation and viewing the eradication program as a continuing, multi-year project it cannot be said that the Federal Government has or will be obliged to assume more than its statutorily limited share of the total costs of the program. For these reasons, and in view of the long-standing administrative practice of aggregating costs and contributions, we will not object to the Secretary's proposed interpretation for fiscal year 1979. However, we urge the Department to seek congressional clarification of the scope of the matching requirement for application in future years.


Deputy Comptroller General
of the United States