Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 71

[Docket No. 00–094–1]

RIN 0579–AB84

Interstate Movement of Sheep and Goats; Approved Livestock Facilities, Identification and Recordkeeping Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the interstate movement of animals to require livestock facilities that handle sheep or goats in interstate commerce to be approved by us. This would include stockyards, livestock markets, buying stations, concentration points, or any other premises where sheep or goats in interstate commerce are assembled. Our approval would be contingent on the facility operator meeting certain minimum standards and other conditions relating to the receipt, handling, and release of sheep and goats at the facility, as well as complying with certain animal identification and recordkeeping requirements. The proposed standards and other conditions would be based, in part, on recently implemented regulations relating to the interstate movement of sheep and goats in order to control the spread of scrapie, a serious disease of sheep and goats. This proposed rule would provide for the establishment of standards for the approval of livestock facilities that handle sheep or goats in interstate commerce.

DATES: We will consider all comments that we receive on or before October 25, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 00–094–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–094–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–094–1'' on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 43, Riverdale, MD 20737–1235; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), regulates the interstate movement of certain animals (including poultry) and animal products to prevent the spread of livestock and poultry diseases within the United States. The regulations are contained in 9 CFR chapter I, subchapter C, parts 70 through 89. The regulations in part 71 contain general provisions covering the interstate transportation of animals and animal products. The regulations in part 71 also provide the standards and other requirements that livestock facilities, including stockyards, livestock markets, buying stations, concentration points, or any other premises where livestock in interstate commerce are assembled, must follow in order to be approved by APHIS. The approval of facilities by APHIS is intended to ensure that such facilities are constructed and operated in a manner that will help prevent the interstate transmission of livestock diseases. Such facilities are subject to State or Federal veterinary supervision. We presently require the approval of livestock facilities that handle horses, cattle, bison, or swine in interstate commerce.

The regulations in part 79 contain certain restrictions and other requirements regarding the interstate movement of sheep and goats in order to control the spread of scrapie within the United States. Scrapie is a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats. It is a member of a class of diseases called transmissible spongiform encephalopathies. Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease. APHIS also administers the Scrapie Flock Certification Program (SFCP), described at 9 CFR part 54, and produces a program standards document entitled ''Program Standards—Voluntary Scrapie Flock Certification Program,'' which is available on the Internet at *http://www.aphis.usda.gov/vs/scrapie/umr*. A copy of the program standards also may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

On August 21, 2001, we published in the **Federal Register** (66 FR 43964–44003, Docket No. 97–093–5) a final rule amending part 79 by providing additional restrictions for the interstate movement of sheep and goats. We also added new requirements with regard to the identification, recordkeeping, and health status of sheep and goats in order to provide a more effective national program for surveillance of scrapie and for the tracing of animals affected with scrapie. In our August 2001 final rule,

we also amended part 54 by reinstating a scrapie indemnification program for sheep and goats. The recent changes to parts 54 and 79 were designed, in part, to provide a national standard for the control and eradication of scrapie. These changes also reflect our commitment to eliminating scrapie from the United States.

For the scrapie eradication program to be effective, it is imperative that the identification, recordkeeping, and other requirements in part 79 be carried out at livestock facilities that handle sheep and goats in interstate commerce. The regulations in part 79 do contain requirements relating to identification, recordkeeping, and handling of sheep and goats that must be followed by approved livestock markets. However, at this time, the regulations in part 71 do not provide for the approval of facilities that handle sheep and goats as they do for facilities that handle cattle and bison, swine, and horses. Therefore, it is imperative that an approval process be added to our regulations to ensure that certain uniform practices relating to identification, recordkeeping, and handling of sheep or goats be followed at these facilities in order to help minimize the risk of the spread of scrapie.

Therefore, we are proposing to amend the regulations in part 71 by requiring that livestock facilities handling sheep or goats in interstate commerce would have to be approved by APHIS and be subject to State or Federal veterinary supervision. Providing such approval would be contingent on the facility agreeing to comply with certain standards and conditions, which we would add to § 71.20 of the regulations.

Changes to Part 71

The regulations in § 71.20(a) contain an agreement that sets out the requirements that livestock facilities handling certain classes of livestock in interstate commerce, *i.e.*, cattle and bison, swine, and horses, must agree to follow in order to be designated as an approved livestock facility. (We note that, although sheep are included in the definition of livestock in § 71.1, the agreement in § 71.20(a) contains no sheep-related provisions.) In that agreement, paragraphs (a)(1) through (a)(13) provide certain general requirements relating to oversight, recordkeeping, animal identification, cleaning and disinfection, and facility and equipment standards. These requirements include:

- Providing the State animal health official and the APHIS area veterinarian in charge a schedule of the facility's sale days that indicates the types of animals that will be handled at the facility on each sale day;
- Ensuring that an accredited veterinarian, State representative, or APHIS representative is on the facility premises on sale days to perform duties in accordance with State and Federal regulations;
- Allowing State representatives and APHIS representatives access to the facility during normal business hours to evaluate whether the facility and its operations are in compliance with applicable regulations;
- Providing immediate notification to an APHIS representative, a State representative, or an accredited veterinarian of any livestock at the facility that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease;
- Placing reactor, suspect, or exposed livestock in quarantined pens apart from all other livestock while such animals are at the facility;
- Prohibiting the sale of any reactor, suspect, or exposed livestock, and any livestock that show signs of being infected with any communicable disease, except when authorized by an APHIS representative, State representative, or accredited veterinarian;
- Maintaining documents such as weight tickets, sales slips, and records of origin, identification, and destination relating to livestock handled by the facility for a period of 5 years. Such documentation is subject to review by APHIS representatives and State representatives;
- Ensuring that all livestock are officially identified in accordance with the applicable regulations;
- Maintaining the facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance, and other associated equipment, in a clean and sanitary condition in accordance with the regulations. The facility also must maintain an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection;
- Maintaining the facility and equipment in good repair. The facility must provide well-constructed and well-lighted livestock handling chutes, pens, alleys, and sales rings for the inspection, identification, vaccination, testing, and branding of livestock. Electrical outlets also must be provided at the chute area for branding purposes; and
- Ensuring that quarantined pens are clearly marked as such and are cleaned and disinfected in accordance with the regulations in part 71 before being used to pen livestock that are not reactor, suspect, or exposed animals. The quarantined pens also must have adequate drainage, and the floors and other parts of the quarantined pens with which reactor, suspect, or exposed livestock, or their excrement or discharges, may have contact must be constructed of materials that are substantially impervious to moisture and able to withstand continuing cleaning and disinfection.

We propose to amend the agreement in § 71.20(a) so that livestock facilities handling sheep or goats in interstate commerce also would be specified as being subject to the general standards just discussed.

In the agreement in § 71.20, paragraphs (a)(14), (a)(15), and (a)(16) provide specific additional handling and identification standards applicable to cattle and bison, swine, and horses, respectively, that approved livestock facilities must comply with to help prevent the spread of certain animal diseases specific to those livestock species. We would amend the agreement in § 71.20(a) to provide specific additional standards applicable to sheep and goats that livestock facilities receiving sheep or goats in interstate commerce would have to follow in order to minimize the risk in the spread of scrapie. A number of additional conditions would be based on requirements appearing in part 79 of the regulations.

This proposed rule would provide for the establishment of standards for the approval of livestock facilities that handle sheep or goats in interstate commerce, and would facilitate our enforcement of existing animal identification and recordkeeping requirements in part 79 of the regulations. A more detailed discussion of the proposed changes to part 71 of the regulations follows.

Definitions

We are proposing to add definitions to § 71.1 of the regulations for the terms *consistent States* and *inconsistent States*. Both of these terms would be used in conjunction with the approval of livestock facilities handling sheep or goats, as discussed below. *Consistent States* would be defined as those States listed as consistent States in 9 CFR 79.1 because they meet certain standards, as provided in part 79, for conducting an active State scrapie program that involves the identification of scrapie in sheep and goats for the purpose of controlling the spread of scrapie. *Inconsistent States* would be defined as those States not included in the list of

consistent States appearing in § 79.1. Inconsistent States would generally include those States that do not consider scrapie a reportable disease or do not require the quarantine of infected flocks or source flocks, or that otherwise do not meet the requirements in 9 CFR 79.6. Section 79.6 sets forth the standards for States to qualify as consistent States. We note that, under the regulations in § 79.1, all 50 States currently hold consistent State status.

We also would amend the definition of *livestock* in § 71.1 of the regulations by adding goats, cervids, and camelids to the current list of animals that includes horses, cattle, bison, sheep, and swine.

Interstate Movement of Diseased Animals

Section 71.3 of the regulations covers the interstate movement of diseased animals and poultry. Paragraph (a) of § 71.3 provides that animals or poultry affected with a communicable disease endemic to the United States cannot be moved interstate except as provided in paragraphs (c), (d), and (e) of that same section. Scrapie is listed among the diseases endemic to the United States in § 71.3(a). Paragraphs (c) and (d) of § 71.3 authorize the interstate movement of certain classes of livestock affected with particular diseases under specific circumstances, while in § 71.3(e), the Administrator is authorized to grant exceptions in specific cases involving individual animals being moved to a designated diagnostic or research facility.

Section 71.3 of the regulations does not provide a specific exception from the general interstate movement prohibition for animals affected with scrapie. However, the scrapie regulations in part 79 do allow for the interstate movement of sheep and goats with scrapie status designations under certain conditions. Since part 79 does authorize the restricted movement of animals with scrapie status designations, we would amend § 71.3 of the regulations and add a new paragraph (c)(5) that would stipulate that sheep and goats designated, with regard to scrapie, as exposed, high-risk, suspect, or scrapie-positive animals, as those terms are defined in part 79 of the regulations, may be moved interstate in accordance with the regulations in part 79.

Approval of Livestock Facilities

The regulations in § 71.20(a) provide the standards and other conditions that livestock facilities handling horses, cattle, bison, or swine in interstate commerce must follow in order to be approved by us. These standards and conditions are intended, in part, to ensure that the facilities are constructed and operated in a manner that will prevent the transmission of livestock diseases in interstate commerce. Some of the standards and conditions provided in § 71.20(a) apply to all approved livestock facilities, while other standards and conditions apply only to those facilities that handle specific classes of livestock.

To be designated as an approved livestock facility, the facility operator must execute a livestock facility agreement that indicates his or her intention to comply with all applicable standards and conditions provided in § 71.20(a). The facility operator also must indicate, by initialing the appropriate paragraphs of the agreement, the class or classes of livestock that will be handled at the facility. Paragraph (b) of § 71.20 sets forth the basis and procedures for APHIS withdrawing or denying approval of a livestock facility.

We would amend § 71.20(a) to require that livestock facilities handling sheep or goats in interstate commerce would now have to be approved by APHIS. APHIS approval would be contingent on the facility meeting certain standards and conditions, as provided in § 71.20(a), that would relate to facility construction, maintenance, and equipment, as well as other requirements relating to the receipt, handling, and release of animals. Facility operators also would be subject to certain identification and recordkeeping requirements relating to sheep and goats handled at the facility.

In broadening the applicability of § 71.20(a) to cover those livestock facilities that handle sheep or goats in interstate commerce, we would amend § 71.20(a) to include those particular animal health-status designations covering sheep and goats affected with scrapie. We also would amend § 71.20(a) by referencing the applicability of the scrapie regulations in part 79, where appropriate.

Paragraph (a)(3) of § 71.20 provides that State representatives and APHIS representatives must be granted access to an approved livestock facility during normal business hours to evaluate whether the facility and its operations are in compliance with the livestock facility agreement, as well as with other applicable provisions in 9 CFR parts 71, 75, 78, and 85. Part 75 contains additional restrictions with regard to the interstate movement of horses, asses, ponies, mules, and zebras with communicable diseases; part 78 contains additional interstate movement restrictions for animals with brucellosis; and part 85 contains additional interstate movement restrictions for animals with pseudorabies.

In broadening the scope of § 71.20 to include the approval of livestock facilities handling sheep and goats, we would amend § 71.20(a)(3) by adding a reference to the scrapie regulations in part 79. With this change, livestock facilities approved to handle sheep or goats under part 71 of the regulations also would be subject to the requirements in part 79, which include movement restrictions, identification and recordkeeping requirements, and other conditions affecting the interstate movement of sheep and goats in order to control the spread of scrapie.

Paragraph (a)(4) of § 71.20 provides that an APHIS representative, a State representative, or an accredited veterinarian shall be immediately notified of the presence at the facility of any livestock that are known to be infected, exposed, or suspect, or that show signs of possibly being infected, with any infectious, contagious, or communicable disease. We are proposing to amend § 71.20(a)(4) to clarify the applicability of this provision to all animal health-status designations involving scrapie. As discussed previously, sheep and goats with scrapie disease classifications are classified as exposed, high-risk, suspect, or scrapie-positive animals in accordance with part 79 of the regulations. The term scrapie-positive would be covered by the term infectious. So, to cover classifications relating to scrapie, we would amend § 71.20(a)(4) by adding the scrapie status designation ''high-risk.''

Paragraph (a)(5) of § 71.20 provides that any reactor, suspect, or exposed livestock shall be held in quarantined pens apart from all other livestock at an approved livestock facility. We require the separation of animals affected with communicable livestock diseases as a further safeguard against the spread of such diseases. To emphasize the applicability of the quarantine requirements in § 71.20(a)(5) to animals subject to scrapie, we would amend § 71.20(a)(5) and add references to ''high-risk'' and ''scrapie-positive'' alongside the existing animal health-status designations of reactor, suspect, or exposed livestock. We would qualify this change, however, by noting that the quarantine requirements would not apply to those sheep or goats designated as scrapie-exposed or high risk animals that will be moved directly to slaughter in accordance with parts 71 and 79. We would provide this exception since these particular slaughter animals

would pose a negligible risk for the spread of scrapie.

Paragraph (a)(6) of § 71.20 provides that no reactor, suspect, or exposed livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at an approved livestock facility, except as authorized by an APHIS representative, State representative, or an accredited veterinarian. We would make a number of changes to this provision. First, we would expand the coverage of § 71.20(a)(6) to apply not only to the sale of livestock, but also to any other situation in which the animals are moved from the facility. To clarify the regulatory basis for allowing the sale or movement of such animals, we would provide that such sale or movement from the facility must be in accordance with 9 CFR parts 71, 75, 78, 79, or 85. Referring to those specific regulatory authorities would provide additional guidance as to when affected animals could be sold or moved from the facility. Finally, in order to broaden the applicability of § 71.20(a)(6) to cover livestock facilities with sheep or goats, we would add references to the scrapie health-status designations ''high-risk'' and ''scrapie-positive.'' This would mean that sheep and goats designated as suspect, exposed, high-risk, or scrapie-positive animals could not be sold at or moved from an approved livestock facility except in accordance with 9 CFR parts 71 and 79.

Paragraph (a)(7) of § 71.20 provides that documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years. APHIS representatives and State representatives must be permitted to review and copy those documents during normal business hours. We would amend § 71.20(a)(7) to require that facilities must maintain documents relating to sheep or goats for a period of 5 years. These documents are used to trace a positive animal back to its flock of origin, so the additional 3 years are necessary because the incubation period for scrapie is between 2 and 5 years.

Paragraph (a)(8) of § 71.20 provides that all livestock must be officially identified in accordance with the applicable regulations in 9 CFR parts 71, 75, 78, and 85 at the time of, or prior to, entry into an approved livestock facility. As noted previously, parts 75, 78, and 85 include requirements not covered in the general provisions of part 71 of the regulations with regard to the interstate movement of particular classes of livestock that are affected with certain communicable livestock diseases. Identification and recordkeeping requirements relating to the interstate movement of sheep and goats are provided in part 79. Therefore, to enlarge the scope of part 71 to cover approved livestock facilities handling sheep or goats, we would amend § 71.20(a)(8) by adding a reference to part 79 so that operators of approved livestock facilities handling sheep or goats in interstate commerce would be subject to the identification and recordkeeping requirements found in part 79 of the regulations.

Paragraph (a)(11) of § 71.20 provides that quarantined pens at approved livestock facilities must be clearly labeled with paint or placarded with the word ''Quarantined'' or the name of the disease of concern, and must be cleaned and disinfected in accordance with the regulations in part 71 before the pens may be used to hold livestock that are not reactor, suspect, or exposed animals. In order for this provision to be applicable to facilities handling sheep or goats affected with scrapie, we would amend § 71.20(a)(11) and insert references to the animal health-status designations ''high-risk'' and ''scrapie-positive'' alongside the existing designations of reactor, suspect, and exposed. In addition, because the regulations in 9 CFR part 54, ''Control of Scrapie,'' contain specific cleaning and disinfection procedures related to scrapie, we would also amend paragraph (a)(11) so that it specifies that quarantined pens used to hold animals affected with scrapie would have to be cleaned and disinfected in accordance with 9 CFR 54.7(e)(2), which contains specific procedures on the cleaning and disinfection of non-earth surfaces of premises used to hold animals affected with scrapie.

Paragraph (a)(12) of § 71.20 provides that quarantined pens shall have adequate drainage, and the floors and those parts of the walls of the quarantined pens with which reactor, or suspect, or exposed livestock, or their excrement or discharges, may have contact shall be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection. Similar to changes proposed elsewhere in part 71 of the regulations, we would amend § 71.20(a)(12) by adding references to the animal health-status designations of ''high-risk'' and ''scrapie-positive'' alongside the references to reactor, suspect, or exposed livestock in order to cover sheep and goats affected with scrapie.

Paragraphs (a)(14) through (a)(16) of § 71.20 provide additional standards that operators of approved livestock facilities must follow in order for their facility to handle particular classes of livestock, i.e., cattle and bison, swine, and horses. We are proposing to add a new paragraph (a)(17) that would list additional standards and conditions that operators of approved livestock facilities handling sheep or goats in interstate commerce would have to follow in order for their facility to handle sheep or goats in interstate commerce. To add this paragraph at § 71.20(a)(17), we would redesignate existing paragraphs (a)(17) through (a)(20) as paragraphs (a)(18) through (a)(21).

Under proposed § 71.20(a)(17), the facility operator would have to indicate in the livestock facility agreement whether the facility would be handling sheep or goats; and if so, whether those animals would be breeding or slaughter animals. The operator also would have to indicate in the agreement whether the facility would be receiving sheep or goats classified as scrapie-positive, exposed, high-risk, or suspect animals; and if so, whether those particular animals are breeding animals or for slaughter only.

Under proposed § 71.20(a)(17) of the regulations, operators of livestock facilities handling sheep or goats in interstate commerce also would have to adhere to the following operating practices:

- The facility would have to receive, handle, and release sheep and goats in accordance with parts 71 and 79 of the regulations;
- The facility operator would have to officially identify all sheep and goats handled at the facility, including whether the animals are from consistent or inconsistent States, and maintain relevant records pertaining to those animals in accordance with part 79 of the regulations;
- Breeding and slaughter animals would have to remain separated at all times while at the facility, so that no contact will occur;
- Any breeding sheep or goats that are designated, with regard to scrapie, as exposed, high-risk, suspect, or scrapie-positive animals, or any slaughter sheep or goats that are designated as scrapie-positive or suspect animals, would have to be held in quarantined pens while at the facility;
- Any sheep or goats that are designated as scrapie-exposed or high-risk animals could be consigned from the facility only in accordance with part 79 of the regulations; and
- Any sheep or goats that are designated as scrapie-positive or suspect

animals would have to be reported immediately by the facility operator to a State representative, an APHIS representative, or an accredited veterinarian. Such animals could be released or consigned from the facility only if accompanied by a permit issued by a State representative, an APHIS representative, or an accredited veterinarian, allowing movement of the animals to an approved disposal site or research facility in accordance with parts 71 and 79 of the regulations.

Miscellaneous Changes

We would make miscellaneous nonsubstantive changes in § 71.1 to the definitions of *accredited veterinarian, area veterinarian in charge, interstate commerce, State, State animal health official,* and *State representative,* to be consistent with how these terms appear elsewhere in the regulations, as well as to be consistent with the Government Printing Office Style Manual.

We also would amend § 71.6(a) to include a specific reference to goats among the listed animals subject to this provision on cleaning and disinfecting of conveyances used in the interstate transportation of affected with or infected with a livestock or poultry disease.

The proposed addition of paragraph (a)(17) to § 71.20 would require several nonsubstantive changes in § 71.20 to include a reference to that paragraph or to update references to other paragraphs that would be redesignated as a result of the addition of paragraph (a)(17). We also would amend § 71.20(a)(18) to refer to part 79 in addition to parts 71, 75, 78, and 85.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule, which is set out below. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

We do not have enough data for a comprehensive analysis of the economic effects of this proposed rule on small entities. Therefore, in accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis for this proposed rule. We are inviting comments about this proposed rule as it relates to small entities. In particular, we are interested in determining the number and kind of small entities who may incur benefits or costs from implementation of this proposed rule and the economic effect of those benefits or costs. Based on the information we have, there is no basis to conclude that this rule will result in any significant economic effect on a substantial number of small entities.

Under the Animal Health Protection Act (7 U.S.C. 8301–8317), USDA is authorized to conduct programs for the control of communicable animal diseases and to regulate the interstate movement of animals that may spread disease. The regulations are contained in 9 CFR chapter I, subchapter C, parts 70 through 89. The regulations in part 71 (referred to below as the regulations) contain general provisions covering the interstate transportation of animals and animal products. The regulations also set forth requirements that livestock facilities handling certain classes of livestock in interstate commerce, including cattle and bison, swine, and horses, must follow in order to be designated by us as approved livestock facilities.

This proposed rule would establish a means for APHIS approval of livestock facilities that handle sheep or goats in interstate commerce. The conditions for approval would be based, in part, on recently implemented regulations relating to the interstate movement of sheep and goats in order to control the spread of scrapie.

To be designated as an approved livestock facility for handling sheep or goats, the facility would have to enter into an agreement in which it agrees to follow certain identification, recordkeeping, and handling practices with respect to animals under its control in accordance with 9 CFR parts 71 and 79. Any reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock would have to be held in quarantined pens apart from all other livestock at the facility. The quarantined pens holding such animals would have to be clearly marked, and would have to be cleaned and disinfected before being used by other animals not affected with disease. The quarantined pens also would have to have proper drainage and be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection.

To be approved, such facilities would have to provide access to accredited veterinarians, State representatives, and APHIS representatives, as well as comply with certain notification requirements with respect to livestock known to be infected, exposed, or suspect, or that show signs of being infected with a communicable disease. Such facilities also would have to keep State animal health officials and APHIS informed of upcoming sale days at the facility.

This proposed rule, if implemented, would strengthen scrapie control programs on the national level, reduce the losses that scrapie causes to the sheep and goat industries, and prevent the further spread of scrapie. Proper handling and identification of animals that may be infected with scrapie is essential for an effective scrapie eradication program. States do not have uniform requirements for markets handling sheep and goats in interstate commerce. Therefore, it is imperative that a process for approving livestock facilities that handle sheep or goats in interstate commerce be established to ensure that such livestock facilities follow certain identification, recordkeeping, and handling practices and procedures designed to prevent the spread of scrapie and other communicable diseases.

The primary alternative to the proposed rule would be to make no changes at all to the existing regulations. The regulations in part 79 already include certain requirements to be followed by approved livestock markets with respect to the identification, recordkeeping, and handling of sheep and goats in interstate commerce. However, the regulations in part 71 do not specify the process by which these facilities are to be approved. Therefore, it is imperative that an approval process be added to our regulations.

We considered how we could consolidate or simplify the compliance and reporting requirements contained in this proposal. We believe we accomplish this objective by including the approval standards for sheep and goat facilities in part 71 amongst the existing requirements for approval of livestock facilities handling other classes of livestock. In this way, many of the same requirements for approving sheep and goat facilities would parallel those requirements for approving facilities handling other classes of livestock.

Overview of U.S. Sheep and Goat Industry Operations, Inventory, and Trade

As of January 1, 2004, there were 6.09 million sheep and lambs in the United States, valued at approximately $721 million. This represented a 3 percent decline from the level on January 1, 2003. The above total of 6.09 million sheep and lambs consists of 4.48 million

breeding sheep and lambs and 1.61 million market sheep. There were approximately 64,170 operations that produced sheep and lambs in 2002, which is 1.5 percent less than the previous year.[1]

Sheep are produced in all parts of the United States, although stock levels vary from State to State. Ten States (California, Colorado, Idaho, Iowa, Montana, Oregon, South Dakota, Texas, Utah, and Wyoming) account for nearly 69 percent of the total inventory, mostly in the Mountain, North Central, and South Central States. The northeastern and southeastern States have the smallest sheep populations, accounting only for 5.2 percent of the total.

TABLE 1.—*Sheep and Lambs: Farms and Inventory by Size, 2003*

Number of sheep/lambs per farm	Number of farms with sheep/lambs	Percent of farms (based on total number of farms)	Inventory of sheep and lambs	Percent of sheep and lambs (based on total inventory)
1 to 99	58,909	91.8	1,820,910	29.9
100 to 499	4,299	6.7	1,449,420	23.8
500 to 4,999	898	1.4	2,015,790	33.1
5,000 or more	65	0.1	803,880	13.2
Total	64,170	100	6,090,000	100

Source: USDA/NASS, *Sheep and Goats,* January 2004.

About 92 percent of the producers had fewer than 100 animals each, but these accounted only for about 30 percent of the total inventory of sheep and lambs. On the other hand, large sheep operations with 5,000 sheep or more each represented less than 1 percent of the farms but accounted for about 13 percent of the total inventory. The overall average size of a flock was 95 animals in 2003; therefore, most sheep operations would be classified as small entities with annual sales of $750,000 or less. The average size of a flock on large operations of 5,000 sheep or more was 12,367 animals, while that of small operations was 82 animals. Of the total number of operations, about 60 percent of producers were full owners, about 32 percent were part owners, and 8 percent were tenants.

A total of about 5.65 million sheep and lambs were marketed in 2003. A little over 85 percent of these were lambs and the rest were mature sheep. Marketing includes animals for slaughter market, younger animals shipped to other States for feeding and breeding purposes, and some exports. Approximately 81 percent of sheep and lambs are marketed, involving the crossing of State lines in most cases.[2]

A total of 3.042 million sheep and lambs were slaughtered in 2003, of which 95.2 percent were lambs.[3] Most of the sheep and lambs shipped for immediate slaughter would not be affected by this proposed rule since they would not be handled by a livestock market or other assembly point en route to the slaughter facility.

In 1997 (the latest year for which data are available for all States), there were 57,925 goat operations in the United States, which raised about 1.99 million goats, valued at approximately $74 million, a decline of about 21 percent from the 1992 level. About 40.7 percent were Angora goats, about 7.4 percent were milk goats, and about 52 percent were goats other than Angora or milk goats. The number of Angora goats declined from about 1.8 million in 1992 to about 0.8 million in 1997, as many mohair producers shifted from producing Angora goats to meat type goats because of the repeal of the Wool and Mohair Act in October 1993. The State of Texas accounted for about 64.3 percent of the goat inventory. Other important goat-raising States are Arizona, California, Georgia, New Mexico, North Carolina, Oklahoma, and Tennessee. These States together represented another 14.2 percent of the U.S. goat holdings. Goat holdings vary in size and degree of commercialization, with many producers relying on other sources of income. With an average holding of about 35 goats, most, if not all, goat operations are relatively small, and would be classified as small entities with annual sales of $750,000 or less.

There are currently about 1,300 livestock facilities that handle cattle and calves, swine, or sheep and goats moving in interstate commerce. Of this total, about 126 handle sheep or goats.

The United States produced about 204 million pounds of lamb and mutton in 2003, a decline of about 8 percent from the previous year. Imports of lamb and mutton increased from 162.8 million pounds in 2002 to 170.9 million pounds in 2003, an increase of about 5 percent.

An increasing proportion of domestic demand for lamb and mutton is met by imports. The share of imports in domestic consumption of lamb and mutton increased from about 11 percent in 1991 to about 46.5 percent in 2003. Even with such increased imports both total consumption as well as per capita consumption of lamb declined. Total consumption declined from about 396 million pounds to 367.5 million pounds, a decline of about 7.2 percent. Per capita consumption (based on carcass weight equivalent) of lamb and mutton slightly declined from 1.6 pounds per person in 1991 to 1.1 pounds per person in 2002. This decline in sheep meat consumption is not unique to the United States but is a worldwide phenomenon.

The United States has a limited foreign trade both in live sheep and goats and their products. Both the sources of imports and destinations of exports are concentrated in a few countries. During calendar year 2003, the United States exported 172,726 head of sheep valued at $10.273 million (see table 2). Most exports were to Mexico (170,595 head). Other sheep markets were Ecuador (878 head), Trinidad and Tobago (463 head), Dominican Republic (277 head), Canada (257 head), Netherlands (233 head), Venezuela (15 head) and Japan (8 head). The United States also exported 29,579 goats valued at $1.615 million in 2003. The primary importers were Mexico (25,202 head), China (4,112 head), Canada (133 head), Netherlands (81 head), and Jamaica (33 head) in 2003. Other destinations included Grenada (6 head), Philippines (6 head), and Japan (6 head).

[1] USDA/NASS, *Sheep and Goats*, January 2004.

[2] USDA/NASS, *Meat Animals Production, Disposition, and Income: 2003 Summary,* April 2004.

[3] USDA/NASS, *Livestock Slaughter: 2003 Summary,* March 2004.

TABLE 2.—*Sheep and Goats: Imports and Exports, 2003*

Item	Number of imports	Value of imports (in millions)	Number of exports	Value of exports (in millions)
Sheep	67,778	$7.106	172,726	$10.273
Goats	7,453	0.578	29,579	1.615
Total	75,231	7.684	202,305	11.888

SOURCE: World Trade Atlas, Global Trade Information Services, Inc., U.S. Edition, March 2004.

In 2003, the United States imported 67,778 sheep valued at $7.106 million. All sheep imports in 2003 were from Canada (67,766 head) and Australia (12 head). Additionally, the United States imported 7,453 goats valued at $0.578 million in 2003, of which 5,967 were from Canada and 1,486 were from Australia. In 2003, the United States imported 170.9 million pounds of sheep and goat meat, valued at $353 million and exported 7.4 million pounds of sheep and goat meat valued at $7.9 million. Most lamb and mutton imports came from Australia and New Zealand.

Cost-Benefit Analysis

This proposed rule, if implemented, could result in additional administrative burdens and costs for livestock facilities handling sheep or goats in interstate commerce in order to qualify for and maintain their status as approved livestock facilities.

There are currently 126 facilities that handle sheep and goats moving in interstate commerce. These facilities would have to provide access to accredited veterinarians, State representatives, and APHIS representatives, as well as comply with certain notification requirements with respect to livestock known to be infected, exposed, or suspect, or that show signs of being infected with a communicable disease. Such facilities also would have to keep State animal health officials and APHIS informed of upcoming sale days at the facility. Some of the livestock facilities covered by this rule, if implemented, are already subject to these requirements as approved livestock facilities handling other classes of livestock.

To be approved, such livestock facilities also would have to follow certain identification, recordkeeping, and handling practices with respect to sheep or goats under their control as provided in 9 CFR parts 71 and 79. Documents such as weight tickets, sales slips, and records of origin, identification, and destination relating to livestock at the facility would have to be maintained by the facility for a period of 5 years. Some of these requirements are already provided for elsewhere in the regulations, and thus would not represent a new burden. However, any new paperwork and administrative burdens may result in additional costs to facility operators who find it necessary to adjust their operations to meet the new requirements. We do not expect that this will be a significant issue for most facilities.

The livestock facility and equipment would have to be maintained in a state of good repair. Chutes, pens, alleys, and sales rings would have to be well-constructed and well-lighted for the inspection, identification, vaccination, testing and branding of livestock. Electrical outlets would have to be provided at the chute area for branding purposes. The facility, including all yards, docks, pens, alleys, sale rings, chutes, scales, means of conveyance and their associated equipment would have to be maintained in a clean and sanitary condition. The operator of the facility would be responsible for maintaining an adequate supply of disinfectant and serviceable equipment for cleaning and disinfection. Meeting these standards could entail additional costs for some livestock facilities seeking to qualify as approved livestock facilities. However, we do not expect this to be a significant issue as a number of these conditions represent good business practices that most facilities already follow. In addition, some of these facilities would already be complying with these conditions as approved livestock facilities handling other classes of livestock. So the additional changes in this proposed rule should not have a significant effect on facilities conducting their businesses.

In addition, as a condition of approval, reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock would have to be held in quarantined pens apart from all other livestock at the facility. The quarantined pens in which such animals are held would have to be clearly marked and would have to be cleaned and disinfected before being used to hold other animals not affected with diseases. The quarantined pens also would have to have proper drainage and be constructed of materials that are substantially impervious to moisture and able to withstand continued cleaning and disinfection. The regulations in § 71.20(a)(5) already require that approved livestock facilities hold any reactor, suspect, or exposed livestock in quarantined pens apart from all other livestock at the facility; facilities handling sheep or goats that do not have quarantined pens would likely incur a one time capital investment of about $3,000 to $5,000 to install such a pen. Otherwise, we expect that the number of reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock handled by approved livestock facilities to be very small, and thus quarantining of such animals should not have a significant effect on facility operations or economic activity.

Producers who are engaged in intrastate and interstate marketing also may pay higher consignment fees as approved livestock facilities pass their increased costs of providing services to affected producers. Other costs to producers of this proposed action could result for those animals requiring special handling at approved livestock facilities.

This proposal, if implemented, could result in a small increase in the time that APHIS and State representatives would spend monitoring livestock facilities. In those cases where a facility is already operating as approved livestock facility for other classifications of livestock, and APHIS or State representatives (as opposed to an accredited veterinarian) are already on site, the addition of sheep and goats to the classifications of livestock covered by the agreement is unlikely to substantially increase the workload for those representatives. In those cases where a facility handling sheep and goats is not already an approved livestock facility, APHIS or State representatives are also present in order to monitor compliance with the identification requirements of the scrapie regulations in part 79. Thus, we believe that any additional monitoring responsibilities on the part of State or Federal representatives that may result

from implementation of this proposed rule could be handled by existing staff.

In spite of the potential burdens to facility operators and producers, we believe that the long-term avoided costs of coping with losses associated with scrapie by the U.S. sheep and goat industry far exceed the potential costs of this proposed rule. This includes the avoidance of those veterinary and associated costs for managing scrapie-affected flocks. A recent agency estimate showed that scrapie costs the U.S. sheep industry about $24 million per year in direct losses. This includes an estimated $10 million in lost breeding stock and embryo sales, $10.5 million in disposal costs for offal, and $2.8 million in lost meat sales and of bone meal sales from non-federally inspected plants.

Accelerating the eradication of scrapie in the United States also could facilitate the U.S. sheep and goat industry to once again become competitive both in the domestic and global market, particularly in the export of live sheep and goats. Currently, producers in countries such as Australia and New Zealand have a competitive advantage over U.S. producers, based in part on the absence of scrapie in those countries. The achievement of ''scrapie-free'' status in the United States could neutralize the competitive advantage of such countries.

Since both actual product quality as well as purchaser's perception of quality contribute to continued market acceptance, efforts to eradicate scrapie and secure the health of U.S. sheep and goats will continue to serve the economic interests of the industry and the Nation.

This proposed rule should not affect the interstate flow of sheep and goats. The interstate movement of sheep and goats is important as it reduces interstate price differences faced by consumers of livestock products and it allows movement of sheep and goats from areas of surplus to areas of deficit. A majority of sheep and goats moving across State lines are slaughter animals. Although we do not have specific data, based on our observation of livestock markets and the sheep and goat industry, we believe that most of these slaughter animals move directly to the slaughterhouse and bypass the types of livestock facilities that are the subject of this proposed rule. In addition, the operators of livestock facilities that agree to handle animals affected by scrapie would be most impacted under this proposed rule. However, the number of sheep or goats affected by scrapie and handled by these livestock facilities is likely to be very small. So this proposed rule should not pose a significant burden on operators of livestock facilities or producers so as to reduce interstate commerce or retard economic activity.

Initial Regulatory Flexibility Analysis

Agencies are required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to evaluate the potential economic effects of proposed rules on small entities. We do not have enough information to fully evaluate the potential effect of this proposed rule on small entities. As such, we are inviting comments addressing this issue. In particular, we are interested in determining the number and kinds of small entities that may incur benefits or costs from implementation of this proposed rule, and if there are any special issues relating to the business practices of these small entities that would make them particularly different from larger firms in their ability to comply with this proposed rule. We also are interested whether any other costs may result from implementation of this proposed rule that are not discussed in this analysis. Based on what information we have, we have made some initial conclusions.

The changes in this proposed rule would directly affect livestock facilities that handle sheep or goats in interstate commerce. This would include stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where sheep or goats have been assembled. Producers of sheep or goats also could be affected by the proposed rule if livestock facilities pass their increased costs of providing services to affected producers.

The Small Business Administration (SBA) has established guidelines for determining which types of firms are to be considered small under the Regulatory Flexibility Act. Facilities that handle livestock such as stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where livestock are assembled are considered small if they have 100 or fewer employees. There are currently about 1,300 livestock facilities that handle cattle and calves, swine, or sheep and goats moving in interstate commerce. Of this total, about 126 handle sheep or goats. Of those livestock facilities that handle sheep and goats, only 1 facility may be considered to be large and all other facilities are small entities of 100 employees or less.

Livestock facilities that are considered small entities would have to meet the same standards as other larger firms. This would include following certain identification, recordkeeping, and handling practices with respect to sheep or goats. Some of these requirements are already provided in part 79 of the regulations, and thus would not represent a new burden. In addition, a certain number of these facilities already comply with many of the conditions in this proposed rule in operating as approved livestock facilities for other classes of livestock.

We considered the feasibility of exempting small entities from some or all of the requirements in this proposed rule or establishing differing compliance or reporting requirements that take into account the resources available to small entities. However, one of the aims of an effective national program to control and eradicate scrapie is to establish uniform standards that will be followed by all livestock facilities handling sheep or goats in interstate commerce. Programs relating to disease surveillance and control do not lend themselves to different compliance standards based on the size of the entity subject to regulation. Also, the requirements in part 79 pertaining to identification, recordkeeping, and handling of sheep and goats make no distinction as to the size of producer or other livestock facility handling the animals.

As discussed above, producers who are engaged in intrastate and interstate marketing may be indirectly affected by this proposed rule if they have to pay higher consignment fees as livestock facilities pass their increased costs of providing services. Other costs to producers of this proposed action could result for those animals requiring special handling at approved livestock facilities. An establishment engaged in sheep or goat production is considered small if it has annual sales of less than $750,000. As discussed previously, the vast majority of sheep and goat producers would be considered small entities based on such criteria. Based on our initial analysis, the potential costs to sheep and goat producers considered small entities should not be significant.

In sum, it is reasonable to expect that both small and large entities would benefit from this proposed rule, which would strengthen scrapie control programs resulting in long-term avoided costs of coping with market losses associated with scrapie to the U.S. sheep and goat industry, currently estimated as high as $24 million per year in direct losses to the U.S. sheep industry alone. We expect any costs to operators of livestock facilities or to producers to be more than offset by the added benefits to the industry at large

in providing a more effective scrapie eradication program.

This proposed rule would entail information collection requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The assessment provides a basis for the conclusion that Animal and Plant Health Inspection Service approval of livestock facilities that handle sheep or goats in interstate commerce under the conditions specified in this proposed rule would not have a significant impact on the quality of the human environment.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment are available for public inspection in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this docket). In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–094–1. Please send a copy of your comments to: (1) Docket No. 00–094–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing that livestock facilities that handle sheep or goats in interstate commerce would have to meet certain standards and follow certain operating practices in order to be approved by us. Complying with the proposed standards and other conditions described in this proposed rule would necessitate the use of several information collection activities, including (1) executing a livestock facility agreement that provides the conditions under which the facility must operate in order to be approved by us, (2) notifying an APHIS or State representative or accredited veterinarian concerning the presence of any sick animal at the facility, (3) completing an application for permit in order for the facility to release certain sheep and goats affected with scrapie, and (4) maintaining records relating to the identity of sheep handled at the facility. We note that much of the information that would be requested under the proposed rule is already being recorded by livestock facility owners/operators as part of their routine business practices. In addition, much of the information requested is currently required by our regulations in 9 CFR parts 54, 71, and 79, and is thus already being provided by many of the respondents who would be affected by the proposed regulations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5068226 hours per response.

Respondents: Owners/operators of certain livestock facilities that handle sheep or goats moving interstate, accredited veterinarians, and State animal health authorities.

Estimated annual number of respondents: 1,026.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,026.

Estimated total annual burden on respondents: 520 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 71 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

2. Section 71.1 would be amended by revising the definitions of *Accredited Veterinarian, Area Veterinarian in Charge, interstate commerce, livestock, State, State animal health official, State representative* and by adding, in alphabetical order, new definitions for *consistent States and inconsistent States,* to read as follows:

§ 71.1 Definitions.

* * * * *

Accredited veterinarian. A veterinarian who is approved by the Administrator, in accordance with part 161 of this chapter, to perform official animal health work of the Animal and Plant Health Inspection Service specified in subchapters A, B, C, and D of this chapter; and to perform work required by cooperative State-Federal disease control and eradication programs.

* * * * *

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

Consistent States. Those States listed as consistent States in § 79.1 of this subchapter because they meet certain standards, as provided in § 79.6 of this subchapter, for conducting an active State scrapie program involving the identification of scrapie in sheep and goats for the purpose of controlling the spread of scrapie.

* * * * *

Inconsistent States. Those States not included in the list of consistent States appearing in § 79.1 of this subchapter.

* * * * *

Interstate commerce. Trade, traffic, transportation, or other commerce between a place in a State and any place outside of that State, or between points within a State but through any place outside of that State.

* * * * *

Livestock. Horses, cattle, bison, cervids, camelids, sheep, goats, and swine.

* * * * *

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the District of Columbia, and any territories and possessions of the United States.

State animal health official. The State official responsible for livestock and poultry disease control and eradication programs.

State representative. An individual employed in animal health work by a State or a political subdivision thereof and authorized by such State or political subdivision to perform the function involved.

* * * * *

3. Section 71.3 would be amended by adding a new paragraph (c)(5) to read as follows:

§ 71.3 Interstate movement of diseased animals and poultry generally prohibited.

* * * * *

(c) * * *

(5) Sheep or goats designated, with regard to scrapie, as exposed animals, high-risk animals, suspect animals, or scrapie-positive animals, as those terms are defined in part 79 of this chapter, may be moved interstate only in accordance with part 79 of this chapter.

* * * * *

§ 71.6 [Amended]

4. In § 71.6, paragraph (a), the first sentence would be amended by adding the word ''goats,'' immediately after the word ''sheep,''.

§ 71.19 [Amended]

5. In § 71.19, paragraph (d), the introductory text would be amended by removing the words ''Area Veterinarian in Charge'' and adding the words ''area veterinarian in charge'' in their place.

6. Section § 71.20 would be amended as follows:

a. In paragraph (a)(3), by adding the number ''79,'' immediately after the number ''78,''.

b. In paragraph (a)(4), by adding the words ''high-risk'' immediately after the word ''exposed,''.

c. By revising paragraphs (a)(5), (a)(6), (a)(7), and (a)(11) to read as set forth below.

d. In paragraph (a)(8), by adding the number ''79,'' immediately after the number ''78,''.

e. In paragraph (a)(12), by removing the words ''or suspect, or exposed'' and adding in their place the words ''suspect, exposed, high-risk, or scrapie-positive''.

f. By redesignating paragraphs (a)(17) through (a)(20) as paragraphs (a)(18) through (a)(21), respectively, and adding a new paragraph (a)(17) before the undesignated center heading ''*Approvals*'' to read as set forth below.

g. By revising newly redesignated paragraph (a)(18) to read as set forth below.

§ 71.20 Approval of livestock facilities.

* * * * *

(5) Any reactor, suspect, exposed, high-risk, or scrapie-positive livestock shall be held in quarantined pens apart from all other livestock at the facility. This requirement shall not apply to sheep or goats designated under 9 CFR part 79 as exposed or high-risk animals that will be moved directly to slaughter in accordance with 9 CFR parts 71 and 79.

(6) No reactor, suspect, exposed, high-risk, or scrapie-positive livestock, nor any livestock that show signs of being infected with any infectious, contagious, or communicable disease, may be sold at or moved from the facility, except in accordance with 9 CFR parts 71, 75, 78, 79, and 85.

Records

(7) Documents such as weight tickets, sales slips, and records of origin, identification, and destination that relate to livestock that are in, or that have been in, the facility shall be maintained by the facility for a period of 2 years, or for a period of 5 years in the case of sheep or goats. APHIS representatives and State representatives shall be permitted to review and copy those documents during normal business hours.

* * * * *

(11) Quarantined pens shall be clearly labeled with paint or placarded with the word ''Quarantined'' or the name of the disease of concern, and shall be cleaned and disinfected in accordance with 9 CFR part 71, as well as 9 CFR 54.7(e)(2) if the disease of concern is scrapie, before being used to pen livestock that are not reactor, suspect, exposed, high-risk, or scrapie-positive animals.

* * * * *

(17) Sheep and goats:

—This facility will handle breeding sheep or goats: [*Initials of operator, date*]

—This facility will handle slaughter sheep or goats: [*Initials of operator, date*]

—This facility will handle scrapie-exposed or high-risk sheep or goats: [*Initials of operator, date*]

—This facility will handle scrapie-exposed or high-risk sheep or goats for slaughter only: [*Initials of operator, date*]

—This facility will not handle scrapie-exposed, high-risk, suspect, or scrapie-positive sheep or goats, nor permit such animals to enter the facility: [*Initials of operator, date*]

(i) All sheep and goats must be received, handled, and released by the facility only in accordance with 9 CFR parts 71 and 79.

(ii) All sheep and goats at the facility must be officially identified and relevant records relating to those

identified animals must be maintained by the facility operator, as required under 9 CFR part 79.

(iii) The identity of sheep and goats from consistent States and inconsistent States must be maintained by the facility operator.

(iv) Breeding and slaughter animals must be separated at all times so that no contact will occur.

(v) Any breeding sheep or goats that are designated, with regard to scrapie, as exposed, high risk, suspect, or scrapie-positive animals, or any slaughter sheep or goats that are designated as scrapie-positive or suspect animals, must be held in quarantined pens while at the facility.

(vi) Any sheep or goats that are designated as scrapie-exposed or high-risk animals must be consigned from the facility only in accordance with 9 CFR part 79.

(vii) Any sheep or goats that are designated as scrapie-positive or suspect animals must be reported immediately by the facility operator to a State representative, an APHIS representative, or an accredited veterinarian. Such animals may be released or consigned from the facility only if accompanied by a permit issued by a State, an APHIS representative, or an accredited veterinarian, allowing movement of the animals to an approved disposal site or research facility in accordance with 9 CFR parts 71 and 79.

Approvals

(18) Request for approval:

I hereby request approval for this facility to operate as an approved livestock facility for the classes of livestock indicated in paragraphs (14) through (17) of this agreement. I acknowledge that I have received a copy of 9 CFR parts 71, 75, 78, 79, and 85, and acknowledge that I have been informed and understand that failure to abide by the provisions of this agreement and the applicable provisions of 9 CFR parts 71, 75, 78, 79, and 85 constitutes a basis for the withdrawal of this approval. [*Printed name and signature of operator, date of signature*]

* * * * *

Done in Washington, DC, this 20th day of August, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–19516 Filed 8–25–04; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[NOTICE 2004–12]

Rulemaking Petition: Exception for the Promotion of Political Documentary Films From ''Electioneering Communications''

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: notice of availability.

SUMMARY: On July 20, 2004, the Commission received a Petition for Rulemaking (''Petition'') from Mr. Robert F. Bauer (''Petitioner''). The Petition asks the Commission to revise its regulations by exempting the promotion of political documentary films that may otherwise meet the requirements of an electioneering communication within the meaning of the Federal Election Campaign Act of 1971, as amended (the ''Act''). The Petition is available for inspection in the Commission's Public Records Office, through its Faxline service, and on its Web site, *http://www.fec.gov.* Further information is provided in the supplementary information that follows.

DATES: Statements in support of, or in opposition to, the Petition must be submitted on or before September 27, 2004.

ADDRESSES: All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be send to *ECADSNOA@fec.gov* and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission (''Commission'') has received a Petition for Rulemaking from Mr. Robert F. Bauer, acting on his own behalf and not on behalf of any client or other interested party. Petitioner asks the Commission to revise 11 CFR 100.29(c) to exempt from the term ''electioneering communications'' any communication appearing in a promotion for a political documentary film ''by corporations and other entities established and operating for such purpose in the ordinary course of their businesses,'' provided that the promotion does not ''promote, support, attack or oppose'' a candidate for federal office within the meaning of 2 U.S.C. 431(20)(A)(iii). Petitioner seeks to have any such protections also apply to the promotion, in the ordinary course of business, of ''books, plays, and other forms of political expression that may involve references to Federal candidates.''

The Commission seeks comments on whether the Commission should initiate a rulemaking on ''electioneering communications'' and on whether there are other issues regarding the electioneering communications rules that should also be addressed in a rulemaking at this time.[1]

Copies of the Petition are available for public inspection at the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday though Friday between the hours of 9 a.m. and 5 p.m., and on the Commission's Web site, *http://www.fec.gov.* Interested persons may also obtain a copy of the Petition at any time by dialing the Commission's Faxline service at (202) 501–3413 and requesting document # 257.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: August 20, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–19526 Filed 8–25–04; 8:45 am]

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[1] Certain aspects of the Commission's regulations regarding electioneering communications are the subject of a pending lawsuit in the United States District Court for the District of Columbia. *Shays and Meehan* v. *FEC*, Civ. Act. 02–CV–1984.