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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 71

[Docket No. 00–094–2]

RIN 0579–AB84

#### Interstate Movement of Sheep and Goats

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations regarding the interstate movement of animals to add sheep and goats to the approved livestock facility agreement. Livestock facilities that handle sheep and goats in interstate commerce must meet the requirements for approval including complying with this agreement to utilize certain provisions in our scrapie regulations that reduce the movement requirements for sheep and goats moving to or from these establishments. Such facilities may include stockyards, livestock markets, buying stations, concentration points, or any other premises where sheep and goats in interstate commerce are assembled. Our approval will be contingent on the facility operator meeting certain minimum standards and other conditions related to the receipt, handling, and release of sheep and goats at the facility, as well as complying with certain animal identification and recordkeeping requirements. These standards and other conditions will serve, in part, to support our 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.

**DATES:** *Effective Date:* May 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dr. Diane Sutton, Senior Staff Veterinarian,

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#### SUPPLEMENTARY INFORMATION:

##### Background

On August 26, 2004, we published in the **Federal Register** (69 FR 52451–52461, Docket No. 00–094–1) a proposed rule to amend our regulations governing the interstate movement of sheep and goats to require livestock facilities that handle sheep and goats in interstate commerce to be approved by the Animal and Plant Health Inspection Service (APHIS) if they want to take advantage of provisions in our scrapie regulations in 9 CFR part 79 that reduce the movement requirements for sheep and goats moving to or from these establishments. Approval would be contingent on the facility operator meeting certain minimum standards and certain other conditions relating to 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 were based, in part, on our 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.

We solicited comments concerning our proposal for 60 days ending October 25, 2004. We received nine comments by that date. The comments came from private citizens, a livestock marketer and marketing association, wool growers associations, a sheep industry association, a farm bureau association, and a veterinary medical association. The comments generally supported the proposed rule. They did, however, raise several issues associated with the proposed rule. Those issues are discussed below.

Some commenters said that the definitions of *exposed animal* and *high-risk animal* in 9 CFR parts 54 and 79 did not properly describe animals that pose a true risk for the spread of scrapie based on current science. These commenters stated that genetically resistant sheep pose a minimal risk of transmitting scrapie and therefore should not be required to be quarantined at assembly points as proposed. In addition, the commenters

stated that the definitions in the proposed rule excluded some animals that could pose a risk, such as genetically susceptible animals that have resided on infected premises.

We agree with the commenters and intend to modify the definitions in 9 CFR 54.1 and 79.1 in a future rulemaking. In our proposed rule, we proposed requiring exposed sheep that have not also been designated as high-risk animals be kept in quarantine pens away from other animals at livestock facilities. Because we agree with the commenters that genetically resistant exposed sheep pose a minimal risk of transmitting scrapie, we have removed the provision from this final rule.

Some commenters asked for clarification of the term “breeding sheep and goats,” which is not spelled out in the existing regulations. They said that a single, clear definition of breeding sheep and goats would help clarify both existing identification requirements and the additional requirements described in the proposed rule.

We agree with the commenters and have added the following definition of *breeding sheep and goats* to § 71.1: “Any sexually intact sheep or goat that is not moving either directly to slaughter or through one or more restricted sales and/or terminal feedlots and then directly to slaughter.”

Several commenters requested clarification of the definition of a facility. The proposed rule suggests that a facility has permanent pens, etc., but some commenters stated that some business owners gather sheep for resale in interstate commerce using portable pens and loading ramps. The commenters believe that this portable equipment should be exempt from a definition of a facility.

Becoming an approved livestock facility for sheep and goats is only required if a facility wishes to utilize the provisions in part 79 that reduce the movement requirements for animals moving to or from these facilities, such as the ability to accept unidentified animals in interstate commerce that otherwise would have been required to be identified before entering the facility. As such it places no additional burden on facilities that are not currently approved, or on tent shows or other informal gatherings that use portable equipment.

A few commenters requested clarification of “interstate commerce,”

which is defined in part as trade, traffic, or transportation of livestock interstate. The commenters noted that some sheep might cross State lines without ownership change and noted that there are also producers who buy and sell replacement females across State lines. The commenters asked if these types of movement are to be exempt from the proposed requirements which relate to the inspection of facilities, etc. If so, they stated, that exemption needs to be clearly spelled out; if not, then an exemption should be provided, as these activities by and of themselves are not likely to cause the dissemination of scrapie.

The movement of animals by private agreement or without transfer of ownership is governed by the requirements of part 79, and their premises of origin are not considered livestock facilities for the purposes of § 71.20.

Some commenters questioned why the proposed rule did not include a requirement for high-risk or exposed sheep intended for slaughter to be kept in pens apart from the general population of sheep and goats, especially those that may return to a farm for breeding. They pointed out that if any of these high-risk animals have lambed or may lamb in the livestock facility, they could introduce scrapie contamination into the environment.

We agree with the commenters and will revise paragraph (a)(5) of § 71.20 to read: "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 scrapie exposed sheep that are not also designated high-risk animals or to sheep or goats designated under 9 CFR part 79 as scrapie exposed or high-risk animals that either are not pregnant based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, or a certificate issued by an accredited veterinarian stating that the animals are open; or that the animals are under 12 months of age and are not visibly pregnant and are maintained in the same pen only with other animals that will be moved directly to slaughter or to a terminal feedlot in accordance with 9 CFR parts 71 and 79." This is intended to prevent potential breeding animals from being exposed to scrapie during the time they are held in an approved livestock facility while allowing exposed and high-risk slaughter lambs and kids to move through markets.

We will also change 71.20(a)(11) to add "and the quarantined animal gave

birth or aborted at the facility" after "if the disease of concern is scrapie." This will significantly reduce the number of times the disinfection procedure specified in 9 CFR 54.7(e)(2) will be required in addition to the standard disinfection procedure.

One commenter noted that the proposed rule would require that facility operators separate breeding and slaughter animals at all times, but questioned how operators are to distinguish between animals for breeding and animals for slaughter. The commenter pointed out that sorting animals might entail a substantial amount of time being added to the check-in process, and that the increased time in unloading at the facility could be detrimental to the well-being of the animals.

In response to this comment, we are changing the wording of § 71.20(a)(17)(iv) from "breeding and slaughter animals must be separated at all times so that no contact will occur" to "sexually intact animals that do not meet the requirements of part 79 to be sold as breeding animals must be maintained in separate enclosures at all times from animals that may be offered for sale as breeding animals unless all animals maintained in an enclosure arrived at the facility as part of the same consignment and are separated prior to sale."

One commenter stated that the market approval requirement to provide quarantine pens for reactor, suspect, or exposed sheep or goats makes no sense since the approval requirements also prohibit "the sale of any reactor, suspect, or exposed livestock, and any livestock that show signs of being infected with any communicable disease." The commenter asserted that market operators are unlikely to know the disease status of the animals entering their market, and even if the animals were known to be reactors, exposed, or suspect, the market operators would refuse to receive them for sale.

We agree it is unlikely that these animals would be found at a market. However, if they are found, it is important that they be segregated. These animals could be placed in a non-species specific quarantine pen that could be disinfected after the affected animals were removed. An APHIS or State animal health official must be notified immediately when such animals are quarantined. We also agree that facilities should not have to indicate that they will handle classes of animals that are prohibited from sale and are amending § 71.20(a)(17) accordingly.

Some commenters said that it is not clear if businesses doing less than \$750,000 in sales per year will be exempted from the requirements. The commenters further said that such small businesses pose little threat to the nation's economy because of the transport of sheep infected with scrapie and their transactions should be protected.

The \$750,000 figure included in the regulatory flexibility analysis for the proposed rule represents the threshold established by the Small Business Administration for transition between small and large entities and has nothing to do with compliance requirements. Businesses doing less than \$750,000 in sales per year will not be exempt from these regulations.

Some commenters expressed concern about a lack of resources for enforcement and that APHIS will expect the States and private enterprise to handle enforcement without offering sufficient funding.

APHIS establishes the necessary regulations on interstate commerce to conduct disease eradication, control, and surveillance programs. The States, through cooperative agreements and memorandums of understanding with APHIS, support these efforts by promulgating the necessary laws and regulations and undertaking associated compliance and enforcement activities within the State. The standards that States must meet to qualify as Consistent States are described in § 79.6; as we are not amending that section in this rule, we do not agree that States are being assigned additional enforcement responsibilities. Some States currently work collaboratively with APHIS on market approvals and would likely continue to do so. Private enterprises are required to comply with the regulations, not enforce them.

One commenter noted that the issue of individual animal identification is hampered by the fact that there is no technology currently available that is workable at the speed of commerce and is affordable to the sheep and goat industry. The commenter stated that until a suitable technology is available, APHIS cannot assume that individual identification records can be kept on sheep and goats.

We agree with the commenter that in some circumstances reading and recording of pre-existing identification numbers may be impractical and are taking steps in conjunction with the sheep and goat industry ID working group to identify appropriate ID methods which meet the needs of commerce, the needs of disease eradication and surveillance programs,

and the economics of sheep and goat production. As appropriate technologies are identified, they will be introduced through the scrapie eradication program and industry initiatives. Until this is achieved, we will continue to follow the established identification requirements in 9 CFR 79.2.

One commenter asserted that there are incorrect statements made in the rule, for example: "Most of the sheep and lambs shipped for immediate slaughter would not be affected by the proposed rule since they would not be handled by a livestock market or other assembly point en route to the slaughter facility." The commenter asserted that most sheep and lambs are handled by livestock markets and other assembly points (dealers or feed yards) sometime during their lifetimes. As supporting evidence, the commenter asserted that of the approximately 170,595 head of sheep exported to Mexico in 2003, probably 95 percent came through a market or some other dealer in Texas. The commenter also asserted that many of the kid goats and lambs that are sold for immediate slaughter to slaughterhouses all over the United States go through markets first.

We acknowledge the major role of markets in the movement of lambs and cull sheep into and through slaughter channels; however, we believe it is accurate that more than 50 percent of slaughter animals do not move directly to slaughter through livestock facilities that would require approval under this rule.

Some commenters said that there was an inconsistency between the current recordkeeping requirements for livestock facilities and the proposed requirements, specifically with respect to how long the records must be kept. Given this, the commenters stated, clarification of the distinction between the recordkeeping schedule for sheep and goats and that for other species may be warranted in the final rule.

Approved markets that handle sheep and goats would have to agree to maintain records in a manner consistent with the requirements of the scrapie eradication program in 9 CFR part 79. Those recordkeeping requirements support the need for tracing activities for a disease with an incubation period of 4 to 5 years in most cases.

Some commenters stated that the current regulations are sufficient and that there is no need to add additional requirements. They stated that current efforts to eradicate scrapie through genetic selection in show animals would do more than any new regulations, and furthermore the proposed rule would add to the

economic burden on producers and be detrimental to the health of the industry.

In order for the United States to eradicate scrapie, we must be able to trace all infected and exposed animals. To do this we need to increase compliance with the identification requirements in 9 CFR part 79. Accelerating the scrapie eradication program could help the United States sheep and goat industry to become more competitive in both the domestic and global market. Since both actual product quality and purchaser's perception of quality contribute to continued market acceptance, efforts to eradicate scrapie will serve the economic interests of the industry.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final regulatory flexibility analysis examines the rule's expected costs and benefits in accordance with requirements of the Office of Management and Budget for regulatory analysis and its expected impact on small entities, in accordance with the Regulatory Flexibility Act. This analysis for the final rule follows an earlier analysis that was prepared for the proposed rule, and takes into account public comment received in response to the proposed rule. There were no public comments in response to the initial regulatory flexibility analysis.

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

Production and trade: As of January 1, 2008, there were 6.055 million sheep and lambs in 67,160 operations, and values at \$836 million.<sup>1</sup> This number represented a 1.9 percent inventory decline from January 1, 2000. The above total consists of 4.505 million breeding sheep and lambs and 1.55 million market sheep. Of the breeding sheep, ewes, 1 year old or older, totaled 3.617 million, replacement lambs were 0.695 million, and rams totaled 0.193 million.

Sheep are produced in all parts of the United States, although stock levels vary from State to State. Ten States

(Colorado, California, Idaho, Montana, Iowa, Oregon, South Dakota, Texas, Utah, and Wyoming) account for nearly 68 percent of the total inventory, with most in the Mountain, North Central, and South Central areas. These States also account for about 81 percent of incoming shipments, indicating most sheep and sheep meat production activities take place in these States.<sup>2</sup> Northern and southeastern States have the smallest sheep populations, accounting only for 7.8 percent of the total.

A total of about 4.8 million sheep and lambs were marketed in 2007. A little over 84 percent of these are lambs and the rest mature sheep. Marketing includes animals for slaughter market, younger animals shipped to other States for feeding and breeding purposes, and some exports. Most animals shipped for immediate slaughter will not be affected by this rule. A total of 2.69 million sheep and lambs were slaughtered in 2007, of which 95 percent were lambs.<sup>3</sup>

In 2002 (the latest year for which detailed data is available for goats), there were 91,462 goat operations in the United States, which raised about 2.53 million goats, valued at approximately \$141 million, an increase of about 12 percent from the 1997 level. About 11.9 percent were Angora goats, about 11.5 percent were milk goats, and 76.6 percent were goats other than Angora or milk-type. The State of Texas accounted for about 47 percent of the goat inventory. Other important goat raising States are Alabama, California, Georgia, Kentucky, Missouri, North Carolina, Oklahoma, and Tennessee. These States together represented another 24 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 28 goats, most, if not all, goat operations are relatively small, and are classified as small entities with annual sales of \$750,000 or less.<sup>4</sup> Of the total

<sup>2</sup> USDA/NASS, Meat Animal Production, Disposition, and Income: 2007 Summary, April 2008.

<sup>3</sup> USDA/NASS, Livestock Slaughter: 2007 Summary, March 2008. The national average sale price of a sheep between 2003 and 2007 was \$132  $(= (119 + 130 + 141 + 134 + 138)/5)$  per head (USDA/NASS, 2008 Agricultural Statistics). Note that these average sale prices reflect the sale of millions of slaughter sheep, selling near the average price, and a few thousand valuable registered breeding sheep selling for much more. The average price for registered breeding sheep is in the range of \$300, with some selling for thousands of dollars (<http://showcase.netins.net/web/sam/ccd.htm>).

<sup>4</sup> The average price for goats between 2003 and 2007 was \$72  $(= (63.3 + 67.2 + 75.9 + 78.5 + 74.8)/5)$  per head USDA/NASS, 2008 Agricultural

<sup>1</sup> USDA/NASS, Sheep and Goats, January 2008.

number of operations, about 74 percent of goat producers were full owners, about 21 percent were part owners, and 5 percent were tenants.

The United States produced about 183 million pounds of lamb and mutton in 2007, a decline of about 43 percent from a decade earlier. Imports of lamb and mutton increased from 42.1 million pounds in 1991 to 183.9 million pounds in 2007, an increase of about 337 percent.<sup>5</sup>

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 50 percent in 2007. 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 million pounds, a decline of about 8 percent.

#### Trade

The United States has a limited foreign trade both in live sheep and goats and their products. Both the sources of imports and destination of exports are concentrated in a few countries. During calendar year 2007,

the U.S. exported 116,618 sheep valued at \$8.148 million (see table 1). Mexico (65,075 head) and Canada (50,808 head) accounted for over 95 percent of this total. Other importers were St. Vincent and the Grenadines (37), Ecuador (323), the Bahamas (22), and Guyana (20). The United States also exported 9,231 goats valued at \$597,000 in 2007. Again, the primary importers were Mexico (7,211 head) and Canada (1,697). Other destinations included St. Vincent and the Grenadines, which imported 323 goats.

TABLE 1—SHEEP AND GOATS: IMPORTS AND EXPORTS, 2007

Item	Imports	Exports	Numbers	Value in millions
Sheep .....	92	\$0.058	116,618	\$8.148
Goats .....	33	0.010	9,231	0.597
Total .....	125	0.068	125,849	8.745

Source: Global Trade Atlas, November 2008.

The U.S. imported 92 sheep valued at \$58,000 in 2007. The sheep imports in 2007 were from Canada (84 head), Australia (6) and New Zealand (2). Additionally, the U.S. imported 33 goats valued at \$10,000 in 2007, all from Australia. The average value of an imported sheep (\$630) is higher than the average value of an exported sheep (\$70). Likewise, the average value of an imported goat (\$300) is higher than the average value of an exported goat (\$65).

In 2007, the United States imported 207 million pounds of sheep and goat meat valued at \$490.5 million and exported 9.2 million pounds of sheep and goat meat valued at \$11.7 million. Most lamb and mutton imports came from Australia and New Zealand. The U.S. exports are distributed to a larger number of markets.<sup>6</sup> Since imports of sheep and goats represent a very small fraction of domestic supply, most interstate movements would involve domestic sheep and goats.

#### Expected Costs and Benefits

There are currently 107 facilities that handle sheep and 62 facilities that handle 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 if they want to take advantage of provisions in our scrapie regulations in 9 CFR part 79 that reduce the movement requirements for sheep and goats moving to or from these establishments. 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 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. Still, any new paperwork and administrative

burdens may result in additional cost to facility operators who find it necessary to adjust their operations to meet the new requirements. However, the additional activities are not expected to be significant for most facilities.

The livestock facility and its 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 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. Since most of these conditions represent good business practices and most facilities already follow them, it is not expected to be a significant issue. Most of these facilities are already complying with

Statistics). The annual prices are from various issues of Agricultural Statistics. The goat quantities are from the 2002 Census of Agriculture. As in the case of sheep there is variability in the market value of goats. Market values can vary depending on whether the animal is a slaughter goat, Angora goat,

dairy goat, crossbred or purebred, etc. Boer goats are considered to be the most expensive goats with some commanding well over \$50,000 for one Boer buck and over \$10,000 for purebred does ([www.jackmauldin.com/new.htm](http://www.jackmauldin.com/new.htm)).

<sup>5</sup> USDA/NASS, *Livestock Slaughter*: 2004 Summary, March 2005; USDA/ERS, *Livestock, Dairy, and Poultry Outlook/LDP-M-172*/October 17, 2008.

<sup>6</sup> Global Trade Atlas, November 2008.

these conditions as approved livestock facilities handling other classes of livestock. Therefore, this rule should not result in a significant effect on facilities conducting their business.

In addition, as a condition of approval, reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock would have to be held in quarantine pens apart from all other livestock at the facility except exposed sheep that are not also high-risk animals or exposed and high-risk animals that are segregated from breeding animals and that do not pose a significant risk of lambing or kidding while in the facility. The quarantine 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 quarantine pens would also 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 9 CFR 71.20(a)(5) already require that approved livestock facilities hold any reactor, suspect, or exposed livestock in quarantine pens apart from all other livestock at the facility. Facilities handling sheep or goats that do not have quarantine pens would likely incur a one-time capital investment of about \$3,000 to \$5,000 to install such a pen. Otherwise, the number of reactor, suspect, exposed, scrapie high-risk, or scrapie-positive livestock handled by approved livestock facilities is expected to be very small, and thus quarantining of such animals should not have a significant effect on facility operations or economic activity.

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

This rule could result in a small increase in the time that APHIS and State representatives spend monitoring livestock facilities. In those cases where a facility is already operating as an approved livestock facility for other classifications of livestock, and APHIS and State representatives 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. APHIS and State representatives monitor compliance at such facilities with the identification requirements of the scrapie regulations

in 9 CFR part 79. Thus, any additional monitoring responsibilities on the part of State or Federal representatives that may result from implementation of this rule could be handled by existing staff.

This 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 rule. In addition, the operators of livestock facilities that agree to handle animals affected by scrapie would be the entities most affected by this rule. However, the number of sheep and goats affected by scrapie and handled by these livestock facilities is likely to be very small. This rule should not post a significant burden on operators of livestock facilities or producers and is not expected to reduce interstate commerce or retard economic availability.

In spite of the potential small burdens to livestock facility operators and producers, the long-term avoided costs of coping with losses associated with scrapie by the U.S. sheep and goat industries as a result of accelerating the scrapie eradication program far exceed the potential costs of this rule. This includes the avoidance of veterinary and associated costs for managing scrapie-affected flocks. An APHIS estimate showed that scrapie costs the U.S. sheep industry about \$24 million per year in 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 and bone meal sales.

Accelerating the eradication of scrapie in the United States also could facilitate movement of the U.S. sheep and goat industries toward increased competitiveness both in the domestic and global markets, 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 purchasers' 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.

#### Effects on Small Entities

This rule will affect livestock facilities that handle sheep and goats in interstate commerce, including stockyards, livestock markets, buying stations, concentration points, or any other premises under State or Federal veterinary supervision where sheep or goats have been assembled and which choose to become an approved livestock facility. These facilities are considered small if they have 100 or fewer employees (North American Industry Classification System [NAICS] 424520).<sup>7</sup> There are currently about 1,106 livestock facilities that handle cattle and calves, swine, or sheep and goats moving in interstate commerce. Of this total, about 107 handle sheep and 62 handle goats, and all are considered to be small entities.

Producers of sheep or goats (NAICS 112410) also could be affected by the rule if livestock facilities pass on the increased costs of providing services attributable to the rule to affected producers. There were 44,189 sheep operations and 43,495 goat operations that sold animals in 2002. An operation engaged in sheep or goat production is considered small if it has annual sales of not more than \$750,000.<sup>8</sup> Small operations, as shown in table 2, accounted for over 99 percent of all operations that sold sheep and lambs. About 81 percent of the producers sold fewer than 100 animals each, but these accounted only for about 17 percent of total sales of sheep and lambs. On the other hand, large sheep operations that sold 5,000 sheep or more represented less than 1 percent of the farms but accounted for about 32 percent of the total number sold. The overall average size of a flock was 117 animals in 2002. The average size of a flock on large operations was 11,094 animals, while that on small operations was 80 animals. The vast majority of sheep and goat producers would be considered small entities based on such criteria. Of

<sup>7</sup> The Small Business Administration defines small market facilities (NAICS 424520) as those having fewer than 100 employees.

<sup>8</sup> Based on the size standard established by the Small Business Administration for livestock and animal specialties, sheep producers (NAICS 112410) and goat producers (NAICS 112420) with not more than \$0.75 million in annual sales qualify as small entities.

the total number of operations, about 68 percent of producers were full owners, about 26 percent were part owners and

6 percent were tenants. Approximately 81 percent of these sheep are marketed,

involving crossing State lines in most cases.

TABLE 2—SHEEP AND LAMBS: NUMBER SOLD BY SIZE OF FLOCK: 2002

Number of sheep/lambs per farm	Number of farms with sheep/lambs	Percent farms (based on total farms)	Inventory of sheep and lambs	Percent sheep and lambs (based on total inventory)	Average value per operation
1 to 99 .....	35,647	80.7	899,589	17.4	\$2,625
100 to 299 .....	5,659	12.8	680,404	13.2	12,510
300 to 999 .....	1,991	4.5	762,007	14.7	39,800
1,000 to 4,999 .....	743	1.7	1,181,441	22.8	165,370
5,000 or more .....	149	0.3	1,653,010	31.9	1,153,780
Total .....	44,189	100	5,176,451	100	12,180

Source: USDA/NASS, 2002 Census of Agriculture.

Livestock facilities that are considered small entities would have to meet the same standards as other larger firms if they choose to become an approved facility. 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 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 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 unidentified sheep or goats and animals with a certificate of veterinary inspection 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 the 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 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 action could result for those animals

requiring special handling at approved livestock facilities. However, because most of the facilities that handle sheep and goats are already in compliance with the regulations in part 79, 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 rule, which would strengthen scrapie control programs resulting in long-term avoided costs of coping with market losses associated with scrapie. Direct losses to the U.S. sheep industry alone are currently estimated to be as high as \$24 million per year. 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.

The primary alternative to the 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.

This rule contains various recordkeeping requirements, which were described in our proposed rule and which have been approved by the Office of Management and Budget (*see* "Paperwork Reduction Act" below).

#### 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the APHIS approval of livestock facilities that handle sheep and goats in interstate commerce under the conditions specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were 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).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web

site.<sup>9</sup> Copies of the environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0258.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this final rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

#### List of Subjects in 9 CFR Part 71

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

■ Accordingly, we are amending 9 CFR part 71 as follows:

#### PART 71—GENERAL PROVISIONS

■ 1. The authority citation for part 71 continues to read as follows:

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

■ 2. Section 71.1 is amended by revising the definitions of *Accredited veterinarian*, *Area veterinarian in charge*, *Interstate commerce*, *Livestock*, *State*, *State animal health official*, and *State representative* and by adding, in alphabetical order, new definitions for *Breeding sheep and goats*, *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.

\* \* \* \* \*

*Breeding sheep and goats.* Any sexually intact sheep or goat that is not moving either directly to slaughter or through one or more restricted sales and/or terminal feedlots and then directly to slaughter.

\* \* \* \* \*

*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, swine, and other farm-raised animals.

\* \* \* \* \*

*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 is amended by reserving paragraph (c)(5) and by adding a new paragraph (c)(6) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(6) 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 subchapter, may be moved interstate only in accordance with part 79 of this subchapter.

\* \* \* \* \*

#### § 71.6 [Amended]

■ 4. In § 71.6, paragraph (a), the first sentence is amended by adding the word “goats,” immediately after the word “sheep,”.

#### § 71.19 [Amended]

■ 5. In § 71.19, paragraph (d), the introductory text is amended by removing the words “Area Veterinarian in Charge” both times it appears and adding the words “area veterinarian in charge” in their place.

■ 6. Section § 71.20 is 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 and scrapie-positive” 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.

<sup>9</sup> Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2007-0069>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

■ h. By adding a parenthetical containing an OMB citation at the end of the section 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 scrapie-exposed sheep that are not also designated high-risk animals or to sheep or goats designated under 9 CFR part 79 as scrapie-exposed or high-risk animals that either are not pregnant based on the animal being male, an owner certification that any female animals have not been exposed to a male in the preceding 6 months, or a certificate issued by an accredited veterinarian stating the animals are open; or that the animals are under 12 months of age and are not visibly pregnant and are maintained in the same pen only with other animals that will be moved directly to slaughter or to a terminal feedlot 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 placard 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 and the quarantined animal gave birth or aborted at the facility, 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 goats or high-risk sheep or goats: [Initials of operator, date]

—This facility will not handle goats known to be scrapie-exposed or sheep or goats known to be high-risk animals, 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 related 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) Sexually intact animals that do not meet the requirements of part 79 to be sold as breeding animals must be maintained in separated enclosures at all times from animals that may be offered for sale as breeding animals unless all animals maintained in an enclosure arrived at the facility as part of the same consignment and are separated prior to sale.

(v) Any sheep or goats that are designated, with regard to scrapie, as high-risk, suspect or scrapie-positive animals, and goats designated with regard to scrapie as exposed animals, excluding slaughter sheep or goats that are designated as exposed or high-risk animals and are not pregnant, must be held in quarantined pens while at the facility.

#### **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]

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0579-0258)

Done in Washington, DC, this 26th day of March 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9-7233 Filed 3-31-09; 8:45 am]

**BILLING CODE 3410-34-P**

## **DEPARTMENT OF AGRICULTURE**

### **Animal and Plant Health Inspection Service**

#### **9 CFR Parts 145, 146, and 147**

[Docket No. APHIS-2007-0042]

**RIN 0579-AC78**

### **National Poultry Improvement Plan and Auxiliary Provisions**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the National Poultry Improvement Plan (the Plan) and its auxiliary provisions by providing new or modified sampling and testing procedures for Plan participants and participating flocks. The changes were voted on and approved by the voting delegates at the Plan's 2006 National Plan Conference. These changes will keep the provisions of the Plan current with changes in the poultry industry and provide for the use of new sampling and testing procedures.

**DATES:** *Effective Date:* May 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, 1498 Klondike Road, Suite 101, Conyers, GA 30094-5104; (770) 922-3496.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The National Poultry Improvement Plan (NPIP, also referred to below as "the Plan") is a cooperative Federal-State-industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as "U.S. Pullorum-Typhoid Clean" as a condition for participating in the other Plan programs.

The Plan identifies States, flocks, hatcheries, dealers, and slaughter plants that meet certain disease control standards specified in the Plan's various programs. As a result, customers can buy poultry that has tested clean of