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Regulatory
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Proposed Regulation Agency Background Document

Agency name	Department of Agriculture & Consumer Services
Virginia Administrative Code (VAC) citation	5 VAC 5 -206
Regulation title	Regulation for Scrapie Eradication
Action title	Proposed
Date this document prepared	October 10, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The agency is proposing a new regulation for the eradication of scrapie in Virginia goats and sheep. The federal regulation which became effective in September 2001 restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication. Virginia has been allowed to maintain its status as a scrapie “consistent” state by USDA, based on actions taken through the Administrative Process Act, in promulgation of a new regulation for the eradication of scrapie.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Section 3.1-724 mandates that the Board of Agriculture and Consumer Services and the State Veterinarian cooperate with the livestock sanitary control officials of other states, and with the U. S. Secretary of Agriculture and the United States Department of Agriculture (USDA) in establishing rules and regulations to protect the livestock and poultry of Virginia against contagious and infectious diseases.

Section 3.1-726 authorizes the Board of Agriculture and Consumer Services to adopt regulations as may be necessary for eradicating and preventing the spread of contagious and infectious diseases.

Section 3.1-730 mandates that the Board of Agriculture and Consumer Services or the State Veterinarian give and enforce directions and prescribe rules and regulations to separating, feeding, and caring for diseased or exposed animals or poultry as may be necessary to prevent the animals or poultry affected with disease, or capable of communicating disease, from coming in contact with other animals or poultry not affected.

Under Code of Federal Regulation (CFR) Title 9, Chapter 1, Part 54, Section 2, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) will execute cooperative agreements and/or memoranda of understanding with the animal health agencies of any state in order to cooperatively administer the Scrapie Eradication Program. Each agreement must specify the roles of the state and federal government for the eradication program and the state Scrapie Flock Certification Program.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Scrapie is a debilitating disease of sheep and goats which is estimated to cost U.S. producers \$20 to \$25 million annually. Infected flocks are less productive, as affected animals usually die during their peak productive years. Recent publicity regarding a possible link between Bovine Spongiform Encephalopathy (“Mad Cow Disease”) and the feeding of cattle in England with scrapie-infected sheep products, has severely affected domestic and international trade in sheep and sheep-derived products. Many renderers have declined to render sheep offal or to pick up dead sheep, significantly increasing disposal costs. In addition, other countries have threatened

possible restrictions on importing certain non-sheep ruminant products from the U.S. because of scrapie.

The USDA has made a commitment to the sheep industry to eradicate scrapie in the U.S. by 2010. The federal regulation, which became effective in September 2001, restricts interstate movement of sheep and goats from states that have not initiated intrastate regulatory action concerning scrapie eradication within two years. The goal of the proposed regulation is to eradicate scrapie in Virginia sheep and goats. The regulation will provide the program standards and procedures for Virginia to participate in the Cooperative State-Federal-Industry Scrapie Program.

The agency has determined that the proposed regulation will protect the welfare of Virginia because it will allow the continued interstate movement of sheep and goats and negate economic losses due to this debilitating disease. Additionally, the eradication of scrapie in Virginia would eliminate the basis for the possible restrictions on trade with Virginia.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed regulation will meet the minimum requirements of the "Scrapie Eradication State-Federal-Industry Uniform Methods and Rules" established by the USDA /Animal Plant Health Inspection Service (APHIS) in August 2002, and revised in October 2003. The proposed regulation will provide guidance for the prevention, monitoring, control, and eradication of scrapie disease from domestic sheep flocks and goat herds in Virginia and for maintenance of state status in the USDA Scrapie Eradication Program. An analysis of Virginia's compliance was conducted in April 2006 by the USDA. They found Virginia to be fully compliant pending final adoption of the proposed regulation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

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

The primary advantage to small business sheep and goat owners is that they will maintain the ability to sell their animals in interstate commerce and at markets that deal in interstate commerce. This means more competition for the animals and thus higher prices. Market

managers will be able to pool sheep and goats so that they will be attractive to large volume buyers outside of the state of Virginia.

The principle disadvantage to the small business flock owner is maintaining the records, since most sheep and goat flocks in Virginia are identified in some manner. The animals must be identified with a tag unique to the farm of origin and distinct from other animals on that farm, and records must be kept. Livestock markets and slaughter houses will also have to assure that the animals are tagged. From a regulatory point of view, this helps in disease trace backs. Adequate tracking is essential to meet the national goal of tracing any animal back to its farm of origin within 48 hours.

Requirements more restrictive than federal

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

There are no requirements more restrictive than the applicable federal requirements.

Localities particularly affected

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

There is no one locality that will be affected disproportionately over any other locality.

Public participation

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

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

Anyone wishing to submit written comments may do so by mail, email or fax to Dr. Colleen Calderwood, Office of Veterinary Services, P.O. Box 1163, Richmond, VA 23218; ph: 804-786-2483; fax: 804-371-2380; e-mail: colleen.calderwood@vdacs.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Costs associated with regulation development, personnel training, laboratory support, and surveillance activities at livestock market and slaughter operations have been offset by grant funding through a USDA Cooperative Agreement through the first year of implementation. Expenditures incurred after the first year of implementation will be covered by general funds for veterinary services.</p>
<p>Projected cost of the regulation on localities</p>	<p>No costs of implementation and enforcement are anticipated for local governments. Agency employees will implement and enforce the provisions of this proposed regulation.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The two groups of individuals impacted by the proposed regulation include 1) owners of flocks or herds of sheep and goats, 2) buyers, sellers, dealers, or market operators involved in the barter, lease, trade, loan, sale, exhibit, or movement of sheep and goats</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The number of sheep in Virginia as of January 1, 2002 was estimated to be 60,404. The number of goats in Virginia as of January 1, 2002 was estimated to be 74,388. The average sheep and goat flock (or lot) size is estimated at 60 animals. The number of sheep and goat flocks is calculated to be 983 based on this average flock (or lot) size.</p> <p>The number of livestock markets that deal in sheep and goats is 26.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>Costs will be associated with 1) the identification device used for sheep and goats, 2) labor costs to physically identify the animal and document movement, and 3) costs of recordkeeping.</p> <p>The cost of this initiative on a per herd (60 animals) basis for the animal owner ranges from \$2.58 to \$6.44 depending on the time spent placing the</p>

	<p>identification device in the animal. The total projected cost for this initiative for owners ranges from \$5,785 to \$14,462.</p> <p>The cost of this initiative on a per lot (60 animals) basis for the market operator is estimated to be \$3.25. The total projected costs for this initiative for the involved markets is estimated at \$3,651.</p>
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Alternatives

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

There are no other alternatives to the proposed regulation. The regulation is required by USDA/APHIS in order for Virginia to be declared a “consistent state” and in compliance with federal regulation. Without the proposed regulation, sheep and goats would not be allowed in interstate commerce. This would have a negative impact that could jeopardize businesses of sheep and goat producers in Virginia.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative methods. The proposed regulation is less stringent than the federal requirements but meets the minimum federal requirements. The proposed regulation would have a minimal impact on small businesses in Virginia. Failure to adopt this regulation would have a devastating impact on the sheep and goat industries in Virginia.

Public comment

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

Commenter	Comment	Agency response

The Notice of Intended Regulatory Action was published in the Virginia Register on July 28, 2003. The agency received one public comment.

The writer indicated that scrapie is not a problem in goats and that the regulation should not apply to goats. The agency feels that this comment was made without a full understanding of the federal requirements. The federal requirements do exempt certain categories of commercial, low-risk goats; however, in order for Virginia to be designated a consistent state (i.e. a state that conducts an effective scrapie control program), the regulation must apply to sheep and goats. While the number of infected goats in the United States has been low, goats can become infected and could spread scrapie.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Unless otherwise discussed in this document, the proposed regulation has no impact upon families.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

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

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale

This is a new regulation. The language in the proposed regulation meet the requirements of the “Scrapie Eradication State-Federal-Industry Uniform Methods and Rules” established by the USDA/Animal, Plant Health Inspection Service in August 2002.

2 VAC 5-206-10. Definitions.

2 VAC 5-206-20. Identification of sheep and goats in commerce.

2 VAC 5-206-30. Importation of Sheep and Goats in Virginia.

2 VAC 5-206-40. Exhibition of Sheep and Goats.

2 VAC 5-206-50. Scrapie Management.