

# 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 79

[Docket No. 97-093-4]

RIN 0579-AA90

#### Scrapie in Sheep and Goats; List of Consistent States

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to establish a list of States that conduct an active State scrapie program that is consistent with Federal requirements. This list of "Consistent States" will be referred to in addressing interstate movement restrictions for sheep and goats. We also propose to expand the criteria we proposed earlier for how States may qualify to be designated as Consistent States in order to provide more detailed information in this area. These changes would help prevent the interstate spread of scrapie, an infectious disease of sheep and goats.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by September 14, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 97-093-4, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238.

Please state that your comment refers to Docket No. 97-093-4. 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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Diane Sutton, Senior Staff Veterinarian, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235, (301) 734-6954.

**SUPPLEMENTARY INFORMATION:** 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 (TSE's). Its control is complicated because the disease has an extremely long incubation period without clinical signs of disease.

To control the spread of scrapie within the United States, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), administers regulations at 9 CFR part 79, which restrict the interstate movement of certain sheep and goats. APHIS also has regulations at 9 CFR part 54, which describe a voluntary scrapie control program.

For over 40 years, USDA has had programs to eradicate or reduce the incidence of scrapie in the United States. The comprehensive data on the incidence of scrapie has always been hard to assemble due to the nature of the disease and its diagnosis. These programs have not resulted in a major reduction in the incidence of scrapie. A major reason for this result is that State programs for scrapie have varied tremendously in their resources and effectiveness. Some States may not invest sufficient resources to identify infected flocks or reduce the incidence of scrapie within that State, and sheep with undiagnosed cases of scrapie could then easily move to other States, infecting new flocks. Therefore, we believe that to build an effective national scrapie program, the current regulations must be adjusted to recognize that sheep from States with minimal or nonexistent scrapie programs represent a higher risk than sheep from other States.

On November 30, 1999, we published in the **Federal Register** (64 FR 66791-66812, Docket No. 97-093-2) a proposal

to amend regulations in 9 CFR parts 54 and 79 that address the control of scrapie. That proposal, referred to below as the November 30 proposed rule, described two sets of interstate movement restrictions: One set for "Consistent States" and another set for "Inconsistent States." The November 30 proposed rule stated that Consistent States would be States that conduct an active State scrapie program which effectively enforces certain requirements to identify scrapie in flocks and control its spread. We proposed on November 30, 1999, to establish a new § 79.6 listing the requirements a State would have to meet to be a Consistent State. The proposed requirements included reporting and investigating any scrapie-suspect animal, affected animal, or scrapie-positive animal; identifying and quarantining infected and source flocks; individually identifying certain exposed animals; and individually identifying and monitoring certain high-risk animals. The proposed individual identification and monitoring of high-risk animals were to apply to animals in all flocks, not just source or infected flocks as required by the current regulations.

We solicited comments concerning the November 30 proposed rule for 30 days ending December 30, 1999. We reopened and extended the deadline for comments until January 14, 2000, in a document published in the **Federal Register** on January 7, 2000 (Docket No. 97-093-3, 65 FR 1074). We received 171 comments by that date. They were from State agriculture agencies, sheep and goat industry associations, sheep and goat producers, livestock auction and slaughter companies, and universities and researchers. We will address these comments later when we take final action on the November 30 proposed rule. However, the November 30 proposed rule also stated that before we finalized the proposal, we would develop and publish for comment a list of States that qualify as Consistent States.

This proposal lists the States that qualify as Consistent States.

The November 30 proposed rule stated that, in determining whether a State qualified as a Consistent State, the Administrator would evaluate the State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State

animal health agency; and a written statement from the State animal health agency describing State scrapie control activities. All 50 States have submitted written statements indicating their willingness to comply with the proposed requirements and have provided copies of their regulatory authority to carry out these actions. The Administrator has evaluated all of these submissions and other information and reports describing scrapie quarantine and control activities in these States and has determined that all 50 of the States meet the standards for Consistent State that were set forth in the November 30 proposed rule. That is, the Administrator considered whether the State's scrapie control program:

- Requires the reporting of and investigation of any suspect animal, affected animal, or scrapie-positive animal; requires the official permanent individual identification of any live scrapie-positive, affected, or suspect animal of any age, and of any exposed animal, including high-risk animals, 1 year of age or over and any exposed animals less than 1 year of age when a change of ownership occurs, except those animals under 6 months of age moving within slaughter channels in accordance with the regulations (whether or not the exposed animal resides in a source or infected flock);
  - Effectively enforces quarantines of all source and infected flocks;
  - Effectively enforces quarantines of all high-risk, affected, suspect, and scrapie-positive animals throughout their lives unless moved in accordance with the regulations;
  - Requires that, if an affected, suspect or scrapie-positive animal dies or is destroyed, that tissues be submitted for diagnostic testing to a laboratory authorized by the Administrator to conduct scrapie tests in accordance with the regulations and requires that the carcass be completely destroyed; and
  - Releases quarantines of these flocks only upon completion of a flock plan and agreement by the owner to participate in a post-exposure monitoring and management plan as defined in part 54.

The 50 States that the Administrator has evaluated and has determined to be Consistent States are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon,

Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Although the definition of State in the regulations includes territories and possessions of the United States, due to the scant amount of interstate commerce in sheep in territories and possessions it is unlikely that any of them will apply to be Consistent States.

We intend to take final action on this proposal to list States as Consistent States at the same time we take final action on the November 30 proposed rule. Comments received on this proposed rule, as well as comments on the November 30 proposed rule, will all be discussed in that final action.

In addition to taking comments on whether to finalize the above list of 50 States as Consistent States, we are also seeking comment on proposed changes to the standards for designating Consistent States. These proposed changes are based largely on comments on the November 30 proposed rule made by sheep industry associations, flock owners, and States regarding the standards States should meet to be designated as Consistent States. Several of these comments suggested that the regulations should be modeled after successful aspects of other APHIS disease eradication programs. We are proposing changes that contain more details on the required elements of State programs, similar to the detail that exists in APHIS regulations that govern similar programs for cattle and swine.

In response to the suggestions made by commenters, we are proposing a new version of section 79.6, *Standards for State programs to qualify as Consistent States*, in lieu of the proposed section set out in the November 30 proposed rule at 64 FR 66812. The new proposed section and a discussion of it follows.

We propose that when the Administrator evaluates a State to determine whether it qualifies for Consistent State status, he would first evaluate the following: State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State animal health agency; and a written statement from the State animal health agency describing State scrapie control activities and certifying that these activities meet the requirements § 79.6. The Administrator would also determine whether the State has the authority, based on State law or regulation, to restrict the movement of all scrapie-infected and source flocks and to require the reporting of any animal suspected of having scrapie to

State or Federal animal health authorities.

These proposed provisions are a restatement of the requirements in the November 30 proposed rule that Consistent States must have authority to restrict movements of animals from scrapie-infected and source flocks and to require the reporting of suspect animal, affected animal, or scrapie-positive animals.

We also propose that the Administrator would determine whether the State has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding between APHIS and the State that delineates the respective roles of each in National Scrapie Program implementation.

In the November 30 proposed rule we requested comments on the issue of whether APHIS should sign compliance agreements with States describing the roles of APHIS and State governments in scrapie program activities. Several commenters endorsed this idea. We propose the use of a memorandum of understanding (MOU) rather than a compliance agreement to record the roles of APHIS and each State in program activities because experience in domestic disease control programs have shown use of MOU's greatly enhances cooperation between APHIS and State personnel, an MOU will achieve the same purpose as a compliance agreement, and States are familiar with the use of MOU's.

We propose that the Administrator would also evaluate whether the State has placed all known scrapie-infected and source flocks under movement restrictions, with movement of animals only to slaughter, to feedlots under permit, and movement restrictions that ensure later movement to slaughter, for destruction, or for research. Scrapie-positive and suspect animals could be moved only for transport to an approved research facility or for purposes of destruction. The Administrator would also evaluate whether the State has effectively implemented policies to:

- Investigate all animals reported as scrapie suspect animals within 7 days of notification;
- Designate a flock's status, within 15 days of notification that the flock contains a scrapie-positive animal, based on an investigation by State or Federal animal health authorities;
- Restrict the movement, in accordance with proposed § 79.6(a)(4), of newly designated scrapie-infected and source flocks within 7 days after they are designated in accordance with proposed § 79.4;

- Relieve infected and source flock movement restrictions only after completion of a flock plan created in accordance with proposed § 54.14 or a flock plan created in accordance with an approved scrapie control pilot project, or as permitted by the conditions of such a flock plan, and after agreement by the owner to comply with a 5-year postexposure monitoring and management plan;

- Conduct an epidemiologic investigation of source and infected flocks that includes the designation of high-risk and exposed animals and that identifies animals to be traced;

- Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-State traces to the appropriate State within 45 days of receipt of notification of a scrapie-positive animal; and,

- Conduct tracebacks based on slaughter sampling within 15 days of receipt of notification of a scrapie-positive animal at slaughter.

These proposed provisions expand upon the requirements in the November 30 proposed rule that Consistent States must effectively quarantine all scrapie-infected and source flocks and all high-risk, affected, suspect, and scrapie-positive animals. The added details describe best practices for investigating and quarantining scrapie outbreaks that are based on APHIS procedures employed during many years of program experience dealing with animal disease outbreaks. The proposed language also adds details on steps States should take before releasing quarantines or modifying movement restrictions, based on practices APHIS has found effective in past quarantine operations.

We also propose that the Administrator would evaluate whether the State effectively monitors and enforces quarantines, and effectively enforces State reporting laws and regulations for scrapie. These proposed provisions are identical to requirements proposed in the November 30 proposed rule.

We also propose that the Administrator would determine whether the State has designated at least one APHIS or State animal health official to coordinate scrapie program activities in the State and to serve as the designated scrapie epidemiologist in the State, and whether the State has educated those engaged in the interstate movement of sheep and goats regarding the identification and recordkeeping requirements of the regulations.

These proposed provisions are similar to provisions employed in APHIS regulations for domestic disease control

programs for cattle and swine. APHIS finds that having a designated epidemiologist for program activities for each State greatly facilitates management of disease programs, and that education programs for persons engaged in interstate movement of animals greatly aids compliance and the effectiveness of disease control programs.

We also propose that the Administrator would determine whether the State has provided APHIS with a plan and timeline for complying with the following additional requirements, which would have to be met within 2 years of designation of the State as a Consistent State.<sup>1</sup> Under these requirements, the State would have to:

- Require, based on State law or regulation, and effectively enforce official identification upon change of ownership of all animals of any age not in slaughter channels and any sheep over 18 months of age as evidenced by eruption of the second incisor such that the animal may be traced to its flock of birth. A State could exempt commercial goats in intrastate commerce from this identification requirement if the goats have not been in contact with sheep and if there has been in that State no case of scrapie in a commercial goat in the past 10 years that originated in that State and cannot be attributed to exposure to infected sheep and there are no exposed commercial goat herds in that State. A State could exempt commercial whiteface sheep under 18 months of age in intrastate commerce from this identification requirement if there has been in that State no case of scrapie in commercial whiteface sheep that originated from that State and there are no exposed commercial whiteface sheep flocks in that State that have been exposed by a female animal. States that exempt these types of commercial animals must put in place the regulations necessary to require identification of these animals within 90 days of these conditions no longer existing.

- Maintain in the National Scrapie Database administered by APHIS, or in a State database approved by the Administrator as compatible with the National Scrapie Database, the State's: (1) Premises information and assigned premises numbers and individual identification number sequences assigned for use as premises identification; (2) individual animal information on all scrapie-positive,

suspect, high-risk, and exposed animals in the State; (3) individual animal information on all out-of-State animals to be traced; and (4) accurate flock status data.

- Require official individual identification of any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than 1 year of age or any sexually intact exposed animal of less than 1 year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than 1 year of age), whether or not the animal resides in a source or infected flock.

- Effectively enforce movement restrictions on all scrapie-positive, suspect, and high-risk animals throughout their lives unless they are moved in accordance with § 79.3.

- Require that tissues from all scrapie-positive or suspect animals and female high-risk animals that have lambed (when they have died or have been destroyed) be submitted to a laboratory authorized by the Administrator to conduct scrapie tests and requires complete destruction of the carcasses of scrapie-positive and suspect animals.

- Prohibit any animal from being removed from slaughter channels unless it is identified to the premises of birth, is not from an inconsistent State, and is not scrapie-exposed or from an infected or source flock.

- Comply with the guidelines adopted in the Scrapie Eradication Uniform Methods and Rules.

Finally, we propose that, if the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status. The decision to grant an extension would be based on the State's ability to prevent the movement of scrapie-infected animals out of the State and on the progress being made in making the needed statutory changes.

These proposed provisions add more detail to the requirements proposed in the November 30 proposed rule regarding the responsibility of Consistent States to conduct official animal identification programs, restrict the movement of certain animals, and submit for testing tissue samples from scrapie-positive or suspect animals and female high-risk animals.

One change from the November 30 proposed rule is the proposal to identify any animal over 18 months of age, rather than any animal over 6 months of age. APHIS agrees with the commenters

<sup>1</sup> This provision would apply until January 1, 2003. Any State designated as a Consistent State after that date would have to meet all requirements prior to designation.

that age and sexual maturity are benchmarks that divide animals into different risk levels for scrapie transmission and our ability to diagnose the disease. After 18 months of age, a lamb will have an eruption of the second incisors and at this age due to sexual maturity the risk of transmission of scrapie increases significantly, as does the ability to diagnose scrapie. We propose to make this change based on comments indicating the 6-month standard would cause needless expense for persons moving lambs to slaughter, without significantly reducing risk.

We also propose to exempt from this identification certain commercial goats and whiteface sheep if the incidence of scrapie in a State indicates scrapie is unlikely to exist in these populations. Only commercial goats that have never been in contact with sheep would be exempted from this identification requirement. A State could exempt such goats only if the only cases of scrapie ever identified among commercial goats in the State were in goats that either associated with sheep (in which case the infection was probably incidental to that association and not endemic to the goat population), or goats that originated in another State. However, a State could not exempt goats from identification if a goat diagnosed with scrapie has given birth in that State resulting in the exposure of other goat herds, even if that goat originated in another State, because the risks of spreading scrapie during birth processes are high. We also propose that a State may exempt commercial whiteface sheep under 18 months of age from this identification if there has been in that State no case of scrapie in commercial whiteface sheep and no commercial whiteface flocks in the State that have been exposed by a female animal. These proposed exemptions are based on information from commenters indicating that these situations for commercial goats and whiteface sheep present very low risks of spreading scrapie.

Overall, the standards proposed above incorporate the standards in the November 30 proposed rule and expand them with more detail describing adequate State scrapie programs. A large part of the new material covers how States must maintain records documenting their quarantine and movement restriction activities, and how this information must be made available through the National Scrapie Database maintained by APHIS or through State databases. The proposed standards also provide more detail on the standards States must apply in releasing animals from quarantine, give more detail on identification

requirements, and establish timelines for required actions and working relationships (e.g., the memorandum of understanding) between APHIS and States.

Communication with the States that have applied for Consistent State status indicates that all 50 of the States we propose to designate Consistent, under the standards contained in the November 30 proposed rule, would also be able to qualify as Consistent under the expanded standards we propose today. Some of the States are currently making changes to their procedures and authorities to bring their programs into full compliance. We expect that all these States will complete these activities within about 90 days after the date this proposal is published, and prior to the time final action is taken on it. One possible exception is where States must pass new laws or regulations to comply. For example, the State of Kentucky has authority to require reporting of disease only by diagnostic laboratories and accredited veterinarians. This authority may or may not be sufficient to meet the requirement in proposed § 79.6(a)(2) that States "require the reporting of any animal suspected of having scrapie to State or Federal animal health authorities."

The efficacy of Kentucky's reporting system as well as that of the other States will be evaluated in an annual review by the Administrator to verify that Consistent States meet the requirements of the regulations. However, in the event that States find they need additional statutory authority to comply with the reporting or any other requirement, we wish to establish a system that allows States to remain Consistent States while they update their statutory authorities. That is the purpose of proposed § 79.6(b), which states that if the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status.

As noted, we intend to take final action on these proposed standards for Consistent States, and on the proposed list of Consistent States, at the same time we take final action on the November 30 proposed rule. At that time, all of the 50 States proposed as Consistent in today's proposal that meet the final standards for Consistent States, or that have been granted an extension by the Administrator under § 79.6(b) to change their statutes in order to meet all the requirements, will be designated as Consistent States. After that final rule is

published, States' program-consistent status will be reviewed at least annually. Any States not found in compliance after such a review will be removed from the list.

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

This proposed 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 action would designate 50 States as Consistent States under the scrapie regulations, but would not have any economic effects in itself. The possible economic effects of Consistent State status were discussed in the November 30 proposed rule, and will be further discussed in a final regulatory flexibility analysis that will be prepared when final action is taken on that rule.

#### **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.

#### **Paperwork Reduction Act**

This proposed rule contains no new information collection or record keeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 9 CFR Part 79**

Animal diseases, Goats, Quarantine, Reporting and recordkeeping requirements, Scrapie, Sheep, Transportation.

For the reasons set forth in the preamble, we propose to amend part 79 as set out in the proposed rule published on November 30, 1999 (64 FR 66791), as follows:

1. The authority citation for part 79 would be revised to read as follows:

**Authority:** 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

2. Section 79.6 is revised to read as follows:

**§ 79.6 Standards for State programs to qualify as Consistent States.**

(a) In reviewing a State for Consistent State status, the Administrator will evaluate the State statutes, regulations, and directives pertaining to animal health activities; reports and publications of the State animal health agency; and a written statement from the State animal health agency describing State scrapie control activities and certifying that these activities meet the requirements of this section. In determining whether a State is a Consistent State, the Administrator will determine whether the State:

(1) Has the authority, based on State law or regulation, to restrict the movement of all scrapie-infected and source flocks.

(2) Has the authority, based on State law or regulation, to require the reporting of any animal suspected of having scrapie to State or Federal animal health authorities.

(3) Has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding between APHIS and the State that delineates the respective roles of each in National Scrapie Program implementation.

(4) Has placed all known scrapie-infected and source flocks under movement restrictions, with movement of animals only to slaughter, to feedlots under permit and movement restrictions that ensure later movement to slaughter, for destruction, or for research. Scrapie-positive and suspect animals may be moved only for transport to an approved research facility or for purposes of destruction.

(5) Has effectively implemented policies to:

(i) Investigate all animals reported as scrapie suspect animals within 7 days of notification.

(ii) Designate a flock's status, within 15 days of notification that the flock contains a scrapie-positive animal, based on an investigation by State or Federal animal health authorities and in accordance with this part.

(iii) Restrict the movement, in accordance with paragraph (a)(4) of this section, of newly designated scrapie-infected and source flocks within 7 days after they are designated in accordance with § 79.4 of this part.

(iv) Relieve infected and source flock movement restrictions only after completion of a flock plan created in accordance with § 54.14 of this chapter or a flock plan created in accordance with an approved scrapie control pilot project, or as permitted by the

conditions of such a flock plan, and after agreement by the owner to comply with a 5-year postexposure monitoring and management plan.

(v) Conduct an epidemiologic investigation of source and infected flocks that includes the designation of high-risk and exposed animals and that identifies animals to be traced.

(vi) Conduct tracebacks of scrapie-positive animals and traceouts of high-risk and exposed animals and report any out-of-State traces to the appropriate State within 45 days of receipt of notification of a scrapie-positive animal.

(vii) Conduct tracebacks based on slaughter sampling within 15 days of receipt of notification of a scrapie-positive animal at slaughter.

(6) Effectively monitors and enforces quarantines.

(7) Effectively enforces State reporting laws and regulations for scrapie.

(8) Has designated at least one APHIS or State animal health official to coordinate scrapie program activities in the State and to serve as the designated scrapie epidemiologist in the State.

(9) Has educated those engaged in the interstate movement of sheep and goats regarding the identification and recordkeeping requirements of this part.

(10) Has provided APHIS with a plan and timeline for complying with the following additional requirements, which must be met within 2 years of designation of the State as a Consistent State:<sup>3</sup>

(i) Requires, based on State law or regulation, and effectively enforces official identification upon change of ownership of all animals of any age not in slaughter channels and any sheep over 18 months of age as evidenced by eruption of the second incisor such that the animal may be traced to its flock of birth; except that:

(A) A State may exempt commercial goats in intrastate commerce that have not been in contact with sheep from this identification requirement if there has been in that State no case of scrapie in a commercial goat in the past 10 years that originated in that State and cannot be attributed to exposure to infected sheep and there are no exposed commercial goat herds in that State; and

(B) A State may exempt commercial whiteface sheep under 18 months of age in intrastate commerce from this identification requirement if there has been in that State no case of scrapie in commercial whiteface sheep that originated from that State and there are

no exposed commercial whiteface sheep flocks in that State that have been exposed by a female animal.

(C) States that exempt these types of commercial animals must put in place the regulations necessary to require identification of these animals within 90 days of these conditions no longer existing.

(ii) Maintains in the National Scrapie Database administered by APHIS, or in a State database approved by the Administrator as compatible with the National Scrapie Database, the State's:

(A) premises information and assigned premise numbers and individual identification number sequences assigned for use as premises identification;

(B) individual animal information on all scrapie-positive, suspect, high-risk, and exposed animals in the State;

(C) individual animal information on all out-of-State animals to be traced; and

(D) accurate flock status data.

(iii) Requires official individual identification of any live scrapie-positive, suspect, or high-risk animal of any age and of any sexually intact exposed animal of more than 1 year of age or any sexually intact exposed animal of less than 1 year of age upon change of ownership (except for exposed animals moving in slaughter channels at less than 1 year of age), whether or not the animal resides in a source or infected flock.

(iv) Effectively enforces movement restrictions on all scrapie-positive, suspect, and high-risk animals throughout their lives unless they are moved in accordance with § 79.3.

(v) Requires that tissues from all scrapie-positive or suspect animals and female high-risk animals that have lambed (when they have died or have been destroyed) be submitted to a laboratory authorized by the Administrator to conduct scrapie tests and requires complete destruction of the carcasses of scrapie-positive and suspect animals.

(vi) Prohibits any animal from being removed from slaughter channels unless it is identified to the premises of birth, is not from an inconsistent State, and is not scrapie-exposed or from an infected or source flock.

(vii) Complies with the guidelines adopted in the Scrapie Eradication Uniform Methods and Rules.

(b) If the Administrator determines that statutory changes are needed to bring a State into full compliance, the Administrator may grant up to a 2-year extension to allow a State to acquire additional authorities before removing a State's Consistent Status. The decision to grant an extension will be based on

<sup>3</sup> This provision would apply until January 1, 2003. Any State designated as a Consistent State after that date would have to meet all requirements prior to designation.

the State's ability to prevent the movement of scrapie-infected animals out of the State and on the progress being made in making the needed statutory changes.

Done in Washington, DC, this 10th day of August 2000.

**Bobby R. Acord,**

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

[FR Doc. 00-20657 Filed 8-11-00; 8:45 am]

BILLING CODE 3410-34-U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-129-AD]

RIN 2120-AA64

#### **Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-145 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-145 series airplanes. This proposal would require replacement of defective hydraulic tubing in the left and right wings with new hydraulic tubing. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The action specified by the proposed AD is intended to prevent the loss of hydraulic pressure which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by September 29, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-129-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain

“Docket No. 2000-NM-129-AD” in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

#### **FOR FURTHER INFORMATION CONTACT:**

Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE-116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703-6071; fax (770) 703-6097.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket Number 2000-NM-129-AD.” The postcard will be date stamped and returned to the commenter.

#### **Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-129-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### **Discussion**

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB-145 series airplanes. The DAC indicated that tubing which is part of the hydraulic system in each airplane wing had failed during routine hydraulic pressure testing. Investigation revealed that there were defects in a particular batch of tubing due to errors in the manufacturing process. If the defective tubing is not replaced, it could fail and cause a loss of hydraulic pressure. Such a loss in pressure could result in reduced controllability of the airplane.

#### **Explanation of Relevant Service Information**

EMBRAER has issued Service Bulletin 145-29-0003, dated November 13, 1997, which describes procedures for replacing the existing hydraulic tubing with new non-defective tubing. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98-01-03, dated January 15, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

#### **FAA's Conclusions**

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.