
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

AVI BIOPHARMA, INC.

(Exact name of registrant as specified in charter)

OREGON

(State or other jurisdiction of
incorporation or organization)

93-0797222

(I.R.S. Employer
Identification Number)

**ONE S.W. COLUMBIA, SUITE 1105
PORTLAND, OREGON 97258
(503) 227-0554**

(Address, including zip code and telephone number,
including area code, of registrant's principal executive offices)

**AVI BIOPHARMA, INC.
2002 EQUITY INCENTIVE PLAN
(Full Title of the Plan)**

**DENIS R. BURGER, Ph.D.
CHIEF EXECUTIVE OFFICER
AVI BIOPHARMA, INC.
ONE S.W. COLUMBIA, SUITE 1105
PORTLAND, OREGON 97258
(503) 227-0554**

(Name, address, including zip code and telephone number,
including area code, of agent for service)

with copy to:
**ROBERT A. STOUT, ESQ.
HURLEY, LYNCH & RE, P.C.
747 SW INDUSTRIAL WAY, BEND, OREGON 97702
(541) 317-5505**

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock \$.0001 par value	2,500,000	\$5.02(1)	\$12,550,000(1)	\$1,154.60

- (1) The offering price is estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h). The offering price per unit and the aggregate offering price is based on the average of the high and low per share sales prices reported for the Common Stock by the Nasdaq National Market, which was \$5.02 on December 9, 2002.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE

The following documents are incorporated by reference into this registration statement:

(a) Annual Report on Form 10-K of AVI BioPharma, Inc. (the "Company" or the "Registrant") for the year ended December 31, 2001, filed with the Securities and Exchange Commission (the "SEC") on April 1, 2002.

(b) Amendment to Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2001 filed with the SEC on April 23, 2002; Quarterly Report on Form 10-Q of the Company for the Quarter ended March 31, 2002, filed with the SEC on May 14, 2002; Amendment to Quarterly Report on Form 10-Q of the Company for the quarter ended March 31, 2002, filed with the SEC on July 8, 2002; Quarterly Report on Form 10-Q of the Company for the quarter ended June 30, 2002, filed with the SEC on August 14, 2002; Quarterly Report on Form 10-Q of the Company for the quarter ended September 30, 2002, filed with the SEC on November 13, 2002.

(c) Current Report of the Company on Form 8-K filed with the SEC on March 5, 2002; Current Report of the Company filed on Form 8-K filed with the SEC on March 12, 2002; Current Report of the Company on Form 8-K filed with the SEC on April 2, 2002; Current Report of the Company on Form 8-K filed with the SEC on May 22, 2002; Amendment to Current Report of the Company on Form 8-K filed with the SEC on May 31, 2002; Amendment to Current Report of the Company on Form 8-K filed with the SEC on June 10, 2002; Current Report of the Company on Form 8-K filed with the SEC on August 7, 2002; Current Report of the Company on Form 8-K filed with the SEC on November 5, 2002.

(d) Registration Statement of the Company on Form S-3 filed with the SEC on August 28, 2001 (SEC Registration No.: 333-68502); Amendment No. 1 to Registration Statement of the Company on Form S-3 filed with the SEC on April 23, 2002; Amendment No. 2 to Registration Statement of the Company on Form S-3 filed with the SEC on June 12, 2002; Amendment No. 3 to Registration Statement of the Company on Form S-3 filed with the SEC on July 10, 2002.

(e) Registration Statement of the Company on Form S-3 filed with the SEC on April 23, 2002 (SEC Registration No.: 333-86778); Amendment No. 1 to Registration Statement of the Company on Form S-3 filed with the SEC on June 12, 2002; Amendment No. 2 to Registration Statement of the Company on Form S-3 filed with the SEC on July 10, 2002;

(f) All documents filed by the Company with the SEC pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 after the date of this registration statement and before the date of filing of a post-effective amendment to this registration statement stating that all securities offered have been sold or which deregisters all securities then remaining unsold.

ITEM 4. DESCRIPTION OF SECURITIES

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

Not applicable.

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ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Company's Articles of Incorporation provide for indemnification of the officers and directors of the Company to the fullest extent permitted by law. The Oregon Business Corporation Act permits a corporation to limit, under certain circumstances, a director's liability for monetary damages in actions brought by the corporation or its stockholders. As an Oregon corporation, the Company is subject to the OBCA and the exculpation from liability and indemnification provisions contained therein. Pursuant to Section 60.047(2)(d) of the OBCA, Article VI of the Company's Third Restated Articles of Incorporation eliminates the liability of the Company's directors to the Company or its stockholders for monetary damages, except for any liability related to breach of the duty of loyalty, actions not in good faith and certain other liabilities.

Section 60.387, ET SEQ., of the OBCA allows corporations to indemnify their directors and officers where the director or officer has acted in good faith and with a reasonable belief that actions taken were in the best interests of the corporation or at least not adverse to the corporation's best interests and, if in a criminal proceeding, the individual had no reasonable cause to believe the conduct in question was unlawful. Under the OBCA, corporations may not indemnify against liability in connection with a claim by or in the right of the corporation but may indemnify against the reasonable expenses associated with such claims. Corporations may not indemnify against a breach of the duty of loyalty. The OBCA mandates indemnification against all reasonable expenses incurred in the successful defense of any claim made or threatened whether or not such claim was by or in the right of the corporation. Finally, a court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification in view of all the relevant circumstances whether or not the director or officer met the good faith and reasonable belief standards or conduct set out in the statute.

The OBCA also provides that the statutory indemnification provisions are not deemed exclusive of any other rights to which directors or officers may be entitled under a corporation's articles of incorporation or bylaws, any agreement, general or specific action of the board of directors, vote of stockholders or otherwise.

The Company has entered into indemnification agreements with its directors and certain of its officers.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED

Not applicable.

ITEM 8. EXHIBITS

NUMBER	EXHIBITS
5.1	Opinion of Hurley, Lynch & Re, P.C. as to the legality of the securities being registered
23.1	Consent of Hurley, Lynch & Re, P.C. (included in legal opinion filed as Exhibit 5.1)
24.1	Powers of Attorney
99.1	AVI BioPharma, Inc. 2002 Equity Incentive Plan (incorporated by reference to Appendix A to Registrant's Definitive Proxy Statement on Form 14A filed with the SEC on April 11, 2002.)

ITEM 9. UNDERTAKINGS

(a) The Registrant hereby undertakes to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

- (i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

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- (ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement;
- (iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement; provided, however, that subparagraphs (i) and(ii) do not apply if the information required to be included in a post-effective amendment by those subparagraphs is contained in periodic reports filed by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(b) The Registrant hereby undertakes that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) The Registrant hereby undertakes to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(d) The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(e) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such a director, officer or controlling person in connection with securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Portland, State of Oregon, on the 13th day of December, 2002.

AVI BIOPHARMA, INC.

By: /s/ DENIS R. BURGER, PH.D.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities and on the date indicated.

Signature	Title
<hr/> /s/ DENIS R. BURGER PH.D. <hr/> Denis R. Burger, Ph.D.	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)
<hr/> /s/ ALAN P. TIMMINS <hr/> Alan P. Timmins	President, Chief Operating Officer, and Director
<hr/> /s/ MARK M. WEBBER <hr/> Mark M. Webber	Chief Financial Officer and Chief Information Officer (Principal Financial and Accounting Officer)
<hr/> * <hr/> Patrick L. Iversen, Ph.D.	Senior Vice President of Research and Development and Director
<hr/> * <hr/> Dwight D. Weller, Ph.D.	Senior Vice President of Chemistry and Manufacturing and Director
<hr/> * <hr/> Andrew J. Ferrara	Director
<hr/> * <hr/> Bruce L.A. Carter, Ph.D.	Director
<hr/> * <hr/> John W. Fara, Ph.D.	Director

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<hr/> * <hr/> James B. Hicks, Ph.D.	Director
<hr/> * <hr/> Joseph Rubinfeld, Ph.D.	Director

*By: /s/ ALAN P. TIMMINS
 Alan P. Timmins, as *Attorney-in-fact*

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INDEX TO EXHIBITS

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PART II INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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ITEM 4. DESCRIPTION OF SECURITIES

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL

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SIGNATURES

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Hurley, Lynch & Re, P.C. letterhead

December 13, 2002

Board of Directors
AVI BioPharma, Inc.
One S.W. Columbia, Suite 1105
Portland, Oregon 97258

Gentlemen:

In connection with the registration of 2,500,000 shares of common stock, .0001 par value (the "Common Stock"), of AVI BioPharma, Inc., an Oregon corporation (the "Company"), under the Registration Statement on Form S-8 to be

filed with the Securities and Exchange Commission on December 13, 2002, and the proposed offer and sale of the Common Stock pursuant to the terms of the AVI BioPharma, Inc., 2002 Equity Incentive Plan (the "2002 Equity Incentive Plan"), we have examined such corporate records, certificates of public officials and officers of the Company and other documents as we have considered necessary or proper for the purpose of this opinion.

Based on the foregoing and having regard to legal issues which we deem relevant, it is our opinion that the shares of Common Stock to be offered pursuant to the 2002 Equity Incentive Plan, when such shares have been delivered against payment therefor as contemplated by the 2002 Equity Incentive Plan, will be validly issued, fully paid and nonassessable.

We hereby consent to the filing of this opinion as an exhibit to the above-mentioned registration statement.

Very truly yours,

/s/ HURLEY, LYNCH & RE, P.C.
HURLEY, LYNCH & RE, P.C.

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[EXHIBIT 5.1](#)

POWER OF ATTORNEY

The person whose signature appears below constitutes and appoints Alan P. Timmins as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, in his name, place and stead, in any and all capacities to sign and file with the Securities and Exchange Commission a Registration Statement on Form S-8 covering the registration and sale of up to 2,500,000 shares of AVI BioPharma, Inc.'s common stock ("Common Stock") acquirable pursuant to the terms of the AVI BioPharma, Inc. 2002 Equity Incentive Plan ("2002 S-8") and amendments to such 2002 Form S-8, as required to comply with the registration requirements of such shares under the Securities Exchange Act of 1933, as amended from time to time, or as deemed necessary by such attorney-in-fact (including to add additional shares), granting unto such attorney-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact or his substitutes may lawfully do or cause to be done by virtue thereof.

This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ DENIS R. BURGER

DENIS R. BURGER, Ph.D.
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

POWER OF ATTORNEY

The person whose signature appears below constitutes and appoints Alan P. Timmins as his lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, in his name, place and stead, in any and all capacities to sign and file with the Securities and Exchange Commission a Registration Statement on Form S-8 covering the registration and sale of up to 2,500,000 shares of AVI BioPharma, Inc.'s common stock ("Common Stock") acquirable pursuant to the terms of the AVI BioPharma, Inc. 2002 Equity Incentive Plan ("2002 S-8") and amendments to such 2002 Form S-8, as required to comply with the registration requirements of such shares under the Securities Exchange Act of 1933, as amended from time to time, or as deemed necessary by such attorney-in-fact (including to add additional shares), granting unto such attorney-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact or his substitutes may lawfully do or cause to be done by virtue thereof.

This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ MARK M. WEBBER

MARK M. WEBBER
Chief Financial Officer and Chief Information Officer
(Principal Financial and Accounting Officer)

POWER OF ATTORNEY

The person whose signature appears below constitutes and appoints Alan P. Timmins as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, in his name, place and stead, in any and all capacities to sign and file with the Securities and Exchange Commission a Registration Statement on Form S-8 covering the registration and sale of up to 2,500,000 shares of AVI BioPharma, Inc.'s common stock ("Common Stock") acquirable pursuant to the terms of the AVI BioPharma, Inc. 2002 Equity Incentive Plan ("2002 S-8") and amendments to such 2002 Form S-8, as required to comply with the registration requirements of such shares under the Securities Exchange Act of 1933, as amended from time to time, or as deemed necessary by such attorney-in-fact (including to add additional shares), granting unto such attorney-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact or his substitutes may lawfully do or cause to be done by virtue thereof.

This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ PATRICK L. IVERSEN

PATRICK L. IVERSEN
Senior Vice President of Research and Development and Director

POWER OF ATTORNEY

The person whose signature appears below constitutes and appoints Alan P. Timmins as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, in his name, place and stead, in any and all capacities to sign and file with the Securities and Exchange Commission a

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This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ DWIGHT D. WELLER

DWIGHT D. WELLER, Ph.D.
Senior Vice President of Chemistry and Manufacturing and Director

POWER OF ATTORNEY

The person whose signature appears below constitutes and appoints Alan P. Timmins as his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him, in his name, place and stead, in any and all capacities to sign and file with the Securities and Exchange Commission a Registration Statement on Form S-8 covering the registration and sale of up to 2,500,000 shares of AVI BioPharma, Inc.'s common stock ("Common Stock") acquirable pursuant to the terms of the AVI BioPharma, Inc. 2002 Equity Incentive Plan ("2002 S-8") and amendments to such 2002 Form S-8, as required to comply with the registration requirements of such shares under the Securities Exchange Act of 1933, as amended from time to time, or as deemed necessary by such attorney-in-fact (including to add additional shares), granting unto such attorney-in-fact full power and authority to do and perform each and every act and thing requisite and necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact or his substitutes may lawfully do or cause to be done by virtue thereof.

This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ ANDREW J. FERRARA

ANDREW J. FERRARA
Director

POWER OF ATTORNEY

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This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ BRUCE L.A. CARTER

BRUCE L.A. CARTER
Director

POWER OF ATTORNEY

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This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ JOHN W. FARA

JOHN W. FARA
Director

POWER OF ATTORNEY

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This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ JAMES B. HICKS

JAMES B. HICKS
Director

POWER OF ATTORNEY

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This power of attorney shall remain in full force and effect and may be relied upon by such attorney-in-fact unless the undersigned files a revocation thereof with the Securities and Exchange Commission.

DATED effective December 5, 2002.

/s/ JOSEPH RUBINFELD

JOSEPH RUBINFELD, Ph.D.
Director

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[EXHIBIT 24.1](#)