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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 01–126–2]

RIN 0579–AB37

Infectious Salmon Anemia; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that established regulations to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. We considered depopulation necessary to control infectious salmon anemia in Maine, and indemnification for depopulated fish necessary to gain producer support.

DATES: *Effective Date:* The interim rule became effective on April 5, 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Jill Rolland, Fishery Biologist, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–8069.

SUPPLEMENTARY INFORMATION:

Background

The regulations at 9 CFR part 53 (referred to below as the regulations) provide for the control and eradication of diseases including foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, and other communicable diseases of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitute an emergency

and threaten the livestock (farm-raised animals, including poultry and fish) of the United States. The regulations authorize payments based on the fair market value of the animals destroyed, as well as payments for their destruction and disposition. The regulations also authorize payments for materials that must be cleaned and disinfected or destroyed because of being contaminated by or exposed to disease.

In an interim rule effective April 5, 2002, and published in the **Federal Register** on April 10, 2002 (67 FR 17605–17611, Docket No. 01–126–1), we amended the regulations to provide for the payment of indemnity to producers in the State of Maine whose fish were destroyed due to infectious salmon anemia (ISA). The rule amended §§ 53.1, 53.2, 53.4, and 53.10 of the regulations by adding ISA to the list of diseases, providing for payments of up to 60 percent of the fair market value of the fish destroyed because of ISA, and by setting out criteria for qualifying for indemnity. We took that action to increase the effectiveness of our efforts to control ISA in Maine and prevent further outbreaks of the disease.

Comments on the interim rule were required to be received on or before June 10, 2002. We received two comments. The various issues raised in these comments are discussed below by topic.

Both commenters expressed disappointment in the Federal contribution to the farmers who depopulated fish because of ISA. Specifically, one commenter questioned how providing a 60 percent level of indemnification for ISA was determined when different percentages have applied to other programs. The other commenter stated that all farmers whose fish were depopulated after the Secretary of Agriculture's Declaration of Emergency on December 13, 2001, should be fully compensated. This commenter also stated that the interim rule did not make clear what level of compensation would be available to farmers for the costs of carcass disposal and facility cleaning and disinfection, and added that farmers should be fully reimbursed for these costs.

Federal compensation is not intended to reimburse producers for all disease-related losses. The Federal Government compensates producers for livestock or crops destroyed because they are affected by certain diseases and pests

primarily to provide an incentive for the producers to participate in eradication programs. The ISA situation in Maine resulted in a Federal decision to pay compensation at a 60 percent level, rather than at the 50 percent level provided by the regulations in 9 CFR part 53 for most other animal diseases, in order to gain producer cooperation in depopulating affected fish. The Federal Government also paid 60 percent of the cost of carcass disposal, facility cleaning, and disinfection. The Federal share for depopulation and associated disposal, cleaning, and disinfection costs, was reduced to 40 percent in the second year of the ISA program.

One commenter asked what funds would be available for future eradication efforts once the current monies were used, and whether State, Federal, or Tribal fish rearing facilities in Maine would qualify for indemnity should ISA be found at one of those sites.

The ISA indemnity program described in the interim rule ended September 30, 2003. As of yet, no decision has been made about indemnification for future ISA outbreaks, including outbreaks in State, Federal, and Tribal fish rearing facilities in Maine.

One commenter stated that ISA is not a disease foreign to the United States and should therefore not be addressed in part 53. The commenter suggested that ISA be included with other animal diseases endemic to the United States and that we indemnify the salmon producers under the rules for those diseases.

We considered ISA a foreign animal disease because this is the first time that the disease has been diagnosed in the United States. The first case of ISA in the United States was confirmed in Maine on February 15, 2001, and the disease has not been diagnosed in other parts of the United States.

One commenter questioned why a claimant must have an accredited veterinarian perform certain activities in order to be eligible for indemnity. The commenter said that other aquatic animal health professionals accredited by the American Fisheries Society could perform the services needed.

To be eligible for Federal indemnity payments, we require that all claimants participate in the ISA control program administered by APHIS and the State of Maine. Participants in this program

must have ready access to an APHIS accredited veterinarian. APHIS relies on accredited veterinarians in many of its disease control programs. These veterinarians are accredited by APHIS after completing specialized training in Federal animal health laws, regulations, and rules; interstate movement requirements for animals; import and export requirements for animals; USDA animal disease and eradication programs; laboratory support in confirming disease diagnoses; ethical/professional responsibilities of an accredited veterinarian; and animal health procedures, issues, and information resources relevant to the State in which the veterinarian wishes to perform accredited duties. To be accredited, a veterinarian must also be able to perform a variety of specialized tasks, which include recognizing clinical signs of foreign animal diseases, planning a disease control strategy for a unit of livestock, and developing appropriate cleaning and disinfection plans to control the spread of communicable diseases of livestock. We believe that this knowledge and these competencies are essential to the success of our disease control and eradication programs. In addition, we believe that requiring an accredited veterinarian to perform specific activities in the cooperative ISA control program was particularly important because the ISA program was our first action to regulate the farm-raised fish industry.

One commenter questioned provisions in § 53.4 that allow salvageable fish depopulated because of ISA to be sold for rendering, processing, or other purposes. The commenter stated that these provisions are inconsistent with the requirements in § 53.4 for other species and diseases, which appear to be intended to remove animals posing risks to other animals as quickly as possible.

Allowing salvageable fish to be sold for rendering or processing does not delay their removal. Once a disease is detected, the farmer may determine if the infected fish have salvage value. However, fish will be removed from their pens within a specified time regardless of whether they will be sold for rendering and processing or whether they will be destroyed by other means.

Other indemnity programs have allowed producers to seek salvage value in the past. One such program was the low pathogenic avian influenza indemnity program. Under this program, nearly 976,000 meat birds were sent to controlled slaughter. Determining whether an animal may have salvage value is based on a number

of factors, including the effect of the disease on the animal, whether or not the disease poses human health risks, and whether there is a risk of spreading the disease in transit or after processing. In the case of ISA, we determined that these risks did not apply and that it was appropriate to allow salmon farmers to be compensated for fish in this manner.

One commenter questioned why the eligibility requirements for receiving indemnity for fish destroyed because of ISA are more extensive than the requirements for receiving indemnity for destruction of animals because of other diseases covered by the regulations. The commenter cited retention of an accredited veterinarian and participation in the sea lice control program as examples. The commenter added that terrestrial farmers are not required to participate in disease control programs for endemic pests in order to receive compensation under the regulations.

We included these requirements after consultation with members of the State-Federal Joint Working Group on ISA, whose members believed the requirements we have established to be central issues in controlling the spread of ISA. With the knowledge that diseases spread in aquatic areas are more difficult to control than terrestrial diseases, we determined that such measures were necessary to ensure the disease was eradicated.

The commenter is correct in stating that terrestrial indemnification programs do not require that farmers participate in endemic pest control programs in order to receive indemnity payments under the regulations. However, the regulations do describe specific requirements for participation in some terrestrial animal disease indemnity programs. For example, 9 CFR part 54, subpart A—Scrapie Indemnification Program, describes a comprehensive disease control program that farmers must participate in to be eligible for indemnity payments. In the case of ISA, there is scientific evidence which suggests that sea lice contribute to the spread of ISA. For this reason, we determined that a sea lice control program was an integral part in controlling ISA. All vectors through which a disease can spread must be addressed in order to have an effective program.

Citing the Department's indemnification schedule in the "Infectious Salmon Anemia Programs Standards," v6.2, April 30, 2002, one commenter stated support for the general schedule but objected to broodfish being valued on the basis of meat value only. The commenter

suggested that the value of these fish be calculated based on average fecundity (12,000 eggs per female) and the market price of salmon eggs (\$0.05 per egg), which the commenter stated would generate a value of \$300 per broodfish.

We agree that broodfish should not be valued based on meat value. A valuation method for broodfish would be based on eggs, among other variables affecting these eggs, but no broodfish were depopulated in this program. We did not include a value specifically for broodfish in the schedule developed for the interim rule because one was not needed. If needed in the future, a standard would be developed for the valuation of broodfish.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988.

Further, this action 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.

Regulatory Flexibility Act

This rule affirms an interim rule that amended the regulations by establishing regulations to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to ISA.

In accordance with 5 U.S.C. 603, we performed an initial regulatory flexibility analysis for the interim rule, which was included in the interim rule and which invited submission of comments and data to assist in a comprehensive analysis of the economic effects of the interim rule on small entities. More specifically, we requested information on the number and kind of small entities that might incur benefits or costs from the implementation of the interim rule. No such information was submitted in the comments that we received.

The following final regulatory flexibility analysis addresses the economic effects of the interim rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 604).

Program Description and Benefits

ISA is recognized to cause considerable economic losses. In 2002, the Secretary of Agriculture authorized the transfer from the Commodity Credit Corporation of \$8.29 million as one part of a 2-year ISA indemnity and control program. The money was earmarked for indemnity costs, disposal, cleanup,

epidemiology, and surveillance. Under the interim rule, APHIS paid up to 60 percent of the fair market value of the fish destroyed.

At the time the interim rule was published, the farmed Atlantic salmon industry in Maine was estimated to be producing over 15,000 tons (or 30 million lbs.) of fish per year. In 2000, production value was estimated to have surpassed \$100 million in Maine. Maine's farmed Atlantic salmon industry directly employed approximately 1,000 people, primarily in Washington and Hancock Counties, and it was estimated that an additional 2,500 people had jobs that directly depended on Maine's farmed Atlantic salmon industry. There were approximately 28 to 33 employees per every million pounds of product output. The amount of fish stock per farm varied; as of December 2003, there were 26 active pen sites and 45 permitted pen sites, and, on average, 350,000 fish per site.

Value Determination for Non-Marketable Animals

Under the interim rule, an appraiser determined the fair market value of fish to be destroyed. Value was based on age; as salmon mature, their value increases significantly. Initially, salmon smolts are raised in freshwater pens for approximately 14 or 15 months. On average, these smolts weigh about 0.25 lbs. and carry no market value. On or about May 1 of each year, operators move salmon into saltwater pens, where they grow at a rapid pace. Therefore, salmon that are 16 months old have actually only been in a saltwater pen for approximately 1 month. Salmon grow approximately 0.5 to 1 lb. each month, except during the coldest winter months. During that first winter (December to March), when salmon are between 21 to 24 months, their weight stagnates at approximately 3 lbs. This weight stagnation process occurs each year, and in the spring, salmon resume growing at their previous pace. Prior to the ISA program a producer typically strived to harvest fish when they were the ideal market age of 38 to 42 months old (about 24 to 28 months in a saltwater pen, or about the time they reach 10 to 14 lbs.). Following implementation of the ISA program, the ideal market age dropped to 30 to 38 months (about 16 to 22 months in the saltwater pen, or about 9 to 14 lbs.). The final indemnity schedule is available through the person listed under **FOR FURTHER INFORMATION CONTACT.**

Between December 2001 and September 2003, APHIS, with the cooperation of the State of Maine and

affected producers, depopulated just over 1.66 million exposed or infected salmon in Maine. At the 60 percent rate provided for by the interim rule, we provided indemnity payments of about \$4.5 million to salmon producers in fiscal year 2002. We spent an additional \$1.1 million on facility cleaning and disinfection, disposal, and operating costs, bringing the total cost for the first year to \$5.6 million. The remaining \$2.6 million was rolled over for the program in fiscal year 2003. We provided about \$84,000 in indemnity to producers at the 40 percent rate in the program's second year. The remainder of the \$2.6 million went to costs associated with facility cleaning and disinfection, disposal, and operating costs for fiscal years 2003 and 2004. The following paragraph discusses how the indemnity payments were distributed over the 2-year program.

In fiscal year 2002, 1.61 million exposed or infected salmon from 8 sites were depopulated. Three sites contained about 718,000 10-month-old salmon. These sites received a little more than \$2.33 million in indemnity. About 711,500 9-month-old salmon from 4 sites were depopulated. These four sites received around \$2.16 million in indemnity. In fiscal year 2003, 23,391 14-month-old fish from one site were depopulated. The site received a total of \$77,284 in indemnity.

Salvage Value—Value Determination for Marketable Animals

Under the interim rule, salmon producers had the option of selling stock for rendering or other processing. The prices offered for salmon sold for rendering or processing were based on a number of criteria, but primarily considered the weight of the salvageable portion of the fish. These prices are offered by the processors; the prices for fish sold for salvage were reported to APHIS. We subtract any salvage value gained at slaughter from the indemnity payment.

In fiscal year 2002, a salmon producer from one site in the Passamaquoddy Bay received at least 60 percent of the market value in salvage value for 131,295 14-month-old salmon. Thus, APHIS paid no indemnity for the fish harvested from that site. In fiscal year 2003, a salmon producer from one site received \$80,139 in salvage value for 28,516 fish that were worth \$86,917. In this case, APHIS paid the difference of \$6,778 to the producer.

Cost Benefit Analysis

ISA put the entire farmed Atlantic salmon industry in Maine at risk. The benefits of keeping this \$100 million

dollar per year industry viable outweighed the cost of this program. Additionally, the interim rule provided salmon owners with a financial incentive to identify and destroy their ISA infected and/or exposed fish, thus arresting the spread of the disease and accelerating eradication efforts. Several benefits flowed from the interim rule. First, it reduced costs to the Maine salmon industry from animal mortality, costs from possible State regulatory actions, and trade restrictions on U.S. salmon product exports. Second, an aggressive program early on, while the number of known affected pens was reasonably small, obviated the need for higher future Federal costs to contain a more widespread outbreak. As a result of the ISA program, one-half of Maine's salmon industry (along the West Coast of Cobscook Bay) avoided exposure to ISA.

The interim rule also produced third-party trade benefits by demonstrating to trading partners the intent and ability of the United States to protect its animal industries, thus enhancing our ability to negotiate access to foreign markets. In addition, the interim rule encouraged salmon farmers in New Brunswick, Canada, to upgrade the province's program, thereby reducing the risk of future outbreaks in Maine.

The action taken in the interim rule can also be expected to reduce potential future eradication program costs. Canada has been battling ISA for several years; from 1998 to 2000, fish farmers in that country lost approximately \$70 million (in U.S. dollars). Canada's Provincial and Federal Governments have contributed over \$29.5 million (in U.S. dollars) to compensate salmon farmers. As a result of early intervention, based on a compensation program with enough financial incentive to encourage active participation among salmon farmers, Canada reduced the incidence of ISA from 18 infected sites in 1998 to 4 infected sites in 2001. However, this number jumped to 18 infected sites in 2003. This led to the destruction of 2.7 million fish with projected losses of more than \$76 million (in U.S. dollars).

Options Considered

In assessing the need for the interim rule, we identified three alternatives. The first was to maintain the status quo, where State efforts are supported by Federal technical assistance but not by Federal compensation programs or interstate movement restrictions. We rejected this option because it did not fully address the risks associated with a more widespread ISA epidemic. While Maine has the authority to quarantine a

pen site once it is known to be infected with ISA, the State lacked the resources to conduct the comprehensive testing and traceback activities that were necessary to identify newly infected sites. States also lack authority to directly regulate interstate commerce in salmon. Finally, while State quarantines are an important tool, quarantining a pen site does not eliminate the risk, since people may accidentally or deliberately violate the quarantine. Making Federal indemnity funds available served as a powerful incentive for producers to participate in the ISA control program and for owners of infected sites to depopulate, which greatly reduced the risk of further spread of ISA.

The second option would have been to provide financial and technical assistance to Maine's farmed salmon industry for continuation and expansion of a variety of pen site management practices to reduce or eliminate ISA. Although this option may have been less costly than the option we chose, option three below, we did not select it because it did not allow us to advance the ISA control program as quickly or effectively as the chosen option. However, APHIS will continue to work with industry and the State of Maine to further develop ISA management practices to preserve the reduction in ISA levels that the indemnity program achieved.

The third option, to provide indemnity payments to depopulate ISA infected and/or exposed fish, was the one we chose. Depopulation of infected animals, which clears the way for a disinfection program, is currently the single most effective way to eliminate ISA. Under this alternative, producers gained partial compensation for ISA infected and/or exposed fish.

Potential Impact on Small Entities

The interim rule established a voluntary program that allowed salmon producers in Maine to be paid indemnity for fish destroyed because of ISA. Many producers, as well as a number of processors who render salmon into food and non-food byproducts, may be small businesses. To the extent that the interim rule contributed to the elimination of ISA in Maine, all salmon producers were expected to benefit over the long term. In the short term, the economic impact on producers was expected to vary.

The U.S. Small Business Administration (SBA) defines a small fin fish and/or fish hatchery operation as one that has per-farm gross receipts of less than \$750,000. In 2000, there were 26 Atlantic salmon farms in the

State of Maine. Collectively, they employed approximately 1,200 workers; also, another 2,500 jobs, primarily in processing, rendering, or transport directly depended on these operations. The gross receipts of the affected salmon producers is unknown. However, it is reasonable to assume that most exceeded the SBA small entity threshold because, collectively, these 26 farms produced gross receipts in excess of \$100 million in 2000.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements in the interim rule have been approved by the Office of Management and Budget (OMB). The assigned OMB control number is 0579-0192.

Government Paperwork Elimination Act Compliance

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

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 53 and that was published at 67 FR 17605-17611 on April 10, 2002.

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

Done in Washington, DC, this 23rd day of April 2004.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04-9598 Filed 4-27-04; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004-NM-57-AD; Amendment 39-13590; AD 2004-09-01]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A300 B4-600, B4-600R, C4-605R Variant F, and F4-600R (Collectively Called A300-600) Series Airplanes; and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4-600, B4-600R, C4 605R Variant F, and F4-600R (collectively called A300-600) series airplanes; and Model A310 series airplanes. This action requires a one-time inspection for damage of the integrated drive generator electrical harness and pyramid arm, and repair if necessary. This action is necessary to prevent electrical arcing within the engine pylon, which could result in loss of the relevant alternating current (AC) bus bar, reduced structural integrity of the engine pylon, and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 13, 2004.

Comments for inclusion in the Rules Docket must be received on or before May 28, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2004-NM-57-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 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-iarccomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2004-NM-57-AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must