

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 51

[Docket No. 98-016-2]

#### Brucellosis; Increased Indemnity for Cattle and Bison

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting as a final rule, with two changes, an interim rule that amended the regulations governing Federal indemnity paid under the brucellosis eradication program to increase the amount of indemnity that may be paid for certain cattle and bison destroyed because of brucellosis. The interim rule described two indemnity methods—an appraisal method and a fixed-rate method—from which owners of certain animals approved for destruction may choose. As amended by this document, the rule now allows owners to receive Federal indemnity for unweaned, neutered calves in herds approved for depopulation, and the fixed-rate indemnity method now accounts for the higher value of registered beef cattle and dairy cattle compared to nonregistered beef cattle and bison. This action will provide sufficient financial incentive for cattle and bison owners to depopulate brucellosis-affected herds. The continued existence of these herds increases the risk of disease spread and prolongs the eradication process.

**EFFECTIVE DATE:** September 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-3754.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in part 78 of title 9 of the Code of Federal Regulations (CFR) govern the interstate movement of cattle, bison, and swine to help prevent the interstate spread of brucellosis, a contagious disease affecting animals and humans caused by bacteria of the genus *Brucella*. In humans, brucellosis initially causes flulike symptoms, but the disease may develop into a number of chronic conditions, such as arthritis. In cattle and bison, brucellosis causes, among other things, decreased milk production and loss of young through abortion or birth of weak calves. Humans can be treated for brucellosis with antibiotics; there is no feasible means of curing brucellosis in food animals.

The regulations in part 78 are part of a cooperative Federal and State program, administered by the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture (USDA), to eradicate brucellosis from the United States. Program officials are striving to eradicate the field strain of *Brucella abortus* from domestic cattle and bison herds by the end of December 1998. Among other things, the regulations in part 78 provide a system for classifying States or portions of States (areas) according to the rate of *B. abortus* infection present and the general effectiveness of the brucellosis control and eradication program in the State or area. The classifications are Class Free, Class A, Class B, Class C, and quarantined States and areas, with Class Free States being those in which there has been no finding of brucellosis in cattle or bison for the 12 months preceding classification and quarantined States and areas being those States and areas with the highest rates of brucellosis. As of July 31, 1998, there were only 8 known affected cattle herds and 1 known affected bison herd, and APHIS had declared 43 States, Puerto Rico, and the U.S. Virgin Islands free of the disease.

Brucellosis is commonly transmitted to susceptible animals by direct contact with infected animals. The disease is also transmitted to susceptible animals in contact with an environment that has been contaminated by discharges from infected animals. Infected pregnant cows may discharge billions of *Brucella* bacteria at calving or abortion. Although

it is not common, infected bulls can spread the disease to cows during breeding. Because brucellosis is transmitted by sexually intact animals, steers and spayed heifers do not pose a risk of transmitting brucellosis.

The basic approach to brucellosis eradication in cattle and bison has been to test cattle and bison for infection and send sexually intact infected and exposed animals to slaughter. Brucellosis-exposed cattle and brucellosis-exposed bison have a high probability of contracting brucellosis, and may, in fact, be contagious before they react to an official test for brucellosis. Because the continued presence of brucellosis in a herd seriously threatens the health of animals in that herd and other herds, the prompt destruction of sexually intact brucellosis-affected cattle or bison is critical to the success of the eradication program.

To encourage destruction of sexually intact cattle and bison that are infected with or that have been exposed to brucellosis, USDA pays Federal indemnity to owners of certain animals that are destroyed because of brucellosis. The regulations governing indemnification under the brucellosis eradication program are in 9 CFR part 51 (referred to below as the regulations). Without sufficient financial incentive to destroy exposed animals or depopulate affected herds, many owners prefer to quarantine exposed animals or, when the exposed animals in a herd cannot be isolated, the entire herd. Quarantining is a lengthy and expensive process for both the owner and USDA. USDA has to pay to have the quarantined herd tested periodically, until the herd is found to be free of brucellosis, and the owner may not sell or move any animals while they are under quarantine, except for slaughter, which provides less revenue than sales for breeding purposes.

In an interim rule effective March 24, 1998, and published in the **Federal Register** on March 31, 1998 (63 FR 15281-15284, Docket No. 98-016-1), we amended the regulations to provide additional financial incentive for owners to choose depopulation when USDA offers to pay indemnity for destruction of a herd. We amended § 51.3, "Payment to owners for animals destroyed," by changing the system of determining the indemnity to be paid for all cattle and bison destroyed under

the program, except for individual reactors and sexually intact exposed female calves that are not part of a whole-herd depopulation.

As a result of the interim rule, the Administrator may authorize the payment of indemnity by USDA to any owner of the following animals destroyed under the brucellosis eradication program: (1) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves (defined in § 51.1 as "a female bovine less than 6 months of age that is nursed by a brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction"), (2) cattle and bison in a herd that has been approved by APHIS for depopulation, and (3) brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that has, subsequent to the sale or trade, been found to be affected with brucellosis.

For individual cattle and bison identified as reactors on a complete herd test and for any sexually intact exposed female calves, the interim rule provided a fixed indemnity rate: \$250 for any registered cattle and nonregistered dairy cattle and \$50 for any bison, nonregistered cattle other than dairy cattle, or sexually intact exposed female calves. For cattle and bison herds that have been approved for depopulation and for brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions described above, the interim rule allowed owners to choose an appraisal method or a fixed-rate method for determining the indemnity amounts. As specified in the interim rule, under the appraisal method, the indemnity is the appraised market value of the animal minus the salvage value, and under the fixed-rate method, the indemnity will not exceed \$250 per animal. The method chosen must be used for all animals to be destroyed.

According to the interim rule, owners have the option of having an appraisal of their animals done prior to choosing the method used. Appraisals are conducted by an independent appraiser selected by the APHIS Administrator, and the cost of the appraisals is borne by APHIS. In all cases, the amount of Federal indemnity is determined in accordance with the regulations that were in effect on the date that reactors were found or the date that depopulation or removal of individual exposed animals was approved. Prior to payment of indemnity, proof of

destruction<sup>1</sup> must be furnished to the Veterinarian in Charge. The Administrator shall authorize the maximum per-head amount for animals approved for indemnity under the brucellosis eradication program unless: (1) Sufficient funds are not available, (2) the State or area in which the animal is located is under Federal quarantine, (3) the State does not request payment of Federal indemnity, or (4) the State requests a rate lower than the maximum.

We solicited comments concerning the interim rule for 60 days ending June 1, 1998. We received 14 comments by that date. The comments were from cattle industry associations, State departments of agriculture, and veterinary associations. All of the commenters were in favor of the intent of the interim rule: Many stated that increased indemnification is important for the rapid completion of the brucellosis eradication program because some producers have been reluctant to depopulate their affected herds. However, all but one of the commenters requested changes to the provisions of the interim rule. The suggestions made in the comments are discussed in detail below.

The comments primarily dealt with two concerns. The most prevalent suggestion was to allow cows and nursing calves in herds approved for depopulation to be appraised as a pair because these animals are generally worth more as a unit than as individuals.

The second most prevalent suggestion was to allow indemnity to be paid for all unweaned calves in herds approved for depopulation and to exempt any neutered calves from "B" branding and slaughter requirements. (Currently, the regulations allow for indemnity to be paid for sexually intact calves of both sexes but not for spayed heifers or steers, with the exception of work oxen, because neutered animals do not present a threat of spreading brucellosis. However, a common herd-management practice involves neutering nursing calves, especially the males. Owners of herds approved for depopulation are

<sup>1</sup> The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e) a permit (VS Form 1-27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

reluctant to slaughter cows with nursing calves that have been neutered because these calves are not eligible for indemnity and feeding unweaned calves is a labor-intensive and frequently unsuccessful undertaking.) The commenters expressed concern that owners of herds approved for depopulation may either delay depopulation until the neutered calves can be weaned (generally at about 6 months of age) or opt to test the herd with removal of reactors until the herd qualifies for release from quarantine. In either case, the herd remains as a potential source of disease transmission for an extended period of time. Several commenters stated that herd owners whose management practices include neutering of calves are "seriously disadvantaged" by the provisions in the interim rule.

One commenter stated that it is important to pay adequate indemnity to the owners of cows with nursing bull calves. The commenter stated that 4 to 6 months after weaning, the nursing bull calf becomes a valuable steer worth approximately \$500. Without being offered adequate indemnity, owners of exposed cows with nursing bull calves may resist depopulation. The commenter further stated that either "an indemnity option to encourage such owners to depopulate should be provided" or the Federal fixed indemnity should be increased by \$100 and the States should be permitted to apply State indemnity funds to address this issue.

One commenter suggested several other changes to the regulations. (1) State clearly that bull calves are eligible for indemnity. These calves would include weaned and unweaned bull calves that are to be used for breeding and unweaned bull calves that are not to be used for breeding. (2) Require destruction of all sexually intact males and females for which indemnity is paid. However, bull calves under 18 months of age for which indemnity is paid could be castrated and not destroyed and exempted from reactor tagging and "B" branding requirements. (3) For the purpose of herd depopulation, define a "steer" as a castrated male that has been weaned and a "not weaned steer" as a castrated male that has not been weaned. Allow indemnity to be paid for not weaned steer calves and exempt these calves from reactor tagging, "B" branding, and slaughter.

One commenter "encourages APHIS to continue to vigorously attack the remaining vestiges of this contagious disease affecting animals and humans." The commenter urged that, as the

eradication program winds down, APHIS continue adequate monitoring and surveillance at first points of market concentration and/or slaughter to prevent reinfection of the Nation's cattle herd from undetected animals.

Our final rule incorporates some of the suggestions made in the comments.

We agree with the comments about the increased value of cow-calf pairs over individual animals, and the appraisals made under the brucellosis program already take into account the increased value of such pairs. We further believe that adequate indemnity is currently offered for both weaned and unweaned bull calves and that no clarification needs to be made to the regulations regarding the eligibility of bull calves for indemnity. We also do not believe that definitions of steer and bull calves need to be added to the regulations. However, we will amend the regulations to allow for payment of indemnity for certain neutered calves as explained below.

In regard to the suggestions regarding unweaned calves in herds approved for depopulation, we recognize the problems described previously for herd owners caused by slaughtering cows that have nursing calves. We have decided to offer herd owners indemnity for unweaned, neutered cattle and bison in herds approved for depopulation. We are changing the regulations in paragraph (d) of § 51.9, "Claims not allowed," to allow for such payment. However, for reasons described below, we are not changing our regulations to incorporate the suggestion to allow indemnity to be paid for these calves but not require them to be destroyed.

As with all other animals for which Federal indemnity is provided under the brucellosis eradication program, we will require that owners of unweaned, neutered cattle and bison in herds approved for depopulation send these unweaned calves to slaughter or otherwise destroy them in accordance with the regulations in order to receive indemnity for them. Although these animals do not pose a threat of spreading brucellosis, we believe that it is important to require their destruction because we do not want to establish a situation in which it is financially beneficial for owners to have brucellosis infection in their herds. By providing indemnity for these calves and then allowing the owners to keep them, the possibility exists that the owners could profit from this action if the animals are raised and then sold at a later date. As stated previously, our goal in providing indemnification to owners under the brucellosis eradication program is to provide sufficient financial incentive to

encourage destruction of infected and exposed animals. Therefore, we are not amending the requirement in § 51.3 of the regulations that owners must provide proof of destruction of their animals in order to collect Federal indemnity for them. We are also not amending the requirements in § 51.5, which specifies methods of identification, including an option for "B" branding, for animals to be destroyed. Owners who choose to seek Federal indemnity for unweaned, neutered calves in herds approved for depopulation must identify and move these calves to slaughter in accordance with § 51.5 of the regulations and provide proof of destruction for them in accordance with § 51.3 of the regulations.

In regard to the comment concerning continued efforts by APHIS to identify and eliminate the last vestiges of brucellosis, we recognize the need to ensure adequate monitoring and surveillance to detect and eliminate any newly discovered sources of the disease and are committed to continuing efforts in this regard.

We are also making a change to the interim rule to correct an inadvertent omission. As stated previously, the interim rule specifies that, for owners of herds and individual exposed animals that qualify for either the appraisal method or the fixed-rate method of indemnity, the indemnity rate under the fixed-rate method shall not exceed \$250 per animal. For reasons explained below, the interim rule should have stated that, under the fixed-rate system, the indemnity shall not exceed \$250 per animal for bison and nonregistered cattle other than dairy cattle and \$750 per animal for registered cattle and nonregistered dairy cattle. We are amending the language in § 51.3 (a)(2)(ii)(B) accordingly.

Prior to publication of the interim rule, the indemnity regulations for herd depopulation in States other than Class Free States took into account the higher value of dairy cattle and registered beef cattle in comparison with bison and nonregistered beef cattle. The former regulations provided that, in States other than Class Free States, the indemnity for animals in herds depopulated because of brucellosis would not exceed \$250 per animal for any bison and nonregistered cattle other than dairy cattle and the lesser of 95 percent of appraised value minus salvage value or \$750 for any registered cattle or nonregistered dairy cattle. The regulations essentially provided a fixed-rate system with an appraisal component in States other than Class Free States: For regulated animals with

comparatively lower values (bison and nonregistered beef cattle), the indemnity was capped at \$250; for regulated animals with comparatively higher values (registered beef cattle and dairy cattle), the indemnity was capped at \$750.

As stated previously, under the new indemnity system established by the interim rule, owners of herds approved for depopulation must choose one of the two methods (appraisal or fixed rate) for all of the animals in the herd. While the appraisal method obviously accounts for differences in value of animals, the fixed-rate method (\$250 per animal) does not account for any differences in value. In changing the former indemnity regulations to the interim rule, we inadvertently omitted under the fixed-rate method the higher rates (up to \$750 per animal) that had been in place under the former regulations for registered animals and dairy cattle in States other than Class Free States.

Under the interim rule, owners of nonregistered beef cattle herds are expected to choose the fixed-rate method because the rate of \$250 per animal plus salvage value is fair compensation for these animals; owners of registered beef cattle herds are expected to choose the appraisal method because \$250 per animal plus salvage value is inadequate compensation for such animals. Owners of beef cattle herds with a mixture of registered and nonregistered animals would have to choose the appraisal method to obtain adequate compensation for all their animals. However, in certain situations, the fixed-rate method can be advantageous to both APHIS and the owner, i.e., APHIS can avoid the cost of conducting the appraisals, and the owner can receive the indemnity money quickly. To make the fixed-rate method under the interim rule commensurate with the former indemnity regulations, which accounted for the higher value of registered beef cattle and dairy cattle, we are splitting the fixed-rate method into the two levels described above. This change in the fixed-rate method should not cause a significant difference in program expenditures and will facilitate depopulation of affected herds with a mixture of registered and nonregistered animals.

Therefore, based on the rationale set forth in the interim rule and in this document, we are adopting the provisions of the interim rule as a final rule with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372

and 12988 and the Paperwork Reduction Act. Because the emergency nature of the interim rule made compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable, we are addressing the Regulatory Flexibility Act in this document as set forth below.

#### Effective Date

This is a substantive rule that relieves restrictions concerning the payment of indemnity for certain cattle and bison. Therefore, pursuant to the provisions of 5 U.S.C. 553, it may be made effective less than 30 days after publication in the **Federal Register**.

#### Executive Order 12866 and Regulatory Flexibility Act

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

In its effort to eradicate brucellosis, an infectious and contagious bacterial disease affecting animals and humans, the Federal Government offers indemnity payments to owners of cattle and bison destroyed because of brucellosis in accordance with the regulations in 9 CFR part 51. As completion of the brucellosis eradication program approaches, whole-herd depopulation of affected herds has become critical. Program officials recently determined that the Federal indemnity payments needed to be increased to provide sufficient incentive for owners to agree to depopulate herds. When whole-herd depopulation is necessary, producers incur costs related not only to animal loss, but also to transactions, including expenses of gathering and loading, transportation, and commission fees. Furthermore, with the loss of an entire herd, producers suffer production losses; dairy operations lose milk production, and beef operations lose calves. Registered herds may experience the irretrievable loss of valuable breeding characteristics.

In an interim rule published in the **Federal Register** on March 31, 1998, (63 FR 15281-15284, Docket No. 98-016-1), APHIS increased the Federal indemnity payments under the brucellosis eradication program to better reflect the appraised value, or fair market value, of certain animals destroyed under the program. Program officials believe that the increased payments will provide the necessary inducement for producers to depopulate affected herds and replace slaughtered animals with healthier ones. The continued existence of these herds

increases the risk of disease spread and prolongs the eradication process.

In 1997, the total number of cattle and bison in the United States was approximately 101.2 million, valued at about \$53 billion. Gross income of the U.S. cattle industry was about \$31 billion, and total U.S. earnings from exports of live cattle, beef, and veal was approximately \$2.6 billion. More than 97 percent of the 1,167,910 U.S. cattle and bison operations had gross cash values of less than \$500,000, which, according to standards for agricultural producers set by the Small Business Administration, categorizes these operations as small entities.

The number of brucellosis-affected herds varies over time. According to an informal APHIS estimate, for each herd in quarantine, program officials expect the possible existence of two potential suspect herds. As of July 31, 1998, eight cattle herds and one bison herd were under quarantine. However, only six herds (all owned by persons considered to be small entities) were potential candidates for depopulation. Five were nonregistered beef herds with a total of approximately 1,367 head of cattle, and one was a registered beef herd with about 155 head.

According to the indemnity regulations in place prior to publication of the interim rule, the producers accepting herd depopulation would have received \$250 per head as indemnity payment for bison and nonregistered beef cattle destroyed and the lesser of either 95 percent of appraised value minus salvage value or \$750 for any registered cattle or nonregistered dairy cattle. In addition to these Federal indemnity payments, these owners would have received the salvage value for each animal and possibly a State supplement to the Federal indemnity payment.

In 1997, beef and cull dairy cows sold for slaughter brought an average of \$270 salvage value per 900-lb animal. The replacement cost of a nonregistered beef cow with calf averaged \$750, and a cow with no calf, \$500. A replacement cow from a registered beef herd averaged \$1,200. These figures show that, even before taking into account the other costs, the total compensation (the sum of the salvage value and the indemnity amounts in place at that time) paid to a nonregistered herd owner still fell short of the replacement costs. Specifically, the shortfall averaged \$230 per nonregistered beef cow with calf. As a result, many producers would not opt for whole-herd depopulation if offered. The continued existence of affected herds can result in the spread of

brucellosis, hindering the eradication process and increasing long-term costs.

Under this final rule, which gives producers of herds approved for depopulation the option of receiving a fixed rate for their animals or an amount based on an appraisal, it is anticipated that many producers will choose the fixed-rate method for claiming indemnity for bison and nonregistered beef cattle and the appraisal method for registered cattle and nonregistered dairy cattle. For owners of bison and nonregistered beef cattle, the value per animal would be about \$520 (the fixed rate plus the estimated salvage value), which is very close to the market value of the animals. Owners of registered cattle and nonregistered dairy cattle would not incur a direct market loss because the new indemnity payments would amount to the appraised market value of the live animals minus the salvage value realized. Owners of herds comprising registered and nonregistered beef cattle could choose either indemnity method to receive adequate compensation for their animals as a result of a change from the interim rule to the final rule that split the flat rate into two levels—\$250 for bison and nonregistered beef cattle and \$750 for registered beef cattle and dairy cattle. Another change from the interim rule to the final rule is the inclusion in the indemnity payment program of neutered calves that are nursing cows in herds approved for depopulation. These calves were formerly excluded from eligibility for indemnity. This change will have an additional mitigating impact on the losses certain producers would incur through herd depopulation.

The cost to APHIS for paying indemnity to the six eligible herd owners if they had decided to participate in whole-herd depopulation under the former indemnity regulations would have been approximately \$322,375; the cost to APHIS under the regulations created by the interim and final rules would be approximately \$352,450—a difference of \$30,075. (We estimate that \$26,625 of that total is the result of paying indemnity for the neutered calves.) Because keeping potentially diseased animals or having a herd under quarantine creates a severe competitive disadvantage, these producers can be expected to participate in whole-herd depopulation if their losses are reasonably reduced. These figures do not take into account any currently unidentified affected herds for which APHIS may want to encourage depopulation in the future. However, the total compensation that APHIS will provide in fiscal year 1998 will be limited by available appropriated

funding and will not exceed \$3.41 million on a nationwide basis.

Compared with the value of the U.S. cattle industry and its importance to the national economy, the actual costs of increased indemnity for depopulating all animals in all brucellosis-affected herds is small. Competitiveness in the international market depends upon a reputation for producing high-quality, disease-free animals. Both the actual product and the purchasers' perception of the product's quality contribute to continued world market acceptance. While isolated brucellosis outbreaks resulting in relatively small potential losses in cattle production can reduce the confidence of importers and cause a loss of trade, the damage that would result from a widespread brucellosis infection would be extremely costly and harmful to U.S. gross national income. Therefore, efforts to eradicate brucellosis and secure the health of the cattle industry continue to serve the economic interests of the Nation. The increased indemnity payments promulgated by this rule are expected to provide a stronger incentive for whole-herd depopulation of affected cattle. This rule should result in savings to the eradication program because the rule will facilitate the program's progress. The overall effect of this rule upon supply, price, and competitiveness is expected to be minor or none.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 9 CFR Part 51

Animal diseases, Cattle, Hogs, Indemnity payments, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 51 as follows:

#### PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

1. The authority citation for part 51 continues to read as follows:

**Authority:** 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 51.3, paragraph (a)(2)(ii)(B) is revised to read as follows:

#### § 51.3 Payment to owners for animals destroyed.

- (a) \* \* \*  
(2) \* \* \*  
(ii) \* \* \*

(B) *Fixed-rate method.* The indemnity shall not exceed \$250 per animal for bison and nonregistered cattle other

than dairy cattle and \$750 per animal for registered cattle and nonregistered dairy cattle.

\* \* \* \* \*

3. In § 51.9, paragraph (d) is revised to read as follows:

#### § 51.9 Claims not allowed.

\* \* \* \* \*

(d) If the animals are:

- (1) Barrows or gilts maintained for feeding purposes; or  
(2) Spayed heifers or steers, unless the steers are work oxen, or unless the spayed heifers or steers are unweaned animals in a herd approved for depopulation in accordance with § 51.3 of this part.

\* \* \* \* \*

Done in Washington, DC, this 28th day of August, 1998.

**Joan M. Arnoldi,**

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

[FR Doc. 98–24016 Filed 9–4–98; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98–NM–18–AD; Amendment 39–10742; AD 98–18–26]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A320 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires repetitive inspections to detect fatigue cracking of the front spar vertical stringers on the wings; and repair, if necessary. This amendment also provides for an optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the front spar vertical stringers on the wings, which could result in reduced structural integrity of the airframe.

**DATES:** Effective October 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of October 13, 1998.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus A320 series airplanes was published in the **Federal Register** on May 5, 1998 (63 FR 24760). That action proposed to require repetitive inspections to detect fatigue cracking of the front spar vertical stringers on the wings; and repair, if necessary. That action also proposed to provide for an optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

#### Request To Allow Flight With Known Cracks

One commenter, the manufacturer, requests that the proposed AD be revised to allow operators to continue operation of an unrepaired airplane following detection of cracks, utilizing the follow-on inspections and conditions described in Airbus Service Bulletin A320–57–1016, Revision 1, dated December 6, 1995. The commenter states that the follow-on inspection intervals are based on fatigue test results and calculations of the crack propagation rate, depending on the crack length. The commenter also states that the structure of the Airbus Model A320 series airplane is classified as damage tolerant. Additionally, the commenter notes that the inspection program specified in the service bulletin was developed in order to prevent the need for extensive repairs of the aircraft.

The FAA does not concur. It is the FAA's policy to require repair of known cracks prior to further flight, except in certain cases of unusual need, as