

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

7 CFR Part 301

[Docket No. 00–035–2]

RIN 0579–AB19

Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

DATES: We will consider all comments that we receive on or before December 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and

three copies) to: Docket No. 00–035–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–035–2. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 00–035–2” on the subject line.

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: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

On March 2, 2000, as a result of the detection of plum pox in Adams County, PA, the Secretary of Agriculture published in the **Federal Register** (65 FR 11280–11281, Docket No. 00–001–1) a declaration of extraordinary emergency regarding plum pox that was effective on January 20, 2000. The declaration of extraordinary emergency was followed by an interim rule published in the **Federal Register** on June 2, 2000 (65 FR 35261–35265, Docket No. 00–034–1), that established regulations quarantining a portion of Adams County, PA, due to the detection of plum pox in that region¹ and restricting the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox (e.g., trees, seedlings, root stock, budwood, branches, twigs, and leaves of susceptible *Prunus* spp.). That interim rule, which established a new “Subpart-Plum Pox” (7 CFR 301.74 through 301.74–4), was promulgated on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

On September 14, 2000, we published in the **Federal Register** (65 FR 55431–55436, Docket No. 00–035–1) another interim rule that established regulations to provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. Those compensation provisions, which were added to “Subpart-Plum Pox” as a new § 301.74–5, were necessary to reduce the economic effect of the plum pox quarantine on affected commercial growers and nursery owners, thus ensuring the continued cooperation of growers and nursery owners with the

¹ The particular strain of plum pox found in the quarantined area in Adams County, PA—the “D” strain—is not known to be transmitted by seed or fruit, and is not known to infect cherry.

survey and eradication activities being conducted by the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) and the Pennsylvania Department of Agriculture (PDA).

Existing Compensation Regulations

Under the regulations in § 301.74–5 (referred to below as the regulations), owners of commercial stone fruit orchards and owners of fruit tree nurseries are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox and the prohibition on the movement or sale of nursery stock,

respectively, if the losses result from an action performed pursuant to an emergency action notification (EAN) issued by APHIS.

The regulations provide, among other things, that owners of commercial stone fruit orchards will be compensated on a per-acre basis at a rate based on the age of the trees destroyed and a 3-year prohibition on the replanting of host trees. The compensation to be paid by USDA is based on the loss in value of the destroyed orchard. The loss in value is calculated as the difference between the net present value (NPV) of the original (destroyed) orchard over a 25-year life cycle minus the NPV of the

replanted orchard for its entire productive life of 25 years. To calculate the NPV of an orchard (both original and replanted orchards), we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period. Each year's net income is discounted back to a present worth figure at the appropriate, market-derived discount rate. The valuation model can be expressed in the following equation form, where Y = net income, r = discount rate, and n = number of years in the discount period:

$$NPV = \frac{Y_1}{(1+r)^1} + \frac{Y_2}{(1+r)^2} + \frac{Y_3}{(1+r)^3} + \dots + \frac{Y_n}{(1+r)^n}$$

To calculate NPV using the above equation, we had to determine net income, discount rate, and the number of years in the discount period. Each of these inputs is discussed below.

The rate of compensation to be paid by USDA is set at up to 85 percent of the difference in value between the destroyed and replacement orchards as

described above. The State of Pennsylvania has indicated that State funds will be used to make up the remaining difference in value. In no case will total USDA plus State compensation exceed 100 percent of the difference in value.

Net income. To determine per-acre net income, we multiplied the yield

(number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on the 1995–1998 average Pennsylvania peach production, price, and yield data from the Pennsylvania Agricultural Statistics Service.

Year	Peach price (\$/bushel)	Yield (bushel/acre)	Income (\$ per acre)
1995	13.65	275.9	3,766
1996	16.50	254.5	4,199
1997	16.85	254.5	4,288
1998	15.85	236.4	3,747
1995–98 average	15.71	255.3	4,010

The calculation of the variable costs of production is based on the following estimates:

Type of cost	Year incurred	Costs
Land preparation	Year 0	\$395 per acre.
Planting	Year 1	\$1,303 per acre.
Orchard maintenance during preproductive year	Year 2	\$222 per acre.
Orchard maintenance during productive years	Years 3–25	\$899/year per acre.
Harvest cost	Years 4–25	\$1.75 per bushel.

Discount rate. The discount rate used in the present value calculation is 12.5 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

Number of years in discount period. The NPV was calculated using a life cycle approach. The revenues and costs were calculated over a period equal to the expected productive life of a replanted orchard, which, as noted previously, is 25 years.

Using the information and methodology set forth in the preceding paragraphs, we arrived at the per-acre compensation rates set forth in § 301.74–5(b)(1) of the current regulations. The amounts of compensation for destroyed trees range from \$3,713 per acre for a 25-year-old block of trees to \$15,000 per acre for a 7-year-old block of trees. Finally, because compensation programs are intended, in part, to encourage the

prompt execution of measures deemed necessary to control or eradicate plant pests, § 301.74–5(b)(1) of the regulations provides that compensation payments will be reduced by 10 percent, plus any tree removal costs incurred by the State or USDA, if the trees subject to an EAN were not destroyed by the date specified on that order.

The existing regulations also: (1) Provide that owners of fruit tree nurseries will be compensated for up to

85 percent of the net revenues lost from their first and second year crops as the result of the issuance of an EAN, and (2) stipulate procedures for applying for compensation and require that premises on which trees have been destroyed because of plum pox pursuant to an EAN issued by APHIS may not be replanted with susceptible *Prunus* species (*Prunus* species identified as regulated articles) for 3 years.

Proposed Changes to the Compensation Regulations

Extension of Prohibition of Replanting

In December 2001, a science panel² concluded that the prohibition on replanting host material at locations where orchards had been destroyed due to the presence of plum pox should be extended due to recent detections of plum pox-positive trees during the second year. As a result of these detections, replanting cannot occur at affected sites for an additional 3 years. Since the existing regulations in § 301.74–5(d) do not make it clear that replanting should be banned in a regulated area until 3 years after the most recent detection of plum pox in that area, we are proposing to amend the regulations to clarify that fact.

As explained earlier in this document, the calculations on which the currently authorized rates of compensation are based were designed to account for a 3-year period during which growers could not replant *Prunus* species in quarantined areas. Given the detections of additional plum pox-positive trees, we believe it is necessary to provide

additional compensation to growers since they will not be able to plant host species for additional years. The amount of additional compensation has been determined to be \$828 per acre for a fourth fallow year and \$736 per acre for a fifth fallow year. These amounts are based on extending the same formula we used to calculate the original 3-year compensation rate to apply to fourth and fifth fallow years.

We are proposing to provide additional payments in those amounts to growers who have already received compensation payments, and to provide those same amounts to growers who are due compensation in the future.

Note: APHIS does not intend to propose additional compensation in the future if additional plum pox positive trees are found and the ban on replanting must be extended further. The maximum amount of compensation per acre that a grower could receive under any circumstances would be the total payment due for 5 fallow years according to the age of the trees.

The revised compensation rates are shown in proposed § 301.74–5(b)(1)(ii) in the rule portion of this document.

New Provisions for Direct Market Growers

The current compensation regulations contain no provisions for “direct market growers.” Direct market growers are growers who produce fruit and sell the fruit themselves for premium prices at farmers markets. Typically, the acreage involved in production for these purposes is small, and all of the fruit produced is for sale directly to

consumers as tree-ripened fruit. None of the fruit produced on acreage devoted to direct market production is sold for processing or to packing houses, nor is it marketed wholesale.

Direct market growers usually produce a wide variety of fruit (both species and varieties) to enable them to satisfy the needs of their customers through an extended marketing season. In the event these growers are not able to use their own fruit (*e.g.*, as a result of their orchards being destroyed due to the presence of plum pox) they are normally precluded from obtaining fruit from other sources. The conditions under which these growers are eligible to sell their products at farmers markets usually require that sellers be the producers of the fruits and vegetables they are selling.

We have reviewed information on production costs and revenues for direct market growers, and believe it is necessary to increase the rates of payment to these growers in order to fairly compensate them. The formulas used to calculate the original amount of compensation due to such growers would remain the same, and the discount rates would not be changed. The difference in payments for direct marketers versus other growers would be due primarily to the high value of sales by direct marketers, despite the fact that they bear additional costs that other growers do not. The net income for direct marketers are based on the income and cost figures presented in tables 1 and 2:

TABLE 1.—CALCULATION OF INCOME PER ACRE FOR DIRECT MARKETERS

Year	Price (\$ per pound)	Peach price (\$ per bushel)	Yield (bushel per acre)	Income (\$ per acre)
1998	\$1.69	81.13	273.1	\$22,156
1999	1.66	79.92	321.3	25,678
2000	1.65	79.03	378.0	29,873
3-year average	1.67	80.02	324.1	25,902

TABLE 2.—VARIABLE COSTS OF PRODUCTION FOR DIRECT MARKETERS

Type of cost	Year incurred	Costs
Land preparation	Year 0	\$395 per acre.
Planting	Year 1	1,303 per acre.
Maintenance (pre-productive years)	Year 2	222 per acre.
Maintenance (productive years)	Years 3–25	1,376 per year, per acre.
Harvest	Years 4–25	1.75 per bushel, per year.
Marketing costs	Years 4–25	21,304 per year.

² The science panel was composed of representatives of APHIS, PDA, USDA’s

Agricultural Research Service, and university scientists.

As with per-acre net income for all other growers, to determine per-acre net income for direct marketers, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on data provided by a direct marketer for the 1998, 1999, and 2000 production seasons.

Given the difference in net income between other growers and direct marketers, we are proposing to compensate direct marketers at the rates shown in proposed § 301.74–5(b)(1)(i) in the rule portion of this document. Like the rates for other growers discussed earlier in this document, the rates for direct marketers would also include provisions to pay compensation for fourth and fifth fallow years if necessary.

We propose to pay growers direct market rates of compensation only if the orchard owner grows fruit exclusively for sale in farmers markets or similar outlets as described in the proposed regulations. We would not pay compensation at direct marketer rates to growers who sell any portion of their harvest to wholesale markets, nor would we pay direct marketer compensation rates to growers who sell most of their fruit wholesale and who sell some of their fruit at roadside fruit stands or similar venues.

Additional Compensation for Destruction of Trees Less Than 1 Year Old

The current regulations do not contain provisions for compensation for the destruction of trees less than 1 year old (known as “0 year trees”). However, we have concluded that growers who have such trees destroyed because of plum pox deserve to be compensated for the loss of those trees and the revenue that might be expected from them. This is based on our determination that growers incur costs in ground preparation, the cost of nursery stock, and the expense of planting and maintaining these trees.

After examining the economic information obtained from the Pennsylvania State University and the Pennsylvania State Adams County Cooperative Extension Service, we have concluded that a fair rate of compensation for these trees is \$2,403 per acre for all growers, including direct marketers. This amount represents the 85 percent Federal share, and is the same for all growers because all growers, including direct marketers, incur similar costs for 0 year trees. Growers of 0 year trees would also be compensated for fourth and fifth fallow

years, where applicable, at rates of \$828 per acre for a fourth fallow year and \$736 per acre for a fifth fallow year.

Compensation will be paid using funds transferred to APHIS by the Commodity Credit Corporation of USDA. For any acres that are added to the plum pox quarantine program after September 30, 2004, the Federal share of compensation to be paid may change.

Benefits of Compensation

The benefit of providing compensation is the increased likelihood that growers with infected orchards will participate in the plum pox eradication program. The use of compensation complements and supports the regulatory goal of preventing disease spread. More so than in other pest eradication programs, the specific characteristics of plum pox necessitate the use of compensation to obtain growers' cooperation in the control of the immediate disease outbreak and the ensuing national survey.

Because the manner in which PPV spreads is not predictable, the eradication strategy necessarily calls for the destruction of trees that are asymptomatic. Growers, on their own, would not have the incentive to cut down trees that appear uninfected as would be necessary in an eradication program.

Without government intervention, growers would opt to keep producing as long as trees remain symptom-free. The eradication strategy calling for the swift destruction of both diseased and exposed trees causes economic losses in addition to that resulting from the disease. For these reasons, the payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar costs.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or may be viewed on the Internet at http://www.aphis.usda.gov/ppd/rad/plum_pox.pdf.

Summary of Economic Analysis

We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

This proposed rule would amend the regulations to provide additional compensation in the event a quarantine period is extended according to an EAN issued by APHIS. The fallow period may be increased by 1 or 2 years depending on the proximity of the land to recent finds of the plum pox virus. By delaying the time at which growers can replant, the longer fallow period increases the loss to growers. We are proposing to increase the amount of compensation to account for the longer fallow period.

Plum pox has been detected in some areas near orchards that were removed in the initial year of the eradication program. This has led to a need for additional fallow years for those acres. A fallow period of 3 years from the last find is needed to conclude that plum pox has been eradicated. The maximum amount of compensation to be paid would be for 5 fallow years. For orchards removed in 2002, we anticipate that only a 3-year fallow period will be needed if no further plum pox is discovered.

Compensation payments are based on calculating the difference between the amount a grower could earn from the original orchard minus the amount that the grower could earn from a replanted orchard after a fallow period. A longer fallow period results in higher compensation payments because of the

additional time it takes until growers have productive trees.

The payment to commercial growers for 2 additional fallow years would be \$828 per acre for the fourth year and \$736 per acre for the fifth year (\$1,564 total per acre). The total number of acres that would currently be eligible for additional payments because of the added fallow years is 1,400. The estimated cost if all acres are eligible for 2 additional years is \$2,189,600.

Total additional payments for direct marketers range from \$264,472 to \$348,452 depending on the number of fallow years a direct marketer would be required to wait before replanting. Table 7, page 15 summarizes the range of payments. Payments to direct marketers for the first three fallow years would increase by \$10,172 per acre from the base amount that growers receive. Direct marketers were eligible to receive the same payments as other growers so the \$10,172 represents the additional payment. Because they are among the last trees that have been removed, a three year fallow period should be sufficient to demonstrate that plum pox has been eradicated. However, in the event that additional fallow years are necessary due new detections of plum pox, direct marketers would be compensated for up to 5 (total) fallow years. They would receive \$1,710 per acre for a fourth year and \$1,520 per acre for a fifth year. There are approximately 26 acres of trees used for direct marketing that have been removed as part of the plum pox eradication program; total payments to direct marketers would increase by \$264,472, assuming the fallow period does not need to be extended. A four year fallow period for direct marketers would result in payments of \$11,882 per acre (\$10,172 + \$1,710). Total payments for 26 acres would be \$308,932. A five year fallow period for direct marketers would result in payments of \$13,402 per acre (\$10,172+\$1,710+\$1,520). Total payments for 26 acres would be \$348,452.

This proposed rule also addresses the issue of trees less than one year old. Some growers have received destruction orders for trees that had been planted the same year. These trees did not go through one harvest season and are sometimes referred to as zero year trees. The original compensation program made no provision for these trees. However, growers that have had trees less than one year old destroyed have incurred costs. Based on input from cooperative extension agents and Pennsylvania State University, we have concluded that a fair rate of compensation for these trees is \$2,403

per acre for a three year fallow period. There are at least 43 acres of zero year trees that have been removed as part of the plum pox eradication program; total payments to growers of zero year trees would increase by \$103,329.

As stated earlier in this document, these proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine. Persons affected by the quarantine would, in all cases, benefit from adoption of this proposed rule.

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

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 inconsistent 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

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00-035-2. Please send a copy of your comments to: (1) Docket No. 00-035-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6667 hours per response.

Respondents: Owners of stone fruit orchards and fruit tree nurseries in Pennsylvania.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3.

Estimated total annual burden on respondents: 2 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

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 proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.74–5, paragraphs (a)(1), (b)(1), (c)(1), (c)(2) and (d) would be revised and a new paragraph (c)(3) would be added to read as follows:

§ 301.74–5 Compensation.

(a) * * *

(1) *Owners of commercial stone fruit orchards.* Owners of commercial stone fruit orchards are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox pursuant to an

emergency action notification issued by the Animal and Plant Health Inspection Service (APHIS).

(i) *Direct marketers.* Orchard owners eligible for compensation under this paragraph who market all fruit they produce under the conditions described in this paragraph may receive compensation at the rates specified in paragraph (b)(1)(i) of this section. In order to be eligible to receive compensation at the rates specified in paragraph (b)(1)(i) of this section, orchard owners must have marketed fruit produced in orchards subsequently destroyed because of plum pox under the following conditions:

(A) The fruit must have been sold exclusively at farmers markets or similar outlets that require orchard owners to sell only fruit that they produce;

(B) The fruit must not have been marketed wholesale or at reduced prices in bulk to supermarkets or other retail outlets;

(C) The fruit must have been marketed directly to consumers; and

(D) Orchard owners must have records documenting that they have met the requirements of this section, and must submit those records to APHIS as part of their application submitted in

accordance with paragraph (c) of this section.

(ii) *All other orchard owners.* Orchard owners eligible for compensation under this paragraph who do not meet the requirements of paragraph (a)(1)(i) of this section are eligible for compensation only in accordance with paragraph (b)(1)(ii) of this section.

* * * * *

(b) * * *

(1) *Owners of commercial stone fruit orchards.*—(i) *Direct marketers.* Owners of commercial stone fruit orchards who APHIS has determined meet the eligibility requirements of paragraph (a)(1)(i) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate (\$/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	\$2,403	\$828	\$736
1	9,584	1,710	1,520
2	13,761	1,710	1,520
3	17,585	1,710	1,520
4	21,888	1,710	1,520
5	25,150	1,710	1,520
6	25,747	1,710	1,520
7	25,859	1,710	1,520
8	25,426	1,710	1,520
9	24,938	1,710	1,520
10	24,390	1,710	1,520
11	23,774	1,710	1,520
12	23,080	1,710	1,520
13	22,300	1,710	1,520
14	21,422	1,710	1,520
15	20,434	1,710	1,520
16	19,323	1,710	1,520
17	18,185	1,710	1,520
18	17,017	1,710	1,520
19	15,814	1,710	1,520
20	14,572	1,710	1,520
21	13,287	1,710	1,520
22	12,066	1,710	1,520
23	10,915	1,710	1,520
24	9,620	1,710	1,520
25	8,163	1,710	1,520

(ii) *All other orchard owners.* Owners of commercial stone fruit orchards who meet the eligibility requirements of paragraph (a)(1)(ii) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees

destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The

maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate (\$/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	\$2,403	\$828	\$736
1	4,805	828	736
2	7,394	828	736
3	9,429	828	736
4	12,268	828	736
5	14,505	828	736
6	14,918	828	736
7	15,000	828	736
8	14,709	828	736
9	14,383	828	736
10	14,015	828	736
11	13,601	828	736
12	13,136	828	736
13	12,613	828	736
14	12,024	828	736
15	11,361	828	736
16	10,616	828	736
17	9,854	828	736
18	9,073	828	736
19	8,272	828	736
20	7,446	828	736
21	6,594	828	736
22	5,789	828	736
23	5,035	828	736
24	4,341	828	736
25	3,713	828	736

* * * * *

(c) * * *
 (1) *Claims by owners of stone fruit orchards who are direct marketers.* The completed application must be accompanied by:

(i) A copy of the emergency action notification ordering the destruction of the trees and its accompanying inventory that describes the acreage and ages of trees removed;

(ii) Documentation verifying that the destruction of trees has been completed and the date of that destruction; and

(iii) Records documenting that the grower meets the eligibility requirements of paragraph (a)(1)(i) of this section.

(2) *Claims by owners of commercial stone fruit orchards who are not direct marketers.* The completed application must be accompanied by a copy of the emergency action notification ordering the destruction of the trees, its

accompanying inventory that describes the acreage and ages of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction.

(3) *Claims by owners of fruit tree nurseries.* The completed application must be accompanied by a copy of the order prohibiting the sale or movement of the nursery stock, its accompanying inventory that describes the total number of trees and the age and variety, and documentation describing the final disposition of the nursery stock.

(d) *Replanting.* Trees of susceptible *Prunus* species (*i.e.*, *Prunus* species identified as regulated articles) may not be replanted on premises within a contiguous quarantined area until 3 years from the date the last trees within that area were destroyed because of plum pox pursuant to an emergency action notification issued by APHIS.

* * * * *

Done in Washington, DC, this 10th day of October 2003.

Bill Hawks,
Under Secretary for Marketing and Regulatory Programs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO-14-A72, *et al.*; DA-03-08]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Correction

7 CFR Part	Marketing Area	AO Nos.
1001	Northeast	AO-14-A72