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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. 00-035-3]

RIN 0579-AB19

#### Plum Pox Compensation

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

**ACTION:** Final rule.

**SUMMARY:** We are amending the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are providing additional compensation to growers who have already been paid compensation for 3 years of lost production, 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 will be paid compensation for up to 2 additional years. We are also providing additional compensation to growers who are direct marketers of their fruit and growers who have had trees that were less than 1 year old destroyed. We are taking 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 changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

**DATES:** *Effective Date:* July 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Poe, Operations Officer, Program Support Staff, PPO, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-8247.

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 16, 2003, we published in the **Federal Register** (68 FR 59548-59554, Docket No. 00-035-2) a proposal to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. Specifically, we proposed 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. Under our proposal, such growers would be paid compensation for up to 2 additional years. We also proposed 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 proposed 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. We believe the proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

We solicited comments concerning our proposal for 60 days ending December 15, 2003. We received 2 comments by that date. They were from a stone fruit grower affected by the quarantine and a private citizen. The grower encouraged us to adopt our proposal as a final rule. The private citizen opposed the proposal but did not provide a rationale for her position. We are not making any changes to our proposal in response to the comments.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

#### 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.

We have prepared an economic analysis for this 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/plumpox.pdf>.

#### Summary of Economic Analysis

We are amending the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We will provide additional compensation to growers who have already been paid 3 years worth of compensation but who are prohibited from replanting regulated articles for a total of more than 3 years due to recent detections of plum pox in areas already under quarantine. Such growers will be paid compensation for up to 2 additional years. We are also providing additional compensation to growers who are direct marketers of their fruit, and providing compensation for growers who have had trees of less than 1 year of age destroyed. These actions are in response to our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. This action is necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

This rule provides additional compensation in the event a quarantine period is extended according to an emergency action notification 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. This final rule increases 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. APHIS will pay affected growers a maximum of 5 years of compensation. 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 they 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 per-acre payment to commercial growers for 2 additional fallow years orchard will be \$828 for the fourth year and \$736 for the fifth year (\$1,564 total per acre). The total number of acres 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 will be required to wait before replanting. Table 7 on page 15 of the full analysis summarizes the range of payments. Payments to direct marketers for the first 3 fallow years will 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 3-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 will be compensated for up to 5 (total) fallow years. They will receive \$1,710 for a 4th year and \$1,520 for a 5th 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 will increase by \$264,472, assuming the fallow period does not need to be extended. A 4-year fallow period for direct marketers will result in payments of \$11,882 per acre (\$10,172 + \$1,710). Total payments for 26 acres will be \$308,932. A 5-year fallow period for direct marketers will result in payments of \$13,402 per acre (\$10,172 + \$1,710 + \$1,520). Total payments for 26 acres will be \$348,452.

This final rule also addresses the issue of trees less than 1 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 1 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 3-year fallow period.

As stated earlier in this document, the changes in payments of compensation 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 will, in all cases, benefit from adoption of this final rule.

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.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.028 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0251.

#### 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 7 CFR Part 301

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

■ Accordingly, 7 CFR part 301 is amended as follows:

#### PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues 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) are revised, a new paragraph (c)(3) is added, and the OMB control number citation at the end of the section is revised, 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  |

| 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 |
|----------------------|--|--|--|
| 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.

(Approved by the Office of Management and Budget under control numbers 0579-0159 and 0579-0251)

Done in Washington, DC, this 25th day of May 2004.

**W. Ron DeHaven,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-12266 Filed 5-28-04; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

[Docket No. FAA-2004-17723; **Airspace Docket No. 04-ACE-35**]

**Modification of Class E Airspace; North Platte, NE**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at North Platte, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above the surface at North Platte, NE, reveals that neither reflects the current North Platte Regional Airport Lee Bird Field airport reference point (ARP) and neither complies with criteria for diverse departures. These airspace areas are enlarged and modified to conform to FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules docket must be received on or before July 27, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2004-17723/

Airspace Docket No. 04-ACE-35, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Brenda Mumper, Air Traffic Division, Airspace Branch, ACE-520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329-2524.

**SUPPLEMENTARY INFORMATION:**

This amendment to 14 CFR 71 modifies the Class E surface area and Class E airspace area extending upward from 700 feet above the surface at North Platte, NE. An examination of controlled airspace for North Platte, NE revealed that the North Platte Regional Airport Lee Bird Field ARP used in the legal descriptions for both Class E airspace areas is incorrect. Also, neither airspace area complies with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The North Platte, NE Class E surface area is increased from a 4.6-mile radius to a 5.4-mile radius of North Platte Regional Airport Lee Bird Field, thereby eliminating the need for an extension to the Class E surface area. The Class E airspace area extending upward from 700 feet above the surface is increased from a 7.1-mile radius to an 8.4-mile radius of North Platte Regional Airport Lee Bird Field in order to comply with the criteria for 700 feet AGL airspace required for diverse departures. These modifications bring the legal descriptions of the North Platte, NE Class E airspace areas into