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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS-2011-0004]

RIN 0579-AD58

Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the plum pox regulations to provide for the payment of compensation to eligible owners of non-fruit-bearing ornamental tree nurseries and to increase the amount of compensation that may be paid to eligible owners of commercial stone fruit orchards and fruit tree nurseries whose trees are required to be destroyed in order to prevent the spread of plum pox. The interim rule also provided updated instructions for the submission of claims for compensation. These changes were necessary to provide adequate compensation to persons who are economically affected by the plum pox quarantine and the associated State and Federal eradication efforts.

DATES: Effective on [insert date of publication in the Federal Register], we are adopting as a final rule the interim rule published at 77 FR 5381-5385 on February 3, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Plum Pox National Program Manager, PPQ, APHIS, 4700 River Road Unit 160, Riverdale, MD 20737-1231; (301) 851-2286.

## SUPPLEMENTARY INFORMATION:

### Background

The regulations in Subpart--Plum Pox (7 CFR 301.74 through 301.74-5), referred to below as the regulations, quarantine areas of the United States where plum pox has been detected and restrict the interstate movement of regulated articles (e.g., trees, seedlings, root stock, budwood, branches, twigs, and leaves of susceptible Prunus spp.) from quarantined areas to prevent the spread of plum pox virus (PPV) into uninfected areas of the United States.

In addition to the quarantine and interstate movement restrictions in the regulations, § 310.74-5 also provides for the payment of compensation to eligible owners of commercial stone fruit orchards, including direct marketers, and fruit tree nurseries. In an interim rule<sup>1</sup> effective and published in the Federal Register on February 3, 2012 (77 FR 5381-5385, Docket No. APHIS-2011-0004), we amended the plum pox regulations to provide for the payment of compensation to eligible owners of non-fruit-bearing ornamental tree nurseries and to increase the amount of compensation that may be paid to eligible owners of commercial stone fruit orchards and fruit tree nurseries whose trees are required to be destroyed in order to prevent the spread of plum pox. We also provided updated instructions for the submission of claims for compensation.

Comments on the interim rule were required to be received on or before April 3, 2012. We received three comments by that date. The comments were from a State agricultural agency, a fruit grower, and an organization of State plant regulatory agencies. Two commenters fully supported the action, with one of these commenters encouraging the expanded use of

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<sup>1</sup> To view the interim rule and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0004>.

compensation for producers who sustain losses due to quarantine plant pests and regulatory actions associated with these pests.

The third commenter said that the interim rule makes reference to “commercial stone fruit orchards and fruit tree nurseries” without defining fruit tree nursery. The commenter also expressed concern that his fruit tree nursery does not qualify for compensation.

In § 301.74-5, paragraph (a)(2) describes the eligibility criteria for compensation for owners of fruit tree nurseries. Those eligibility criteria and the considerations in paragraph (b) that determine payment amounts specify that the plants affected by an emergency action notification are plants that have been produced for commercial sale, which is not the case in the situation described by the commenter.

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

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this action has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 7 CFR Part 301

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

PART 301–DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 77 FR 5381-5385 on February 3, 2012.

Done in Washington, DC, this 17<sup>th</sup> day of September 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

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