

We would find the method described by the commenter an acceptable method of calculating projected flock income, provided documentation is provided to support the numbers provided.

One commenter asked whether any payment would be due a producer of broiler breeder birds if the age of the LPAI-affected flock was older than the average age of previous flocks.

It is not clear to us what the commenter means. Payment will be calculated for contract growers based on the amount they received for previous flocks. Contract growers will be compensated at 100 percent of their eligible losses, minus any compensation they already received from the owner. One possible but unlikely scenario the commenter may be referring to would be based on the fact that producers of breeding eggs often receive payment during the production cycle. Thus, it is possible, if the depopulated flock had much greater productivity and lasted in production longer than previous flocks, for the payment already received from the owner to be greater than the average amount received from previous flocks. If such a situation occurred, then no additional compensation would be paid to the producer, because the producer would have already received payment equal to previous flocks.

Several commenters stated that, under the interim rule, compensation would not be paid for male birds in broiler breeder flocks associated with the Virginia disease situation. The commenters requested that payment be made for such male birds disposed of due to the disease.

The compensation plan for Virginia does take into account losses for male birds in broiler breeder flocks; however, that may not be immediately apparent. The per bird compensation value for breeder broilers is shown in Table 1 of that compensation plan. (The compensation plan can be accessed as an appendix to the full economic analysis of the interim rule at <http://www.aphis.usda.gov/ppd/rad/avianecon.html>.) An explanation of how to apply that value is set out in the compensation plan under the heading "Female Breeder Birds (in lay), Table Egg Birds (in lay)." See section XXVI, which states, "Per bird compensation values for broiler breeders include the cost of males, thus bird count should be of hens only." In other words, the value given the hens takes into account the value of male birds in the flock.

Growers Who Cease Business

One poultry owner stated that, in cases where a contract grower is ruled ineligible for payment because the

grower did not adhere to the cleaning and disinfection requirements of the interim rule due to cessation of the business, the poultry owner should nonetheless be compensated the total amount the owner is eligible to receive.

In such a case, the owner would receive compensation for the total eligible losses. However, based on the information available to us, all growers have chosen to clean and disinfect affected premises.

Requests for Additional Compensation

Several commenters requested that compensation be paid for income and production losses associated with delays in restocking a premises or neighboring premises after an LPAI test-positive flock had been depopulated and disposed of.

We are making no changes based on the comments. It has traditionally been the policy of the Department not to pay for "downtime."

Several commenters requested that compensation be paid for the cost of cleaning and disinfecting affected premises.

We are making no changes based on the comments. We consider the amounts that will be paid in accordance with the interim rule, as amended by this final rule, to be equitable compensation for losses incurred.

Several commenters requested that compensation be paid for reduced income to producers whose flocks tested negative, but who, as a precautionary measure due to detection of the disease in premises in the area, sent the flocks to slaughter earlier and at less value than they would have normally.

We recognize that some producers whose flocks were not affected chose to send their birds to slaughter due to detection of the disease in the area. However, APHIS, by law, may compensate only for birds and materials destroyed because they are considered to be infected with or exposed to the disease.

Payment for Poultry Linked to the Situation

One commenter requested confirmation that compensation would be paid for losses incurred from the destruction of poultry in States other than Virginia that were epidemiologically linked to the Virginia situation.

The commenter is correct in concluding that compensation will be paid for poultry in States other than Virginia that were destroyed because of an epidemiological link to the situation in Virginia.

Opposition to the Interim Rule

One commenter opposed the payment of indemnity under the interim rule, stating that losses due to disease are normal costs of doing business for any livestock industry.

We are making no changes based on this comment. In the event of a potentially serious disease situation, it is important to have a rapid, coordinated response by the public and private sectors in the early stages of the situation. The purpose of compensation is to remove possible sources of delay in eradicating the disease, such as grower and owner reluctance to report incidences of the diseases because of uncertainty about whether they will be compensated for losses.

Therefore, for the reasons given in the interim rule and in this document, we are adopting 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.

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 are under review by the Office of Management and Budget under OMB control number 0579-0208.

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.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on December 9, 2002. This rule expands and increases the compensation to be paid for losses associated with an LPAI situation in Virginia and allows compensation to be paid for losses associated with an LPAI