

situation in Texas. Immediate action is warranted to expedite compensation of persons who incurred eligible losses due to the disease situations.

Executive Order 12866 and Regulatory Flexibility Act

This 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.

Below is the economic analysis of the changes in indemnity contained in this document with regard to LPAI in Virginia and Texas. Our November 4, 2002, interim rule included a summary of an initial regulatory flexibility analysis and cost-benefit analysis of the potential economic effects of the interim rule regarding the LPAI situation in Virginia. The full economic analysis for the interim rule, along with addendum for this final rule (the compensation plan for Texas), are available for review at <http://www.aphis.usda.gov/ppd/rad/avianecon.html>. This final economic analysis affirms the information contained in the economic analysis for the interim rule, with the changes discussed below.

As amended by this document, subject to available funding, the Department may pay up to 75 percent of eligible total losses associated with LPAI outbreaks in Virginia and Texas,

with contract growers being compensated at 100 percent of their eligible losses and the remaining amount being paid to the owner of the flock. However, total payments may not exceed 75 percent of all eligible costs. Additionally, this document makes eligible for compensation those losses incurred because of eggs and semen that were destroyed because of low pathogenic avian influenza associated with the disease situations in Virginia and Texas. These actions are necessary to provide appropriate compensation for losses incurred due to this disease.

The interim rule provided for compensation of all eligible losses of contract growers and eligible losses of owners related to the LPAI situation in Virginia, up to 50 percent of the value of affected poultry. However, the interim rule, as does this final rule, provided that payments to owners would be net payments after payments to growers were subtracted. Changes in this final rule will have the effect of more fully compensating poultry owners for losses associated with the LPAI situations in Virginia and Texas.

Disease Situation in Virginia

The economic analysis accompanying the interim rule estimated a total of \$50.99 million in compensation due to the LPAI situation in Virginia, with \$37.1 million going to owners and \$13.9

million going to growers, based on the assumption that compensation would be paid for 4.7 million birds depopulated. Fewer birds (3.7 million) were actually depopulated and eligible for compensation than had originally been predicted. Additionally, although the interim rule provided that total Federal payments would be reduced by any amounts paid by slaughtering establishments for birds sent to slaughter, the original compensation estimate did not assume that any such payments would occur. However, approximately \$9 million was realized by the companies at controlled slaughter. Consequently, eligible losses were reduced by this amount and this reduction is reflected in the final rule.

The numbers in Table 1, below, reflect more up-to-date and accurate information on numbers of birds depopulated and average payout per bird. Total payments due to the disease situation in Virginia are expected to be close to \$52.4 million—which includes compensation for destroyed eggs (\$1.6 million) and disposal costs (\$7.7 million)—with approximately \$47.8 million of the total going to owners and approximately \$4.6 million going to growers. This information was current as of January 28, 2003. No substantial changes were expected after this date, although a few small claims could still be presented for payment.

TABLE 1.—DISEASE SITUATION RELATED TO VIRGINIA

	Number of birds depopulated	Number of birds sent to controlled slaughter	Average per bird compensation value (based on average payout values to date)**	Total compensation
Chicken broilers (meat birds)	586,363	210,000	\$1.12	\$656,727
Chicken broiler breeders	533,715	0	12.00	6,404,580
Table egg layers	83,600	0	4.61	385,396
Turkey breeders*	171,990	140,300	58.70	22,836,456
Turkey meat birds	2,328,321	625,680	5.50	12,805,766
Total birds	3,703,989	975,980		43,088,924
Eggs destroyed				1,634,372
Disposal				7,656,597
Total				52,379,893

*The only birds sent to controlled slaughter for which compensation was paid were turkey breeders. For breeder birds, USDA pays the difference between slaughter price and estimated bird value. Compensation is not paid for turkey or chicken meat birds sent to controlled slaughter.

** Dollar amounts are based on a 75 percent compensation rate.

Under the final rule, growers continue to be compensated for 100 percent of their losses. However, the total dollar amount expected to be paid to growers is less than had originally been anticipated. A number of factors are responsible for the lower total payment to growers.

First, fewer grower farms were eligible for compensation. A significant number of meat birds went to controlled slaughter, plus fewer farms had contract growers than were initially assumed. In the original analysis, we assumed that every farm had a contract grower, but, in reality, this assumption holds true only for meat flocks. Breeder flocks,

especially the more valuable turkey breeders, tend to be raised on company farms. Only 20 percent of turkey breeders were raised on grower farms.

Second, the average actual per-bird payout to growers was less than estimated. Actual per-bird payout to growers depends on the age of the flock