

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.