

As with per-acre net income for all other growers, to determine per-acre net income for direct marketers, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on data provided by a direct marketer for the 1998, 1999, and 2000 production seasons.

Given the difference in net income between other growers and direct marketers, we are proposing to compensate direct marketers at the rates shown in proposed § 301.74–5(b)(1)(i) in the rule portion of this document. Like the rates for other growers discussed earlier in this document, the rates for direct marketers would also include provisions to pay compensation for fourth and fifth fallow years if necessary.

We propose to pay growers direct market rates of compensation only if the orchard owner grows fruit exclusively for sale in farmers markets or similar outlets as described in the proposed regulations. We would not pay compensation at direct marketer rates to growers who sell any portion of their harvest to wholesale markets, nor would we pay direct marketer compensation rates to growers who sell most of their fruit wholesale and who sell some of their fruit at roadside fruit stands or similar venues.

#### **Additional Compensation for Destruction of Trees Less Than 1 Year Old**

The current regulations do not contain provisions for compensation for the destruction of trees less than 1 year old (known as “0 year trees”). However, we have concluded that growers who have such trees destroyed because of plum pox deserve to be compensated for the loss of those trees and the revenue that might be expected from them. This is based on our determination that growers incur costs in ground preparation, the cost of nursery stock, and the expense of planting and maintaining these trees.

After examining the economic information obtained from the Pennsylvania State University and the Pennsylvania State Adams County Cooperative Extension Service, we have concluded that a fair rate of compensation for these trees is \$2,403 per acre for all growers, including direct marketers. This amount represents the 85 percent Federal share, and is the same for all growers because all growers, including direct marketers, incur similar costs for 0 year trees. Growers of 0 year trees would also be compensated for fourth and fifth fallow

years, where applicable, at rates of \$828 per acre for a fourth fallow year and \$736 per acre for a fifth fallow year.

Compensation will be paid using funds transferred to APHIS by the Commodity Credit Corporation of USDA. For any acres that are added to the plum pox quarantine program after September 30, 2004, the Federal share of compensation to be paid may change.

#### **Benefits of Compensation**

The benefit of providing compensation is the increased likelihood that growers with infected orchards will participate in the plum pox eradication program. The use of compensation complements and supports the regulatory goal of preventing disease spread. More so than in other pest eradication programs, the specific characteristics of plum pox necessitate the use of compensation to obtain growers' cooperation in the control of the immediate disease outbreak and the ensuing national survey.

Because the manner in which PPV spreads is not predictable, the eradication strategy necessarily calls for the destruction of trees that are asymptomatic. Growers, on their own, would not have the incentive to cut down trees that appear uninfected as would be necessary in an eradication program.

Without government intervention, growers would opt to keep producing as long as trees remain symptom-free. The eradication strategy calling for the swift destruction of both diseased and exposed trees causes economic losses in addition to that resulting from the disease. For these reasons, the payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar costs.

#### **Executive Order 12866 and Regulatory Flexibility Act**

This proposed 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.

We have prepared an economic analysis for this proposed 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 proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing 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. Such growers would be paid compensation for up to 2 additional years. We are also proposing 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 are proposing 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 proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

This proposed rule would amend the regulations to provide additional compensation in the event a quarantine period is extended according to an EAN 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. We are proposing to increase 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. The maximum amount of compensation to be paid would be for 5 fallow years. 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 the grower could earn from a replanted orchard after a fallow period. A longer fallow period results in higher compensation payments because of the