

*Preliminary Economic and Initial Regulatory Flexibility Analyses*

*Proposed Rule: Revision of “Subpart—Fruits and Vegetables”  
(7 CFR 319.56 through 319.56-8)*

*Docket No. APHIS-2005-0106*

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*Policy Analysis & Development  
Policy & Program Development  
Animal & Plant Health Inspection Service  
U.S. Department of Agriculture*

## *Executive Summary*

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the process.

International trade in fruits and vegetables – in particular, many new and newly traded commodities – expanded rapidly over the past two decades, while also undergoing a marked change in the products demanded. According to Food and Agriculture Organization (FAO) data, the average value share of fruits and vegetables (including pulses and tree nuts) in global agricultural exports increased from 11.7 percent in the period 1977-81 to 15.1 percent in 1987-91 and reached an all time high of 16.5 percent in 1997-2001.<sup>1</sup> Imports have become increasingly important for domestic fresh fruit and vegetable consumption. In 2004, the U.S. imported more than \$7 billion in fresh fruits and vegetables. Maintaining the current process will make it difficult to keep pace with this rapidly increasing volume of import requests.

The proposed process for approving imports would apply only to commodities that based on the findings of risk analysis, APHIS determines can be safely imported subject to one or more designated risk management measures. The new process would be a notice-based process while the existing process is a rulemaking-based process.

By eliminating the need for specific prior rulemaking for notice-based process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to upwards of 3 years (beginning with the initial request and ending with the publication of the final rule). A significant portion of this time is accounted for in the rulemaking process. This rule would reduce the time needed for approval of some fruits and vegetables for import without eliminating the opportunity for public participation in our analysis of risk. In addition, this rule would help relieve the burden on APHIS' regulatory mechanism, given the volume of new commodity import requests APHIS has

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<sup>1</sup> Huang, Sophia Wu. *Global Trade Patterns in Fruits and Vegetables*. Chapter 2. Economic Research Service/USDA.

been receiving, and the large volume of rulemaking initiatives already underway in APHIS.

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Many of the commodities that would be covered by this rule would be niche products, unavailable or limited in availability in the United States. This rule would allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

In the current process, once APHIS has conducted a risk analysis and identified what phytosanitary measures are necessary to address the pest risk posed by the commodity subject to an import request, APHIS then proceeds through rulemaking. The rulemaking amends the fruits and vegetables regulations to list the commodity from a specific part of the world as eligible, under specified conditions, for importation into the United States. Some import requests that might otherwise have very quickly led to new imports are delayed considerably by the rulemaking process. One reason for this is the complexities of the rulemaking process itself. There are certain statutory, executive branch, and departmental process requirements that are typically not required under a notice based process. Another is the nature of the requests. Few if any of these requests warrant an entire rulemaking in and of themselves. These requests are primarily small in stature either because they are specialty crops or are grown in limited quantities in the requesting area. Therefore these requests, when their risk analyses have been completed and needed phytosanitary measures have been identified, are necessarily grouped together for movement through the rulemaking process. These changes, along with other minor regulatory changes, are covered in rulemakings referred to as periodic amendments to Q56.

A significant number of the commodity import requests that APHIS receives would likely fit the notice-based process criteria as laid out in this rule. The number of import requests has grown significantly. There are currently approximately 400 commodity import requests being processed by APHIS. Because of the nature of the import requests likely to qualify for the notice-based approach, those commodities would most likely otherwise be included in periodic amendments to Q56.

Included in the 11<sup>th</sup> periodic amendment<sup>2</sup> were numerous herbs from Central America, figs from Mexico, peppers from Chile, cape gooseberry from Columbia, longan from China, persimmon from Spain, yard-long-bean from Nicaragua, and yellow pitaya from Columbia. These commodities would fit the notice-based process criteria of this rule,

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<sup>2</sup> Importation of Fruits and Vegetables. Final Rule. Docket No. 02-024-6. Federal Register/Vol. 68, No. 122/Wednesday, June 25, 2003/Rules and Regulations.

subject only to designated mitigation measures. Had these commodities followed the notice-based process of this rule, these commodities would have been available to U.S. consumers far sooner than was actually the case. For example, all of the pest risk analyses and risk management decisions associated with the herbs from Central America were completed by the end of 2001. The final rule allowing the import of these commodities was not published and effective until June 25, 2003.

In 2004 and 2005, approximately 454,000 KG of the above commodities were imported into the U.S. from the countries covered in the amendment. It is estimated that the average monthly value per commodity of these shipments was about \$3,900.<sup>3</sup> There are approximately 400 commodity import requests currently being processed by APHIS. A significant percentage of these requests may fit the notice-based process criteria of this rule. The rulemaking process is an inherently longer process than a notice-based process would be. There are complexities in the rulemaking process that are not present in the notice-based process. In addition, few if any of the requests that would fall into the notice-based process warrant an entire rulemaking in and of themselves, and must therefore be grouped with other commodities for rulemaking. Therefore, a notice based approach to commodity import approvals could be 6 to 12 months shorter than under a rulemaking approach.

For the purposes of estimating the benefits of a notice-based approach to approving commodity import requests, we make the following assumptions: The commodities that are approved for import under this notice-based process have values similar to those approved under the 11<sup>th</sup> periodic amendment; Thirty to 50 percent (120 to 200) of current commodity import requests would be approved under this process; and, those commodities approved in the notice-based process would reach the U.S. market 6 to 12 months earlier than they would under rulemaking.

Based on these assumptions, we could expect imports valued at between \$2.8 million and \$9.4 million to occur under a notice-based process that would not occur under the current rulemaking process. These added sales represent benefits of this rule. The rule will also have the benefit of improving trade relations with other countries by speeding import approvals. In addition, by moving to a notice-based process for certain commodities, fewer APHIS resources will have to be devoted to rulemaking for these commodities. Those resources will then become available for other uses.

This rule would not alter the manner in which the risks associated with a commodity import request are evaluated, nor would it alter the manner in which those risks are ultimately mitigated. The change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures.

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<sup>3</sup> Shipment information was obtained from APHIS' PQ280 database. Information on value is from the U.S. Census Bureau, Foreign Trade Statistics 'cowpeas', 'figs', 'fruit not elsewhere specified', 'other spices and herbs,' 'other berries' and 'peppers' for 2004 and 2005, in 2005 dollars.

APHIS currently recognizes changes in the pest-free status of countries via rulemaking. Under this rule, APHIS would use Federal Register notices and public comment to acknowledge pest-free areas in foreign countries without undertaking rulemaking. This would allow APHIS to be more responsive in recognizing changes in the pest-free status of foreign areas.

This rule would also clarify and strengthen requirements regarding safeguarding of fruits and vegetables that are imported from pest-free areas. These safeguards would provide necessary protection of imported commodities against pest infestations while they are in transit to the United States and are consistent with standard operating procedures of all current programs that export fruits and vegetables from pest-free areas. These changes should therefore have little, if any, impact on users of the system.

If the fast track approach is adopted for use by APHIS, the commodities approved under the fast track approach would no longer be listed in the regulations, nor would commodities that are currently approved for importation subject to one or more of the designated measures described previously be listed.

The fruits & vegetables manual<sup>4</sup> would contain a listing of all commodities approved for importation into the United States and would serve as a comprehensive list and reference of enterable fruits and vegetables.

Most of these changes would not alter how or whether a commodity is approved for importation, merely how that status would be presented. These changes should therefore have little, if any, impact on users of the system.

This proposed rule would make several changes to the issuance of permits for the importation of fruits and vegetables. This proposed rule would amend the regulations pertaining to permits to state that certain dried, cured, or processed fruits and vegetables; certain fruits and vegetables grown in Canada; and certain fruits and vegetables grown in the British Virgin Islands that are imported into the U.S. Virgin Islands; may be imported without a permit, while all other fruits and vegetables must be imported under permit. Because this change merely removes an unnecessarily confusing distinction between specific and general written permits, the change should have minor, but positive impact on users.

Other current provisions regarding application for permits; issuance of permits; amendment, denial, or withdrawal of permits; and appeals would be relocated in this proposed rule. The provisions for applying for permits would also be updated to reflect the various means now available for applying for permits. These changes would not affect program operations, and should therefore have little, if any, impact on users of the system.

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<sup>4</sup> *Regulating the Importation of Fresh Fruits and Vegetables*. United States Department of Agriculture. Marketing and Regulatory Programs. Animal and Plant Health Inspection Service. Plant Protection and Quarantine. <http://www.aphis.usda.gov/ppq/manuals/>

This proposed rule would also add new provisions to the regulations which would authorize APHIS to issue special use permits that authorize the importation of small lots of fruits or vegetables that are otherwise prohibited importation under the regulations. These permits would provide for the importation of fruits and vegetables for special events such as trade shows and for scientific research. In each case, such imports would only be allowed under strict conditions approved by the administrator to address the particular risk posed by the particular imported fruit or vegetable. This change could facilitate future trade opportunities, scientific research, and potentially pest management, but would have little direct impact on imports or consumers.

This proposed rule would revise, reorganize and update some of the regulations, update terms and remove outdated requirements and references, and make various editorial and nonsubstantive changes to regulations to make them easier to use. The proposed reorganization of the regulations would not affect any requirements for importing commodities but would simplify the regulations and organize them to facilitate future revisions. In addition, this proposal would also clarify treatment requirements in 7 CFR part 305. These changes do not represent a change in program operations and therefore should not affect users of the system.

This rule would also amend the various restrictions on the importation of okra from countries where the pink bollworm is known to exist. The regulations are outdated, and contain differing restrictions for the importation of okra from countries even though the regulations are all aimed at excluding pink bollworm from the United States. Under this proposal, all imports from pink bollworm-infested areas would be subject to the same requirements. The proposed conditions would be equivalent to our domestic regulations that pertain to pink bollworm.

In 2004, okra was imported from 11 countries into the United States with a value of \$17.4 million. Mexico has been the primary source of these imports. In 2004, Mexico accounted for nearly 70 percent of the imports. Other major sources are El Salvador, Honduras and Nicaragua, together accounting for about 31 percent of the imports in 2004.

Currently, the regulations contain varying restrictions on the importation of okra from countries where pink bollworm is known to exist. These restrictions include fumigation of imports from pink bollworm infested countries that are moving into infested areas of the U.S. The proposed conditions would remove this restriction. This may reduce the cost associated with some imports. However, this change would primarily impact Mexican imports. Mexico is already, by far, the U.S.' largest foreign source of okra. In addition, this change would only affect a limited portion of those okra imports. Therefore, this change should have at most a minor effect on okra imports and domestic okra prices.

This rule would also update the regulations to reflect to reflect current APHIS operating practices regarding biometric sampling of apricots, nectarines, peaches, Plumcot, and plums from Chile. Under the rule, the current sampling regimens would be removed and

replaced with provisions that require sampling, but do not specify the percentage of fruit to be sampled or the confidence level of the inspection. Chile is the primary source of U.S. stone fruit imports, accounting for more than 97 percent \$73 million in such imports in 2005. However, these modifications proposed in this rule do not represent a change in current program operations and therefore should not affect users of the system.

This rule would also amend the various provisions pertaining to packing and safeguarding of tomatoes. The rule would require tomatoes to be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. In addition, tomatoes would be required to be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States.

Annual Fresh tomato imports were valued at about \$852 million on average for the period 2000-2004. This represents more than 14 percent of the value of all fruit and vegetable imports in that period. Fresh tomato imports are primarily from Mexico, which represents nearly 70 percent of the value of tomato imports from all countries for that period. Other important origin countries for U.S. imports of fresh tomatoes are Canada and the Netherlands.

Complying with the provisions of this change could represent added cost to importers. However, this additional cost should be small since the change represents a change in the rigorousness of the packaging and containers protecting against attack by insects, not whether the tomatoes are protected. The current regulations already require packaging and containers to be fruit-fly proof. Therefore, the change should have little impact on importers of tomatoes. We welcome comments on the size of this added cost.

In sum, APHIS expects little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers. In addition, those additional measures in this proposal that affect specific commodities are also expected to have limited impact. The main portions of this proposal, if adopted, would represent a significant structural revision of the fruits and vegetables import regulations and would establish a new process for approving certain new commodities for importation into the United States. However, those commodity import requests most likely to qualify for the notice-based process are small in stature. This is either because they are for specialty crops unavailable or limited in availability in the U.S., or are for crops grown in limited quantities in the requesting area. In addition, the rule would not alter the conditions for importing the majority of currently approved fruits or vegetables.

Of particular note with respect to the proposed changes to the approval process, the change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. The rule would not alter the manner in which the risk associated with a commodity import request is evaluated, nor would it alter the manner in which those risks are

ultimately mitigated. Consumers would have quicker access to imported fruits and vegetables, though risks would still be evaluated and appropriate mitigations required, as they are currently. Also, given the growing number of requests to ship foreign fruits and vegetables to the United States, some trading partners may perceive the time required to conduct the rulemaking process as a barrier to trade. Such perception may impede their consideration of U.S. requests to ship U.S. commodities to their markets. To the extent to which trading partners consider the time it takes to conduct the rulemaking process a trade barrier, by reducing that time; this rule may facilitate the export of U.S. agricultural commodities.



### *Background:*

Under the Regulations in “Subpart-Fruits and Vegetables” 7 CFR 319.56 through 319.56-8 (commonly referred to as “Q56”) the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fresh fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of generally applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the process.

### *Economic Analysis:*

#### Fruits and Vegetables

The fruit and tree nut and the vegetable and melon sectors are vibrant areas in the United States, both for consumers and producers. The U.S. is one of the world’s leading producers and consumers of vegetables and melons. The sale of vegetables and melons (including mushrooms) earned farmers \$17.3 billion on average during 2001-03, more than 8 percent of all farm cash receipts (crops and livestock) and 17 percent of crop receipts. Similarly, the U.S. fruit and tree nuts industry is an important component of the U.S. farm sector. It generated over \$12 billion in U.S. farm cash receipts annually in the early 2000s, averaging 6 percent of all farm cash receipts and 12 percent of all crop receipts.

The typical American annually consumes over 280 pounds of fruit and tree nuts (fresh and processed products) each year, ranking third per capita consumption of major food groups, next to dairy and vegetables. Annual use of all vegetables and melons rose 4 percent from 1991-93 to 2001-03, reaching 440 pounds as fresh consumption increased and processed fell. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Increased domestic and world supplies, rising disposable incomes and a growing and more culturally diverse population will continue to expand consumer demand for fruits and vegetables in the United States over the next decade. Another important stimulus is continued emphasis on health and nutrition. The

fruit and vegetable industries have been very active in promoting the health benefits of fruit consumption.

International trade in fruits and vegetables – in particular, many new and newly traded commodities – expanded rapidly over the past two decades, while also undergoing a marked change in the products demanded. According to Food and Agriculture Organization (FAO) data, the average value share of fruits and vegetables (including pulses and tree nuts) in global agricultural exports increased from 11.7 percent in the period 1977-81 to 15.1 percent in 1987-91 and reached an all time high of 16.5 percent in 1997-2001.<sup>5</sup>

Imports have become increasingly important for domestic fresh fruit and vegetable consumption. In 2004, the U.S. imported more than \$7 billion in fresh fruits and vegetables. (See tables 1 and 2).

**Table 1. Fresh Fruit Imports into the United States, 2000-2004.<sup>6</sup>**

| Type                                             | 2000                   | 2001         | 2002         | 2003         | 2004         |
|--------------------------------------------------|------------------------|--------------|--------------|--------------|--------------|
|                                                  | <i>million dollars</i> |              |              |              |              |
| Avocados                                         | 108                    | 84           | 135          | 157          | 157          |
| Apples, Pears & Quinces                          | 173                    | 175          | 180          | 208          | 247          |
| Bananas & Plantains                              | 1,101                  | 1,146        | 1,141        | 1,114        | 1,097        |
| Berries                                          | 133                    | 139          | 167          | 196          | 271          |
| Citrus Fruit                                     | 224                    | 218          | 222          | 298          | 307          |
| Grapes                                           | 552                    | 571          | 680          | 680          | 732          |
| Pineapples                                       | 130                    | 153          | 188          | 226          | 233          |
| Stone fruit (apricot, cherry, plum, peach, etc.) | 75                     | 95           | 113          | 99           | 111          |
| Other Fruit                                      | 268                    | 282          | 290          | 311          | 350          |
| Total                                            | <b>2,764</b>           | <b>2,863</b> | <b>3,118</b> | <b>3,288</b> | <b>3,504</b> |

While growth in U.S. fruit exports has been strong, the United States has remained a net fruit importer. U.S. fruit imports also grew during the last two decades and through the early 2000s, due in part to the growing ethnic population in the U.S. and the increased demand for new products. Of the various fruit and fruit product categories, growth in U.S. fruit imports has been strongest in fresh fruit. Fresh fruit imports as a share of domestic fruit consumption rose from 35 percent in 1990 to over 40 percent in the early 2000s. Sold year round in the domestic market, bananas rank number one in U.S. per capita fresh fruit consumption, followed by apples and oranges. To meet domestic demand, virtually all bananas are imported, and they claim more than 60 percent of the volume of fresh fruit imports.<sup>7</sup>

<sup>5</sup> Huang, Sophia Wu. *Global Trade Patterns in Fruits and Vegetables*. Chapter 2. Economic Research Service/USDA.

<sup>6</sup> Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics. Totals may not sum due to rounding. nes: not elsewhere specified.

<sup>7</sup> Economic Research Service. USDA. Briefing room: fruit and tree nuts. <http://www.ers.usda.gov/Briefing/FruitandTreeNuts>.

**Table 2. Fresh Vegetable & Melon Imports into the United States, 2000-2004.<sup>8</sup>**

| Type                                            | 2000                   | 2001         | 2002         | 2003         | 2004         |
|-------------------------------------------------|------------------------|--------------|--------------|--------------|--------------|
|                                                 | <i>million dollars</i> |              |              |              |              |
| Asparagus                                       | 115                    | 117          | 135          | 149          | 176          |
| Cucumbers and gherkins                          | 177                    | 201          | 212          | 273          | 349          |
| Melons (cantaloupe, honeydew, watermelon, etc.) | 259                    | 284          | 259          | 241          | 282          |
| Onions, Shallots, Garlic, Leeks, etc.           | 167                    | 211          | 204          | 213          | 253          |
| Peppers                                         | 456                    | 510          | 458          | 547          | 663          |
| Squash                                          | 113                    | 151          | 156          | 178          | 184          |
| Tomatoes                                        | 640                    | 722          | 795          | 1,048        | 1,054        |
| Other Vegetables                                | 460                    | 515          | 561          | 557          | 663          |
| Total                                           | <b>2,387</b>           | <b>2,710</b> | <b>2,780</b> | <b>3,206</b> | <b>3,624</b> |

The United States is one of the world's leading producers and consumers of vegetables and melons, with imports playing an increasing role. In 2001, the U.S. imported 157 million pounds of fresh-market asparagus. This was 3 times greater than in 1990 and 20 times larger than in 1980 and reflects rising demand. Over the past two decades, the demand for sweet, mild peppers has been rising, reaching a record high in 2000. Trade plays an important role in the U.S. fresh bell pepper market. About 7 percent of the domestic supplies are exported, and about 20 percent of demand is satisfied by imports. Per capita use of cucumbers has risen during each of the last four decades. Fresh-market use has accounted for all of the growth over the last 20 years. Imports accounted for 45 percent of U.S. fresh cucumber consumption during 2001-03, up from 38 percent in the 1990s. Between 1990-92 and 2000-02, per capita consumption of cantaloup rose 27 percent. Nearly half this gain can be attributed to a doubling of imports, which accounted for 34 percent of consumption in 2002. Consumption of honeydew has risen 9 percent since 1990-93. The largest share of this increase is attributable to imports which have risen 26 percent. The fresh market accounts for the largest share of domestic onion use. Imports accounted for 11 percent of the fresh-market onions consumed in the U.S. in 2002. The U.S. is the world's top squash import market, importing an average of \$170 million annually during 2001-03. During 2001-03, 37 percent of domestic squash demand was satisfied by imported product, up from 18 percent during 1981-83. In terms of consumption, tomatoes are fourth among fresh-market vegetables, with total use averaging 5.3 billion pounds in 2001-03. Imports now account for about 39 percent of U.S. tomato consumption, up from about 20 percent in the early 1990s.

There is a definite seasonal pattern to fresh vegetable imports, with two-thirds of import volume arriving between December and April when U.S. production is low and limited to the southern portions of the country. The majority of these imports are tender, warm-season vegetables like tomatoes, peppers, squash, and cucumbers. Three-quarters of all fresh-market onion and squash imports occur during the winter months. From December to April, cantaloup and honeydew availability depends almost entirely on imports. Cool-

<sup>8</sup> Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics. Totals may not sum due to rounding.

season crops like leafy green vegetables and carrots grow abundantly and cheaply in California, Arizona, and Texas during the winter months. As a result, imports of these items are very low compared with the warm-season crops.<sup>9</sup>

A similar dynamic exists in fruits. Mexico is the United States' largest supplier of fresh fruit. Mexico ships mostly limes, tangerines, mangoes, grapes, pineapples, papayas, avocados, and strawberries. U.S. production of these commodities – except for tangerines, grapes, strawberries, and avocados – is small. Chile is also a major supplier of fresh fruit, with a 20-percent share of the U.S. import market. Chile enjoys the advantage of having a counter-seasonal production schedule with the United States. Expanded trade with Chile extended the availability of certain fruits in the market without direct competition with domestic production and provided U.S. consumers with fruit choices beyond the traditional domestic winter fruits of citrus, apples, and pears.<sup>10</sup>

## PROPOSED REVISIONS

This proposed rule alters the fruits and vegetables regulations in three primary areas. It would establish criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; do away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and provide for the issuance of special use permits for fruits and vegetables. In addition, the rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. Following is a discussion of these proposed changes.

### *Approval of certain fruits and vegetables for importation.*

Exceptions are made to the prohibition for specific commodities (which are then listed in Q56) provided that the pest risk they pose is mitigated by specific phytosanitary measures. For the vast majority of commodities listed in Q56, inspection and/or treatment are the phytosanitary measures applied to ensure that the imported commodity does not contain plant pests. For other commodities, APHIS requires a more complex risk mitigation strategy (i.e., a systems approach).

In considering whether to authorize the importation of a new commodity, APHIS identifies the phytosanitary measures necessary to address the pest risk posed by the commodity. As a matter of current APHIS policy, any decision made on whether to allow the importation of a commodity proceeds through the rulemaking process before the decision can be implemented and import permits issued. All newly-authorized commodities are then specifically added to the CFR.

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<sup>9</sup> USDA-ERS Vegetable briefing room. <http://www.ers.usda.gov/Briefing/Vegetables>.

<sup>10</sup> USDA-ERS. Briefing room: fruit and tree nuts.

This rule would establish a new regulatory approach where APHIS would approve or reject certain fruits and vegetables for importation without specific prior rulemaking, but in a manner that would still provide for public review and comment on the scientific documentation on which such decisions would be based. This performance-based process would involve a risk analysis that identifies all the pests of concern, documents how all quarantine pests would be removed from the import pathway through inspection and/or treatment, and allows for public comment.

This proposed process for approving imports would apply only to commodities that based on the findings of risk analysis, APHIS determines can be safely imported subject to one or more designated risk management measures. These designated measures are: (1) Inspection upon arrival in the United States and subject to other general requirements of proposed § 319.56-3; and (2) Certified origin from a pest-free area in the country of origin in accordance with revised § 319.56-5; and/or (3) Treatment for pest(s) in accordance with part 305; and/or (4) Inspection and certification that the commodity is pest free in the country of origin by the national plant protection organization of the exporting country. The importation of fruits and vegetables that require additional risk management beyond one or more of the designated measures cited above would continue to require specific prior rulemaking. The new process would be a notice-based process while the existing process is a rulemaking-based process.

By eliminating the need for specific prior rulemaking for notice-based process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18 months to upwards of 3 years (beginning with the initial request and ending with the publication of the final rule). A significant portion of this time is accounted for in the rulemaking process. This rule would reduce the time needed for approval of some fruits and vegetables for import without eliminating the opportunity for public participation in our analysis of risk. In addition, this rule would help relieve the burden on APHIS' regulatory mechanism, given the volume of new commodity import requests APHIS has been receiving, and the large volume of rulemaking initiatives already underway in APHIS.

Consumers benefit from the opportunity to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. Many of the commodities that would be covered by this rule would be niche products, unavailable or limited in availability in the United States. This rule would allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

In the current process, once APHIS has conducted a risk analysis and identified what phytosanitary measures are necessary to address the pest risk posed by the commodity subject to an import request, APHIS then proceeds through rulemaking. The rulemaking amends the fruits and vegetables regulations to list the commodity from a specific part of the world as eligible, under specified conditions, for importation into the United States. Some import requests that might otherwise have very quickly led to new imports are delayed considerably by the rulemaking process. One reason for this is the complexities of the rulemaking process itself. There are certain statutory, executive branch, and departmental process requirements that are typically not required under a notice-based process. Another is the nature of the requests. Few if any of these requests warrant an entire rulemaking in and of themselves. They are primarily small in stature, either because they are for specialty crops or are for crops grown in limited quantities in the requesting area. Therefore these requests, when their risk analyses have been completed and needed phytosanitary measures have been identified, are necessarily grouped together for the rulemaking. These changes, along with other minor regulatory changes, are covered in rulemakings referred to as periodic amendments to Q56.

A significant number of the commodity import requests that APHIS receives would fit the notice-based process criteria as laid out in this rule. The number of import requests has grown significantly. There are currently approximately 400 commodity import requests being processed by APHIS. Because of the nature of the import requests likely to qualify for the notice-based approach, those commodities would most likely otherwise be included in periodic amendments to Q56.

**Table 3. Selected Commodities Covered in the 11th Periodic Amendment.**

| <b>Commodity</b>         | <b>Country(ies) of Origin</b>               |
|--------------------------|---------------------------------------------|
| Basil                    | Honduras                                    |
| Cape gooseberry          | Columbia                                    |
| Fennel                   | El Salvador, Guatemala, Nicaragua           |
| Figs                     | Mexico                                      |
| German Chamomile         | El Salvador, Guatemala, Honduras, Nicaragua |
| Jicama ( Yam-yam bean)   | El Salvador, Honduras, Nicaragua            |
| Longan                   | China                                       |
| Lorocco                  | El Salvador, Guatemala, Honduras, Nicaragua |
| Oregano (Sweet Marjoram) | El Salvador, Honduras                       |
| Parsley                  | El Salvador, Honduras                       |
| Peppers                  | Chile                                       |
| Persimmon                | Spain                                       |
| Rosemary                 | El Salvador, Guatemala                      |
| Waterlily (lotus)        | El Salvador, Guatemala, Honduras, Nicaragua |
| Yard-long-bean           | Nicaragua                                   |
| Yellow pitaya            | Columbia                                    |

Included in the 11<sup>th</sup> periodic amendment<sup>11</sup> were numerous herbs from Central America, figs from Mexico, peppers from Chile, cape gooseberry from Columbia, longan from China, persimmon from Spain, yard-long-bean from Nicaragua, and yellow pitaya from Columbia. These commodities would fit the notice-based process criteria of this rule,

<sup>11</sup> Importation of Fruits and Vegetables. Final Rule. Docket No. 02-024-6. Federal Register/Vol. 68, No. 122/Wednesday, June 25, 2003/Rules and Regulations.

subject only to designated mitigation measures. Had these commodities followed the notice-based process of this rule, these commodities would have been available to U.S. consumers far sooner than was actually the case. For example, all of the pest risk analyses and risk management decisions associated with the herbs from Central America were completed by the end of 2001. The final rule allowing the import of these commodities was not published and effective until June 25, 2003.

In 2004 and 2005, approximately 454,000 KG of the above commodities were imported into the U.S. from the countries covered in the amendment. It is estimated that the average monthly value per commodity of these shipments was about \$3,900.<sup>12</sup> There are approximately 400 commodity import requests currently being processed by APHIS. A significant percentage of these requests may fit the notice-based process criteria of this rule. The rulemaking process is an inherently longer process than a notice-based process would be. There are complexities in the rulemaking process that are not present in the notice-based process. In addition, few if any of the requests that would fall into the notice-based process warrant an entire rulemaking in and of themselves, and must therefore be grouped with other commodities for rulemaking. Therefore, a notice based approach to commodity import approvals could be 6 to 12 months shorter than under a rulemaking approach.

For the purposes of estimating the benefits of a notice-based approach to approving commodity import requests, we make the following assumptions: The commodities that are approved for import under this notice-based process have values similar to those approved under the 11<sup>th</sup> periodic amendment; Thirty to 50 percent (120 to 200) of current commodity import requests would be approved under this process; and, those commodities approved in the notice-based process would reach the U.S. market 6 to 12 months earlier than they would under rulemaking.

Based on these assumptions, we could expect imports valued at between \$2.8 million and \$9.4 million to occur under a notice-based process that would not occur under the current rulemaking process. These added sales represent benefits of this rule. The rule will also have the benefit of improving trade relations with other countries by speeding import approvals. In addition, by moving to a notice-based process for certain commodities, fewer APHIS resources will have to be devoted to rulemaking for these commodities. Those resources will then become available for other uses.

This rule would not alter the manner in which the risks associated with a commodity import request are evaluated, nor would it alter the manner in which those risks are ultimately mitigated. The change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures.

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<sup>12</sup> Shipment information was obtained from APHIS' PQ280 database. Information on value is from the U.S. Census Bureau, Foreign Trade Statistics 'cowpeas', 'figs', 'fruit not elsewhere specified', 'other spices and herbs,' 'other berries' and 'peppers' for 2004 and 2005, in 2005 dollars.

### *Approval of pest free areas*

APHIS currently recognizes changes in the pest-free status of countries via rulemaking. For example, if an area within a country where fruit flies are known to exist is determined to be free of fruit flies, in order for a fruit or vegetable that is a fruit fly host to be imported from that area without treatment or other mitigation for fruit flies, APHIS must list the specific area in the regulations as a fruit-fly free area. If changes in the pest-free status of such areas occur, APHIS must again revise the regulations to recognize the change. Given that such changes in the regulations can only be made via rulemaking, often the regulations do not reflect the actual status of a particular area given the time it takes to propose a change to the regulations, respond to comments on the proposal, and to publish a final rule amending the regulations.

Under this rule, when provided with evidence that the pest-free status of a foreign area has changed, APHIS would publish in the Federal Register a notice of the proposed change in status and take public comment for 60 days. If no comments submitted to APHIS provide evidence that its determination of pest-freedom is incorrect, APHIS would announce that it considers the area to be free of the specified pest and that the area in question meets certain criteria. These criteria are: (1) APHIS made a determination that the area is free of specified pest(s) in accordance with the criteria for establishing freedom established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization; and (2) APHIS has approved the survey protocol used to determine and maintain pest-free status, as well as protocols for actions to be performed upon detection of a pest.

This rule would allow APHIS to be more responsive in recognizing changes in the pest-free status of foreign areas and would also clarify and strengthen requirements regarding safeguarding of fruits and vegetables that are imported from pest-free areas. These safeguards would provide necessary protection of imported commodities against pest infestations while they are in transit to the United States and are consistent with standard operating procedures of all current programs that export fruits and vegetables from pest-free areas. These changes should therefore have little, if any, impact on users of the system.

### *Listing of specific commodities allowed import*

If the fast track approach is adopted for use by APHIS, the commodities approved under the fast track approach would no longer be listed in the regulations, nor would commodities that are currently approved for importation subject to one or more of the designated measures described previously be listed. Consequently, the lists of commodities contained in current §§319.56-2t (approved for importation subject to inspection) and 319.56-2x (approved for importation subject to inspection and treatment) would be removed from the CFR, as would a number of other provisions in current commodity-specific sections in the regulations that authorize importation of specific fruits and vegetables in accordance with one or more of the designated measures.



The fruits & vegetables manual<sup>13</sup> would contain a listing of all commodities approved for importation into the United States and would serve as a comprehensive list and reference of enterable fruits and vegetables.

Most of these changes would not alter how or whether a commodity is approved for importation, merely how that status would be presented. These changes should therefore have little, if any, impact on users of the system.

#### *Permits*

This proposed rule would make several changes to the issuance of permits for the importation of fruits and vegetables. Currently, general written permits simply authorize in the written text of the regulations the importation of certain dried, cured, or processed fruits and vegetables; certain fruits and vegetables grown in Canada; and certain fruits and vegetables grown in the British Virgin Islands that are imported into the U.S. Virgin Islands. This proposed rule would amend the regulations pertaining to permits to state that these commodities may be imported without a permit, while all other fruits and vegetables must be imported under permit. Because this change merely removes an unnecessarily confusing distinction between specific and general written permits, the change should have minor, but positive impact on users.

Other current provisions regarding application for permits; issuance of permits; amendment, denial, or withdrawal of permits; and appeals would be relocated in this proposed rule. The provisions for applying for permits would also be updated to reflect the various means now available for applying for permits. These changes would not affect program operations, and should therefore have little, if any, impact on users of the system.

This proposed rule would also add new provisions to the regulations which would authorize APHIS to issue special use permits that authorize the importation of small lots of fruits or vegetables that are otherwise prohibited importation under the regulations. These permits would provide for the importation of fruits and vegetables for special events such as trade shows and for scientific research. In each case, such imports would only be allowed under strict conditions approved by the administrator to address the particular risk posed by the particular imported fruit or vegetable. This change could facilitate future trade opportunities, scientific research, and potentially pest management, but would have little direct impact on imports or consumers.

#### *Reorganization and Revision of the Regulations*

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability—definitions, permits, phytosanitary certificates, notices of arrival, as well as the proposed performance-based process for determining fruits and vegetables whose pest risk can be mitigated solely through inspection and/or an approved treatment. It would eliminate

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<sup>13</sup> *Regulating the Importation of Fresh Fruits and Vegetables*. United States Department of Agriculture. Marketing and Regulatory Programs. Animal and Plant Health Inspection Service. Plant Protection and Quarantine. <http://www.aphis.usda.gov/ppq/manuals/>

redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use.

This proposal would locate all requirements of general applicability at the beginning of the regulations, followed by all commodity-specific requirements, and redundant references to general requirements that are contained in commodity specific regulations would be removed. The proposed reorganization of the regulations would not affect any requirements for importing commodities but would simplify the regulations and organize them to facilitate future revisions.

APHIS recently amended the regulations in 7 CFR part 305 by listing treatment schedules for imported fruits and vegetables and other requirements for certifying facilities and conducting treatments. In this proposed rule, we would remove treatment schedules from the Q56 fruits and vegetables regulations. We would also move provisions on cold treatment and the regulations that require treatments to be monitored by an inspector to part 305. These changes do not represent a change in program operations and therefore should not affect users of the system.

Further, the proposed rule would add provisions in part 305 to make it clear that any treatment performed outside the United States must be monitored and certified by APHIS or an official from the plant protection service of the exporting country. We would also require consignments of agricultural commodities that are treated outside the United States to be accompanied by a phytosanitary certificate attesting to the fact that the consignment has been treated in accordance with part 305, and stored and handled between treatment and export to prevent infestation. These changes are necessary to ensure commodities are treated in accordance with APHIS requirements and to help ensure that they arrive in the U.S. free from quarantine pests. These changes do not however represent a change in program operations. APHIS has been administratively requiring documentation of treatment for several years.

#### *Other Changes*

This rule would also amend the various restrictions on the importation of okra from countries where the pink bollworm is known to exist. The regulations are outdated, and contain differing restrictions for the importation of okra from countries even though the regulations are all aimed at excluding pink bollworm from the United States. Under this proposal, all imports from pink bollworm-infested areas would be subject to the same requirements. The proposed conditions would be equivalent to our domestic regulations that pertain to pink bollworm.

In 2004, okra was imported from 11 countries into the United States with a value of \$17.4 million (see Table 4). Mexico has been the primary source of these imports. In 2004, Mexico accounted for nearly 70 percent of the imports. Other major sources are El Salvador, Honduras and Nicaragua, together accounting for about 31 percent of the imports in 2004.

**Table 4. Fresh Okra Imports into the United States, 2000-2004.<sup>14</sup>**

| Country            | 2000                    | 2001         | 2002         | 2003          | 2004          |
|--------------------|-------------------------|--------------|--------------|---------------|---------------|
|                    | <i>Thousand dollars</i> |              |              |               |               |
| Dominican Republic | 3                       | 13           | 5            | 10            | 34            |
| Ecuador            | 0                       | 0            | 0            | 0             | 15            |
| Egypt              | 0                       | 13           | 0            | 0             | 3             |
| El Salvador        | 43                      | 59           | 30           | 1,330         | 2,818         |
| Guatemala          | 89                      | 22           | 0            | 0             | 9             |
| Honduras           | 0                       | 15           | 377          | 710           | 1,604         |
| Mexico             | 9,023                   | 8,103        | 8,937        | 9,524         | 11,830        |
| Nicaragua          | 79                      | 4            | 39           | 271           | 1,067         |
| Panama             | 0                       | 0            | 9            | 0             | 3             |
| Peru               | 0                       | 33           | 0            | 0             | 4             |
| Turkey             | 20                      | 0            | 6            | 0             | 4             |
| Total              | <b>9,258</b>            | <b>8,365</b> | <b>9,432</b> | <b>11,848</b> | <b>17,390</b> |

Currently, the regulations contain varying restrictions on the importation of okra from countries where pink bollworm is known to exist. These restrictions include fumigation of imports from pink bollworm infested countries that are moving into infested areas of the U.S. The proposed conditions would remove this restriction. This may reduce the cost associated with some imports. However, this change would primarily impact Mexican imports. Mexico is already, by far, the U.S.' largest foreign source of okra. In addition, this change would only affect a limited portion of those okra imports. Therefore, this change should have at most a minor effect on okra imports and domestic okra prices.

This rule would also update the regulations to reflect to reflect current APHIS operating practices regarding biometric sampling of apricots, nectarines, peaches, Plumcot, and plums from Chile. Under the rule, the current sampling regimens would be removed and replaced with provisions that require sampling, but do not specify the percentage of fruit to be sampled or the confidence level of the inspection. Chile is the primary source of U.S. stone fruit imports, accounting for more than 97 percent \$73 million in such imports in 2005. However, these modifications proposed in this rule do not represent a change in current program operations and therefore should not affect users of the system.

This rule would also amend the various provisions pertaining to packing and safeguarding of tomatoes. The rule would require tomatoes to be safeguarded from harvest to export by insect-proof mesh screens or plastic tarpaulins, including while in transit to the packing house and while awaiting packaging. In addition, tomatoes would be required to be packed in insect-proof cartons or containers, or covered by insect-proof mesh or plastic tarpaulins for transit to the airport and subsequent export to the United States.

<sup>14</sup> Data Source: Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics. Totals may not sum due to rounding.

Annual fresh tomato imports were valued at about \$852 million on average for the period 2000-2004. This represents more than 14 percent of the value of all fruit and vegetable imports in that period. Fresh tomato imports are primarily from Mexico, which represents nearly 70 percent of the value of tomato imports from all countries for that period. Other important origin countries for U.S. imports of fresh tomatoes are Canada and the Netherlands.

Complying with the provisions of this change could represent added cost to importers. However, this additional cost should be small since the change represents a change in the rigorousness of the packaging and containers protecting against attack by insects, not whether the tomatoes are protected. The current regulations already require packaging and containers to be fruit-fly proof. Therefore, the change should have little impact on importers of tomatoes. We welcome comments on the size of this added cost.

### *Conclusion*

In sum, APHIS expects little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers. In addition, those additional measures in this proposal that affect specific commodities are also expected to have limited impact. The main portions of this proposal, if adopted, would represent a significant structural revision of the fruits and vegetables import regulations and would establish a new process for approving certain new commodities for importation into the United States. However, those commodity import requests most likely to qualify for the notice-based process are small in stature. This is either because they are for specialty crops unavailable or limited in availability in the U.S., or are for crops grown in limited quantities in the requesting area. In addition, the rule would not alter the conditions for importing the majority of currently approved fruits or vegetables.

Of particular note with respect to the proposed changes to the approval process, the change would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. The rule would not alter the manner in which the risk associated with a commodity import request is evaluated, nor would it alter the manner in which those risks are ultimately mitigated. Consumers would have quicker access to imported fruits and vegetables, though risks would still be evaluated and appropriate mitigations required, as they are currently. Also, given the growing number of requests to ship foreign fruits and vegetables to the United States, some trading partners may perceive the time required to conduct the rulemaking process as a barrier to trade. Such perception may impede their consideration of U.S. requests to ship U.S. commodities to their markets. To the extent to which trading partners consider the time it takes to conduct the rulemaking process a trade barrier, by reducing that time, this rule may facilitate the export of U.S. agricultural commodities.

## *Initial Regulatory Flexibility Analysis*

The Regulatory Flexibility Act of 1980 (Public Law 96-354) requires agencies to evaluate the potential effects of proposed and final rules on small businesses, small organizations, and small governmental jurisdictions.

Section 603 of the Act requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) describing the impacts of rules on small entities. Section 603(b) of the Act specifies the content of an IRFA. Each IRFA must contain:

1. A description of the reasons why action by the agency is being considered;
2. A succinct statement of the objectives of, and legal basis for, the proposed rule;
3. A description and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report of record;
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
6. Descriptions of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

### 1. Description of the reasons why action by APHIS is being considered

This proposed rule would revise and reorganize the regulations pertaining to the importation of fruits and vegetables to consolidate requirements of general applicability and eliminate redundant requirements, update terms and remove outdated requirements and references, update the regulations that apply to importations of fruits and vegetables into U.S. territories, and make various editorial and nonsubstantive changes to regulations to make them easier to use. APHIS is also proposing to make substantive changes to the regulations, including: (1) Establishing criteria within the regulations that, if met, would allow APHIS to approve certain new fruits and vegetables for importation into the United States and to acknowledge pest-free areas in foreign countries without undertaking rulemaking; (2) doing away with the process of listing specific commodities that may be imported subject to certain types of risk management measures; and (3) providing for the issuance of special use permits for fruits and vegetables. These changes are necessary to simplify and expedite the APHIS process for approving new imports and pest-free areas while continuing to allow for public participation in the process.

### 2. Objectives of, and legal basis for, the proposed rule

By eliminating the need for specific prior rulemaking for notice-based process commodities, considerable time savings could be reaped. The current process for approving new imports takes a notable period of time, ranging on average from 18

months to 3 years (beginning with the initial request and ending with the publication of the final rule).

Consumers benefit from the ability to purchase fruits and vegetables from a variety of sources, foreign as well as domestic. Many of the commodities that would be covered by this rule would be niche products, unavailable or limited in availability in the United States. This rule would allow importers to more quickly meet consumer demand for those niche products. In addition, climate causes most domestic fruit and vegetable production to be seasonal, with the largest harvests occurring during the summer and fall. Imports supplement domestic supplies, especially of fresh products during the winter, resulting in increased choices for consumers. Even where the new imports would compete directly with domestic production, consumers would benefit when increased competition results in lower prices.

Under the Regulations in “Subpart-Fruits and Vegetables” 7 CFR 319.56, APHIS prohibits or restricts the importation of fresh fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

### 3. Description and estimate of the number of small entities to which the proposed rule will apply

Those entities most likely to be economically affected by the rule are domestic importers and producers of fruits and vegetables. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling fresh fruits and vegetables is considered small if it employs not more than 100 persons. In 1997,<sup>15</sup> more than 96 percent (5,456 of 5,657) of fresh fruit and vegetable wholesalers would be considered small by SBA standards.<sup>16</sup> All types of fruit and vegetable farms are considered small if they have annual receipts of \$0.75 million or less. With some exceptions, vegetable and melon farms are largely individually owned and relatively small, with two-thirds harvesting fewer than 25 acres. In 2002, between 80 and 84 percent of vegetable and melon farms would be considered small. Similarly, although numbers have declined, fruit and tree nut production is still dominated by small, family or individually-run farm operations. In 2002, between 92 and 95 percent of all fruit and tree nut farms would be considered small.<sup>17</sup>

The number of entities that would be affected by this rule is unknown but those affected would likely be considered small. However, based on the information that is available, the effects of this rule should be small whether the entity affected is small or large. Those commodity import requests most likely to qualify for the notice-based process are

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<sup>15</sup> Establishment and firm size is not yet available for the 2002 Economic Census.

<sup>16</sup> 1997 Economic Census. Department of Commerce. US Bureau of the Census. North American Industry Classification System (NAICS) Category – 424480: Fresh fruit & Vegetable wholesalers.

<sup>17</sup> 1997 Census of Agriculture. US Department of Agriculture. National Agricultural Statistics Service. NAICS Categories – 1112: Vegetable and melon farming; 1113: Fruit and tree nut farming.

small in stature. This is either because they are for specialty crops unavailable or limited in availability in the U.S., or are for crops grown in limited quantities in the requesting area. This proposal would merely allow a new commodity import to move more quickly into commerce to the benefit of consumers once it has been determined that the commodity can be safely imported subject to one or more designated risk management measures. Hence, we expect little impact on the total volume of U.S. imports of fruits and vegetables, with small effects on U.S. marketers and consumers.

Nevertheless, we invite public comment on the proposed rule -- including any comment on the expected impacts for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. Any comment suggesting changes to the proposed criteria should be supported an explanation of why the changes should be considered.

#### 4. Description of the projected reporting, recordkeeping, and other compliance requirements for small entities

The proposed rule contains, under the heading "Paperwork Reduction Act," a description of the information collection and recordkeeping requirements associated with the proposed rule.

#### 5. Duplication, overlap or conflict with other Federal rules

APHIS is unaware of any Federal rules that are duplicative, overlapping, or conflicting with this proposed rule.

#### 6. Description of any significant alternatives to the proposed rule

One alternative to this rule would be to simply continue under APHIS' current process of authorizing the importation of fruits and vegetables. In this case, we would continue to list all newly approved fruits and vegetables in the regulations through notice-and-comment rulemaking, as we have been doing since 1987. This approach is unsatisfactory, because the number of requests we receive from foreign exporters and domestic importers to amend the regulations has been steadily increasing. Maintaining the current process will make it difficult to keep pace with the volume of import requests. Therefore, this alternative was rejected. We believe that the new approach would enable us to be more responsive to the import requests of our trading partners while maintaining the transparency of our decision-making afforded by notice-and-comment rulemaking.

Prior to 1987, APHIS authorized the importation of a fruit or vegetable by simply issuing a permit once the Agency was satisfied that the relevant criteria in the regulations had been met. Another alternative to this rule would be to return to this method of authorizing fruit and vegetable importations. This approach is unsatisfactory, because it does not provide the opportunity for public analysis of and comment on the science associated with such imports. Therefore, this alternative was rejected. We believe that the new approach would enable us to be more responsive to the import requests of our trading partners while maintaining the transparency of our decision-making afforded by notice-and-comment rulemaking.

*Future Analyses*

If this rule is adopted as a final rule, the requirements of Executive Order 12866 or the Regulatory Flexibility Act will be met through the analyses that accompany the final rule. The economic effects of importing the specific commodities that are approved using the streamlined approach would not be analyzed at the point of approval, since such approval would occur without additional rulemaking.