Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 03–022–3]

RIN 0579–AB81

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to expand the number of States in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to allow the distribution of the avocados during all months of the year. To reflect these proposed changes, we would also make other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States. We are proposing this action in response to a request from the Government of Mexico and based on our finding that the phytosanitary measures described in this proposed rule will reduce the risk of introducing plant pests associated with Mexican Hass avocados into the United States.

DATES: We will consider all comments that we receive on or before July 23, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 03–022–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–022–3.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–022–3'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Karen Bedigian, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff (referred to below as the regulations), fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (October 15 through April 15) that shipments may enter the United States, are designed to reduce the risk of pest introduction. Further, the regulations limit the distribution of the avocados to 31 northeastern and north central States (Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming) and the District of Columbia.

In November 2000, the Government of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow Hass avocados to be imported year round into all 50 States. We did not act on Mexico's request at the time because we did not have documentation available to support Mexico's position that such importations would not present a risk of introducing plant pests into certain States.

As part of our evaluation of Mexico's request, we prepared a draft pest risk assessment (PRA), titled ''Importation of 'Hass' Avocado Fruit (*Persea americana*) from Mexico'' (June 2003), to evaluate the importation of fruit to the entire United States throughout the year. The draft PRA contained two components: (1) A risk assessment component that identifies quarantine pests that are likely to follow the Mexican Hass avocado import pathway, and (2) a risk management component that evaluates the ability of the selected phytosanitary measures to mitigate the risk posed by those quarantine pests.

The first component revealed that the quarantine pests of concern remained the same as those identified in previous risk assessments. After eliminating non-quarantine and non-pathway pests from the list, eight pests of quarantine significance that follow the pathway remain: Three fruit flies (*Ceratitis capitata, Anastrepha ludens, A. striata*),

three seed weevils (*Conotrachelus aguacatae, C. perseae,* and *Heilipus* lauri), one stem weevil (*Copturus aguacatae*), and one seed moth (*Stenoma catenifer*).

The second component of the draft PRA evaluated the phytosanitary measures that would be applied under this proposed rule (described in detail later in this document). This component concluded that imports of Mexican avocados subject to the phytosanitary requirements described in this proposed rule would result in the following:

- Fewer than 387 infested avocados will enter the United States each year, estimated with 95 percent confidence.
- Fewer than 49 avocados infested with stem weevil, seed weevils, and seed moth will enter avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 143 avocados infested with fruit flies will enter fruit fly susceptible areas each year, estimated with 95 percent confidence.
- Fewer than 3 avocados infested with stem weevil, seed weevils and seed moth will be discarded in avocado producing areas each year, estimated with 95 percent confidence.
- Fewer than 8 avocados infested with fruit flies will be discarded in fruit fly susceptible areas each year, estimated with 95 percent confidence.
- There is an overall low likelihood of pest introduction.
- Based on the statistical models we have used to estimate sampling efficacy, it is slightly more likely that zero infested avocados will enter the United States than one infested avocado, however, we cannot rule out the possibility that some may enter the country.

Only those avocados discarded in susceptible areas pose a risk of establishment of the pests in the United States. In the PRA, the risk associated with the importation of commercial shipments of avocados is compared to the risks associated with infested avocados smuggled into the United States. During the 17-year period from 1985 to 2002, an average of 30 avocados infested with pathway pests were intercepted and denied entry into the United States each year. Studies of port efficiency, when searching for prohibited materials, indicates that inspectors detect approximately 10–20 percent of what actually arrives. That suggests that an estimated average 150 to 300 infested avocados are introduced each year through baggage and cargo. During the period 1985 to 2002, 502 pathway pests were detected in intercepted avocados (specific variety or cultivar not recorded) that were found in baggage and cargo. During the same period, 24,283 tephritid larvae were intercepted at the Mexican border in all types of fruit, most of it from baggage. Therefore, prohibited transport of avocados in baggage and cargo pose a substantially greater risk of introducing the above pests into the United States than commercial imports of Hass avocados from Mexico.

Additionally, APHIS has 6 years worth of data from the avocado import program, which gives us confidence that the systems approach currently in place provides adequate safeguards against avocado pests. The systems approach mitigations include annual pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. The efficacy of the systems approach depends on redundant measures. Those measures are backed up by an inspection system that, when a pest is detected, shuts down the imports from an affected area, depending on the pest, until corrective actions are taken. An examination of over 10 million fruit has not revealed any pests in 6 years of fruit cutting and inspection.

On June 16, 2003, we published a notice in the **Federal Register** (68 FR 35619, Docket No. 03–022–1) in which we advised the public of the availability of the draft PRA. We solicited comments for 60 days. On August 14, 2003, we published another notice in the **Federal Register** (68 FR 48595–48596, Docket No. 03–022–2) in which we extended the comment period on the pest risk assessment until September 15, 2003.

We received 291 comments by that date. Based on some of those comments, we have made changes to the PRA. Those changes are described in Appendix G of the revised PRA. APHIS will accept additional comments on the revised PRA throughout the comment period for this proposed rule. The revised PRA, titled ''Importation of Avocado Fruit (*Persea americana* Mill. var. 'Hass') from Mexico'' (February 17, 2004) can be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados/,* or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule).

In the past, fruit flies (*Anastrepha* spp.) have been a major concern and a key focus of previous risk analyses. The PRA cites recent research conducted under laboratory conditions that prompted a reevaluation of the potential of *Anastrepha* spp. to infect Hass avocados. Based on this research, the Department's Agricultural Research Service concluded that commercially produced Hass avocados are very poor hosts for the *Anastrepha* spp. considered. Moreover, Hass avocados produced and exported using the systems approach described in this document have a low likelihood of being a pathway for *Anastrepha* spp. fruit flies and other quarantine pests.

As described in the PRA, even if an infested avocado were to arrive in an area of the United States where host material was present, several additional conditions are required for pest establishment:

- The pest must survive in the avocado during transportation and storage;
- The infested avocado must be discarded in close proximity to host material;
- The pest must find a mate;
- The pest must successfully avoid predation and other threats;
- The adult pest must find appropriate host material; and
- Suitable climatological and microenvironmental conditions must exist.

Although information that would allow quantifying these conditions is not currently available, the PRA concludes that collectively they substantially reduce the likelihood of pest establishment and the overall level of risk.

The phytosanitary measures in the systems approach are designed to reduce the risk posed by the identified pathway pests. The effectiveness of this approach is evident from the failure to detect arthropods in even one avocado in the commercial pathway to the United States, despite very large samples and continuous, concerted survey and detection efforts. Further, avocado importations during the last 6 years have provided APHIS with valuable experience managing the systems approach.

Under § 412(a) of the Plant Protection Act, the Secretary of Agriculture may prohibit or restrict the importation and entry of any plant or plant product if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed.

The Secretary has determined that it is not necessary to prohibit the importation of Hass avocados from Mexico subject to the phytosanitary requirements described in this proposed rule in order to prevent the introduction into the United States or the dissemination within the United States of a plant pest or noxious weed. This determination is based on the findings

of the risk assessment referred to earlier in this document, and the Secretary's judgment that the application of the measures required under § 319.56–2ff would prevent the introduction or dissemination of plant pests into the United States.

Based on the Secretary's determination, and in response to the Mexican Government's request, we are proposing to amend the regulations to expand, from 31 to 50, the number of States (plus the District of Columbia) in which fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be distributed. We are also proposing to allow the distribution of the Hass avocados during all months of the year. The proposed expansion of the Mexican Hass avocado import program would necessitate several other changes in the regulations, such as removing restrictions on the ports through which the avocados may enter the United States and the corridor through which the avocados must transit the United States.

Limited Distribution

We are considering instituting a limited distribution plan that would delay the entry of Hass avocados from Mexico into commercial avocado-producing areas in the United States for up to 1 full year. This would mean that the importation and distribution of Mexican Hass avocados would continue to be prohibited into and within California, Florida, and Hawaii during the limited distribution period. This delay would provide an opportunity for the efficacy of the proposed regulations to be demonstrated under actual production and distribution conditions for up to 1 full year before Mexican Hass avocado imports would be allowed to enter commercial avocado-producing areas of the United States. We invite the public to submit information demonstrating whether or not this measure is warranted.

Proposed Changes

Shipping Restrictions

In § 319.56–2ff, paragraph (a), ''Shipping restrictions,'' currently provides that the avocados may be imported in commercial shipments only, that they may be imported only between October 15 and April 15 of the following year, and that they may be distributed only in the approved States listed earlier in this proposed rule.

Under this proposed rule, we would allow the avocados to be imported during all months of the year, and would expand the number of States in which the avocados may be distributed.

To make these proposed changes in the regulations, we would remove § 319.56–2ff(a)(2), which limits imports to the period between October 15 and April 15. We would also remove the list of approved States in § 319.56–2ff(a)(3), and would amend the title of the section, the introductory text of the section, and current paragraph (i) by removing references to ''approved States'' since the avocados would be distributed in all areas of the United States.

Safeguards in Mexico

In § 319.56–2ff, paragraph (c), ''Safeguards in Mexico,'' currently provides specific municipality, orchard and grower, and packinghouse requirements that must be met in order for the avocados to be eligible for entry in the United States. While this paragraph would remain largely the same under this proposed rule, we are proposing several changes.

Throughout the paragraph, as well as in paragraphs (d) and (e), we would remove the current references to Sanidad Vegetal, which is Mexico's national plant protection organization (NPPO), and replace them with a more generic reference to ''the Mexican NPPO.'' Similarly, we would amend the introductory text of paragraph (c), which refers to ''the Michoacan State delegate of the Secretaria de Agricultura, Ganaderia y Desarrollo Rural (SAGDR),'' so that it simply refers to ''the Michoacan State delegate of the Mexican NPPO.'' Finally, in paragraphs (c)(2)(v) and (c)(3)(vi), we would replace references to a ''Sanidad Vegetal registration number'' with references to an ''official registration number.'' Referring to the NPPO generally, rather than by name, is consistent with the terminology used in the International Plant Protection Convention (IPPC) and would preclude the need to amend the regulations should the specific name of Mexico's NPPO change in the future.

The municipality requirements in paragraph (c)(1) currently require that municipalities be surveyed at least annually and found to be free from the large avocado seed weevil *Heilipus lauri*, the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.* These surveys must be conducted during the growing season and completed prior to the harvest of the avocados. Because we are proposing to allow the avocados to be imported into the United States during all months of the year, we are proposing to require semiannual, rather than annual, surveys for those pests. The currently required pre-harvest survey, which is a wet season survey that normally occurs between July and September of each year, provides a good opportunity to detect fruit fly larvae, seed moth larvae, and adult stem weevils. To that we would add a second survey that would be conducted approximately 6 months later (starting in January) during the dry season, which would provide a good opportunity to detect stem weevil larvae in branches and fruit and seed moth larvae at the early point of flowering and at the decline of the peak harvest period.

As part of this proposed change, we would remove the specific instructions in paragraph (c)(1)(ii) that the survey must cover at least 300 hectares in the municipality and include randomly selected portions of each registered orchard and areas with wild or backyard avocado trees as well as the requirements regarding the timing of the surveys. As the surveys themselves are required by the regulations, we believe that it is appropriate to leave the details of how and when the surveys are to be conducted to the annual work plan. The regulations require that the work plan, which is prepared by the Mexican NPPO, be approved by APHIS, and that APHIS will be directly involved in the monitoring and supervision of the activities covered by the work plan. APHIS would ensure that the surveys would be conducted in a manner that is consistent with the text of the current regulations.

Like the municipality requirements discussed above, the orchard and grower requirements in paragraph (c)(2) currently require an annual inspection, in this case for the avocado stem weevil *Copturus aguacatae.* The survey must be conducted during the growing season and completed prior to the harvest of the avocados. For the same reasons as discussed above with respect to the municipality surveys, we are proposing to amend the regulations to require semiannual, rather than annual, orchard surveys for the avocado stem weevil. Our experience has shown that the period between May and July is an opportune time to detect seed weevil adults, and seed weevil larvae can be most readily detected during the November through April time period. As with the municipality surveys, the survey requirement itself would remain in the regulations, while the details of conducting the surveys would be addressed in the annual work plan. The details specified in the work plan would be consistent with those currently in the regulations.

In the packinghouse requirements of paragraph (c)(3), paragraph (c)(3)(iv) states that prior to the culling process, a sample of 300 avocados per shipment must be selected, cut, and inspected and found free from pests. We are proposing to remove the specific sample size of 300 fruit and replace it with a requirement for a biometric sample at a rate determined by APHIS. We set the current 300 fruit figure, which is itself a biometric sample, to reach the 95 percent confidence level of detecting a 1 percent infestation for each shipment. (The actual sample number that we determined when using the 95 percent confidence level of detecting a 1 percent level of infestation ranged from 258 to 288 fruit for shipments ranging from 1,000 to 4,000 fruit, but we rounded up to 300 at the beginning of the program.) This figure, however, does not allow us the flexibility to make adjustments that may be indicated by our monitoring of field conditions in the growing area. We have therefore determined that a biometric sample size as large as 300 fruit will be sampled from each shipment. Production areas and orchards with a past history of negative pest finds may have fewer then 300 fruit sampled. Thus, by requiring a biometric sample rather than a set 300 fruit, we would have the flexibility to adjust sample sizes as appropriate.

Also, in this paragraph, as well as several other places in the regulations, we would replace the term ''shipment'' with ''consignment.'' ''Consignment'' is a term that is defined in the context of international trade agreements, whereas ''shipment'' is not. (*Consignment* is defined in the IPPC's Glossary of Phytosanitary Terms as ''a quantity of plants, plant products and/or other regulated articles being moved from one country to another and covered by a single phytosanitary certificate [a consignment may be composed of one or more lots].'')

The packinghouse provisions in paragraph (c)(3)(vii) require that all boxes or crates of avocados be clearly marked with, among other things, the statement ''Not for distribution in AL, AK, AZ, AR, CA, FL, GA, HI, LA, MS, NV, NM, NC, OK, OR, SC, TN, TX, WA, Puerto Rico, and all other U.S. Territories.'' To reflect the proposed expansion of the avocado import program into all areas of the United States, we would remove that requirement.

Paragraph (c)(3)(viii) requires that, prior to leaving the packinghouse, the truck or container transporting the avocados must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it reaches the port of first arrival in the United States. We are proposing to replace the requirement for seals with a requirement for the avocados to be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin prior to leaving the packinghouse. We believe that these safeguards, which would have to be intact when the avocados arrive at the port of first arrival in the United States, would provide the necessary protection from pest infestation for avocados as they transit Mexico en route to the United States. This proposed change from sealed conveyances to safeguarding containers is not considered in the PRA. However, we believe this change would provide for an equal, if not greater degree of protection against the infestation of harvested avocados by fruit flies. Requiring the use of insect-proof coverings would help ensure that the fruit remains protected from infestation during all phases of transit, including those times when Mexican authorities inspect for illegal drugs and other contraband.

Pest Detection

In § 319.56–2ff, paragraph (e), ''Pest detection,'' provides that if the stem weevil *Copturus aguacatae* is detected in an orchard or in fruit at a packinghouse, the orchard where the pest was found or where the infested fruit originated will lose its export certification immediately and will be denied export certification for the entire shipping season of October 15 through April 15. Because we are proposing to allow the importation of avocados during all months of the year, the language regarding the shipping season would no longer be applicable. We would, therefore, amend paragraphs (e)(2) and (e)(3) to provide that the orchard would lose its export certification immediately and that avocado exports from that orchard would be suspended until APHIS and the Mexican NPPO agreed that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated. This is the approach currently applied under paragraph (c)(1) when specified pests are detected within a municipality, and we believe that it can be effectively employed at the orchard level as well.

Ports

In § 319.56–2ff, paragraph (f), ''Ports,'' currently provides that the avocados may enter the United States only at certain ports, *i.e.:*

- Any port located in an approved State;
- The ports of Galveston or Houston, TX, or the border ports of Nogales, AZ, or Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, TX; or
- Other ports within that area of the United States specified in § 319.56–2ff(g).

These port of entry limitations were intended to work in concert with the shipping area provisions of § 319.56–2ff(g) described below to ensure that the avocados were moved by the most direct route from the U.S./Mexican border to the approved States where they may be distributed. Because we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, port of entry limitations of paragraph (f) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(f).

Shipping Areas

In § 319.56–2ff, paragraph (g), ''Shipping areas,'' currently describes the areas of the United States that avocados moving by truck or rail car may transit while en route to approved States. This transit corridor was established to ensure that the avocados were moved by the most direct route from the U.S./Mexican border to the approved States where they may be distributed. Given that we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, shipping area provisions of paragraph (g) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(g).

Shipping Requirements

In § 319.56–2ff, paragraph (h), ''Shipping requirements,'' currently provides that the avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in a refrigerated container on a truck or rail car. If the avocados are moved in a refrigerated container on a truck or rail car, an inspector must seal the container with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The

avocados must be moved through the United States under Customs bond.

As discussed previously, we are proposing to require that the avocados be packed, at the packinghouse in Mexico, in insect-proof cartons or covered with insect-proof mesh or a plastic tarpaulin, and that those safeguards must remain intact upon the arrival of the fruit in the United States. These proposed safeguards would ensure that the packed fruit is protected from pest infestation as it is moved in a refrigerated truck or refrigerated container through Mexico. Given that we are proposing to remove the distribution restrictions on the avocados once they have entered the United States, shipping requirements of paragraph (h) would no longer be necessary. Therefore, we are proposing to remove § 319.56–2ff(h).

Inspections

In § 319.56–2ff, paragraph (i), ''Inspections,'' currently provides that the avocados are subject to inspection by an inspector at the port of first arrival, at any stops in the United States en route to an approved State, and upon arrival at the terminal market in the approved States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

We would amend these provisions by removing the references to inspections while the avocados are en route to approved States and at terminal markets in approved States, as such references would not be necessary with the proposed expansion of the number of States in which the avocados could be distributed. Also in this paragraph, we would replace the term ''shipment'' with ''consignment'' as discussed above.

Finally, to reflect the proposed removal of paragraphs (f), (g), and (h) discussed above, we would redesignate paragraph (i) as paragraph (f).

Repackaging and Compliance Agreements

In a final rule effective January 5, 2000, and published in the **Federal Register** on December 6, 1999 (64 FR 68001–68005, Docket No. 99–020–2), we amended the regulations to require handlers and distributors to enter into compliance agreements with APHIS and added requirements regarding the repackaging of the avocados after their entry into the United States. We made those changes to ensure that distributors and handlers were familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States would bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico. The provisions regarding repackaging are found in current paragraph (j) of the regulations, and the compliance agreement provisions are in paragraph (k). Because those provisions were intended to reinforce the limited distribution safeguards of the avocado import program, we believe that they would no longer be necessary in light of the proposed expansion of the Mexican avocado import program. Therefore, we are proposing to remove paragraphs (j) and (k) of § 319.56–2ff.

While we believe that the repackaging provisions of paragraph (j) are no longer necessary for the purpose they were originally intended—*i.e.*, to reinforce the limited distribution safeguards of the avocado import program—we do believe that they may be of use were it to become necessary, for any reason, to trace repackaged avocados back to the packinghouse from which they were shipped or the orchard in which they were grown. In addition, we note that other commodities subject to the regulations are required to be packed in boxes that must be marked with specific information such as has been required for Mexican avocados. For example, under § 319.56–2(g), each box of fruit or vegetables imported into the United States in accordance with § 319.56–2(e)(3) or (4) and § 319.56–2(f) must be clearly labeled with the name of the orchard or grove of origin, or the name of the grower; the name of the municipality and State in which it was produced; and the type and amount of fruit it contains. Similarly, under § 319.56–2t, boxes of papayas from Belize must be marked ''Not for importation into or distribution within HI.''

In order to facilitate the traceback of fruits or vegetables when necessary, we believe that it would be useful to apply the repackaging requirements described in paragraph (j) to all imported plants and plant parts covered under part 319, such as Mexican avocados or the papayas from Belize cited above. Therefore, we are planning to publish a separate proposed rule that would add a general repackaging requirement to the regulations in ''Subpart—Imported Plants and Plant Parts'' (§§ 301.10 and 301.11), which addresses the interstate movement of imported articles that are subject to distribution restrictions under part 319. Because this proposed change would affect numerous other commodities in addition to avocados, we will address this change in a separate rulemaking in order to give all potentially affected entities a meaningful opportunity to comment.

Other Proposed Changes

Elsewhere in the fruits and vegetables regulations, § 319.56–2bb, ''Administrative instructions governing movement of Hass avocados from Mexico to Alaska,'' provides for the importation into Alaska of Hass avocados grown in Michoacan, Mexico. With the proposed expansion of the Mexican avocado import program, we believe it is no longer necessary to have a separate section pertaining specifically to the importation of Hass avocados from Mexico into Alaska during all months of the year. Therefore, we would remove and reserve § 319.56–2bb.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be economically significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis. The economic analysis contains cost-benefit analysis as required by Executive Order 12866, as well as an initial regulatory flexibility analysis that considers the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**. In addition, the full analysis may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/avocados/* or in our reading room (information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). We do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

Summary of Economic Analysis

This analysis addresses economic impacts of a proposed rule that would allow fresh Hass avocados from Mexico to be imported into all States of the United States throughout the year. APHIS is proposing this action at the request of the Government of Mexico. Economic effects of the rule are analyzed as required by Executive Order 12866. Possible impacts on small entities are considered in accordance with the Regulatory Flexibility Act.

Economic effects of allowing Hass avocados from Mexico to be imported into all States year-round are analyzed using a static, partial equilibrium model. The model has three demand regions: 31 northeastern and central States (and the District of Columbia) currently approved to receive Hass avocado imports from Mexico during the 6-month period October 15–April 15 (Region A); 16 Pacific and southern States, excluding California and Florida, not approved to receive Hass avocados from Mexico (Region B); and California and Florida (Region C). Separation of California and Florida into a third region is based on their much higher per capita demand for Hass avocados compared to other States.

There are three supply regions in the model: California, Mexico, and Chile. Nearly all U.S. Hass avocado production takes place in California. Over 96 percent of all Hass avocado imports are supplied by Chile and Mexico. Two time periods are specified in the model, given the current 6-month restriction on Hass avocado imports from Mexico: October 15–April 15 (Period 1) and April 16–October 14 (Period 2). Throughout the following discussion, ''avocado'' refers only to fresh Hass avocados unless otherwise indicated.

With respect to pest risks, a systems approach currently in place provides redundant safeguards against pest introduction. Risk mitigation measures include pest field surveys; orchard certification; and packinghouse, packaging, and shipping requirements. Since shipments into the conterminous United States began in 1997, cutting and inspection of over 10 million Mexican avocados has not revealed any quarantine pests.

The proposed rule includes certain changes in the risk mitigations. In the approved orchards in Michoacén, Mexico, surveys for the quarantine pests of concern would be increased from annually to semiannually, given that the avocados would be allowed to be imported throughout the year. In the packinghouses, a sample of 300 avocados per consignment currently must be selected, cut, and inspected and found free from pests. APHIS is proposing to remove the specific sample size of 300 fruit and replace it with a requirement for a biometric sample at a rate determined by APHIS and based on field conditions in the growing area. Consignments of avocados would no longer need to be officially sealed before shipment, but rather would be required to be packed, at the packinghouse in Mexico, in insect-proof cartons or covered with insect-proof mesh or a plastic tarpaulin that must remain intact upon arrival of the avocados in the United States. Ports-of-entry and transit pathways would no longer be restricted, since access would be allowed to all States. Repackaging requirements specific to Mexican avocados after they enter the United States would be replaced by general repackaging requirements for imported plants and plant parts. Costs related to any of these changes are expected to be small and not significantly influence the supply of Mexican avocados. Costs associated with risk mitigation changes in Mexico would be borne by Mexican entities.

The Model

The analysis is based on a set of equations that describe, on the demand side, avocado consumption in the United States, and on the supply side, foreign and domestic avocado production for the U.S. market. Demand for avocados in the model is derived from a weakly separable utility function for a representative consumer. The utility function is assumed to contain two partitions of all goods purchased by consumers: Avocados and everything else. In addition, avocados produced in each of the three supply regions are assumed to be heterogeneous products, based on observed wholesale price differentials. A nested constant elasticity of substitution (CES) utility function is used. The main advantage of this functional form is the minimal number of parameters needed to make the model operational. A major disadvantage of the CES utility function is that income elasticities can only equal 1.

On the supply side, a constant elasticity of transformation (CET) production possibility frontier is used to capture the option of producers to leave ripe avocados on the tree and shift their sale between time periods as relative prices change. Like the CES utility function, the main advantage of the CET function is that it is parsimonious in the parameters. Only a single, constant elasticity of transformation must be chosen in order to apply this functional form.

Initial quantities and prices used as the baseline for the model are averages for the 2-year period October 15, 2000, to October 15, 2002. Constant elasticities of substitution and transformation are specified, based on demand and supply elasticities derived from the literature, namely: A wholesale-level price elasticity of demand for California of -0.96, an aggregated wholesale-level price elasticity of demand of -0.67, and a price elasticity of supply for California of 0.35. The elasticities of substitution and transformation are then applied to the model's demand and supply equations to replicate the baseline quantities and prices, yielding shift parameter values. The equations are then resolved using different shift parameters to account for the greater access to U.S. markets afforded avocado imports from Mexico under the proposed rule. Resulting changes in prices and quantities provide the basis for approximating welfare impacts for avocado consumers and producers in the United States, and effects for small entities.

Shift parameters for avocados from Mexico have initial zero values in Regions B and C (Pacific and southern States) at all times and in Region A (northeastern and central States) during Period 2. Without adjusting these parameters, the model cannot show the effect on U.S. avocado demand of allowing Mexican avocados year-round access to all States. This raises the question of what this adjustment should be. Changes in the shift parameters can be thought of as changes in non-price influences on the relative demand for avocados. Even if avocados from the three supply regions were equal in price, demand for them would not be the same because of consumers' perceptions and preferences.

We assume that with removal of import restrictions, shift parameter values for avocados from Mexico that are initially zero can be set equal to the shift parameter values for Chilean avocados, by demand region and time period. In other words, consumers' preference for Mexican avocados would be the same as their preference for Chilean avocados. This adjustment rule may overstate this effect for Mexican avocados with respect to California avocados, and understate the effect with respect to Chilean avocados. Changes in demand for California avocados (and impacts for California producers) estimated by the model may therefore be larger than would be the case if newly available avocados from Mexico were to result in a decline in the shift parameter

not only for California avocados, but for Chilean avocados as well.

Another basis for adjustment of the shift parameters would be to equate them to the initial parameter values for Region A during Period 1: Approximately 0.39 for California, 0.14 for Chile, and 0.47 for Mexico. However, applying these shift parameters to Region A in Period 2 and to Regions B and C in both time periods would result in an even larger increase in Mexico's supply and decrease in the supply by California's producers than is shown by the analysis. Moreover, Region A during Period 1 is the demand region and time period of least importance to California's producers, whereas most of Mexico's worldwide avocado exports occur during the October 15 to April 15 time period.

We invite public comment on the basis by which we adjust the shift parameters for this analysis. We welcome suggestions of other possible adjustment rules.

In the model, California producer prices are free on board (FOB) prices reported by the California Avocado Commission. Chilean and Mexican producer prices are cost insurance freight (CIF) import values reported by USDA's Foreign Agricultural Service. ''Producer'' prices refer in all cases to the FOB and CIF values.

Currently, Mexico is exporting to the United States a fraction of the avocados that could be exported from approved orchards and municipalities in the State of Michoacán. An estimated 479 million pounds of fresh avocados could be certified for export to the United States. During the baseline period, imports from Mexico totaled approximately 64.2 million pounds, or 13.4 percent of what potentially could be certified for export to the United States. It is apparent that Mexican producers could readily expand their level of exports to the United States at the current price level. Compared to an average wholesale price during the baseline period in the United States of $1.14 per pound, the average wholesale price in Mexico in 2001 was $0.46 per pound, and in 2002, $0.37 per pound. We assume in the model that the export supply of avocados from Mexico is perfectly elastic, and that the price Mexico's producers receive for their exports is constant (or fixed). We recognize that, in reality, prices in Mexico are not constant, and that this assumption results in a larger level of avocado imports from Mexico than if their demand were modeled as price-responsive. However, price changes are likely to be very small as long as there are large quantities of avocados that meet requirements for sale in the United States but are consumed domestically within Mexico or are exported elsewhere.

Effects on Supply and Demand

Impacts on quantities and prices are shown in table 1. Overall, U.S. avocado consumption under the proposed rule would increase by 10.4 percent. Quantities supplied by California and Chile would decline by 9.5 percent and 8.9 percent, respectively, while imports from Mexico would increase to nearly 3.7 times their initial level, from 38.5 million pounds to over 141 million pounds.

Given producers' inelastic supply, the decline in price is of greater significance for California producers than is the decline in the quantity supplied. California's prices would fall by 15.4 percent at the wholesale level and by 25.6 percent at the producer level. Price impacts for avocados supplied by Chile would be much smaller, since their initial price is closer to that of avocados from Mexico.

Effects by demand region, supply region, and time period are provided by the model. Two-thirds of avocado imports from Mexico under the proposed rule would enter during Period 1. In Regions B and C during Period 1, avocados from Mexico would displace 30 percent and 23 percent of the avocados that had been supplied by California.

Because overall demand for avocados from California and Chile would decrease in both time periods, wholesale and producer prices for avocados from California and Chile also would decrease in both time periods. Imports from Mexico during Period 1 would comprise a larger share of total avocado consumption and therefore would exert greater downward pressure than during Period 2 on prices of avocados supplied by California and Chile.

TABLE 1.—SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]

	Initial prices and quantities[2]	With rule[3]	Change	Percentage change
Quantity (millions of pounds)				
Total	537.643	593.785	+56.142	+10.4
Supplied by:				
California	376.629	340.895	−35.734	−9.5
Chile	122.564	111.715	−10.849	−8.9
Mexico	38.450	141.174	+102.724	+267.2
Wholesale price of avocados (in dollars per pound) supplied by:				
California	$1.49	$1.26	−$0.23	−15.4
Chile	$1.24	$1.16	−$0.08	−6.5
Producer price for:				
California	$0.90	$0.67	−$0.23	−25.6
Chile	$0.52	$0.45	−$0.07	−13.5

[1] Prices weighted by regional and time period quantities.
[2] Baseline.
[3] Effects of the rule on quantities and prices (simulation results).

Welfare Effects

Price and quantity changes described by the model translate into the welfare changes for U.S. avocado consumers and producers are shown in table 2. For consumers, the concept of equivalent variation is used to quantify these changes. Equivalent variation (EV) refers to the additional amounts of income measured at initial equilibrium prices that would be equal to the price and quantity changes from removing the restrictions on the importation of avocados from Mexico.

Under the proposed rule, the decrease in California avocado prices due to producers' inelastic supply response would result in large gains in consumer

utility. EV across all regions and time periods would total $115.3 million. Not surprisingly, consumers in Region A in Period 1 would gain the least, since this is the region already approved to receive avocados from Mexico. Consumer gains in Regions B and C would be similar for both time periods.

Welfare impacts for avocado producers in California and Chile are determined by computing changes in producer surplus based on their avocado factor endowment supply curves. A fall in producer prices will decrease the amount of factor endowment employed in avocado production. Given the decline in producer prices, California avocado producers would experience welfare losses equivalent to $84.5 million. Chile's suppliers would lose producer surplus equivalent to $8.5 million.

The net change in U.S. welfare is computed by subtracting the loss in producer surplus for California producers from the total EV. As shown in table 2, the net welfare gain would be $30.8 million.

A sensitivity analysis was conducted of the changes in avocado supply and demand and changes in consumer and producer welfare, in recognition of the uncertainty surrounding parameters and exogenous variables such as the demand and supply elasticities. The results of the sensitivity analysis for the welfare effects are given in the mean and standard deviation columns in table 2. Relative to the baseline and mean values, the standard deviations for the EV values are small, suggesting that the parameters and exogenous variables used in the model are reasonable. The standard deviations for the changes in producer surplus are larger, implying a lower level of confidence in the precision of the results. In the sensitivity analysis, the loss in producer surplus for California producers ranged from $65.3 million to $114.2 million.

TABLE 2.—WELFARE GAINS AND LOSSES

[in millions of dollars]

	Welfare effect [1]	Mean [2]	Std. dev. [3]
Changes in producer surplus			
California	−$84.49	−$86.88	$16.45
Chile	−8.46	−9.23	2.98
Equivalent variation			
Time period 1 [4]			
Region A	7.92	8.31	1.33
Region B	24.36	25.02	2.19
Region C	23.80	24.57	2.58
Time period 2 [5]			
Region A	14.70	14.92	3.19
Region B	22.06	22.36	4.25
Region C	22.44	22.80	5.21
Net U.S. welfare change	30.78	31.10	2.30

[1] The difference between baseline values and values with the proposed rule.
[2] Mean values of the sensitivity analysis distributions.
[3] Standard deviations of the sensitivity analysis distributions.
[4] October 15–April 15.
[5] April 16–October 14.

Effects on Small Entities

As a part of the rulemaking process, APHIS evaluates whether regulations are likely to have a significant economic impact on a substantial number of small entities. The Small Business Administration has set size criteria for small entities according to the categories of the North American Industrial Classification System. Entities that would be directly affected by the proposed rule are U.S. producers, handlers (firms engaged in postharvest activities), and importers of avocados.

APHIS is unable to assess effects of the proposed rule for small-entity avocado handlers and importers, since we are lacking information on the number of firms that would be affected, their size distributions, and degree to which their businesses depend on the avocado industry. In general, handlers operating in California could be expected to experience a decline in business, based on the results of the analysis. Negative effects could be at least partially cancelled by additional avocado business activities in Mexico in which U.S. handlers may be involved.

U.S. avocado importers as a group would gain from the increased volume of imports from Mexico, but gains for the industry would be tempered by reduced imports from Chile. We welcome information that would allow us to evaluate impacts of the proposed rule for affected handlers and importers that are small entities.

California's large and small avocado producers are expected to incur welfare losses as described. APHIS has been unable to obtain current information on the size distribution of affected avocado producers. For the purposes of our analysis, we rely on information provided in the 1997 Census of Agriculture on the size distribution of avocado farms. (Information from the 2002 Census of Agriculture is not yet available.)

An avocado farm is considered small if it has annual receipts of not more than $750,000. According to the 1997 Census of Agriculture, over 98 percent of avocado farms are small entities. The Census of Agriculture data include producers of all varieties of avocados. We assume Hass avocado production is distributed proportionately among the various farm sizes, that is, over 98 percent of the farms growing Hass avocados are small.

Expected impacts can be described in terms of decreases in gross revenue for California producers, as shown in table 3. The model indicates that the overall decline in gross revenue would be 32.9 percent.

TABLE 3.—ANNUAL IMPACT ON GROSS REVENUE FOR CALIFORNIA AVOCADO PRODUCERS

Initial gross revenue (baseline) [1]	$339.38 million.
Gross revenue with proposed rule [1]	$227.83 million.
Decrease in gross revenue incurred by large and small Hass avocado producers	$111.55 million.
Decrease incurred by small entity avocado producers [2]	$70.28 million.
Decrease as a percentage of initial gross revenue [3]	32.9%.

[1] Gross revenue values are based on the producer prices and demand quantities for avocados supplied by California, shown rounded in table 1.

[2] Decreases in gross revenue are multiplied by 63 percent, the percentage of the total value produced by farms with less than 100 acres harvested in 1997. Hass avocado production is assumed to be proportionally distributed among farms of all sizes.

[3] The decrease in gross revenue is assumed to be proportionally spread across all producers.

In evaluating the expected impact on California's small-entity avocado producers, the large number of very small farms should be acknowledged. As indicated by the 1997 data, over one-half of the avocado farms that year harvested less than 5 acres. Average 1997 gross income for these farms was about $4,800. Clearly, farms of less than 5 acres could not be the principal source of income for their owners. Notwithstanding this large percentage of very small farms, table 3 indicates that California small-entity avocado farms could be seriously affected by the proposed rule. Generally, we assume regulations that entail compliance costs equal to a small business's profit margin—5 to 10 percent of annual sales—pose an impact that can be considered significant. Impacts simulated by this model would meet this criterion.

Alternatives

One alternative to the proposed rule would be to leave the regulations unchanged. In this case, access of Mexican avocados would continue to be restricted to the 31 States and the District of Columbia currently approved to receive avocados from Mexico between October 15 and April 15 (and Alaska year-round). Impacts for U.S. producers and consumers simulated for the proposed rule would not occur. In general, demand for avocados from all three supply regions would be expected to continue to expand due to growth in population and income. It is noted, however, that increases in avocado imports from Mexico in recent years (27.9 million pounds in 2001, 58.8 million pounds in 2002, 76.8 million pounds in 2003, as reported by World Trade Atlas) would indicate that suppliers of Mexican avocados also may be increasing their market share in the currently approved States.

Other alternatives to the proposed rule would be to increase access of Mexican avocados to the United States, but not to all States year-round. We would expect that any expansion of Mexico's access to the U.S. market other than that proposed, either regionally or by time period, would result in a lower level of additional avocado imports from Mexico and therefore smaller price and quantity impacts for California avocado producers. California producers' welfare losses would be less, as would welfare gains for consumers. Net welfare benefits of such alternatives would depend upon the relative magnitude of changes in U.S. producer and consumer surplus.

To illustrate the impacts of such an alternative, we consider effects of allowing access of Mexican avocados to all States except the avocado-producing States of California, Florida, and Hawaii. An analysis of expected impacts of this alternative, summarized here, is based on entry of Mexican avocados into California and Florida continuing to be prohibited. These two States produce over 99 percent of the Nation's avocados (all varieties). Hawaii's small production is largely for intrastate sale.

Quantity and price changes of allowing Mexican avocados to enter all States throughout the year, except California, Florida, and Hawaii, are shown in table 4. Under this alternative, avocado consumption would increase by 6.8 percent (compared to 10.4 percent under the proposed rule). Quantities supplied by California and Chile would decline by 5.6 percent and 5.8 percent, respectively (compared to 9.5 and 8.9 percent), while imports from Mexico would increase to 103 million pounds (compared to 141 million pounds), about 2½ times their initial level. California's prices would fall by 10.1 percent at the wholesale level (compared to 15.4 percent) and by 15.6 percent at the producer level (compared to 25.6 percent). Thus, all impacts are diminished in comparison to those that would result from the proposed rule.

Welfare effects for this alternative are shown in table 5. Total equivalent variation across all regions and time periods would be $76.3 million, compared to $115.3 million under the proposed rule. California avocado producers would experience welfare losses of $52.4 million (compared to $84.5 million). The net gain in welfare for the United States would be $23.9 million (compared to $30.8 million).

TABLE 4.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]

	Initial prices and quantities [2]	With alternative [3]	Change	Percentage change
Quantity (millions of pounds)				
Total	537.643	574.296	+36.653	+6.8
Supplied by:				
California	376.629	355.480	−21.149	−5.6
Chile	122.564	115.511	−7.053	−5.8
Mexico	38.450	103.305	+64.855	+168.7
Wholesale price of avocados (in dollars per pound) supplied by:				
California	$1.49	$1.34	$0.15	−10.1
Chile	$1.24	$1.19	−$0.05	−4.0
Producer price for:				
California	$0.90	$0.76	−$0.14	−15.6

TABLE 4.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; SUMMARY OF CHANGES IN QUANTITIES AND PRICES[1]—Continued

	Initial prices and quantities[2]	With alternative[3]	Change	Percentage change
Chile	$0.52	$0.47	−$0.05	−9.6

[1] Prices weighted by regional and time period quantities.
[2] Baseline.
[3] Effects of the rule on quantities and prices (simulation results).

As with the sensitivity analysis of impacts of the proposed rule, a sensitivity analysis for this alternative indicated small standard deviations for the EV values and larger ones for the producer surplus. The loss in producer surplus for California producers was found to range from $40.6 million to $71.2 million.

Expected impacts for California's small-entity avocado producers under this alternative, in terms of the decreases in gross revenue, are shown in table 6. The decline would be 20.5 percent, compared to a decline of nearly 33 percent under the proposed rule. California small-entity avocado farms could still be greatly affected under this alternative, but not as severely.

In sum, effects in terms of changes in prices, quantities, and welfare measures would be smaller than the impacts expected under the proposed rule. By excluding California, Florida, and Hawaii from the proposed increased access for Mexican avocados, California's producers would experience smaller welfare losses, but consumers' gains and net welfare gains would also be lower. The proposed rule allowing Mexican avocados to be imported into all States year-round is based on the pest risk assessment's conclusion of an overall low likelihood of quarantine pest introduction.

TABLE 5.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; WELFARE GAINS AND LOSSES

	Wefare effect[1]	Mean[2]	Std. dev.[3]
Changes in producer surplus			
California	−$52.39	−$54.11	$10.59
Chile	−5.59	6.13	2.05
Equivalent variation			
Time period 1[4]			
Region A	3.99	4.20	0.76
Region B	18.27	18.64	1.31
Region C	12.36	12.97	2.28
Time period 2[5]			
Region A	10.89	11.11	1.87
Region B	16.98	17.28	2.49
Region C	13.79	14.20	3.47
Net U.S. welfare change	23.89	24.29	1.27

[1] The difference between baseline values and values with the alternative.
[2] Mean values of the sensitivity analysis distributions.
[3] Standard deviations of the sensitivity analysis distributions.
[4] October 15-April 15.
[5] April 16-October 14.

TABLE 6.—ALTERNATIVE OF ALLOWING AVOCADOS FROM MEXICO TO BE IMPORTED YEAR-ROUND INTO ALL STATES EXCEPT CALIFORNIA, FLORIDA, AND HAWAII; ANNUAL IMPACT ON GROSS REVENUE FOR CALIFORNIA AVOCADO PRODUCERS

Initial gross revenue (baseline)	$338.97 million.
Gross revenue under the alternative	$269.60 million.
Decrease in gross revenue incurred by large and small Hass avocado producers	$69.37 million.
Decrease incurred by small entity avocado producers[1]	$43.70 million.
Decrease as a percentage of initial gross revenue[2]	20.5%.

[1] Decreases in gross revenue are multiplied by 63 percent, the percentage of the total value produced by farms with less than 100 acres harvested in 1997. Hass avocado production is assumed to be proportionally distributed among farms of all sizes.
[2] The decrease in gross revenue is assumed to be proportionally spread across all producers.

This proposed rule contains no new information collection requirements. (See **Paperwork Reduction Act** below.)

Executive Order 12988

This proposed rule would allow avocados to be imported into the United States from certified orchards in Michoacan, Mexico. If this proposed rule is adopted, State and local laws and regulations regarding avocados imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative

proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has been prepared for this proposed rule. The environmental assessment, which takes into account the findings of the risk assessment, documents our review and analysis of the potential environmental impacts associated with the importation of Hass avocados from Mexico under the conditions specified in this proposed rule. We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment is available for viewing on the Internet at *http://www.aphis.usda.gov/ppq/avocados/.* Copies of the environmental assessment are also available for public inspection in our reading room. (Information on the location and hours of the reading room is provided under the heading **ADDRESSES** at the beginning of this proposed rule). In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–2bb [Removed and Reserved]

2. Section § 319.56–2bb would be removed and reserved.

3. Section 319.56–2ff would be amended as follows:

a. By revising the section heading and the introductory text of the section to read as set forth below.

b. By revising paragraph (a) to read as set forth below.

c. By revising the introductory text of paragraph (c) and paragraphs (c)(1)(i) and (c)(1)(ii) to read as set forth below.

d. By revising the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) and (c)(2)(v) to read as set forth below.

e. By revising the introductory text of paragraph (c)(3) and paragraphs (c)(3)(i), (c)(3)(iv), (c)(3)(vi), (c)(3)(vii), and (c)(3)(viii) to read as set forth below.

f. By revising paragraphs (d) and (e) to read as set forth below.

g. By removing paragraphs (f), (g), (h), (j), and (k) and redesignating paragraph (i) as paragraph (f).

h. By revising newly redesignated paragraph (f) to read as set forth below.

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Michoacan, Mexico.

Fresh Hass variety avocados (*Persea americana*) may be imported from Michoacan, Mexico into the United States only under a permit issued in accordance with § 319.56–3, and only under the following conditions:

(a) The avocados may be imported in commercial consignments only.

* * * * *

(c) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan in an orchard located in a municipality that meets the requirements of paragraph (c)(1) of this section. The orchard in which the avocados are grown must meet the requirements of paragraph (c)(2) of this section. The avocados must be packed for export to the United States in a packinghouse that meets the requirements of paragraph (c)(3) of this section. The Mexican national plant protection organization (NPPO) must provide an annual work plan to APHIS that details the activities that the Mexican NPPO will, subject to APHIS'' approval of the work plan, carry out to meet the requirements of this section; APHIS will be directly involved with the Mexican NPPO in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by the Mexican NPPO or by the Michoacan State delegate of the Mexican NPPO.

(1) * * * (i) The municipality must be listed as an approved municipality in the bilateral work plan provided to APHIS by the Mexican NPPO.

(ii) The municipality must be surveyed at least semiannually (once during the wet season and once during the dry season) and found to be free from the large avocado seed weevil *Heilipus lauri,* the avocado seed moth *Stenoma catenifer,* and the small avocado seed weevils *Conotrachelus aguacatae* and *C. perseae.*

* * * * *

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with the Mexican NPPO's avocado export program and must be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed semiannually and found to be free from the avocado stem weevil *Copturus aguacatae.*

* * * * *

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the official registration number of the orchard. The avocados must be moved from the orchard to the packinghouse within 3 hours of harvest or they must be protected from fruit fly infestation until moved.

* * * * *

(3) *Packinghouse requirements.* The packinghouse must be registered with the Mexican NPPO's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by the Mexican NPPO. The operations of the packinghouse must meet the following conditions:

(i) During the time the packinghouse is used to prepare avocados for export to the United States, the packinghouse may accept fruit only from orchards certified by the Mexican NPPO for participation in the avocado export program.

* * * * *

(iv) Prior to the culling process, a biometric sample, at a rate determined by APHIS, of avocados per consignment must be selected, cut, and inspected by the Mexican NPPO and found free from pests.

* * * * *

(vi) Prior to being packed in boxes, each avocado fruit must be cleaned of all stems, leaves, and other portions of plants and labeled with a sticker that bears the official registration number of the packinghouse.

(vii) The avocados must be packed in clean, new boxes, or clean plastic reusable crates. The boxes or crates must be clearly marked with the identity of the grower, packinghouse, and exporter.

(viii) The boxes must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through Mexico to the port of first arrival in the United States. Prior to leaving the packinghouse, avocados must be packed in insect-proof cartons, loaded in insect-proof containers, or covered with insect-proof mesh or plastic tarpaulin, for transit to the United States. These safeguards must be intact when the avocados arrive at the port of first arrival in the United States.

* * * * *

(d) *Certification.* All consignments of avocados must be accompanied by a phytosanitary certificate issued by the Mexican NPPO with an additional declaration certifying that the conditions specified in this section have been met.

(e) *Pest detection.* (1) If any of the avocado seed pests *Heilipus lauri, Conotrachelus aguacatae, C. perseae,* or *Stenoma catenifer* are discovered in a municipality during the semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activity in the municipality, the Mexican NPPO must immediately initiate an investigation and take measures to isolate and eradicate the pests. The Mexican NPPO must also provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the pests are discovered will lose its pest-free certification and avocado exports from that municipality will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that municipality has been eliminated.

(2) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, the Mexican NPPO must provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard in which the pest was found will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(3) If the Mexican NPPO discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, the Mexican NPPO must investigate the origin of the infested fruit and provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. The orchard where the infested fruit originated will lose its export certification immediately and avocado exports from that orchard will be suspended until APHIS and the Mexican NPPO agree that the pest eradication measures taken have been effective and that the pest risk within that orchard has been eliminated.

(f) *Inspection.* The avocados are subject to inspection by an inspector at the port of first arrival. At the port of first arrival, an inspector will sample and cut avocados from each consignment to detect pest infestation.

* * * * *

Done in Washington, DC, this 19th day of May, 2004.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 04–11709 Filed 5–21–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–48–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–3 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–3 airplanes modified with A. M. Luton's Supplemental Type Certificate (STC) number SA3777NM. This proposed AD would require you to inspect the wiring for the heating blankets on P_3 and P_Y pneumatic lines and the push-to-test function lights to ensure that they are wired to the correct schematic; replace the circuit breaker switch as applicable; and replace the flight manual supplement currently in use with Revision G, dated March 28, 2001 (incorporates Revision I of Sheet I of Drawing 20075, ''Electrical System Schematic,'' dated October 10, 2000). This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Canada. We are issuing this proposed AD to detect and correct wiring installed in accordance with an incorrect drawing, which shows the pneumatic heating blankets to the P_3 and P_Y pneumatic lines wired in series with the indicator lights, rather than parallel. This can result in reduced current for the heating blankets and loss of pneumatic line heating, which can lead to loss of engine power or reverse propeller overspeed governing protection and ultimately loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by July 15, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–48–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from A. M. Luton, 3025 Eldridge Ave., Bellingham, WA 98225.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–48–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Special Certification Branch; telephone: 425–917–6507; facsimile: 425–917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–48–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-