

resubmit the prior notice or risk that their products will be refused admission into the United States and held if the notice is deemed inadequate.

FDA does not have information on the number of shipments that, under this option, would need to submit or resubmit prior notice information due to a late order or a change in the information provided on the original notice. We know that changes will occur for some percentage of all prior notices; comments did not indicate the percentage of notices that would have to be resubmitted.

Depending on the U.S. entry point, however, comments FDA received before publishing the proposal indicated that between 40 and 100 percent of shipments from Canada and Mexico are loaded less than 4 hours before arrival. Therefore FDA believes that it is this subset of importers, importing perishable products not far from the U.S. border, that will be most concerned with the prior notice submission timeframe. Based on this information, FDA bases its prior notice resubmission percentage rates and prior notice arrival time on the 4 hours required under option 4.

Option 4 is to have prior notice be required 4 hours before arrival, with the resubmission rate at 20 percent; one-half the comments' lower bound estimate of 40 percent. By using option 4 as the base option, we can then estimate resubmission rates for prior notice arrival times that are less than 4 hours. We assume, then, that for each hour reduction in required prior notice arrival time, the resubmission rate for importers of perishable produce and seafood (based on their location to the border and order placement) is cut in half. Thus, for a 3 hour prior notice timeframe, we assume the resubmission rate for notices will be 10 percent, for a 2 hour prior notice timeframe the resubmission rate for notices will be 5 percent, and for a 1 hour prior notice timeframe (this option) the resubmission rate for notices is 2.5 percent.

(3) *Loss of value for perishables.* The following paragraphs and tables outline how FDA calculated a loss in product value to account for the time that perishable produce and seafood from Canada and Mexico might have to wait to cross the border due to prior notice resubmission. This wait occurs if prior

notice needs to be submitted or canceled and resubmitted due to shipment changes when the shipment is closer to the border than the 1 hour required; the transporter of the shipment must wait for the minimum prior notice time to elapse before crossing the border or risk being denied entry.

Comments from Canadian and Mexican perishable seafood and produce producers indicated that the mode of transport that causes the most concern for delays are shipments arriving in the United States by truck. Some comments, however, indicated that some perishable products might arrive via air transportation, and that air flights from Latin America and even potentially some countries in Europe could take less than 8 hours and in some cases less than 4 hours.

FDA has examined flight times to the countries suggested by comments. FDA does not believe that articles of food arriving in the United States on flights from South America or from Europe will be delayed by the prior notice requirement. However, FDA does believe that perishable products being flown in from Central America might experience some delay, and therefore lost product value, as a result of prior notice. We will begin to include the products from these countries in option 4, minimum prior notice time of 4 hours.

Information on perishable produce and seafood from Canada and Mexico used in this analysis represents yearly shipments of each product regardless of mode of transport. We assume most of these shipments arrive in the United States by truck or other ground transportation, given the proximity of Mexican and Canadian processors to the border, but it is possible that some shipments by air and sea are included in this count. These yearly all-inclusive totals should therefore be sufficient to account for any delay in time that importers of food shipments from Canada and Mexico may experience.

Table 7 of this document shows the volume of fresh, perishable produce imported into the United States from Mexico for the calendar year 2001 (Ref. 4). Produce was included in the count if it was considered 'highly or very highly perishable' (Ref. 5) and if the produce was not regulated under section 8e of the Agricultural Marketing

Agreement Act of 1937 (AMAA). Products currently regulated by the AMAA (including, tomatoes, avocados, oranges, dates, hazelnuts, grapefruit, table grapes, kiwi fruit, limes, most olives, onions, Irish potatoes, plums, prunes, raisins, and walnuts), are required to notify USDA at least 1 day before arrival to make arrangements for inspection and certification of the product they are importing. These products therefore are not included in the count because they already have business practices in place that would accommodate the prior notice requirements provided in this option.

Several comments wanted products under the AMAA and products that are somewhat less perishable to be included in the perishability loss of value calculation. FDA has decided not to include these products in the lost value calculation; products under the AMAA already have operating practices in place to ensure they provide notice before arrival and those products that are less than highly perishable, such as potatoes, are not going to lose value because of the prior notice times presented in these options. FDA will expand its analysis to include the cost of additional truck time for longer submission times for all products being imported into the United States. FDA agrees with the comments that stated that the cost of truck time from a delay at the border is a real cost regardless of a product's perishability.

Multiplying the volume of Mexican produce that was imported into the United States in 2001 by the current U.S. border prices per pound (Ref. 6) for these products gives an estimate of wholesale revenue. Then we convert the wholesale revenue to retail revenue using the retail price mark-up on produce in the United States. We will increase the wholesale revenue by 100 percent in these estimates to represent a reasonable retail price mark-up rate across produce commodities in the United States (Ref. 7). Some comments did not agree with FDA's calculation of the spread between wholesale and retail prices for perishable products. We reexamine our choice of the 100 percent mark-up rate in a sensitivity analysis presented later in the costs section.

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