DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 94–116–3]

Importation of Fresh Hass Avocado Fruit Grown in Michoacan, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and notice of public hearings.

SUMMARY: We are proposing to amend the regulations governing the importation of fruits and vegetables to allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States, subject to certain conditions. We are proposing this action in response to a request from the Mexican Government and following a review of public comments received regarding that request. The conditions to which the proposed importation of fresh Hass avocado fruit would be subject, including pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year shipments may enter the United States, would reduce the risk of pest introduction to an insignificant level. Furthermore, climatic conditions in those areas of the United States into which the avocados would be allowed would preclude the establishment in the United States of any of the plant pests known to attack avocados in Michoacan, Mexico.

DATES: Consideration will be given only to comments received on or before October 16, 1995. We also will consider comments made at five public hearings to be held between August 17, 1995, and August 31, 1995. Hearings will be held in Washington, DC, on August 17 and 18, 1995, and in southern California on August 30 and 31, 1995. A notice detailing the specific dates of the remaining hearings will be published in a future issue of the **Federal Register**.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 94–116–3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 94–116–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room. The public hearings will be held in Washington, DC; southern Florida; New York, NY; Chicago, IL; and southern California. A notice detailing the specific location of each hearing will be published in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, PPQ, APHIS, 4700 River Road Unit 136, Riverdale, MD 20737–1236, (301) 734–8645, or FAX (301) 734–5786.

SUPPLEMENTARY INFORMATION:

Public Hearings

Five public hearings will be held on this notice of proposed rulemaking. The Animal and Plant Health Inspection Service (APHIS) will hold one public hearing dedicated exclusively to the scientific basis for this proposed rule. The first hearing will be open to the public, but participation will be limited to experts in the fields of pest risk assessment and pest risk mitigation measures. Four additional hearings will be held to provide a full opportunity to all interested parties to address every aspect of the proposed rule.

The First Public Hearing—Presentations by Experts in Risk Assessment

The first public hearing, on the scientific basis for this proposed rule, is scheduled to be held in Washington, DC, on August 17 and 18, 1995. A notice will be published in a future issue of the **Federal Register** detailing the specific location of the Washington, DC, hearing. This hearing will focus exclusively on the APHIS pest risk assessment documents upon which the proposed rule is based, and will provide an opportunity for experts in relevant disciplines to present their views on those documents and the scientific issues raised by them.

The APHIS pest risk assessment documents upon which this proposal is based identify the plant pest risks associated with the importation of Hass avocados grown in approved orchards in approved municipalities in Michoacan, Mexico, discuss the mitigation measures identified as reasonable and necessary to prevent the introduction of plant pests into the United States, and contain a quantitative risk analysis examining the likelihood of plant pest introduction into the United States if Hass avocados are allowed to be imported as proposed in this document.

Participation in the Washington, DC, hearing will be limited to those who register and who identify themselves as having expertise in the areas of pest risk assessment and mitigation measures. Experts wishing to participate will be asked to furnish for the record their educational background and their expertise and qualifications relevant to pest risk assessment and mitigation measures. Such experts include scientists, technical experts, and academicians expert in entomology, plant health, plant pathology, risk assessment, and risk mitigation. Federal, State, and local officials, growers, and handlers who have experience with risk assessment, plant protection, quarantine, or risk mitigation measures will also be welcome to participate in this first public hearing.

Presenters are welcome to register as a panel if they believe a panel of experts from several fields would foster a more complete discussion and evaluation of issues related to the pest risk assessment underlying this proposal.

Additional Public Hearings

Four additional hearings will be held during the period between August 21, 1995, and August 31, 1995, to address all aspects of this proposed rule. These four public hearings are scheduled to be held in southern Florida; New York, NY; Chicago, IL; and southern California. The California hearing is scheduled to be held on August 30 and 31, 1995; the exact dates of the other three hearings and the specific locations of all four hearings will be announced in a notice published in a future issue of the **Federal Register**.

Any interested party may appear and be heard in person, or through an attorney or other representative. We are interested in obtaining the views of the public on all aspects of this proposed rule, including the APHIS pest risk assessment documents and the conclusions contained therein.

General Information Applicable to All Five Public Hearings

The APHIS pest risk assessment documents upon which this proposal is based are available. Parties interested in receiving copies may obtain them by contacting APHIS' Legislative and Public Affairs Staff at (301) 734–3256 or by writing to Legislative and Public Affairs, 4700 River Road Unit 51, Riverdale, Maryland 20737–1232. Copies of the risk assessment documents will be available at each of the scheduled public hearings.

Persons who wish to speak at the hearings will be asked to provide their names and their affiliations. Those who wish to form a panel to present their views will be asked to provide the name of each member of the panel and the organizations the panel members represent. Parties wishing to make oral presentations may register in advance by calling the Regulatory Analysis and Development voice mail at (301) 734–4346 and leaving a message stating their name, telephone number, organization, and location of the hearing at which they wish to speak. If a party is registering for a panel, the party will also be asked to provide the name of each member of the panel and the organization each panel member represents.

The hearings will begin at 9 a.m. and are scheduled to end at 5 p.m. each day. The Washington, DC, and California hearings may conclude at any time on the second day if all persons who have registered to participate have been heard. Similarly, the other three hearings may conclude earlier than 5 p.m. if all persons who have registered have been heard. The presiding officer may extend the time of any hearing or limit the time for each presentation so that everyone is accommodated and all interested persons appearing on the scheduled dates have an opportunity to participate.

Registration for each hearing may be accomplished in advance in accordance with the above-described instructions, or by registering with the presiding officer between 8:30 a.m. and 9 a.m. on any hearing day.

A representative of APHIS will preside at each public hearing. Written statements are encouraged, but not required. Any written statement submitted will be made part of the record of the public hearing. Anyone who reads a written statement should provide two copies to the presiding officer at the hearing. A transcript will be made of each public hearing and the transcript will be placed in the rulemaking record and will be available for public inspection.

The purpose of these public hearings is to give all interested parties an opportunity to present data, views, and information to the Department concerning this proposed rule. Questions about the content of the proposal may be part of a commenter's oral presentation. However, neither the presiding officer nor any other representative of the Department will respond to the comments at the hearing, except to clarify or explain the proposed rule and the documents upon which the proposal is based.

Background

The Fruits and Vegetables regulations contained in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States. The regulations do not provide for the importation of fresh avocado fruits grown in Mexico into the United States, except to Alaska under the conditions specified in § 319.56–2bb.

On November 15, 1994, we published an advance notice of proposed rulemaking in the **Federal Register** (59 FR 59070–59071, Docket No. 94–116–1) announcing that APHIS had received a request from the Government of Mexico that we allow, under certain conditions, the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into certain areas of the United States. The advance notice solicited public comment on the Mexican Government request and advised the public that two public meetings would be held to provide interested persons with an opportunity to present their views regarding the possible importation of fresh Hass avocado fruit grown in Mexico.

We solicited comments concerning the Mexican Government request for 28 days ending on December 13, 1994. During that period, we received over 100 comments (including those given at the hearings), several of which requested that we extend the comment period so that interested persons would have additional time to analyze the Mexican Government request before submitting comments. On December 19, 1994, we published a document in the **Federal Register** (59 FR 65280, Docket No. 94–116–2) informing the public that we had reopened the comment period and would continue to accept comments until January 3, 1995, including any comments received between December 13—the close of the original comment period—and December 19. By the close of the extended comment period, we had received over 300 comments.

Twenty of the comments favored allowing the importation of fresh Hass avocado fruit grown in Mexico; the remainder objected. We carefully considered all of the comments during the formulation of this proposed rule and have included proposed phytosanitary requirements that we believe address many of the concerns expressed in the comments. Other issues raised in the comments that are not addressed by the proposed phytosanitary requirements are discussed below, following the explanation of our proposal.

Mexican Government Request

In July 1994, Sanidad Vegetal, the plant protection branch of the Mexican Ministry of Agriculture and Water Resources, requested that APHIS consider allowing the importation of fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, into Connecticut, Delaware, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. A detailed plan that accompanied the request contained specific phytosanitary guidelines for mitigating the risk of plant pest introduction associated with the importation of Mexican avocados into the United States. The risk mitigation plan was based, in part, on research conducted in 1993 by Sanidad Vegetal to determine the susceptibility of Hass avocados to fruit fly infestation; it was also based on historical avocado pest survey data for Michoacan and recent Sanidad Vegetal surveys of Michoacan for pests specific to avocados.

The insect pests of concern are three species of fruit flies (*Anastrepha ludens*, *A. serpentina*, and *A. striata*), four species of avocado weevils (*Conotrachelus perseae*, *C. aguacatae*, *Heilipus lauri*, and *Copturus aguacatae*), and one species of avocado seed moth (*Stenoma catenifer*). These pests would present a significant pest risk to U.S. crops if introduced, particularly in the southeastern and southwestern United States.

Risk Management Analysis and Pest Risk Analysis Documents

This proposed rule is based in part on a document prepared by APHIS entitled ''Risk Management Analysis: A Systems Approach for Mexican Avocado,'' which assesses the pest risks and risk management options associated with the proposed importation of fresh Hass avocado fruit grown in Michoacan, Mexico. Risk mitigation measures discussed in that document are included in this proposed rule as requirements for the proposed importation. APHIS has also prepared a quantitative pest risk analysis for the proposed importation of fresh Hass avocado fruit grown in Michoacan, Mexico, that examines the likelihood of pest introduction into susceptible areas

of the United States. Copies of those documents may be obtained by contacting APHIS' Legislative and Public Affairs staff at (301) 734–3256 or by writing to Legislative and Public Affairs, Public Affairs, 4700 River Road Unit 51, Riverdale, MD 20737–1232.

Systems Approaches

Using systems approaches to phytosanitary security, APHIS establishes growing, packing, shipping, and other conditions whereby fruits and vegetables may be imported into the United States from countries that are not free of certain plant pests. APHIS has used systems approaches to establish conditions for the importation of several commodities, including Unshu oranges from Japan (7 CFR 319.28), tomatoes from Spain (7 CFR 3119.56–2dd), and peppers from Israel (7 CFR 319.56–2u).

For the Unshu oranges mentioned above, APHIS used a systems approach to establish growing, treatment, packing, and inspection requirements designed to prevent the introduction of citrus canker, which exists in Japan and can infect Unshu oranges. The rule requires Japanese growers and agricultural agencies to survey groves for citrus canker, undertake measures to exclude citrus canker from groves of Unshu oranges intended for export, and apply surface sanitary treatments to Unshu oranges being exported to the United States. For the tomatoes and peppers mentioned above, APHIS used a systems approach to develop measures to prevent the introduction of Mediterranean fruit fly (Medfly), which exists in Spain and Israel and can infest tomatoes and peppers. These rules require Spanish and Israeli agricultural agencies and growers to periodically survey growing areas for Medfly, undertake measures to exclude Medfly from growing and packing areas, and pack tomatoes and peppers in flyproof packaging to prevent infestation. Each of these programs has performed successfully.

APHIS also uses systems approaches to establish growing, packing, shipping, and other conditions whereby domestic fruits and vegetables may be exported from areas in the United States that are not free of certain plant pests. Systems approaches are currently used to establish export conditions for certain citrus fruit from Florida and Texas, apples from Washington, and stonefruit from California. Each of these programs has performed successfully.

In developing this proposal to allow the importation of fresh Hass avocado fruit grown in Michoacan, Mexico, APHIS again has used a systems approach to phytosanitary security. Using a systems approach, APHIS developed a series of complementary phytosanitary measures, including pest surveys and pest risk reducing cultural practices, packinghouse procedures, a limited shipping season, inspection and shipping procedures, and restrictions on distribution within the United States, all intended to prevent the introduction of avocado seed and stem weevils, an avocado seed moth, and three species of fruit flies that can infest avocados and other host fruits and vegetables.

Proposed Import Requirements for Hass Avocados Grown in Mexico

We are proposing to allow fresh Hass variety avocados to be imported into the United States from Michoacan, Mexico, if they are grown, packed, and shipped under specified phytosanitary conditions designed to mitigate the risk of plant pest introduction. The conditions for importation would be set out in a new section of the regulations, § 319.56–2ff. Some of our proposed requirements were originally suggested in the mitigation plan that accompanied the request submitted by the Mexican Government. Other proposed requirements go beyond those suggested in the plan and are based in part on comments we received in response to our November 1994 advance notice of proposed rulemaking, as we agree with many of the comments that some additional safeguards would be necessary to prevent the introduction of plant pests if Mexican avocados were imported into the United States.

Permit Required

Section 319.56–3 of the regulations requires that a person who wishes to import fruits or vegetables under the regulations must first apply for a permit from APHIS' Plant Protection and Quarantine Programs. Section 319.56–4 states that, upon receipt of an application and approval by an inspector, a permit will be issued that specifies the conditions of entry and the port of entry. Therefore, our proposed regulations would require that the avocados be imported under a permit issued in accordance with § 319.56–4.

Commercial Shipments

We would allow only commercial shipments of Hass avocados to be imported from Michoacan into the United States. Wild or ''backyard'' avocados generally grow under very different conditions than commercial produce. Avocados growing in the wild or in backyard gardens usually grow among different varieties of plants and produce, with little or no pest control and a lack of sanitary controls during both growing and packing. Therefore, the importation of wild or backyard avocados would present a greater risk of pest introduction than would the importation of commercially produced avocados.

Seasonal Restrictions

We would allow Hass avocados to be imported into the United States from Michoacan only from November through February. The risk of *Anastrepha* fruit flies infesting avocados and subsequently being introduced into the United States through importation is virtually eliminated by restricting avocado importation to these months. *Anastrepha* fruit flies reduce mating and oviposition activities when temperatures drop below 70 °F. Generally, temperatures in the growing areas in Michoacan are below 70 °F between November and February. Furthermore, any risk that fruit flies and other pests of avocados could become established in the United States during these months would be greatly reduced because of low temperatures and subsequent lack of host material in the areas proposed for distribution.

Distribution Within the United States

Hass avocados imported from Michoacan could be distributed only in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin. We do not believe that any of the pests of concern could become established if introduced into these States, due to the cold climate and a lack of suitable host material during the months imports would be allowed. As noted below, we would require that the boxes in which the avocados are shipped be marked with the statement ''Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI.''

Trust Fund Agreement and APHIS Participation

APHIS would be directly involved with Sanidad Vegetal in the monitoring and supervision of avocado exports to the United States. APHIS would not be involved in a preclearance program for the fruit in Mexico; rather, APHIS would monitor orchard surveys, trapping, harvest, and packinghouse operations to ensure that our export requirements are met. The costs of APHIS' involvement during each shipping season would be covered by a trust fund agreement between APHIS

and an industry association representing Mexican avocado growers, packers, and exporters. Under the agreement, the Mexican industry association would pay in advance all estimated costs that APHIS expected to incur through its involvement in the required trapping, survey, harvest, and packinghouse operations prescribed in proposed § 319.56–2ff(c). Those costs would include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing those services. The agreement would require the Mexican industry association to deposit a certified or cashier's check with APHIS for the amount of the costs, as estimated by APHIS. If the deposit was not sufficient to meet all costs incurred by APHIS, the agreement would further require the Mexican industry association to deposit another certified or cashier's check with APHIS for the amount of the remaining costs, as determined by APHIS, before APHIS' services would be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Mexican industry association or held on account until needed.

Safeguards in Mexico

We are proposing to require that the avocados be grown in the Mexican State of Michoacan in an orchard located in a municipality that has been surveyed for certain pests and found to be free from those pests. A trapping program would also have to be in place in the municipality to detect the presence of certain fruit flies. We would require that Sanidad Vegetal submit an annual workplan to APHIS that detailed the activities Sanidad Vegetal would carry out to meet the surveying, trapping, and other phytosanitary requirements of the proposed regulations. Sanidad Vegetal would be required to supervise all of the trapping and pest surveys required of municipalities and orchards wishing to export Hass avocados to the United States. Although Hass avocado growers could pay for trapping and survey expenses, Sanidad Vegetal would be responsible for hiring, training, and supervision of all personnel involved in trapping and conducting the pest surveys. APHIS would be directly involved with Sanidad Vegetal in the monitoring and supervision of the trapping and surveying activities.

Municipality Requirements

A municipality would have to be listed as an approved municipality in the annual work plan provided to APHIS by Sanidad Vegetal and would have to be determined to be free from the seed weevils *Heilipus lauri, Conotrachelus perseae,* and *C. aguacatae,* and the seed moth *Stenoma catenifer* before Hass avocados could be exported to the United States from orchards in that municipality. Sanidad Vegetal would determine the pest status of municipalities by conducting annual surveys during the growing season that would have to be completed before harvest. We would require that Sanidad Vegetal survey at least 300 hectares in any municipality with orchards wishing to export to the United States. Portions of each registered orchard would have to be included in these surveys. Also, areas with backyard and wild fruit would have to be included. We have determined that surveying 300 hectares within a municipality results in a 95 percent confidence level that an infestation of one percent or greater within the municipality would be detected. As stated above, APHIS would monitor these pest surveys.

Also, APHIS would require Sanidad Vegetal to trap for Medfly at a rate of one trap per 1 to 4 square miles throughout each Michoacan municipality containing orchards growing avocados for export to the United States. Although Medfly outbreaks have occurred only in southern Mexico, we feel such trapping is necessary as a safeguard against the possible migration of the pest to Michoacan.

Sanidad Vegetal Avocado Export Program

Only growers, orchards, and packinghouses participating in the avocado export program administered by Sanidad Vegetal could export Hass avocados to the United States. The Sanidad Vegetal avocado export program has been in place for more than 7 years to monitor the export of avocados to several European countries, Japan, and elsewhere. Sanidad Vegetal requires participants to comply with inspection, packing, and shipping practices to ensure that seed weevils and other pests are not present in avocados exported from Mexico.

The Sanidad Vegetal avocado export program has been very successful in ensuring that only pest-free avocados are exported from Michoacan. For example, during the last 3 years, over 5 million kilograms of avocados were exported from Michoacan to Japan. Over this same period, the Japanese Ministry of Agriculture, Forestry, and Fisheries, which extensively samples and cuts avocados imported from Mexico, recorded no interceptions of any of the pests of concern (*Anastrepha ludens, A. serpentina, A. striata, Conotrachelus perseae, C. aguacatae, Heilipus lauri, Copturus aguacatae, Stenoma catenifer*).

While our proposed regulations would place conditions on avocado growers, orchards, and packinghouses beyond those required by the Sanidad Vegetal program, we believe that requiring participation in the Sanidad Vegetal avocado export program would help minimize the risk that Hass avocados infested with weevils or other pests would be exported to the United States.

Orchard and Grower Requirements

The orchard and the grower would have to be registered with the Sanidad Vegetal avocado export program discussed above and would have to be listed as an approved orchard or an approved grower in the annual work plan provided to APHIS by Sanidad Vegetal.

We are proposing to require that Sanidad Vegetal conduct surveys, at least annually, for the avocado stem weevil *Copturus aguacatae* in each orchard wishing to export avocados to the United States and in all contiguous orchards and properties. These surveys would have to be conducted during the growing season and completed before harvest. Orchards would have to be free of this pest in order to be eligible to export avocados to the United States.

To monitor the fruit fly population within avocado production areas, APHIS would require Sanidad Vegetal to conduct trapping throughout the year for the three *Anastrepha* fruit fly species of concern at a rate of one trap per 10 hectares within certified avocado orchards. If one fruit fly were captured within an orchard, export could continue, but 10 traps would have to be deployed in the 50-hectare area immediately surrounding the find. If additional fruit flies were caught within 30 days within the 260-hectare area surrounding the first find, exports could continue only after malathion bait treatments of the orchards involved. The purpose of this pesticide treatment would be to lower fruit fly populations in avocado production areas, thus lessening the chances of infestation. APHIS uses similar procedures in citrus fruit production areas of Florida and Texas where *Anastrepha* fruit flies exist.

Growers would be required to undertake regular field sanitation

measures. APHIS would require that fallen avocado fruit be removed from orchards prior to harvest and that the fallen fruit not be included in shipments of fruit to be packed for export. Fallen avocado fruit can be overripe or damaged, and such fruit is more likely to be infested by pests. Also, dead branches on avocado trees would have to be cut back periodically and the dead branches removed from the orchard. Pruning discourages stem weevil infestations. Both APHIS and Sanidad Vegetal would periodically inspect field sanitation in certified avocado orchards.

APHIS would require harvested avocados to be moved from the orchard to the packinghouse within 3 hours of harvest; if more than 3 hours pass between the time the avocados are harvested and the time they are moved to the packinghouse, the avocados would have to be protected from fruit fly infestation while awaiting transport. For movement, the avocados would have to be placed in field boxes or containers marked with the Sanidad Vegetal registration number of the orchard of origin and, during their movement from the orchard to the packinghouse, the avocados would have to be protected from fruit fly infestation. Vehicles transporting the avocados would be required to carry a field record specifying that the fruit is from a certified orchard.

Packinghouse Requirements

Under our proposed regulations, the packinghouse would have to be registered with the Sanidad Vegetal avocado export program and listed as an approved packinghouse in the annual work plan provided to APHIS by Sanidad Vegetal. Fruit from orchards that are not certified by Sanidad Vegetal for participation in the avocado export program would not be allowed on the premises of a packinghouse while avocados intended for export to the United States were being packed.

All openings in the packinghouse would have to be covered by screening with openings of not more than 1.6 mm to prevent the entry of insects. Also, packinghouses would have to have double door systems at the entrances to the facility, as well as at the entrance to the packing area for avocados intended for export to the United States.

Prior to the culling process, Sanidad Vegetal would have to select, cut, and inspect a sample of 250 avocados per shipment to detect the presence of weevils, fruit flies, or other pests (e.g., a shipment of 500 boxes would have a fruit selected from every second box). We have determined that sampling 250 avocados in this manner would yield a 95 percent confidence level of detecting one percent or greater infestation.

The identity of the avocados would have to be maintained from the field boxes or containers, which would bear the Sanidad Vegetal registration of the orchard of origin, to the shipping boxes. The fruit would have to be packed in new, clean boxes, with the grower, packer, and exporter clearly identified on those boxes. Maintaining the identity of the avocados from the field boxes or containers to the shipping boxes would ensure that any infested fruit could be traced back to the orchard where it was grown. Also, the shipping boxes would have to be clearly labeled to indicate the restrictions on the distribution of the avocados in the United States.

After being loaded into the boxes, the avocados would have to be placed into a refrigerated truck or refrigerated container for transit through Mexico to the port of first arrival in the United States. After the avocados had been inspected, packed, and loaded into a refrigerated truck or refrigerated container, Sanidad Vegetal personnel would be required to secure the refrigerated truck or refrigerated container with a seal before the truck or container left the packinghouse. Any avocados that had not been loaded into a refrigerated truck or refrigerated container by the end of the work day would have to be kept in the screened packing area.

A phytosanitary certificate issued by Sanidad Vegetal certifying that all of these conditions have been met would have to accompany each shipment of avocados.

Avocado Pest Interception

As discussed above, we are proposing that Hass avocado fruit be imported only from orchards located in municipalities in Michoacan certified free of the four seed pests *Heilipus lauri, Conotrachelus perseae, C. aguacatae,* and *Stenoma catenifer,* and only from orchards in Michoacan certified free of the stem weevil *Copturus aguacatae.* We are also proposing that Sanidad Vegetal undertake certain actions in the event any of these avocado pests are discovered during the required annual pest survey or during other monitoring or inspection activities in the orchards or packinghouses.

Upon the discovery of any of the four avocado seed pests, Sanidad Vegetal would be required to immediately initiate an investigation and take measures to isolate and eradicate the pests. Sanidad Vegetal would also have to notify APHIS and provide information regarding the origin of the circumstances of the infestation and the pest risk mitigation measures taken. The municipality in which the infestation occurred would lose its pest-free certification, and avocado exports from that municipality would be suspended until APHIS and Sanidad Vegetal agreed that the pest eradication measures taken had been effective and that the pest risk within that municipality had been eliminated.

If Sanidad Vegetal discovered the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal would have to provide APHIS with information regarding the circumstances of the infestation and the pest risk mitigation measures taken. Similarly, if the stem weevil *Copturus aguacatae* was discovered in fruit at a packinghouse, Sanidad Vegetal would have to 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. In either instance, the orchard where the infested fruit originated would lose its export certification immediately for the entire shipping season of November through February.

Shipping Requirements and Restrictions

Although the safeguards discussed above make it unlikely that avocados infested with seed pests or fruit flies would enter into the United States, we propose to require the following safeguards for movement of the avocados to the northeastern United States in order to prevent the escape and establishment of an insect pest outside of the northeast should any be present on the fruit.

We propose to allow Hass avocados from Mexico to enter the United States at any port within the 20 northeastern States that would be allowed to receive Hass avocados from Michoacan. We are also proposing to allow Hass avocados from Michoacan to enter the United States at certain additional ports provided the avocados are moved within a specified transit corridor to the 20 northeastern States that would be allowed to receive the avocados. We would allow the avocados to enter at the ports of Galveston and Houston, TX, and the border ports at Nogales, AZ; Brownsville, Eagle Pass, El Paso, Hidalgo, and Laredo, TX, all of which are staffed by APHIS inspectors. These ports are among those currently listed for avocados from Mexico moved through the United States to destinations outside the United States under the plant quarantine safeguard

regulations in 7 CFR 352.29, so the inspectors at these ports are experienced in dealing with avocado shipments. We would also allow the avocados to enter at other ports located within that area of the United States bordered by the proposed transit corridor discussed below.

We also propose to establish boundaries restricting the corridor through which the avocados may transit the United States en route to the northeastern United States. Except as explained below for avocados entering the United States at Nogales, AZ, avocados moved by truck or rail car would be allowed to transit only that area of the United States bounded on the west by a line extending from El Paso, TX, to Denver, CO, and due north from Denver; and on the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh. All cities on these boundary lines would be included in this area. If the avocados are moved by air, the aircraft would not be allowed to land outside this area. Avocados that enter the United States at Nogales, AZ, would have to be moved to El Paso, TX, by the route specified on the permit, and would then have to remain within the shipping area described above. These proposed boundaries are similar to those currently in effect for Mexican avocados moved through the United States to destinations outside the United States (see 7 CFR 352.29(f)), but differ in two significant ways. First, because avocados imported under this proposed rule could be distributed only in the northeastern United States, the proposed western boundary would not provide for movement through the northwestern United States. Second, the southeastern boundary would be situated further to the south to give shippers access to the entire States of Kentucky, West Virginia, and Virginia, which are among the States in which the avocados could be distributed under this proposed rule; those States are not fully included in the transit corridor described in 7 CFR 352.29(f). These boundaries would provide protection to the western and southeastern regions of the United States, where avocados and other hosts of fruit flies and are grown, while allowing shippers to utilize the most direct interstate routes to the northeastern United States.

Further, we propose that when moving within these boundaries to the northeastern United States, avocados would have to be moved either by air or in a refrigerated truck or refrigerated rail car or in refrigerated containers on a truck or rail car. If the avocados are moved in refrigerated containers on a truck or rail car, an APHIS inspector would have to seal the containers 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 APHIS inspector would have to 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 APHIS inspector would have to be present to supervise the transfer and would have to apply a new serially numbered seal. The avocados would have to be moved through the United States under Customs bond. These safeguards are the same as those currently in effect for avocados from Mexico that are moved through the United States to destinations outside the United States (see 7 CFR 352.29(e)). Because this proposed rule and the avocado transit regulations in 7 CFR 352.29 share a similar purpose (i.e., the avocados must move through areas of the United States considered to be low-risk areas for the establishment of tropical and subtropical fruit pests), we believe it is reasonable that the safeguards required by both regulations should be the same.

Inspection

The avocados would be subject to APHIS inspection at the port of first arrival, at any stops in the United States en route to the Northeast, and upon arrival at the terminal market to ensure they are being moved in compliance with APHIS regulations. At the port of first arrival, APHIS would sample and cut avocado fruit to detect infestation by fruit flies, avocado seed and stem weevils, the avocado seed moth, and other pests. The number of avocados that the inspectors would sample and cut in any given shipment would depend upon the size of the shipment. Inspectors also would ensure that a valid phytosanitary certificate was present, that the limited distribution statement appeared on all boxes, and that the shipment was consigned to a State allowed to receive Hass avocados from Michoacan.

Responses to Comments

As stated above, we received over 300 comments by the closing date of the comment period for the advance notice of proposed rulemaking. The comments were submitted by avocado growers, processors, packers, and importers; trade and grower associations; grocers; and State and local departments of agriculture. Twenty of the comments favored allowing the importation of Mexican avocados. The remainder raised objections, most of which are summarized, with our responses, below.

Most of the comments assert that research conducted in 1993 by the Sanidad Vegetal concerning Hass avocado susceptibility to *Anastrepha* fruit flies was inconclusive and did not demonstrate that Hass avocados are non-hosts to the fruit flies. The comments contend that before APHIS considers any proposal to import Hass avocados from Mexico, Sanidad Vegetal should (1) replicate and expand laboratory and field research regarding host status of Hass avocados under fully controlled conditions and (2) undertake a multi-site, multi-year trapping program to establish the population and seasonal abundance of *Anastrepha* fruit flies in Michoacan. Only after examining the results of such research, according to the comments, could APHIS and Sanidad Vegetal develop effective measures for preventing the introduction of *Anastrepha* fruit flies into the United States through the importation of Hass avocados.

We agree that the 1993 research was limited in scope and did not prove the Hass avocado to be a non-host for *Anastrepha* fruit flies. However, after considering the 1993 research and other available evidence, including interception data and past studies, we believe the Hass avocado to be a non-preferred host for *Anastrepha* fruit flies prior to harvest. Although we believe Hass avocados become better hosts for *Anastrepha* fruit flies shortly following harvest, we are confident that the phytosanitary requirements we would place on harvesting, packing, transport, and distribution, which are more extensive and redundant than those proposed by Sanidad Vegetal, would prevent infested Hass avocado fruit from being exported from Michoacan into the United States.

Several comments specifically questioned the laboratory testing conducted in 1993 by Sanidad Vegetal to determine the susceptibility of Hass avocados to *Anastrepha* fruit flies. The comments claim that induced infestation tests both in the laboratory and under controlled field conditions were conducted improperly (e.g., allegedly, laboratory climatic conditions were not controlled, sample sizes of fruit were too small, inappropriate cages were used in field testing), thus invalidating any results of those tests. Furthermore, these comments maintain that because *Anastrepha* fruit flies did infest Hass avocados during these tests, the host status of Hass avocados is confirmed.

We agree that the induced infestation research was limited in scope and did not prove Hass avocado to be a non-host for *Anastrepha* fruit flies. However, we do not agree that the infestation that did occur during the testing proves Hass avocados to be preferred hosts. Under artificial laboratory conditions, females of some *Anastrepha* species, including *A. ludens*, will oviposit in almost any fruit available, or even in wax spheres (Norrbom, Allen L., and Ke Chung Kim, ''A List of the Reported Host Plants of the Species of *Anastrepha* (Diptera: Tephritidae),'' APHIS, 1988). Moreover, other evidence indicates that Hass avocados are non-preferred hosts while on the tree. In the cage studies conducted in the field by Sanidad Vegetal, which we feel were conducted properly, Hass avocados on the tree were shown to be non-preferred hosts to *Anastrepha*. Also, APHIS records from interceptions of avocados smuggled into the United States from Mexico indicate that the Hass avocado is a non-preferred host to *Anastrepha*. In fact, according to APHIS and Agricultural Research Service records, *Anastrepha* fruit flies have never been found in Hass avocados outside of laboratory tests. We are confident that the phytosanitary measures we are proposing would prevent infested Hass avocado fruit from being exported from Michoacan into the United States.

Several of the comments claim that the fruit fly trapping conducted in 1993 by Sanidad Vegetal was inadequate to accurately determine fruit fly populations in production areas in Michoacan and subsequently develop effective pest mitigation measures based on the population data. These comments maintain that:

- Traps were not moved frequently enough or maintained correctly;
- Trapping was conducted for too short a duration;
- Trapping density was too low, especially considering that the McPhail trap was used;
- Some trapping was conducted while trees were being sprayed with methyl parathion, thus distorting trapping results, as populations in sprayed areas would be unnaturally low; and
- No trapping was conducted with regard to wild or alternative commercial hosts.

We agree that the trapping conducted by Sanidad Vegetal in 1993 was flawed in its execution; many traps were neither moved often enough nor maintained properly. Initial quality control problems occur in most trapping programs. If we allow the importation of Hass avocados from Michoacan, we will require trapping year-round. We would hold such trapping to a higher quality standard and monitor its execution. Also, we believe that the trapping conducted by Sanidad Vegetal, although it was conducted imperfectly and for a short duration, does provide valuable preliminary data regarding the population of *Anastrepha* fruit flies in avocado production areas in Michoacan.

The density of the 1993 trapping—one McPhail trap per 10 hectares—is standard for population monitoring and was approved by APHIS prior to the trapping. Trapping at this rate is currently required by APHIS in Sonora, Mexico, to maintain the fruit-fly free zone in that State. We are proposing that Sanidad Vegetal trap at the rate of 1 trap per 10 hectares throughout the year and that this trapping be monitored by APHIS.

Some trapping was conducted while trees were being treated with pesticides. However, since this sort of pesticide treatment is routine in Michoacan, and since similar pesticide treatment would occur in orchards growing avocados for export to the United States, we believe that trapping conducted during or after pesticide treatment provided accurate population data.

We agree that Sanidad Vegetal did not conduct trapping with regard to wild or alternative commercial hosts. However, our interest in the 1993 Sanidad Vegetal study is to determine populations in the production areas, not in areas where wild or alternative hosts were being grown.

Because of our reservations concerning Sanidad Vegetal's 1993 fruit fly trapping, we have proposed to allow the Hass avocados from Michoacan to be imported only between November and February, when temperatures in Michoacan significantly lower the level of fruit fly activity.

Several comments expressed concerns that Sanidad Vegetal studies of the pests *Heilipus lauri, Stenoma catenifer, Conotrachelus perseae, C. aguacatae*, and *Copturus aguacatae* did not attempt to identify their seasonal abundance or geographical distribution in Michoacan. Furthermore, the comments claim that Sanidad Vegetal surveys for these pests in Hass avocado production areas in Michoacan were too limited to produce meaningful results, were not supervised by APHIS, and were not conducted carefully, that is, the surveys were not conducted in accord with scientific standards or in the context of pest biology. Finally, the comments maintain that the data reflect significant finds of these pests in production areas.

We believe that the design of the 1993 pest surveys was appropriate for detecting infestation and that Sanidad Vegetal took pest biology into account while conducting the surveys. Data from these surveys is of varying quality, but we believe inconsistencies are indicative of authentic pest survey data. While we did not supervise the surveys, we did observe several as they were being conducted.

It is important to remember that the phytosanitary requirements we propose to place on the avocado imports from Michoacan are not based solely upon the pest surveys and other studies conducted by Sanidad Vegetal in 1993. Much of their findings were of a limited quality and only supplement the data we have used in developing this proposal. If this proposal is finalized, we will monitor closely the pest surveys we are proposing to require for determining municipality and orchard freedom from the avocado pests.

Several comments raised concerns that the Sanidad Vegetal studies did not address risks presented by *Anastrepha distincta, A. leptozona, or A. obliqua*, or several other possible pests of avocados known to inhabit Mexico. Avocado is not a host to these other pests (Norrbom, Allen L., and Ke Chung Kim, ''A List of the Reported Host Plants of the Species of *Anastrepha* [Diptera: Tephritidae],'' APHIS, 1988).

Other comments argue that APHIS should not allow Hass avocado imports from Michoacan until Sanidad Vegetal can establish Michoacan as a pest-free zone.

As explained above, APHIS uses systems approaches to phytosanitary security to allow fruits and vegetables to be imported safely into the United States from countries that are not free of certain plant pests. APHIS has successfully used systems approaches to establish conditions for the importation of several commodities, including Unshu oranges from Japan, tomatoes from Spain, and peppers from Israel. APHIS also uses systems approaches to establish conditions whereby domestic fruits and vegetables may be exported from areas in the United States that are not free of certain plant pests, such as citrus fruit from Florida and Texas, apples from Washington, and stonefruit from California. We now are proposing to use a systems approach to allow Hass avocado fruit to be imported into the northeastern United States from Michoacan, Mexico, an area where fruit flies and certain avocado pests are known to exist. We believe this systems approach would prevent the introduction of plant pests into the United States from Michoacan and that therefore, it is unnecessary to establish

Michoacan as a pest-free zone prior to importing Hass avocados.

Several comments maintain that prior to allowing the importation of Hass avocados from Mexico, APHIS should develop treatments able to eliminate all exotic pests from avocado fruit at a ''probit 9'' mortality level. (A treatment yielding a probit 9 mortality effects a 99.9968 percent mortality in a population of live organisms, that is, a population of pests in fruit.)

Currently, there is no effective treatment for eliminating *Anastrepha* fruit flies or any of the avocado pests of concern from Hass avocado fruit. We believe the multiple safeguards that we are proposing for the importation of Hass avocados from Michoacan, Mexico, into the northeastern United States would mitigate pest risk at a level equivalent to that provided by a treatment yielding a probit 9 mortality. If a treatment for Hass avocado fruit from Michoacan were developed, APHIS would consider its use.

One comment criticized the conclusion drawn by Sanidad Vegetal that a 1993–1994 orchard and packinghouse fruit sampling research study indicated that there was zero risk of live immature stages of fruit flies entering the United States in Hass avocados. We agree that such a conclusion is unsupported by statistical analysis, since it is statistically impossible to prove zero risk for any commodity. Accordingly, this proposed rule contains no provisions that are based on an assumption of zero risk regarding the possibility of live immature stages of fruit flies entering the United States in Hass avocados.

One comment concluded that APHIS must prove Hass avocados to be non-hosts to *Anastrepha* fruit flies before we allow their importation from Michoacan.

As stated above, we believe Hass avocados to be a non-preferred host to *Anastrepha* fruit flies while on the tree and better hosts following harvest. The phytosanitary requirements we are proposing, especially in light of the Hass avocado's poor host status, would prevent *Anastrepha* flies from being introduced into the United States through the importation of Hass avocados.

One comment states that Sanidad Vegetal's conclusions regarding a correlation between maturity of Hass avocado fruit (measured by the percent of dry matter) and fruit immunity to *Anastrepha* fruit fly infestation are invalid.

We agree that Sanidad Vegetal research did not prove that there is a correlation between dry matter content of Hass avocados and immunity to *Anastrepha* infestation. The APHIS avocado interception records and past research mentioned above do indicate, however, that the Hass avocado may have some natural physiological resistance to infestation by *Anastrepha* fruit flies. Further research must be conducted before any such conclusions can be applied to the quarantine status of Hass avocados from Michoacan.

One comment expresses concerns that pests known to attack Hass avocados in Mexico could be introduced into the northeastern United States through importation from Michoacan, colonize the area, and damage fruit crops grown there.

We are proposing to allow Hass avocados to be imported into the Northeastern United States only during the winter, from November through February. The cold temperatures during these months would preclude colonization by these tropical and subtropical pests, because they could not survive under the climatic conditions and/or because there would be no host material.

Several comments state that avocado growers in Michoacan use pesticides not approved for use on avocados in the United States, such as methyl parathion, and that avocados imported from Michoacan containing residues of these pesticides would, therefore, be prohibited from importation.

The United States Food and Drug Administration samples and tests imported fruits and vegetables for pesticide residues. If residue of a pesticide unapproved in the United States is found in a shipment of imported fruit or vegetables, the shipment is denied entry into the United States.

Many of the comments argue that APHIS lacks the resources to enforce phytosanitary restrictions on Hass avocado imports from Michoacan, particularly restrictions on the distribution of Mexican Hass avocados within the United States.

We agree that adequate resources and personnel, especially inspectors, would have to be devoted to prevent the introduction of avocado and other plant pests into the United States. Adjustments in the level of personnel and resources devoted to APHIS programs are a normal part of management in the agency. Duties and staffing levels would be adjusted, in Michoacan, at ports, and elsewhere, to satisfy the needs of a new avocado import program. While APHIS would assign some additional personnel to monitor trapping and surveys and compliance with phytosanitary requirements in Michoacan orchards and packinghouses, we believe much of the resources needed for this program are already in place, in the form of existing APHIS overseas and port personnel. Funding levels and agency personnel may vary from year to year. Import authorizations would not be provided if the level of resources decreases below the level needed to ensure that all imported regulated articles are subject to the level of inspection and monitoring necessary to prevent the introduction of plant pests into the United States. In terms of enforcing the restrictions on the distribution of Mexican Hass avocados within the United States, APHIS would be assisted by the Fruit and Vegetable Division of the Agricultural Marketing Service, which has agreed to notify us if Mexican avocado fruit, which they would grade, showed up at terminal markets in prohibited States.

One comment criticizes the Sanidad Vegetal proposal to have growers hire the technical personnel involved in surveys and trapping, citing a conflict of interests.

As explained above, we would not allow growers to hire or supervise the technical personnel involved in trapping or pest surveys, but they would be allowed to pay expenses.

Several comments question Sanidad Vegetal's claim that *Anastrepha* fruit flies have never infested Hass avocados in Mexico and that *Anastrepha* fruit flies have never been intercepted in Hass avocados intended for export.

According to APHIS and Agricultural Research Service records, *Anastrepha* fruit flies have never been found in Hass avocados outside of laboratory tests, in which infestation was artificially induced.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may

incur benefits or costs from implementation of this proposed rule.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee, 150ff, 151–167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

We are proposing to amend the regulations governing the importation of fruits and vegetables to allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States, subject to certain conditions.

Mexico is the largest producer of avocados in the world, accounting for approximately 45 percent of total production. Mexican growers produced about 696,000 tons of avocados in 1990. Additionally, Mexico is the world's largest consumer of avocados; per capita consumption is close to 17 pounds. Because of this large domestic demand, exports remain small, at approximately 3 percent of production, or 20,880 tons.

Most of the avocado production in Mexico occurs in the state of Michoacan, where approximately 77 percent of the total crop is grown. Ninety-five percent of the avocados grown in Michoacan are of the Hass variety. In 1990, therefore, the total export of Hass variety avocados from Michoacan was approximately 15,000 tons.

In comparison, domestic growers produced 151,650 tons of avocados in 1993; California growers produced approximately 97 percent (147,000 tons), Florida growers produced a little less than 3 percent (4,400 tons), and Hawaiian growers produced less than 1 percent (250 tons) of the 1993 total. In Florida and Hawaii non-Hass varieties are predominant, while in California the Hass variety accounts for approximately 85 percent of the total production.

Although Mexico has well established export markets in Europe, Japan, and Canada, shipping avocados to these markets involves traversing great distances, thus incurring high transportation costs. As in Mexico, a substantial proportion of U.S. production of avocados is consumed internally. In 1993 the United States exported 15,292 tons, while it imported 8,232 tons. However, the U.S. per capita consumption, which is approximately 1.36 pounds, is much smaller than the per capita consumption in Mexico. The demand for avocados in the United States is inelastic (-0.48). In other words, a reduction in the price of avocados would not result in a proportionate increase in the purchase of avocados. For example, a 10 percent decline in avocado price would likely induce only a 4.8 percent increase in avocado consumption. In the case of avocados, quality considerations might have greater impact on consumer purchase decisions than the price of the product.

As the preceding paragraphs indicate, both California and Michoacan are large producers of Hass variety avocados. However, here the similarity between the two states ceases, with marked differences in avocado price, cost structure, and expansion capacity. The weighted average wholesale price for California production was $0.48 per pound between 1991 and 1993 while the Michoacan price was $0.28. Land and labor costs are much lower in Michoacan than in California. Development costs and costs of caring for avocado-bearing trees average $26,000 per acre in California, those same costs are only about $8,000 per acre in Michoacan. Furthermore, the labor share of production costs is 52 percent in California, while the average labor share is only 35 percent in Michoacan. Finally, the two states differ in their capacity to expand production. California has little or no non-bearing acreage remaining while Michoacan has 30 percent non-bearing acreage.

Michoacan producers face three additional costs in order to deliver their products to the U.S. border. These include the cost of transportation ($0.03 per pound), the border crossing cost ($0.027 per pound), and a tariff rate of $0.054 per pound. Taking these factors into consideration, the break-even point for California production is $0.48 (the average wholesale price per pound in California); Michoacan Hass avocados could be delivered to the U.S. border for $0.34 (the price of avocado sold domestically in Mexico ($0.23 per pound) plus the cost of placing Michoacan avocados at the U.S. border ($0.11 per pound). Thus, at the U.S. border the Mexican producers would have a cost advantage over U.S. Hass avocado producers. However, which of these two would gain the market for avocados in the 20 northeastern States would depend on their respective ability to deliver the best quality avocado in the most efficient way.

Allowing the importation of fresh Hass avocado fruit from Michoacan, Mexico, would directly affect avocado growers, mainly in California. There were 7,300 avocado growers in the United States in 1993, most of which were located in California. Of these, 6,729 are considered to be small entities. The importation of Hass avocados from Mexico would likely increase the U.S. supply of fresh avocados by about 12 percent, reducing the average price for U.S. avocados to about $0.42 per lb. The U.S. producers would thus be negatively affected. However, current Interstate Commerce Commission regulations forbid Mexican carriers from hauling the product beyond the border zone, so there would be some benefit to small U.S. specialized transport companies and brokerage houses. At present, the cost of transporting a truckload (40,000 lb) of avocados from Michoacan to the U.S. border at El Paso is $1,080. This includes the margin for truckers and brokerage houses. The number of these entities is difficult to determine at this time. The total impact would depend upon the volume of export from Michoacan to the United States. Finally, even with the low elasticity of demand for avocado, consumers could be positively affected by the increased competition and expanded choices that would be induced by this proposal.

The alternative to this proposed rule was to make no changes in the fruits and vegetables regulations. After consideration, we rejected this alternative since there appeared to be no pest risk reason to maintain the prohibition on the avocados in light of the safeguards that would be applied to their importation.

This proposed rule contains no paperwork or recordkeeping requirements.

Executive Order 12778

This proposed rule would allow fresh Hass avocado fruit to be imported into the United States from the Mexican State of Michoacan. If this proposed rule is adopted, State and local laws and regulations regarding fresh Hass avocado fruit imported under this rule would be preempted while the fruit is in foreign commerce. Fresh avocados 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.

Paperwork Reduction Act

This document contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 would be amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. A new § 319.56–2ff would be added to read as follows:

§ 319.56–2ff Administrative instructions governing movement of Hass avocados from Mexico to the northeastern United States.

Fresh Hass variety avocados (*Persea americana*) may be imported from Mexico into the United States for distribution in the northeastern United States only under a permit issued in accordance with § 319.56–4, and only under the following conditions:

(a) *Shipping restrictions.* (1) The avocados may be imported in commercial shipments only;

(2) The avocados may be imported only during the months of November, December, January, and February; and

(3) The avocados may be distributed only in the following northeastern States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

(b) *Trust fund agreement.* The avocados may be imported only if the Mexican avocado industry association representing Mexican avocado growers, packers, and exporters has entered into a trust fund agreement with APHIS for that shipping season. That agreement requires the Mexican avocado industry association to pay in advance all estimated costs that APHIS expects to incur through its involvement in the trapping, survey, harvest, and packinghouse operations prescribed in paragraph (c) of this section. These costs will include administrative expenses incurred in conducting the services and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The agreement requires the Mexican avocado industry association to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the Mexican avocado industry association to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the Mexican avocado industry association or held on account until needed.

(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. Sanidad Vegetal must provide an annual work plan to APHIS that details the activities that Sanidad Vegetal will carry out to meet the requirements of this section; APHIS will be directly involved with Sanidad Vegetal in the monitoring and supervision of those activities. The personnel conducting the trapping and pest surveys must be hired, trained, and supervised by Sanidad Vegetal.

(1) *Municipality requirements.* (i) The municipality must be listed as an approved municipality in the annual work plan provided to APHIS by Sanidad Vegetal.

(ii) The municipality must 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 persea* and *C. aguacatae.* The survey must cover at least 300 hectares in the municipality and include portions of each registered orchard and areas with wild or backyard avocado trees. The survey must be conducted during the growing season and completed prior to the harvest of the avocados.

(iii) Trapping must be conducted in the municipality for Mediterranean fruit fly (Medfly) (*Ceratitis capitata*) at the rate of 1 trap per 1 to 4 square miles. Any findings of Medfly must be reported to APHIS.

(2) *Orchard and grower requirements.* The orchard and the grower must be registered with Sanidad Vegetal'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 Sanidad Vegetal. The operations of the orchard must meet the following conditions:

(i) The orchard and all contiguous orchards and properties must be surveyed annually and found to be free from the avocado stem weevil *Copturus aguacatae.* The survey must be conducted during the growing season and completed prior to the harvest of the avocados.

(ii) Trapping must be conducted in the orchard for the fruit flies *Anastrepha ludens, A. serpentina,* and *A. striata* at the rate of one trap per 10 hectares. If one fruit fly is trapped, at least 10 additional traps must be deployed in a 50-hectare area immediately surrounding the trap in which the fruit fly was found. If within 30 days of the first finding any additional fruit flies are trapped within the 260-hectare area surrounding the first finding, malathion bait treatments must be applied in the affected orchard in order for the orchard to remain eligible to export avocados.

(iii) Avocado fruit that has fallen from the trees must be removed from the orchard prior to harvest and may not be included in field boxes of fruit to be packed for export.

(iv) Dead branches on avocado trees in the orchard must be pruned and removed from the orchard.

(v) Harvested avocados must be placed in field boxes or containers of field boxes that are marked to show the Sanidad Vegetal 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.

(vi) The avocados must be protected from fruit fly infestation during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating that the avocados originated from a certified orchard.

(3) *Packinghouse requirements.* The packinghouse must be registered with Sanidad Vegetal's avocado export program and must be listed as an approved packinghouse in the annual work plan provided to APHIS by Sanidad Vegetal. 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 Sanidad Vegetal for participation in the avocado export program.

(ii) All openings to the outside must be covered by screening with openings of not more than 1.6 mm or by some other barrier that prevents insects from entering the packinghouse.

(iii) The packinghouse must have double doors at the entrance to the facility and at the interior entrance to the area where the avocados are packed.

(iv) Prior to the culling process, a sample of 250 avocados per shipment must be selected, cut, and inspected by Sanidad Vegetal and found free from pests.

(v) The identity of the avocados must be maintained from field boxes or containers to the shipping boxes so the avocados can be traced back to the orchard in which they were grown if pests are found at the packinghouse or the port of first arrival in the United States.

(vi) The avocados must be packed in clean, new boxes. The boxes must be clearly marked with the identity of the grower, packinghouse, and exporter, and the statement ''Distribution limited to the following States: CT, DC, DE, IL, IN, KY, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and WI.''

(vii) 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, the truck or container must be secured by Sanidad Vegetal with a seal that will be broken when the truck or container is opened.

(viii) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the work day must be kept in the screened packing area.

(d) *Certification.* All shipments of avocados must be accompanied by a phytosanitary certificate issued by Sanidad Vegetal 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 perseae, C. aguacatae,* or *Stenoma catenifer* are discovered in a municipality during an annual pest survey, orchard survey, packinghouse inspection, or other monitoring or inspection activity in the municipality, Sanidad Vegetal must immediately initiate an investigation and take measures to isolate and eradicate the pests. Sanidad Vegetal 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 Sanidad Vegetal agree that the pest eradication measures taken have been effective and that the pest risk within that municipality have been eliminated.

(2) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in an orchard during an orchard survey or other monitoring or inspection activity in the orchard, Sanidad Vegetal 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 will be denied export certification for the entire shipping season of November through February.

(3) If Sanidad Vegetal discovers the stem weevil *Copturus aguacatae* in fruit at a packinghouse, Sanidad Vegetal 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 will be denied export certification for the entire shipping season of November through February.

(f) *Ports.* The avocados may enter the United States at:

(1) Any port located in the northeastern States specified in paragraph (a)(3) of this section;

(2) 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

(3) Other ports within that area of the United States specified in paragraph (g) of this section.

(g) *Shipping areas.* Except as explained below for avocados that enter the United States at Nogales, AZ, avocados moved by truck or rail car may transit only that area of the United States bounded on the west by a line extending from El Paso, TX, to Denver, CO, and due north from Denver; and on the east and south by a line extending from Brownsville, TX, to Galveston, TX, to Kinder, LA, to Memphis, TN, to Knoxville, TN, following Interstate 40 to Raleigh, NC, and due east from Raleigh. All cities on these boundary lines are included in this area. If the avocados are moved by air, the aircraft may not land outside this area. Avocados that enter the United States at Nogales, AZ, must be moved to El Paso, TX, by the route specified on the permit, and then must remain within the shipping area described above.

(h) *Shipping requirements.* The avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in refrigerated containers on a truck or rail car. If the avocados are moved in refrigerated containers on a truck or rail car, an inspector must seal the containers 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.

(i) *Inspection.* 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 the northeastern States, and upon arrival at the terminal market in the northeastern States. At the port of first arrival, an inspector will sample and cut avocados from each shipment to detect pest infestation.

Done in Washington, DC, this 29th day of June 1995.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

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