

of civil and criminal laws; investigations, inquiries, and proceedings thereunder; national security and intelligence activities; and protection of the President of the U.S. or other individuals pursuant to Section 3056 and 3056A of Title 18. The DHS/USCIS-012 CIDR System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain PII collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security has exempted this system from the following provisions of the Privacy Act, subject to limitations set forth in 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of the investigation, and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting could also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation, to the existence of the investigation, and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements), and (f)

(Agency Rules) because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: December 14, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010-32540 Filed 12-27-10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0060]

RIN 0579-AD13

Hass Avocados From Mexico; Importation Into the Commonwealth of Puerto Rico and Other Changes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables to provide for the importation of Hass avocados from Mexico into Puerto Rico under the same systems approach currently required for the importation of Hass avocados into all States of the United States from Michoacán, Mexico. The systems approach requirements include trapping, orchard certification, limited production area, trace back labeling, pre-harvest orchard surveys for all pests, orchard sanitation, post-harvest safeguards, fruit cutting and inspection at the packinghouse, port-of-arrival inspection, and clearance activities. This action will allow for the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico while continuing to provide protection against the introduction of quarantine pests. In addition, we are amending the regulations to provide for the Mexican national plant protection organization to use an approved designee to inspect avocados for export and to suspend importation of avocados into the United States from Michoacán, Mexico, only

from specific orchards or packinghouses when quarantine pests are detected, rather than suspending imports from the entire municipality where the affected orchards or packinghouses are located. These changes will provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

DATES: *Effective Date:* December 28, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Import Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1231; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart—Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

The requirements for importing Hass avocados into the United States from Michoacán, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures.

On May 14, 2010, we published in the **Federal Register** (75 FR 27225–27227, Docket No. APHIS-2008-0060) a proposal¹ to amend the regulations to:

- Allow the importation of Hass avocados from Michoacán, Mexico, into Puerto Rico, under the same conditions required for importation into the 50 States;
- Provide for the Mexican national plant protection organization (NPPO) to use an approved designee to inspect avocados for export; and
- Limit the scope of suspension of export certification to the orchard or packinghouse in which pests are found, rather than the municipality in which the orchard or packinghouse is located.

We solicited comments concerning our proposal for 60 days ending July 13, 2010. We received four comments by that date. They were from associations of avocado producers and representatives of State and foreign

¹ To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0060>.

governments. They are discussed below by topic.

General Comments

One commenter stated that invasive pests are one of the foremost challenges for California avocado growers and that research has definitively shown that some of the most pernicious avocado pests presently found in California originated in Mexico and Central America. This commenter stated that growers are apprehensive about any modification of export protocols that shifts risk to the domestic producer, and the commenter characterized the proposed rule as an example of such risk-shifting.

The commenter did not specify which pernicious avocado pests prompted this concern. The regulations in § 319.56–30 set out a systems approach designed to mitigate the risk of introducing quarantine pests via the importation of Hass avocados from Mexico into the United States. By any measure, the systems approach has been successful at this goal. In 9 years of fruit cutting and inspection of Hass avocados imported from Mexico, over 28 million fruit were examined (20.2 million in the orchards, 7.2 million in packinghouses, and 602,490 at border inspection ports) for pests. Twice, the quarantine pest *Contrachelus perseae* was found, both times in backyard avocados that would not have been eligible to be exported to the United States. Both outbreaks of this pest were eradicated. All other avocados from this export program have been found to be free of quarantine pests. There is no evidence that the importation of Hass avocados from Mexico has resulted in the introduction of quarantine pests into the United States.

The proposed changes are minor updates designed to provide additional flexibility in operating the export program while continuing to provide protection against the introduction of quarantine pests.

Allowing the Importation of Hass Avocados From Mexico Into Other U.S. Territories

We did not receive any comments expressing concern about allowing the importation of Hass avocados from Mexico into Puerto Rico. However, one commenter requested that we eliminate all restrictions on the importation and distribution of Hass avocados to the U.S. territories as well. The commenter stated that, unless there is a sound scientific reason to ban Mexican Hass avocados from being distributed into the U.S. territories, APHIS should allow the trade, whether or not there has been a

formal diplomatic request to lift this trade barrier. The commenter stated that the Plant Protection Act (7 U.S.C. 7701 *et seq.*) clearly considers the territories to be part of the United States.

The commenter noted that Hass avocados produced in California, Chile, New Zealand, and the Dominican Republic can all be imported or moved interstate to the U.S. territories without any additional safeguards or other mitigations for known pests. The commenter stated that if APHIS were to maintain such restrictions on Mexican Hass avocados without a scientific justification, it would risk violating the nondiscrimination provisions of the World Trade Organization's Agreement on the Application of Sanitary and Phytosanitary Measures and the comparable provisions of the North American Free Trade Agreement.

Finally, the commenter stated, maintaining a trade restriction may trap unwary U.S. or Mexican produce handlers who are consolidating shipments of produce to the territories.

The commenter also stated that, if the commenter's proposed change was adopted, it would be appropriate to eliminate box markings for restricted distribution, as the extremely small markets in the U.S. territories would not justify the expensive and burdensome box marking and storage arrangements that would be necessary for packers, importers, and marketers, nor the potential compliance costs incurred by APHIS.

Section 319.56–1 prohibits the importation of all fruits or vegetables except as provided in the regulations. We only allow the importation of fruits or vegetables after conducting an analysis of the pest risk associated with the importation of said fruits or vegetables. As noted in the commodity import evaluation document we made available to the public along with the proposed rule, the risks associated with the importation of Hass avocados from Mexico to U.S. territories have not been analyzed. Therefore, we will not allow such importation until an analysis is completed. The differing pest situations in each of the territories require us to conduct separate analyses regarding the importation of Hass avocados from Mexico into each territory.

Hass avocados produced in California have historically been allowed to move freely within the United States, which, as the commenter notes, clearly includes the territories; we expect that any pests associated with the interstate movement of avocados from California would have been introduced into the territories long ago. The risk analyses for the importation of Hass avocados from

Chile, New Zealand, and the Dominican Republic all included analysis specific to the territories.

As the importation of most fruits and vegetables is prohibited under § 319.56–1, we ask that foreign governments interested in exporting fruits and vegetables to the United States, or to new areas within the United States, make formal requests to do so, so that we can prioritize our risk analysis activity. If we receive a formal request to analyze the risks associated with the importation of Hass avocados from Mexico into the U.S. territories, we will consider it.

With respect to the commenter's concern regarding produce handlers, for consignments imported into the 50 States and Puerto Rico, we will include as a condition of the import permit a prohibition on moving the avocados to any U.S. territory. In the past, we have found such restrictions to be effective at preventing the unauthorized interstate movement of fruits and vegetables. As part of allowing the importation of Hass avocados from Mexico into Puerto Rico, we proposed to remove the requirement for marking boxes to indicate limitations on their distribution from paragraph (c)(3)(vii) of § 319.56–30 for that reason.

However, we are not removing the remaining box marking requirements in paragraph (c)(3)(vii), which require the avocados to be packed in boxes or crates that are clearly marked with the identity of the grower, packinghouse, and exporter. This information is necessary in case we need to conduct traceback on Hass avocados imported from Mexico.

Use of an Approved Designee To Inspect Avocados for Export

The regulations in § 319.56–30(c)(3)(iv) require samples of Hass avocados produced in Michoacán, Mexico, to be selected, cut, and inspected by the Mexican NPPO and found free from pests. We proposed to amend that paragraph to provide for avocados to be selected, cut, and inspected by either the Mexican NPPO or its approved designee. We stated that the use of approved designees in situations such as this is consistent with the International Plant Protection Convention's International Standard for Phytosanitary Measures (ISPM) No. 20,² which, among other things, describes a system that NPPOs may use to authorize other government services, non-governmental organizations, agencies, or

² To view this and other ISPMs on the Internet, go to <http://www.ippc.int/> and click on the "Adopted Standards" link under the "Core activities" heading.

persons to act on their behalf for certain defined functions.

One commenter supported this change, but stressed the importance of reviewing the criteria that will be utilized by the Mexican NPPO to choose a designee for these purposes. Another commenter noted that ISPM No. 20 states that, for the use of approved designees, the ISPM guidelines state that “operational procedures” are required and that “procedures should be developed for the demonstration of competency and for audits, corrective actions, system review and withdrawal of authorization.” This commenter recommended that APHIS require the Mexican NPPO to provide detailed procedures consistent with ISPM No. 20 before making this change. The commenter also recommended that the regulations indicate that APHIS retains the right to conduct periodic audits to verify that the procedures, once implemented, are being properly performed by the NPPO’s designee.

We will review and approve the Mexican NPPO’s procedures for approving designees to select, cut, and inspect fruit before the Mexican NPPO begins using approved designees. The specific process by which this takes place will be detailed in the workplan that the Mexican NPPO provides to APHIS annually. APHIS must approve the workplan. For that reason, it is not necessary to delay changing the regulations in order to ensure that APHIS can review and approve the Mexican NPPO’s procedures for approving designees. With respect to the second commenter’s other recommendation, the introductory text of paragraph (c) of § 319.56–30 already indicates that APHIS will be directly involved with the NPPO in the monitoring and supervision of activities carried out under § 319.56–30. This would include monitoring the procedures for approving designees.

Two commenters recommended that we allow the Mexican NPPO to use approved designees for the pest surveys and trapping required in paragraph (c)(1) of § 319.56–30. The commenters stated that there may be many highly qualified entomologists or other experts in the private sector that would be available for contracting with the Mexican NPPO to carry out phytosanitary tasks in the avocado orchards.

These commenters suggested that we amend the introductory text of paragraph (c), which currently indicates that personnel carrying out tasks required in paragraph (c) must be “hired, trained, and supervised by the Mexican NPPO,” to indicate that it

allows the use of accredited inspectors to perform these tasks.

It was necessary to amend paragraph (c)(3)(iv) in order to accommodate the use of approved designees because that paragraph specifically required the Mexican NPPO to select, cut, and inspect fruit. However, the requirement that personnel who perform tasks required in paragraph (c) of § 319.56–30 be hired, trained, and supervised by the Mexican NPPO does not mean that those personnel have to be employees of the Mexican NPPO; they can be hired as contractors, provided that they are trained and supervised by the Mexican NPPO, and provided that they operate in accordance with the various procedures described in ISPM No. 20. Thus, the regulations already accommodate the use of approved designees for these functions. We appreciate the opportunity to clarify this point.

Limiting the Scope of Suspension of Export Certification

Paragraph (e) of § 319.56–30 sets out the procedures that are followed when a pest is detected in the surveys and inspections required in paragraph (c). Under paragraph (e)(1), when avocado seed pests other than the avocado stem weevil *Copturus aguacatae* (*Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, or *Stenoma catenifer*) are detected during semiannual pest surveys, orchard surveys, packinghouse inspections, or other monitoring or inspection activities, the entire municipality in which the pests are discovered loses its pest-free certification and avocado exports from that municipality are suspended. However, our regulations in paragraphs (e)(2) and (e)(3) call for the suspension of the export certification of individual orchards and packinghouses where the avocado stem weevil, *Copturus aguacatae*, is detected, rather than for the suspension of the export certification of the entire municipality. Based on our experience with the avocado seed pests in the Mexican Hass avocado export program, we proposed to replace paragraphs (e)(1) through (e)(3) of § 319.56–30 with a new paragraph (e) stating that suspension of avocado shipments applies to orchards or packinghouses within a municipality when *H. lauri*, *C. aguacatae*, *C. perseae*, *Copturus aguacatae*, or *S. catenifer* are detected.

One commenter stated that APHIS should establish a buffer zone with a radius of at least 1 square mile from the specific site where an avocado seed pest is detected. The commenter added that orchards encompassed in part or in their

entirety by this buffer zone should be suspended from the avocado export program until the pests of concern have been eradicated. To support this position, the commenter cited recent research conducted in Guatemala by Dr. Mark Hoddle, an entomologist at the University of California, Riverside, which has shown that *S. catenifer* are vigorous fliers that commence flight at dusk and continue on and off until dawn. The commenter quoted a personal communication from Dr. Hoddle stating that it is highly likely that *S. catenifer* flies more than 100 meters in one night. The study from which this figure was derived measured flight distances between release points and pheromone traps designed to lure male avocado seed moths. The commenter stated that this distance is almost certainly different for females, which are likely to fly even farther, if necessary, to locate a site suitable for egg-laying; this assertion was based on a personal communication from Dr. Jocelyn Millar, also an entomologist at the University of California, Riverside. The commenter further stated that various moth species have been documented to fly “at least several kilometers” to locate pheromone sources, citing Hoddle, M.S., et al., “Field optimization of the sex pheromone of *Stenoma catenifer* (Lepidoptera: Elachistidae): Evaluation of lure types, trap height, male flight distances, and number of traps needed per avocado orchard for detection,” scheduled for publication in an upcoming issue of the *Bulletin of Entomological Research*.

Another commenter, supporting the change we proposed, cited a Web site presented by Dr. Hoddle³ that states that the flight of *S. catenifer* when released from vials ranged between 3 and 12 meters; those moths invariably sought refuge in nearby fallen leaves and other debris. The commenter also stated that the original pest risk assessment for the importation of Hass avocados year-round and into all 50 States, prepared in 2004, contained an appendix confirming the limited mobility of the seed pests other than *S. catenifer*.

We appreciate the commenters submitting additional information about *S. catenifer*. In citing Dr. Hoddle’s Web site, the second commenter did not mention that the flights of 3 to 12 meters occurred when *S. catenifer* was released during the day (specifically, at 2 p.m.). As discussed by the first commenter, *S. catenifer* has been shown to fly longer

³ <http://www.biocontrol.ucr.edu/Stenoma/Stenoma.html>.

distances at night in at least some circumstances.

However, the evidence from Dr. Hoddle's studies regarding *S. catenifer*'s mobility in Guatemala may not necessarily be relevant to its mobility in Mexico. *S. catenifer* is known to respond to changes in climate; Guatemala's is a hot climate with periodic shifts from wet to dry seasons, while the province of Michoacán is drier and cooler.

More importantly, conducting the Mexican Hass avocado export program has given us extensive information about how *H. lauri*, *C. aguacatae*, *C. perseae*, *Copturus aguacatae*, and *S. catenifer* behave in commercial Hass avocado production in Michoacán. As noted earlier, only twice has any one of these pests been found, both times in backyard avocados that would not have been eligible to be exported to the United States, and none of the quarantine pests identified in the 2004 pest risk assessment (including the seed pests at issue here) have been found in avocados presented for importation into the United States.

The information provided by the first commenter does not change our conclusion, based on years of evaluation of the effectiveness of the systems approach used to mitigate pests in approved municipalities, that the mobility of avocado seed pests, including *S. catenifer*, creates no greater risk of their avoiding detection than the mobility of the avocado stem weevil, and that the same scope of export suspension should apply to avocado seed pests and the stem weevil. Given our years of experience with surveying and inspecting for these pests in Michoacán, we have determined that the proposed changes are appropriate.

As noted in the proposed rule, if avocado seed pests are present in places of production close to a place of production in which an avocado seed pest is found, the required surveys would find it in those nearby places of production, and we would suspend those places of production as well. The entire municipality would be suspended if the pests were detected in all places of production within that municipality.

In addition, if circumstances were to change, and *S. catenifer* or any of the other seed pests were to suddenly begin infesting commercially produced avocado fruit across wide distances, our surveys and inspections would find the pest, and we would make any necessary adjustments to the program or suspend it while we determined appropriate mitigations for the pests.

One commenter stated that suspension of orchards and

packinghouses when a pest is found can and should be based on the scientific evidence of the biology of the particular pest and its known mobility at various stages. Such suspensions should be no greater than scientifically necessary to protect against exported avocados being a pathway for infestations.

The changes in this final rule limit suspension to the orchard or packinghouse where a pest is found. If the commenter is recommending suspending only portions of an orchard or packinghouse when a pest of particularly low mobility is found in the orchard or packinghouse, we would not consider that operationally feasible, since avocados and pests may be moved around freely within orchards or packinghouses.

One commenter stated that, from the inception of the export program, APHIS has based its assumptions about *S. catenifer* and other seed pests on the results of fruit cutting. The commenter stated that small larvae of these pests may easily be overlooked in fruit that, in all respects, appears uninfested or damage-free. Consequently, the commenter stated, orchard surveys that rely on fruit cutting should not inform APHIS' decisionmaking on the mobility of avocado seed pests.

We disagree with the commenter. Inspection using fruit cutting is an effective mitigation for these pests. Avocado fruit discolor immediately when larvae bore tunnels in the fruit, meaning that damage can be easily detected in cut fruit. Inspection has served as an effective mitigation thus far in preventing the introduction of these pests into the United States, even given the great volumes of Hass avocados that have been imported since the beginning of the program.

Other Issues

One commenter recommended that we remove paragraphs (f) and (h) from § 319.56–30, as paragraph (f) relates to restrictions that have been removed from the regulations and paragraph (h) is duplicated by paragraph (g).

We agree. In a final rule published in the **Federal Register** on October 29, 2010 (75 FR 66643–66644, Docket No. APHIS–2008–0016), we made these changes, although we removed paragraph (g) rather than paragraph (h).

That final rule also revised paragraph (c)(3)(vii) to accommodate the use of bulk shipping bins for Hass avocados from Mexico and to remove outdated restrictions. That paragraph has also contained the box marking requirements reflecting the prohibition on importing Hass avocados from Mexico into Puerto Rico or the U.S. territories. We had

proposed to remove the last two sentences of the paragraph, which contained the box marking requirement and the outdated restrictions; instead, this final rule specifically removes the box marking requirement.

One commenter stated that the administrative instructions found in 7 CFR 352.29 were published to support and maintain the former shipping restrictions on Mexican Hass avocados, which were removed several years ago. This commenter stated that there are no longer any restrictions on moving Mexican avocados through the United States. The commenter stated that these administrative instructions no longer serve any valid purpose and should be eliminated to avoid confusion by the public.

The commenter misunderstands the scope and purpose of § 352.29, which regulates the movement of all avocados from anywhere in Mexico through the United States, rather than the importation of avocados into the United States. The regulations in § 319.56–30 allow only Hass variety avocados from the State of Michoacán to be imported into the United States. However, when exporting to countries other than the United States, Mexican producers and exporters may wish to move avocados of other varieties or from other areas of Mexico through the United States before the avocados arrive at their ultimate destination, in order to use U.S. ports of export. The provisions in § 352.29 allow such transit to occur safely.

One commenter presented extensive information on the use of sex pheromones to lure and trap *S. catenifer* and recommended that we work with the Mexican NPPO to deploy pheromone traps for monitoring and detection purposes in Michoacán.

We appreciate the commenter updating us on the progress of this research. We will review the information submitted and consider whether to incorporate pheromone trapping into the Mexican Hass avocado export program. If we determine that requiring such trapping would be useful, we will publish a proposed rule and take public comment on the use of pheromone trapping.

One commenter complimented the NPPO of Peru on its cooperation in researching *S. catenifer* and recommended that we encourage and facilitate a level of cooperation between California scientists and the Mexican NPPO comparable to the level of cooperation those scientists receive from the NPPO of Peru.

We support the Mexican NPPO working with private collaborators on managing quarantine pest problems. As

members of the North American Plant Protection Organization, APHIS and the Mexican NPPO share a commitment to controlling and eliminating quarantine pest populations. We will continue to encourage collaboration with private groups should opportunities arise.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Hass avocados from Mexico is year-round. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit from these changes. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Puerto Rico has a relatively small avocado industry, importing most of its supply from the Dominican Republic. In 2007, 737 Puerto Rican farms harvested avocados, a significant decrease from the 1,217 farms reported in 2002, and suggesting an increasing reliance on imports. Most, if not all, of these farms are small. Most avocados grown in Puerto Rico, as in the rest of the Caribbean and in Florida, are not Hass variety but larger, smooth-skinned varieties.

We expect this rule to primarily result in increased import competition. Any

impacts for Puerto Rico’s small entities will depend in part upon the extent to which Hass avocados imported from Mexico substitute for the larger, smooth-skinned varieties produced domestically. Avocado imports from Mexico will directly compete with Hass avocados that may be shipped from California.

Other amendments included in this rule provide for the Mexican NPPO to use an approved designee to inspect avocados for export, and when seed pests are detected, for suspension of avocado imports from specific orchards or packinghouses rather than from the entire municipality where the affected orchards or packinghouses are located. These changes will benefit U.S. entities generally by facilitating the inspection process in Mexico and minimizing import disruptions and reductions due to pest detections.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows Hass avocados to be imported into Puerto Rico from Michoacán, Mexico. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and 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. 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 final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

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

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–30 is amended as follows:

■ a. By revising paragraph (a)(2) to read as set forth below.

■ b. In paragraph (c)(3)(iv), by adding the words “or its approved designee” after the word “NPPO”.

■ c. In paragraph (c)(3)(vii), by removing the words “, and with the statement “Not for importation or distribution in Puerto Rico or U.S. Territories.”” and adding a period in their place.

■ d. By revising paragraph (e) to read as set forth below.

§ 319.56–30 Hass avocados from Michoacan, Mexico.

* * * * *

(a) * * *

(2) *Shipping restrictions.* The avocados may be imported into and distributed in all States and in Puerto Rico, but not in any U.S. Territory.

* * * * *

(e) *Pest detection.* If any of the avocado pests *Heilipus lauri*, *Conotrachelus aguacatae*, *C. perseae*, *Copturus aguacatae*, or *Stenoma catenifer* are detected during the semiannual pest surveys in a packinghouse, certified orchard or areas outside of certified orchards, 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. Orchards affected by the pest detection will lose their 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.

* * * * *

Done in Washington, DC, this 21st day of December 2010.

Kevin Shea,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–32589 Filed 12–27–10; 8:45 am]

BILLING CODE 3410–34–P