

Worcester (except Blackstone and Millville)

The following cities and towns in:

Hampshire County:

Amherst
Belchertown
Chesterfield
Cummington
Goshen
Hatfield
Huntington
Middlefield
Pelham
Plainfield
Southampton
Ware
Westhampton
Williamsburg
Worthington

Hampden County:

Blandford
Brimfield
Chester
Granville
Holland
Montgomery
Russell
Tolland
Wales

Middlesex County:

Ashby
Shirley
Townsend

New Hampshire:

Belknap
Carroll
Cheshire
Grafton
Hillsborough
Merrimack
Sullivan

Vermont:

Addison
Bennington
Caledonia
Essex
Lamoille
Orange
Orleans
Rutland
Washington
Windham
Windsor

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**Rhode Island
Narragansett Bay
Survey Area**

Rhode Island:

Bristol
Newport

The following cities and towns:

Kent County:

Anthony
Coventry
East Greenwich
Greene
Warwick
West Warwick

Providence County:

Ashton
Burrillville
Central Falls
Cranston

Cumberland
Cumberland Hill
East Providence
Esmond
Forestdale
Greenville
Harrisville
Johnston
Lincoln
Manville
Mapleville
North Providence
North Smithfield
Oakland
Pascoag
Pawtucket
Providence
Saylesville
Slatersville
Smithfield
Valley Falls
Wallum Lake
Woonsocket

Washington County:

Davisville
Galilee
Lafayette
Narragansett
North Kingstown
Point Judith
Quonset Point
Saunderstown
Slocum

Massachusetts:

The following cities and towns:

Bristol County:

Attleboro
Fall River
North Attleboro
Rehoboth
Seekonk
Somerset
Swansea
Westport

Norfolk County:

Caryville
Plainville
South Bellingham

Worcester County:

Blackstone
Millville

Area of Application. Survey area plus:

Rhode Island:

The following cities and towns in:

Kent County:

West Greenwich

Providence County:

Foster
Glocester
Scituate

Washington County:

Charlestown
Exeter
Hopkinton
New Shoreham
Richmond
South Kingstown
Westerly

Massachusetts:

The following cities and towns in:

Bristol County:

Acushnet
Berkley

Dartmouth
Dighton
Fairhaven
Freetown
Mansfield
New Bedford
Norton
Raynham
Taunton

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS-2006-0189]

RIN 0579-AC67

Movement of Hass Avocados From Areas Where Mexican Fruit Fly or Sapote Fruit Fly Exist

AGENCY: Animal and Plant Health
Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to relieve certain restrictions regarding the movement of Hass variety avocados. Specifically, we are amending our domestic quarantine regulations to provide for the interstate movement, with a certificate, of Hass avocados from areas in the United States quarantined for Mexican fruit fly or sapote fruit fly, provided that the fruit is safeguarded after harvest in accordance with specific measures. We are also amending our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. These actions are warranted in light of research demonstrating the limited host status of Hass avocados to various species of fruit flies in the genus *Anastrepha*, including Mexican fruit fly and sapote fruit fly. By amending both our domestic and foreign quarantine regulations, we are making them consistent with each other and relieving restrictions for Mexican Hass avocado producers. In addition, this action provides an alternative means for Hass avocados to be moved interstate if the avocados originate from a Mexican fruit fly or sapote fruit fly quarantined area in the United States.

DATES: *Effective Date:* July 30, 2009.

FOR FURTHER INFORMATION CONTACT:

Regarding the interstate movement of Hass avocados from Mexican fruit fly and sapote fruit fly quarantined areas,

contact Mr. Wayne D. Burnett, Domestic Coordinator, Fruit Fly Exclusion and Detection, PPQ, APHIS, 4700 River Road, Unit 137, Riverdale, MD 20737–1231; (301) 734–6553. Regarding import conditions for Hass avocados from Mexico, 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

The domestic fruit fly regulations, contained in 7 CFR 301.32 through 301.32–10 (referred to below as the regulations), were established to prevent the spread of exotic fruit flies, including the Mexican fruit fly (*Anastrepha ludens*) and the sapote fruit fly (*Anastrepha serpentina*) into noninfested areas of the United States. The regulations designate soil and many fruits, nuts, vegetables, and berries as regulated articles and impose restrictions on the interstate movement of those regulated articles from quarantined areas.

Avocado, *Persea americana* (including the variety Hass), is listed as a regulated article in the regulations in § 301.32–2. Because avocados are listed as regulated articles, they may not be moved interstate from a quarantined area unless the movement is authorized by a certificate or a limited permit. In general, avocados may be eligible for a certificate if a bait spray is applied to the production site beginning prior to harvest and continuing through the end of harvest or if a post-harvest irradiation treatment is applied to the fruit. To be eligible for a limited permit, a regulated article must be moved to a specific destination for specialized handling, utilization or processing, or for treatment and meet all other applicable provisions of the regulations.

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56–1 through 319.56–49), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) 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 the United States and spread within it. The requirements for importing Hass variety avocados into the United States from Michoacan, 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 April 2, 2008, we published in the **Federal Register** (73 FR 17930–17935, Docket No. APHIS–2006–0189) a proposal¹ to amend our domestic quarantine regulations to provide for the interstate movement of Hass avocados from Mexican fruit fly and sapote fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We also proposed to amend our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. These proposed actions were intended to make our domestic and foreign requirements for movement of Hass avocados consistent with each other, relieve restrictions for Mexican Hass avocado producers, and provide an alternative means for Hass avocados to be moved interstate if the avocados originate from a Mexican fruit fly or sapote fruit fly quarantined area in the United States.

We solicited comments concerning our proposal for 60 days ending June 2, 2008. We reopened and extended the deadline for comments until June 26, 2008, in a document published in the **Federal Register** on June 12, 2008 (73 FR 33333). We received eight comments by the close of the comment period. They were from domestic and foreign avocado producers, exporters, researchers, and representatives of State and foreign governments. They are discussed below by topic.

A commenter stated that while the Hass avocado is resistant to infestation by the Mexican fruit fly while on the tree, it is subject to such infestation after harvest or if the fruit has been punctured. It was suggested that, although the interstate movement requirements contained in the April 2008 proposed rule required certification that fallen fruit not be harvested and that tree-harvested fruit not be exposed for excessive periods in the field, there may not be adequate regulatory oversight to ensure that these prohibited practices do not take place.

APHIS, in cooperation with State plant health program officials, maintains sufficient oversight to ensure that its regulations are enforced. Procedures for handling, packing, processing, and moving Hass avocados interstate are monitored by APHIS and State cooperators under compliance

agreements with domestic producers and shippers.

Similar concerns were expressed by commenters regarding Hass avocados imported from Mexico. Two commenters stated that they could not find in the proposed rule a prohibition on the movement or importation of fruit that has punctures, cuts, or other breaks in the skin. Such fruit would be more susceptible to fruit fly infestation than would healthy fruit.

Under a work plan agreement between APHIS and the Government of Mexico, 2007, Mexican packinghouses exporting avocados to the United States are required to be registered with the Jefatura del Programa de Sanidad Vegetal (PSV) and certified by both the Dirección General de Sanidad Vegetal (DGSV) and by APHIS. DGSV personnel are required to cull fruit that includes punctures, cuts, or breaks in the skin at the packinghouse. In addition, current § 319.56–30(c)(2)(iii) requires that avocado fruit that has fallen from the trees must be removed from the orchard at least once every 7 days and may not be included in the field boxes of fruit to be packed for export. That requirement will not be affected by this rulemaking.

The same commenters also questioned the appropriateness of linking our proposed changes to the domestic regulations with our proposed changes to our import regulations, suggesting that the proposals should be treated separately under distinct rulemaking actions. It was stated that the domestic and Mexican fruit fly infestations differ because Mexico has a permanent endemic population of the *Anastrepha* species in question, while those flies are not established in California or elsewhere in the United States. The domestic and Mexican fruit fly population pressures are therefore different, according to the commenters, who opposed removing *Anastrepha* trapping requirements for Hass avocados imported from Michoacan.

We agree with the commenters' statements regarding the differences in the nature of fruit fly infestations in the United States and Michoacan, Mexico, but do not believe that those differences necessitate any modification of the final rule. In conjunction with the April 2008 proposed rule, we made available to the public a risk management document, titled “Removal of *Anastrepha* Fruit Fly Trapping Requirements from Mexican ‘Hass’ Avocados for Importation into the United States,” which evaluated the risk for the introduction of *Anastrepha* spp. from Mexican Hass avocados. Our evaluation of that risk was based in part on a peer-reviewed study by M. Aluja *et al.* (2004) of the status of Hass avocados

¹To view the proposed rule and the comments we received, go to <http://www.regulations.gov/jdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0189>.

as hosts for Mexican fruit flies. The study was subsequently reviewed by the USDA's Agricultural Research Service (ARS) and by APHIS, and the results led us to conclude that commercially produced Hass avocados are a very poor host for the Mexican fruit fly. Our risk management document also noted that between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies. The sample included fruit from wild trees, backyards, packinghouses, and border inspection stations. No fruit flies were found in the fruit that was sampled over that 9-year period. The results of the Aluja study and of our sampling led us to conclude that the removal of trapping requirements contained in § 319.56–30 is warranted.

The same commenters also suggested that a prohibition may be needed on the growing of prime fruit-fly hosts in association with Mexican avocado groves where avocados are grown that are destined for susceptible States such as California, Texas, and Florida. While expressing agreement with research demonstrating that Hass avocados are poor hosts for fruit flies, the commenters suggested that if there are prime host fruits grown adjacent to Hass avocado orchards, the danger of infestation of the avocados is increased. If the adjacent prime hosts are harvested, the fruit flies will seek nearby lesser hosts, such as avocados.

There are currently no fruit-fly-host commodities that are being grown adjacent to the Hass avocado orchards in Michoacan, Mexico, that have been approved by APHIS to export their fruit to the United States. If any host commodities were being grown in the vicinity of an avocado orchard, we would require a buffer system to be in place to prevent the avocados from being infested.

Several commenters discussed the potential susceptibility to fruit fly infestation of Hass avocados from weakened or stressed trees. It was suggested that conditions such as drought stress, root rot, poor nutrition, and ring neck, which are present in Michoacan avocado groves, may make avocados attached to the trees in those groves more susceptible to Mexican fruit fly infestation by causing a breakdown in host plant resistance. Such a phenomenon was observed in Sharwil avocados in Hawaii, which became infested with Oriental fruit fly when still attached to the trees. It was suggested that our risk management document should have considered the influences of drought stress, root rot, poor nutrition, and ring neck on the potential susceptibility of Hass

avocados to Mexican fruit fly infestations.

We do not believe the situations are analogous. Hass avocados and Sharwil avocados are different varieties. Oriental fruit fly (*Bactrocera dorsalis*) is a different pest species than the *Anastrepha* species found in Mexico. Oriental fruit fly was found to infest Sharwil avocados in Hawaii after 3,000 fruit were harvested and cut. As noted earlier, between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies, and no fruit flies were found. This sampling took place in all types of weather conditions.

Several commenters addressed issues having to do with trapping. Trapping methods were discussed, and reservations about our intention to amend the import regulations by removing trapping requirements for Hass avocados from Mexico were expressed. The issues raised by these commenters are discussed in greater detail in the paragraphs that follow.

Some commenters questioned the adequacy of existing trapping methods for the Mexican fruit fly. It was suggested that, due to the inefficiencies of the McPhail trap, which is used in Michoacan, Mexico, it is likely that the fruit fly populations there are being underestimated. It was noted that no species-specific trap is available for Mexican fruit fly (only McPhail and Multilure traps) and that many areas of California contain good host plants for the highly polyphagous Mexican fruit fly that emerging adult females would seek out and oviposit in after mating. Infestations into the United States could therefore become widespread before detection, causing significant environmental and economic hardship. One commenter expressed a particular concern about Mexican fruit fly becoming established in Florida, which is especially vulnerable since citrus is a preferred host, because there currently exists no adequate attractant for early detection purposes.

There have been no indications that Mexican fruit fly populations are being underestimated in Michoacan. Mexico's national fruit fly program, first implemented in 1992, is based on monitoring (trapping and fruit sampling) and control (bait spray, release of natural enemies, and sterile flies) and is mandated by Mexican regulations. The absence of fruit flies in our sample of more than 27 million Mexican Hass avocados is indicative of the efficacy of the Mexican national program.

APHIS does, however, share the commenters' concerns about the

establishment of Mexican fruit fly in noninfested parts of the United States. APHIS works cooperatively with State and territorial officials to maintain extensive exotic fruit fly surveillance, including surveillance for Mexican fruit fly, employing detection systems throughout 13 States and territories susceptible to exotic fruit fly outbreaks. Nationally and internationally accepted trap/lure combinations are utilized in each of these systems. To address concerns regarding the sensitivity of these exotic fruit fly detection systems toward species of *Anastrepha* spp., APHIS is currently working with State and territorial cooperators, ARS, and industry to explore new trap/lure systems to enhance the sensitivity of exotic fruit fly detection systems within the United States. We are regularly evaluating new trap/lure systems.

A number of commenters opposed the removal of bait spray and trapping requirements for Hass avocado orchards in Mexico. Some commenters questioned how fruit fly populations in Mexican orchards that ship avocados to fruit-fly susceptible States such as California, Texas, and Florida would be assessed if trapping were not required. It was stated that a key component of any systems approach is detection of low, medium, or high levels of the pest in the area where export fruit are harvested. For fruit flies, this means trapping to monitor seasonal population fluctuations. It was suggested that we did not have adequate data to support the removal of trapping requirements for *Anastrepha* in Hass avocado orchards in Mexico. According to these commenters, multiple years of data from multiple sites were needed to justify such an action. A commenter who requested that the final rule be modified to require the continued monitoring of *Anastrepha* spp. fruit flies as a precondition for the shipment of Hass avocados from Mexico to the United States stated that monitoring could be accomplished as part of Mexico's national fruit fly trapping program, provided that traps are deployed in representative avocado groves, particularly at low elevations.

We do not agree with these comments. Although this rulemaking eliminates the requirement for trapping specifically in the certified orchards for *Anastrepha* species associated with Mexican Hass avocado imports, trapping and suppression programs will remain in place under Mexico's National Program against Fruit Flies. Mexico implemented the program in 1992 for the purpose of controlling, suppressing, and eradicating four species of fruit flies: *Anastrepha ludens*,

A. obliqua, *A. striata*, and *A. serpentina*. The program is based on monitoring (trapping and fruit sampling) and control (bait spray, release of natural enemies and sterile flies) and is mandated by Mexican regulations. Also, as noted above, between 1997 and 2006, more than 27 million Hass avocados from Mexico were cut open and examined for fruit flies, and no fruit flies were found. Therefore, we believe the data demonstrate the efficacy of Mexico's National Program against Fruit Flies and support the removal from the regulations in § 319.56–30 of trapping and bait spray requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico. Finally, with regard to sampling at low elevations, the placement of traps in Mexican orchards in accordance with Mexico's National Program against Fruit Flies falls under the purview of the Mexican Government rather than APHIS.

We received several comments pertaining to the risk management document that was made available to the public in conjunction with the April 2008 proposed rule.

A commenter representing a Mexican producers' association, while in general agreement with the findings of the risk management document, critiqued certain aspects of it. It was suggested that one important point missing from the risk management document was its failure to mention the ongoing trapping for *Anastrepha* that will continue under the Mexican national program even after the elimination of the trapping requirements for *Anastrepha* in § 319.56–30.

We agree with this comment and will amend the risk management document to clarify that the general Mexican national fruit fly trapping program for all *Tephritid* fruit flies will continue in the avocado growing areas, and only the extra fruit fly trapping for *Anastrepha* required by the current certification program will be eliminated under this action.

The same commenter also noted that while the risk management document indicates that APHIS agrees with findings showing that Mexican Hass avocados are not hosts for *Anastrepha* species, it does not explicitly refute the somewhat contradictory position of ARS that Hass avocados are "very poor" hosts for Mexican fruit flies. The commenter would have preferred that our risk management document contain a categorical statement that commercially produced Mexican Hass avocados are not hosts for *Anastrepha* species.

APHIS' risk documentation is not intended to affirm or refute the conclusions of ARS' host susceptibility determinations but rather to recommend the appropriate phytosanitary measures needed to maintain an acceptable pest risk level to prevent the spread of identified pests, such as *Anastrepha* species, to noninfested areas of the United States.

A commenter who represented an association of domestic avocado producers, noting that our risk management document reached conclusions supporting those of the Aluja study, stated that that study, standing alone, does not provide conclusive evidence that Hass avocados are unlikely to support the growth and development of *Anastrepha* larvae. The commenter stated that sample sizes in the Aluja study were inadequate, the sampling plan was flawed, and data related to the effects of elevation and quarantine security were lacking. The commenter stated that the overwhelming majority of the adult flies captured in experimental orchards during the Aluja study were trapped in the municipality of Ziracuaretiro, which, in comparison to other locations in Mexico in which Hass avocados are grown, is relatively low in altitude. It was suggested by the commenter that further study is needed to better understand the species-host relationship at issue.

The Aluja study was one piece of evidence that we used in making our determination. Of greater significance was our sampling, as noted above, of very large quantities of imported Hass avocados over an extended time period without any findings of the targeted pests. The results of our sampling, along with our review of the Aluja study, led us to conclude that the Hass avocado, when harvested and safeguarded according to the parameters of the systems approach contained in our regulations, is not a host to *Anastrepha* species fruit flies. We will continue to cut Hass avocado fruits as part of our importation program for this fruit, and if pests are intercepted, then we will take appropriate measures to mitigate the risk. Regarding the possible effects of elevation cited by the commenter, while fruit-fly population density may be higher at lower altitudes, there has been no evidence to suggest that Hass avocados grown at lower altitudes in Mexico have been more susceptible to infestation. *Anastrepha* prevalence measured by trap captures, as in Ziracuaretiro, does not speak to host susceptibility. If a fruit is not a host for a particular pest, then the fruit-fly population density at the altitude at

which the fruit is grown is of no consequence.

A commenter stated that the environmental assessment accompanying the April 2008 proposed rule was flawed because it failed to account for economic impacts on important California commodities such as citrus and many tree fruits (also non-Hass avocados), which are preferred hosts for Mexican fruit fly and would be faced with quarantines on shipment should Mexican fruit fly be found in California.

The purpose of the environmental assessment was to evaluate the potential effects of this rulemaking on the human environment. Addressing possible economic impacts would have been beyond the scope of the environmental assessment.

One commenter stated that identification and traceback provisions included under our proposed packinghouse requirements should apply to all fruit originating in an area under domestic quarantine for Mexican or sapote fruit fly. The packinghouse requirements in the April 2008 proposed rule, according to the commenter, could be interpreted as applying only to packinghouses within a quarantined area, meaning that the requirement that the identity of avocados be maintained from field boxes or containers to shipping boxes in the packinghouse may not apply to avocados grown in an orchard in a quarantined area if the fruit is packed in a packinghouse outside the quarantined area.

We agree with this comment. In this final rule, we have modified § 301.32–(4)(d)(2) to clarify that those identification and traceback provisions apply to all Hass avocados originating in a quarantined area, regardless of whether or not the packinghouse in which they are packed is located in the quarantined area.

A commenter suggested that the final rule should specify regulatory actions that will be taken by APHIS and DGSV if fruit fly larvae are discovered in a Hass avocado from an orchard certified under the Mexican avocado import program.

The work plan agreement between APHIS and the Government of Mexico provides for necessary actions in cases of *Anastrepha* finds, including suspension of the export certification of Mexican orchards, municipalities, or packinghouses where appropriate. Since the issues involved may be complex and are subject to negotiation with Mexico, we believe that it is more appropriate to include enforcement actions that may be taken by APHIS and DGSV in the work

plan agreement rather than in the regulations.

Miscellaneous

The April 2008 proposed rule contained, among other things, amendments to two separate subparts of the domestic regulations: "Subpart—Mexican Fruit Fly Quarantine and Regulations" and "Subpart—Sapote Fruit Fly." Specifically, we proposed to add new §§ 301.6411 and 301.99–11, both of which listed requirements for interstate movement of Hass avocados from quarantined areas. The proposed requirements contained in §§ 301.64–11 and 301.99–11 were identical.

In a final rule published in the **Federal Register** on June 9, 2008 (73 FR 32431–32439, Docket No. APHIS–2007–0084), however, we consolidated our domestic regulations pertaining to exotic fruit flies. Previously, those regulations had been divided into six separate subparts, each of which pertained to a particular species (Mexican fruit fly, Mediterranean fruit fly, Oriental fruit fly, melon fruit fly, West Indian fruit fly, and sapote fruit fly, respectively). The June 2008 final rule removed all six of those subparts from the regulations and consolidated the requirements they contained into one new subpart that covers all six species. That action was taken to prevent unnecessary duplication in our regulations and make them clearer and easier to use, since each of the six subparts contained sections that were substantially the same as the corresponding sections in the other five.

"Subpart—Fruit Flies," the new subpart created under the June 2008 rulemaking, consists of §§ 301.32 to 301.32–10. In this final rule, we are amending the regulations in § 301.32–4, which contains interstate movement requirements for regulated articles from quarantined areas, and in § 301.32–5, which pertains to the issuance and cancellation of certificates and limited permits. These amendments are, in substance, identical to those we had proposed to make to the regulations in April 2008 by adding new §§ 301.64–11 and 301.99–11 and new paragraph (a)(1)(iv) to § 301.99–5.

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.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The 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.

This final rule amends our domestic quarantine regulations to provide for the interstate movement, with a certificate, of Hass avocados from areas in the United States quarantined for Mexican fruit fly and sapote fruit fly, provided that the fruit is safeguarded after harvest in accordance with specific measures. The rule also amends our foreign quarantine regulations to remove trapping and bait spray treatment requirements related to *Anastrepha* spp. fruit flies for imported Hass avocados from Michoacan, Mexico.

In the 2006–2007 season, the United States produced 298 million pounds of avocados, valued at \$208 million. Over 90 percent of the avocados grown in the United States are produced in California. Ninety-five percent of California avocados are of the Hass variety.² For the period 2006 to 2008, the United States imported an average of approximately 414 million pounds of Hass avocados from Mexico, valued at \$374 million.³ This quantity represents almost 80 percent of U.S. Hass avocado imports.

Entities potentially affected by this rule include domestic avocado producers and importers of Hass avocados from Mexico. Under the North American Industry Classification System (NAICS), potentially affected entities fall into the following categories: Other Noncitrus Fruit Farming (NAICS 111339), Fruit and Vegetable Markets (NAICS 445230), Wholesalers and Other Grocery Stores (NAICS 445110), and Fresh Fruit and Vegetable Wholesalers (NAICS 424480).

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The Small Business Administration (SBA) classifies entities in the above industry categories as small if they have annual receipts of not more than \$750,000 (NAICS 111339), not more than \$7 million (NAICS 445230), or not more than \$27 million (NAICS 445110); or if their employees number not more than 100 (NAICS 424480).

According to the 2007 Census of Agriculture, 95 percent of the farms involved in fruit tree farming had annual sales of \$500,000 or less and would be considered small by SBA standards. We conclude, therefore, that avocado producers are predominantly small entities. In 2002, about 95 percent

(4,044 of 4,244) of fresh fruit and vegetable wholesalers in the United States were also small by SBA standards.⁴ Neither the Census of Agriculture nor the Economic Census contains annual revenue information for firms classified under NAICS 445110 or NAICS 445230. In addition, there are 41 U.S. importers of Hass avocados from Mexico that may be affected by this rule, but economic information is not available for these entities.

The only domestic avocado producers that will be directly affected by this rule are ones located within a Mexican fruit fly or sapote fruit fly quarantined area that move their product interstate. Currently, the Mexican fruit fly quarantined area in California is in Los Angeles County and contains only two avocado producers that farm a total of approximately 5 acres. In addition, Hidalgo and Cameron Counties in Texas are also under Mexican fruit fly quarantine. However, there is only one small avocado orchard in Hidalgo County and the avocados produced there are consumed within the county; the producer does not meet regulatory requirements that would allow movement of avocados to areas that are not quarantined for Mexican fruit fly. With this rule, fruit fly treatment restrictions on interstate movement would be removed, perhaps influencing the Hidalgo County producer's marketing decisions.

As a result of this rulemaking, savings to U.S. producers that move Hass avocados interstate from a quarantined area are expected to amount to a fraction of 1 percent of production costs. We expect that the impact on costs of production for Hass avocados imported from Mexico will be similarly small. In addition, as noted above, there are at present only two avocado producers in California and one in Texas that may be affected by this rulemaking. Any effects for wholesalers, importers, and other avocado merchants will be secondary, and likely negligible, based on the expected cost savings for affected producers.

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 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance

⁴ 2002 Economic Census. Department of Commerce, U.S. Bureau of the Census. North American Industry Classification System (NAICS) Category—424480: Fresh fruit & Vegetable wholesalers.

² USDA Economic Research Service, Fruit and Tree Nuts Situation and Outlook October, 2007.

³ World Trade Atlas—U.S. imports from Mexico.

under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this final rule. The environmental assessment provides a basis for the conclusion that the changes to the domestic and foreign quarantine regulations specified in this rule will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.⁵ Copies of the environmental assessment and finding of no significant impact are also available for public inspection 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 copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

⁵ Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0189>. The environmental assessment and finding of no significant impact will appear in the resulting list of documents.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0336.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

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 parts 301 and 319 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.32–4 is amended by adding a new paragraph (d) and by revising the OMB citation at the end of the section to read as follows:

§ 301.32–4 Conditions governing the interstate movement of regulated articles from quarantined areas.

* * * * *

(d) Hass avocados that are grown or packed in an area quarantined for Mexican or sapote fruit fly and that are moving interstate from such an area are subject to the following additional requirements:

(1) *Orchard sanitation and safeguarding requirements.* (i) Hass avocado fruit that has fallen from the trees may not be included in field boxes of fruit to be packed for shipping.

(ii) Harvested Hass avocados must be placed in field boxes or containers of field boxes that are marked to show the location 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.

(iii) Hass avocados must be protected from fruit fly infestations during their movement from the orchard to the packinghouse and must be accompanied by a field record indicating the location of the orchard where the avocados originated.

(2) *Packinghouse requirements for Hass avocados packed within a quarantined area.* (i) All openings to the outside of the packinghouse 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.

(ii) 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.

(iii) If the Hass avocados were grown in an orchard within the quarantined area, the identity of the avocados must be maintained from field boxes or containers to the shipping boxes in the packinghouse so that the avocados can be traced back to the orchard in which they were grown. The avocados must be packed in boxes or crates that are clearly marked with the identity of the grower and the packinghouse.

(iv) Any boxes of Hass avocados packed in the quarantined area must be placed in a refrigerated truck or refrigerated container and remain in that truck or container while in transit through the quarantined area. Prior to leaving the packinghouse, the truck or container must be secured with a seal that will be broken when the truck or container is opened. Once sealed, the refrigerated truck or refrigerated container must remain unopened until it is outside the quarantined area.

(v) Any avocados that have not been packed or loaded into a refrigerated truck or refrigerated container by the end of the workday must be kept inside the screened packinghouse.

(3) *Packinghouse requirements for Hass avocados packed outside a quarantined area but grown within a quarantined area.* Hass avocados grown in an orchard within a quarantined area but packed in a packinghouse outside the quarantined area must meet the

requirements of paragraph (d)(2)(iii) of this section.

(Approved by the Office of Management and Budget under control numbers 0579-0088 and 0579-0336)

■ 3. Section 301.32-5 is amended as follows:

■ a. In paragraph (a)(1)(iii), by removing the word “and” and adding the word “or” in its place.

■ b. By adding a new paragraph (a)(1)(iv) to read as set forth below.

■ c. By revising the OMB citation at the end of the section to read as set forth below.

§ 301.32-5 Issuance and cancellation of certificates and limited permits.

(a) * * *

(1) * * *

(iv) The regulated articles are Hass variety avocados that have been harvested, safeguarded, and packed in accordance with the conditions in § 301.32-4(d); and

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579-0088 and 0579-0336)

PART 319—FOREIGN QUARANTINE NOTICES

■ 4. 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.

§ 319.56-30 [Amended]

■ 5. Section 319.56-30 is amended by removing paragraph (c)(2)(ii) and redesignating paragraphs (c)(2)(iii) through (c)(2)(vi) as paragraphs (c)(2)(ii) through (c)(2)(v), respectively.

Done in Washington, DC, this 24th day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-15416 Filed 6-29-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID: OCC-2009-0007]

RIN 1557-AD25

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-1361]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AD42

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. OTS-2009-0007]

RIN 1550-AC34

Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Capital—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program

AGENCIES: Office of the Comptroller of the Currency, Department of the Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Department of the Treasury.

ACTION: Interim final rule with request for public comment.

SUMMARY: To support and facilitate the timely implementation and acceptance of the Making Home Affordable Program (Program) announced by the U.S. Department of the Treasury (Treasury) and to promote the stability of banks, savings associations, bank holding companies (collectively, banking organizations) and the financial system, the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) have adopted this interim final rule (interim final rule or rule). The rule provides that mortgage loans modified under the Program will retain the risk weight assigned to the loan prior to the modification, so long as the loan continues to meet other applicable prudential criteria.

DATES: The interim final rule is effective June 30, 2009. Comments must be received by July 30, 2009.

ADDRESSES: Comments should be directed to:

OCC: Because paper mail in the Washington, DC area and at the agencies is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Risk-Based Capital Guidelines—Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—“Regulations.gov”:** Go to <http://www.regulations.gov>. Under the “More Search Options” tab click next to the “Advanced Docket Search” option where indicated, select “Comptroller of the Currency” from the agency drop-down menu, then click “Submit.” In the “Docket ID” column, select “OCC-2009-0007” to submit or view public comments and to view supporting and related materials for this interim final rule. The “How to Use This Site” link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.

- **E-mail:** regs.comments@occ.treas.gov.
- **Mail:** Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.
- **Fax:** (202) 874-5274.
- **Hand Delivery/Courier:** 250 E Street, SW., Mail Stop 2-3, Washington, DC 20219.

Instructions: You must include “OCC” as the agency name and “Docket Number OCC-2009-0007” in your comment. In general, the OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this