Rules and Regulations

Federal Register
Vol. 63, No. 49
Friday, March 13, 1998

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 96–046–5]

Importation of Fruits and Vegetables; Papayas From Brazil and Costa Rica

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of fruits and vegetables into the United States to allow, under certain conditions, the importation of papayas from Brazil. The conditions for the importation of papayas from Brazil include requirements for growing, treating, packing, and shipping the papayas; for field sanitation; and for fruit fly trapping in papaya production areas. We are also amending the regulations to apply these same conditions to the importation of papayas from Costa Rica. These actions will allow for the importation of papayas from Brazil and Costa Rica while continuing to provide protection against the introduction of injurious plant pests into the United States. This rule provides importers and consumers in the United States with an additional source of papayas.

EFFECTIVE DATE: March 13, 1998.

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

SUPPLEMENTARY INFORMATION:

Background

The regulations 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 from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On March 25, 1997, we published in the **Federal Register** (62 FR 14037–14044, Docket No. 96–046–1) a proposal to amend the regulations by allowing certain previously prohibited fruits and vegetables to be imported into the United States from certain parts of the world under specified conditions.

One of the fruits that we proposed to allow to be imported into the United States was the Solo type papaya *(Carica papaya)* from Brazil. Because fully ripe papayas can be hosts of several serious plant pests, including the Mediterranean fruit fly *(Ceritatis capitata)* (Medfly) and the South American fruit fly *(Anastrepha fraterculus)*, we proposed to allow the importation of Solo type papayas from Brazil only under certain conditions. The proposed conditions were based on research conducted in Brazil, Costa Rica, and Hawaii and were modeled after the provisions in § 319.56–2w of the regulations for papayas from Costa Rica. The conditions proposed were as follows:

1. The papayas were grown and packed for shipment to the United States in the State of Espirito Santo.

2. Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the area where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-quarter of shell surface yellow), and all culled and fallen fruit were removed from the field at least twice a week.

3. When packed, the papayas were less than one-half ripe (shell surface no more than one-quarter yellow, surrounded by light green) and appeared to be free of all injurious plant pests.

4. The papayas were packaged so as to prevent access by fruit flies or other injurious plant pests, and the package does not contain any other fruit, including papayas not qualified for importation into the United States.

5. All activities described in provisions 1 through 4 above were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

6. Beginning at least 1 year before harvest began and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at the rate of 1 trap per hectare and were checked for fruit flies at least once a week by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and 50 percent of the traps were of the Jackson type. The national Ministry of Agriculture kept records of the fruit fly finds for each trap, updating the records each time the traps were checked, and made the records available to the Animal and Plant Health Inspection Service (APHIS) upon request. The records were maintained for at least 1 year.

7. All shipments of papayas must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

We solicited comments concerning our proposal for 60 days ending May 27, 1997. We received 11 comments by that date. They were from representatives of industry and State governments. Six of the commenters supported the proposed rule in its entirety. The remaining 5 commenters had reservations about specific provisions of the proposed rule. Of those 5 commenters, 3 commenters had concerns about the proposed importation of papayas from Brazil. Upon further review and consideration of this issue, we decided to finalize all portions of our March 27, 1997, proposed rule except the portion concerning papayas from Brazil. (See Docket No. 96–046–3 at 62 FR 50231–50237, September 25, 1997.)

We published another document in the **Federal Register** on September 25, 1997, (Docket No. 96–046–2, 62 FR 50260–50262) that reopened and extended the comment period on that portion of the proposed rule concerning the importation of papayas from Brazil, and also proposed additional conditions for the importation of papayas from Brazil and Costa Rica. These additional conditions included hot water treatment and a requirement that certain actions be taken if Medfly captures reached certain levels in papaya production areas. These additional conditions were proposed to help further prevent the

introduction into the United States of plant pests, including fruit flies, that may be associated with the papayas.

Comments on the proposed conditions for importing papayas from Brazil and Costa Rica, including the additional conditions, were required to be received on or before October 27, 1997. We received 32 comments by that date. They were from representatives of industry, universities, and State governments, and from a member of Congress. Eight commenters supported the provisions of the proposal, including the additional conditions. The remaining 24 commenters expressed various concerns about the proposal. Their concerns are discussed below.

Comment: APHIS acknowledges that Medfly and South American fruit fly pose a significant risk to American agriculture. APHIS also acknowledges that these pests meet the international criteria for designation as quarantine pests. Further, APHIS recognizes that papayas from Brazil are coming from an area infested with Medfly and South American fruit fly. Therefore, because of the pest risk posed by the importation into the United States of papayas from Brazil, the proposal should be withdrawn.

Response: The North American Plant Protection Organization (NAPPO) defines ''quarantine pest'' as a ''pest of potential economic importance to the area endangered thereby and not present in that area, or present there but not widely distributed and being officially controlled.'' [1] Based on this definition, we agree that Medfly and South American fruit fly are quarantine pests that, if established in the United States, could cause economic losses to U.S. producers of fruit fly host crops. Therefore, in order to prevent the introduction and establishment in the United States of Medfly and South American fruit fly, we allow foreign fruit fly host crops to be imported into the United States only under the following conditions: (1) If those crops originate from a fruit fly-free area; or (2) if those crops are treated with an approved treatment that has been determined to prevent the adult emergence of fruit flies; or (3) if those crops are subject to other appropriate and effective mitigation measures, such as a combination of phytosanitary measures, taken to prevent the introduction of fruit flies into the United States.

The State of Espirito Santo, Brazil, where papayas for importation into the United States will be grown, does have established populations of both Medfly and South American fruit fly. However, in order to be eligible for importation into the United States, papayas from Espirito Santo, Brazil, must be grown, treated, packed, and shipped in accordance with certain phytosanitary requirements imposed to ensure that the papayas do not introduce these pests into the United States. The most important of these requirements is that the papayas for importation must be less than one-half ripe. Research conducted in Brazil, as well as other research, including surveys and studies conducted prior to the papaya import program in Costa Rica, and our experience conducting the Costa Rican papaya import program, demonstrates that papayas in any stage of ripeness are not a preferred host for Medfly or South American fruit fly. This research also shows that papayas that are less than one-half ripe are not a host for Medfly or South American fruit fly. For example, in a study conducted in Brazil, more than 100,000 papayas of all ripeness degrees, green to fully ripe (entirely yellow), were collected in commercial groves in Espirito Santo. Under these natural conditions, none of the papayas, not even fully ripe papayas, contained fruit fly larvae. Under forced conditions (e.g., cage tests, where Medfly and South American fruit fly are confined in cages with ripening papayas), Medfly and South American fruit fly only attacked fully ripe papayas. Therefore, we are confident that papayas from Brazil that are less than one-half ripe present a negligible risk of introducing Medfly or South American fruit fly into the United States.

As an additional precaution, however, we proposed other mitigation measures, in the form of phytosanitary requirements, for papayas from Brazil before they may be imported into the United States. These mitigation measures include field sanitation measures to ensure that culls or fallen fruit, which may attract Medfly or South American fruit fly, are kept out of papaya production areas; packing requirements to ensure that once the papayas are picked and packed, they will not be susceptible to fruit fly infestation; hot water treatment to further reduce the pest risk associated with the papayas; and trapping requirements to monitor the fruit fly population in papaya production areas and to take action if that population exceeds a certain level. These additional phytosanitary requirements form a systems approach to pest mitigation; that is, these conditions constitute a framework of overlapping, redundant safeguards that together minimize the pest risk associated with papayas from Brazil.

In light of all of these factors, we believe that there is an insignificant risk of introducing Medfly or South American fruit fly in shipments of papayas imported into the United States from Brazil. Therefore, we are making no changes to the proposal in response to this comment.

Comment: If the risk of pest introduction associated with Brazilian papayas is so great as to prohibit their movement into Hawaii, then the fruit should also be barred from entering other States that have crops and climates adequate to support the establishment of Medfly and South American fruit fly populations. Examples of such States are Florida, California, Texas, and Arizona. We believe that the proposal discriminates against the continental growers of papayas in favor of Hawaiian growers.

Response: Papayas from Brazil will not be allowed to move into Hawaii because of the papaya fruit fly (*Toxotrypana curvicauda*). Papaya fruit fly does not occur in Hawaii, but it is reported to occur in other U.S. papaya production areas. As such, papaya fruit fly is not a quarantine pest for most places in the United States, but it is for Hawaii. Papaya fruit fly occurs in Brazil, but has only been reported in areas outside of commercial papaya production areas. However, Brazil does not have any official controls in place to prevent the spread of papaya fruit fly into commercial papaya production areas. As such, we are prohibiting the movement of papayas from Brazil and Costa Rica into Hawaii as a precautionary measure to prevent the introduction of papaya fruit fly into Hawaii. This final rule includes a requirement at § 319.56–2w(f) that all cartons in which papayas are packed must be stamped ''Not for importation into or distribution in HI.'' However, for the reason discussed above, we are not restricting the movement of papayas from Brazil into papaya-producing areas on the mainland United States.

Comment: Why, if Hawaii is required to spend several hundreds of thousands of dollars on treatment chambers in order to move Hawaiian papayas interstate to the mainland United States, are locations like Brazil and Costa Rica free to send papayas to the mainland United States without treatments?

Response: Because of the occurrence of Oriental fruit fly, a pest that will attack papayas in all ripeness stages, papayas from Hawaii must undergo a stand-alone treatment that will prevent

[1] *NAPPO Compendium of Phytosanitary Terms*, February 1996.

the adult emergence of fruit flies. The treatment may be conducted either prior to interstate movement to the mainland United States or in a non-fruit fly-supporting area of the mainland United States. At present, the approved treatments for fresh papayas from Hawaii are vapor-heat treatment, in accordance with § 318.13–4b; irradiation treatment, in accordance with § 318.13–4f; and high temperature forced air treatment, in accordance with the PPQ Treatment Manual, incorporated by reference at § 300.1. In Brazil and Costa Rica, where Oriental fruit fly does not occur, a systems approach to pest management that does not include a stand-alone treatment to prevent the adult emergence of fruit flies has been determined to be adequate to mitigate the risk of introducing into the United States injurious plant pests that may be associated with the papayas.

Comment: Hawaii experiences a higher level of fruit fly infestation in its papayas because of incidences of blossom end defect, a defect found in some Solo type papayas. The increased risk of fruit fly infestation associated with blossom end defect in papayas from Brazil has not been addressed by the phytosanitary requirements in the proposal. It would be impossible to detect larval infestations in papayas with blossom end defect at the U.S. port of arrival because APHIS inspections at the port of arrival are only a very small sampling of total imports. Measures, including additional treatment of papayas, should be taken to mitigate this risk before papayas from Brazil are allowed into the United States.

Response: Certain Hawaiian papayas exhibit blossom end defect, which occurs from abnormal placental growth near the blossom end of the fruit. Papayas with blossom end defect have a scar on the blossom end of the fruit and, as a result of the defect, may have a small opening in the skin and flesh of the fruit that leads into the seed cavity of the papaya. This defect is associated with a high risk of infestation of Oriental fruit fly, but no written reports associate blossom end defect with infestation of Medfly or South American fruit fly. While an exceedingly high density of Oriental fruit fly exists in Hawaii, Oriental fruit fly does not occur in Brazil or Costa Rica. As such, we do not believe that the presence of blossom end defect in papayas from Brazil or Costa Rica increases the pest risk associated with the importation of those papayas. Therefore, we are making no changes to the proposal in response to this comment.

Comment: If Medflies do not infest less than one-half ripe papayas, as the proposal indicates, how did the Hawaiian papaya program allow fruit flies to enter California inside one-quarter ripe fruit?

Response: In February 1987, the California Department of Food and Agriculture (CDFA) found live Oriental fruit fly larvae in 13 quarter-ripe papayas that had moved interstate from Hawaii to the mainland United States with a hot water treatment consisting of a two-stage hot water dip. All of the infested papayas exhibited blossom end defect. At that time, Hawaii believed that further introductions of Oriental fruit fly onto the mainland United States could be prevented by safeguards instituted in packinghouses in Hawaii. All papayas exhibiting unevenness in ripening (through surface color of the papaya), a symptom of blossom end defect, would be removed from shipments of papayas moving to the mainland at the packinghouse. In 1989, however, CDFA again discovered live Oriental fruit fly larvae in Hawaiian papayas that had been treated with a two-stage hot water dip, but as before, all of the infested papayas exhibited blossom end defect. Therefore, we subsequently discontinued the interstate movement of papayas from Hawaii that had been treated with the two-stage hot water treatment.

As noted above, Oriental fruit fly does not occur in Brazil or Costa Rica. Therefore, we remain confident that less than one-half ripe papayas from Brazil and Costa Rica present an insignificant risk of introducing fruit flies into the United States.

Comment: APHIS allows papayas from Belize to be imported without treatment only if the papayas originate from a Medfly-free area in Belize. Papayas may be imported from other parts of Belize that are not Medfly-free areas only with treatment for Medfly. The conditions for the importation of papayas from Brazil need to match the conditions for the importation of papayas from Belize. Therefore, as it has for papayas from Belize, APHIS needs to require a stand-alone treatment that will prevent the adult emergence of fruit flies for all papayas originating from a Medfly-infested area.

Response: Under § 319.56–2t, papayas from Belize are eligible for importation into the United States without treatment if the papayas originate from the Medfly-free districts of Cayo, Corozal, or Orange Walk, or from the Medfly-free portion of the district of Stann Creek, in Belize. Under § 319.56–2x, papayas from other districts of Belize are eligible for importation into the United States if the papayas are treated for Medfly. However, no papayas from Belize may enter Hawaii because of the risk of introducing papaya fruit fly (*Toxotrypana curvicauda*) into Hawaii.

The regulations for the importation of papayas from Belize do not provide any requirements for the ripeness of papayas eligible for importation into the United States; papayas imported from Belize may be of any ripeness, including fully ripe. In addition, the regulations for the importation of papayas from districts in Belize that are not Medfly-free do not provide conditions for the growing, packing, or shipping of papayas. Therefore, no measures are required in those areas in Belize where Medfly occurs to prevent Medfly infestation of papayas. As such, we require that papayas originating from an area of Belize that is not Medfly-free undergo a treatment that prevents the adult emergence of Medfly.

Unlike the requirements for papayas from Belize, the requirements for papayas from Brazil and Costa Rica concentrate on preventing fruit fly infestation of the papayas. As discussed earlier, we proposed a systems approach for the importation of papayas from Brazil and Costa Rica that includes requirements for the ripeness of papayas eligible for importation; requirements for the growing, packing, and shipping of the papayas; and requirements for trapping in papaya production areas. Taken together, these phytosanitary measures are as effective in preventing the introduction of Medfly into the United States as a treatment designed to prevent the adult emergence of Medfly. Therefore, we are making no changes to the proposal in response to this comment.

Comment: For the proposed systems approach, APHIS has not supplied objectively measured, statistically valid quantification of either the risks themselves or the efficacy of each individual mitigation measure. Without such measurements, such a program has no validity, no standard for evaluation, and, in fact, no substance.

Response: Research from Brazil and Costa Rica substantially demonstrates that there is very little risk involved with importing papayas that are one-half or less ripe into the United States. Yet to further reduce the pest risk associated with papayas from Brazil, we are requiring certain phytosanitary measures be taken in the fields and packinghouses of Brazil and Costa Rica, as discussed earlier. However, each individual measure is not intended to act as a stand-alone treatment for Medfly, South American fruit fly, or any other pest. These are overlapping,

redundant measures that collectively form a systems approach to the importation of papayas from Brazil. Therefore, we see no need to assess the efficacy of each part of the systems approach, but to determine the effectiveness of the components as a whole. Assessment of the phytosanitary measures, and of the success of the Costa Rican papaya import program, which is based on similar measures, demonstrate that the systems approach we will apply to the importation of papayas from Brazil is effective in minimizing the pest risk associated with the importation of papayas from Brazil to an insignificant level.

Comment: Taken together, do the conditions of the systems approach to manage the pest risk associated with Brazilian papayas ensure a probit 9 level of quarantine security?

Response: Individually, the conditions included in the systems approach are not adequate to reduce to an acceptable level the risk of the introduction into the United States of injurious plant pests; in other words, no one condition is intended as a stand-alone treatment for the pests associated with papayas from Brazil. Taken together, however, the conditions for papayas from Brazil are sufficient to mitigate the risk of the introduction of injurious plant pests associated with papayas from Brazil.

Probit 9 level of security refers to a level of effectiveness for a treatment. Probit 9 security means that no more than 32 out of 1,000,000 treated individuals (such as fruit flies) will pass through treatment and still emerge as adults. Determining the efficacy of the Brazilian papaya systems approach is very different from determining the efficacy of a probit 9 treatment. As discussed earlier, research has shown that less than one-half ripe papayas are not a host for Medfly or South American fruit fly, so we would not expect to find Medfly or South American fruit fly in papayas imported from either Brazil or Costa Rica. The addition of other multiple safeguards for papayas from Brazil and Costa Rica will ensure quarantine security.

As mentioned earlier, under a systems approach similar to the one proposed for papayas from Brazil, papayas from Costa Rica have been imported into the United States since 1992, and the Costa Rican system has proven successful against the introduction of exotic plant pests into the United States in papayas from Costa Rica.

Comment: No reliable, peer-reviewed research exists that adequately demonstrates that Solo type papayas that are less than one-half ripe pose little risk of harboring Medfly or South American fruit fly. Therefore, it must be concluded that Solo type papayas that are less than one-half ripe are hosts for Medfly and South American fruit fly. As such, APHIS should not allow Brazilian papayas to enter the United States unless a stand-alone quarantine treatment, such as vapor heat or irradiation treatment, is required for the papayas.

Response: The research conducted by officials in Brazil, Costa Rica, and Hawaii was critically reviewed by U.S. Department of Agriculture (USDA) personnel and found to be satisfactory. This research demonstrates that less than one-half ripe papayas (shell surface no more than one-quarter yellow, surrounded by light green) are not a host for Medfly or South American fruit fly. Further, field and cage tests conducted in Costa Rica and Brazil demonstrate that fully-ripe papayas are not a preferred host of Medfly or South American fruit fly.

In field tests in Costa Rica, papayas were purposely left on trees so that all stages of ripeness were represented at all times, and fields growing papayas for survey were not treated with pesticides. Approximately 100,000 papayas were examined over the course of 3 years. No *Anastrepha* spp. of fruit flies were found in any of the papayas, even in almost fully ripe fruits, and no Medflies were found in papayas that were one-half ripe or less. In those 100,000 papayas, only 6 Medfly larvae were found in fruit that was three-quarters ripe or more. Those 6 larvae, plus trap catches in the areas where research was conducted in Costa Rica, indicate that Medflies were present in the area, but that Medflies do not prefer papayas, especially papayas that are less than one-half ripe.

Further, in forced tests in Costa Rica, no Medfly or *Anastrepha* spp. larvae were found in papayas that were green to quarter-ripe, and only one larva was found in a half-ripe papaya.

In addition, as discussed earlier, in field tests in Brazil, over 100,000 papayas of all ripeness stages (green to fully ripe) were collected in papaya groves. No fruit flies were found in any of the papayas. Therefore, in the Brazilian survey, even when fruit was allowed to fully ripen in the field, it did not contain any fruit fly eggs or larvae. Further, in forced tests in Brazil, oviposition (i.e., the laying of eggs) was only evident in fully ripe or overripe papayas. The results of these tests and the tests conducted in Costa Rica confirm that papayas that are less than one-half ripe are not hosts of Medfly or South American fruit fly. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: The research conducted in Brazil, on which you based your proposal to allow papayas from Brazil to be imported into the United States, should not be so old. The experiments need to be conducted again in order to affirm that Espirito Santo's papayas are free of fruit fly infestation. Experiments and studies also need to be carried out for a longer period of time. In addition, the research should include information on more than three farms of unknown size and location.

Response: The research that Brazil provided for our review was determined to be sufficient by USDA quarantine specialists employed by the Agricultural Research Service of USDA. The date of the research does not appear to be relevant, but in any case, the research conducted in Brazil was not the only research we used to support our proposal to allow papayas from Brazil to be imported into the United States. As discussed earlier, we also based our decision to propose the importation of papayas from Brazil on research conducted in Costa Rica and Hawaii. Therefore, we see no need for additional research in order to finalize this proposal.

Comment: In APHIS' June 1995 technical report (''Determination of 'Solo' Papaya Status as Fruit Fly (*Tephritidae*) Host in Espirito Santo State, Brazil, With Quarantine Objectives''), the following quotation was attributed to Jiron and Hedstrom (1988): ''In Costa Rica, except the papaya fruit fly, all tephritid fruit flies do not infest in natural conditions the solo-type papayas before an advanced degree of ripeness is reached.'' Papaya was not a part of this study.

Additionally, in the same technical report, APHIS states that 50 papayas of each ripeness stage were harvested in the entire orchard in one of the tests conducted in Brazil. If papayas were collected from the entire orchard, does that mean that some of those papayas were collected from insecticide-treated areas?

Further, the authors of the technical report conclude that trap catches indicate that Medfly and South American fruit fly do not prefer papayas; I disagree with this conclusion. Trap catches will not indicate fruit fly preference; a choice test will do this.

Response: Regarding the quote attributed to Jiron and Hedstrom, we agree that the citation is incorrect, but the content of the statement (i.e., that fruit flies do not infest in natural conditions Solo type papayas before an

advanced degree of ripeness is reached) is accurate.

In response to the question concerning the collection of papayas, no insecticides were applied to areas where papayas were harvested for tests conducted in Brazil.

Regarding one of the conclusions of the technical report, the authors used the word ''indicate'' as a synonym for ''suggest,'' and field and cage tests, including a choice test, proved their suggestion that Medfly and South American fruit fly do not prefer papayas. We regret any misunderstanding, however, and believe it would have been more appropriate to say that trap catches and field and cage tests indicate that papaya is not a preferred host of Medfly or South American fruit fly.

Comment: If no insecticide was applied in areas where papayas were harvested for this test, which insecticides were applied in other areas? Were these areas surrounding the experimental areas? This may have interfered with fruit fly population density.

Response: During field experiments, no insecticides were applied in experimental fields in Brazil, and, based on trapping data, we know that fruit flies were present in those fields. Therefore, during field tests, fruit flies could have infested the papayas, but, as discussed earlier, no fruit fly larvae were found in papayas at any stage of ripeness.

Brazil's research does not provide information on the types of insecticides, if any, applied in other areas. However, we do not believe that the application of pesticides in other areas, including areas surrounding experimental fields, would have significantly affected fruit fly populations in experimental fields.

Based on the time of year, ambient temperature, and other factors, the density of the fruit fly population in a given area fluctuates naturally. For that and the other reasons discussed, we designed, as part of our systems approach for the importation of papayas from Brazil and Costa Rica, trapping thresholds for Medfly and South American fruit fly to either trigger mitigation measures or halt papaya imports into the United States from specific papaya production areas in Brazil. These trapping thresholds, combined with the other components of our systems approach for the importation into the United States of papayas from Brazil, will provide protection against the introduction into the United States of Medfly and South American fruit fly.

Comment: In the Brazilian experiments, if stage 4 and 5 papayas (papayas more than one-half ripe) were examined for larvae in the same day of harvest, why were they not examined for fruit fly eggs the same day of harvest as well? Why were stage 1, 2, and 3 papayas (1 and 2 being less than one-half ripe, 3 being half-ripe) only left at room temperature for 2–4 days? Medfly eggs hatch in 4 days, but may require longer. Also, why was the number of pupae emerging from the papaya not looked into? The number of pupae should have been assessed.

Response: The life stages of a fruit fly occur in order as follows: egg, larva, pupa, adult. The experiments conducted in Brazil focused on examinations for fruit fly larvae for two reasons. First, fruit fly eggs are more difficult to detect during inspection than fruit fly larvae. Second, if fruit fly eggs are detected during inspection, it is impossible to determine, without waiting for the eggs to hatch, whether those eggs will hatch viable larvae that will develop into adults. For those reasons, no papayas, including stage 4 and 5 papayas, were examined for fruit fly eggs.

In examining for larval development in papayas, the Brazilian experiments concentrated on finding the earliest life stage that is readily detectable and that marks the progress of a viable, fertile, adult fruit fly. Stage 1, 2, and 3 papayas were left at room temperature for 2–4 days because that amount of time allows for larvae in the fruit to develop to a sufficient size for easy detection.

Because of the lack of larvae finds in Brazilian papayas, it was not necessary to assess the number of pupae emerging from papayas. If there are no larvae, then there will be no pupae.

Comment: In Brazil's 1993 field cage test, how many cages were used per test? In the 1993 tests, the number of fruit flies per cage is quite low considering the dimensions of the cage. In the 1994 field cage test, how many fruit flies were used per cage? In both tests, were the flies used fertile? What is the proportion of ripe to green fruit in the cages for each test?

Response: In the five cage tests conducted during 1993–94, one cage was used per test. In certain tests, there was an average of 50 female Medflies released per cage, and in other tests, between 17 and 41 female South American fruit flies released per cage. We believe that those are sufficient numbers to ensure valid tests.

The fruit flies used in all of the tests were fertile, as is evident from the fruit fly larvae found in fully-ripe and overripe papayas that were used in the cage tests.

The proportion of stage 1 papayas to stage 5 papayas in the cage tests varied from approximately 1:1 to approximately 2:1.

Comment: During cage tests, what were the ambient conditions in the infestation cages during oviposition periods?

Response: The ambient conditions during oviposition periods were not reported, but because of the fruit fly larvae detections in ripe and overripe fruit used in tests, it is evident that those conditions were suitable for survival of the eggs.

Comment: Since a two-choice test (guava vs. papaya) was conducted in 1994, was a one-choice test considered after?

Response: No. The two-choice test was conducted in 1994, after a single choice test had already been administered in 1993. We do not believe that it is necessary to re-administer a single choice test when the results from the first were available and acceptable.

Comment: Are the conditions (fruit fly trap catches, sanitation of papaya fields, etc.) of Guanacaste, San Jose, and Punta Arenas, Costa Rica similar to those in Espirito Santo, Brazil?

Response: Generally, yes, and areas in both Costa Rica and Brazil that are producing papayas for importation into the United States have to meet the same requirements, with the exception that areas in Costa Rica do not have a threshold requirement for South American fruit fly captures because South American fruit fly does not occur in Costa Rica. The *Anastrepha* spp. that occurs in Costa Rica feeds on different hosts than Brazil's South American fruit fly, and is not under any circumstances a pest of papaya.

Comment: Even if papayas are considered an occasional host of both Medfly and South American fruit fly, the presence of unsanitary field conditions (e.g., abandoned fields) may cause papayas in Brazil to become common hosts for both Medfly and South American fruit fly.

Response: According to research conducted in Brazil and Costa Rica, only fully ripe papayas may be considered an occasional host of Medfly or South American fruit fly.

Further, under our systems approach, papayas from Brazil and Costa Rica will only be allowed to be imported into the United States if they are grown, packed, and shipped under the conditions specified in this rule, which include field sanitation measures and trapping in production areas. If there are abandoned groves nearby, and these groves draw fruit flies to commercial papaya production areas, trapping will

detect increasing fruit fly populations, and control measures or, if necessary, a halt to shipments will be required if fruit fly populations exceed stated levels. The trapping requirements and thresholds are discussed in detail below. Therefore, we are making no changes to the proposal in response to this comment.

Comment: The proposed fruit fly trapping requirements are inadequate for quarantine security. No traps are required in highly sensitive areas, such as sites of other fruit-fly host plants, packing houses, abandoned groves, or cull piles. The stated thresholds for action are so high as to be meaningless; an infestation would have to be of enormous proportion to yield an average Jackson trap catch of greater than 7 Medflies per trap per week for an area the size of the State of Espirito Santo. A trapping threshold of one gravid female fruit fly or two adult male flies would be more in line with the biology of a reproducing population. The seven fly figure would be a more appropriate trigger to drop areas from the program. Also, infestations limited to a concentrated range are not addressed. Further, no actions or thresholds are given for South American fruit fly. The trapping requirement should be modified to account for these issues.

Response: The main safeguard against fruit fly introduction into the United States is that less than one-half ripe papaya is not a host of Medfly or South American fruit fly. The trapping requirements we proposed guard against ''high infestation pressure'' in production fields, and each farm's weekly average of Medfly and South American fruit fly captures per trap will be individually calculated. First, we are establishing specific requirements for the placement, types, and monitoring of fruit fly traps in papaya production fields. Specifically, we are requiring that beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps must be maintained in the field where the papayas were grown. The traps must be placed at a rate of 1 trap per hectare and must be checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps must be of the McPhail type, and fifty percent of the traps must be of the Jackson type.

Second, we are establishing trapping thresholds that will trigger action if the fruit fly population in a papaya production area is too large. Specifically, in order to monitor the Medfly levels in commercial papaya production areas, we are establishing a threshold for Medfly captures in papaya production areas of Brazil and Costa Rica. The thresholds are as follows: If the average Jackson trap catch is greater than 7 Medflies per trap per week, measures, which may include Malathion bait sprays or other chemical sprays, must be taken to control the Medfly population in the production area. If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area would be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

In addition, based on this and other comments, we are also establishing a threshold for South American fruit fly captures in papaya production areas of Brazil at § 319.56–2w(j). The thresholds are as follows: If the average McPhail trap catch is greater than 7 South American fruit flies per trap per week, measures, which may include Malathion bait sprays or other chemical sprays, must be taken to control the South American fruit fly population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area would be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

These thresholds for Medfly and South American fruit fly trapping will help detect increasing populations of these fruit flies in growing areas and will help ensure that these fruit flies are not associated with imports of papayas.

The thresholds stated are adequate because we are not requiring that areas in Espirito Santo, Brazil, be pest-free for eligibility to export papayas to the United States. We only want to ensure that fruit fly populations do not exceed an acceptable level in papaya production areas in Brazil.

APHIS does not believe that high fruit fly populations in abandoned groves or near cull piles represent a threat to commercial papaya growing areas. If high populations are generated by abandoned groves or cull piles, and those populations move into a commercial papaya production area, then trapping in the commercial area will identify a problem, and additional mitigation measures, including halting importations of papayas from that commercial production area until fruit fly captures reach an acceptable level, will be taken.

Comment: The average Medfly catch for Vaversa farm was 50.44 Medflies per trap per week. Therefore, in accordance with the proposed trapping thresholds, this farm would not be eligible to export papayas to the United States. What was the Medfly weekly trap catch for Honey Fruit, Agrobas, and Exofruit farms?

Response: In 1996, the annual average Medfly catch for Vaversa farm was 50.44 Medflies per week. However, there were 20 traps on Vaversa farm, so the annual average of Medflies per trap per week was 2.522 Medflies, a number well below the proposed thresholds of 7 Medflies per trap per week to begin mitigation measures in papaya production areas or 14 Medflies per trap per week to halt papaya imports into the United States.

Yet, under the proposal, a farm's eligibility to export papayas to the United States would not be decided annually based on the annual average per trap per week, but decided weekly based on the weekly average per trap. Therefore, if the program had been active in 1996, and if Vaversa farm had met all of the other conditions of the regulations, it would have been eligible to export papayas to the United States during all weeks except those when the trapping thresholds exceeded 14 Medflies per trap per week. Additionally, during all weeks when the Medfly catch exceeded 7 flies per trap per week, mitigation measures would have been required to reduce the Medfly population in the production area.

The 1994 average Medfly weekly trap catch for Honey Fruit farm amounted to .05 flies or fewer per trap per week. The 1994 average Medfly weekly trap catch for Agrobas farm amounted to .10 flies or fewer per trap per week. The 1994 average Medfly weekly trap catch for Exofruit farm also amounted to .10 flies or fewer per trap per week.

Comment: Caliman, Vaversa, and Gaia farms all have a weekly trap average higher than 7 South American fruit flies per trap per week. Based on South American fruit fly captures, would these farms be eligible to export papayas to the United States? What is the South American fruit fly weekly trap catch for Honey Fruit, Agrobas, and Exofruit farms?

Response: Although we believe papayas of any ripeness to be poor hosts for South American fruit fly, as discussed above, we are establishing trapping thresholds for South American fruit fly in papaya production areas in Espirito Santo, Brazil. These trapping thresholds will require that mitigation measures be taken if more than 7 South American fruit flies per trap per week are captured in a papaya production area. Further, if more than 14 South American fruit flies per trap per week are captured in a papaya production area, exports of papayas from that area will halt until the level of captures of

South American fruit flies drops to a maximum of 7 South American fruit flies per trap per week. These thresholds will help monitor and reduce the South American fruit fly population in papaya production areas in Espirito Santo, Brazil.

Just as with Medfly trapping thresholds, South American fruit fly trapping thresholds will be based on the average weekly trap catch, and a farm's eligibility to export papayas to the United States will be determined on a week-to-week basis as a result of the number of South American fruit flies captured per trap per week.

Based on the data provided by Brazil, the 1994 average South American fruit fly weekly trap catch for Caliman farm amounted to 2.3 flies or fewer per trap per week. The 1994 average South American fruit fly weekly trap catch for Vaversa farm amounted to 1.2 flies or fewer per trap per week. The 1994 average South American fruit fly weekly trap catch for Gaia farm amounted to 3.2 flies or fewer per trap per week. The 1994 average South American fruit fly weekly trap catch for Honey Fruit farm amounted to 2.08 flies or fewer per trap per week. The 1994 average South American fruit fly weekly trap catch for Exofruit farm amounted to 1 fly or fewer per trap per week. The 1994 average South American fruit fly weekly trap catch for Agrobas farm amounted to 9.1 flies or fewer per trap per week. Under the provisions outlined in this document, during those weeks when a farm registers more than 7 South American fruit flies per trap per week, mitigation measures to reduce the fruit fly population in the papaya production area must be taken.

Comment: The use of simple averages to determine trap counts is insufficient. For example, if 1 trap out of 30 catches 200 fruit flies, and the other traps do not catch any fruit flies, the average for those 30 traps would be 6.7 flies, a figure below the required average of 7 flies per trap per week to begin mitigation measures. However, the papayas near the trap that catches 200 flies would be at a high risk for infestation. Therefore, another method of determining fruit fly population density should be considered.

Response: We believe that averages are sufficient to determine a papaya production area's eligibility to import papayas into the United States. Variations in trap catches will occur among traps in a given production area, but prior trapping data indicates that your scenario is highly unlikely. However, if this situation occurs, required recordkeeping will identify areas where fruit fly populations are concentrated, and we will investigate the conditions in those areas, including ensuring that the surrounding traps are properly baited, that field sanitation has been performed in compliance with the regulations, and that, if necessary, bait spray treatments are applied to reduce fruit fly populations around traps with excessive fruit fly catches. Therefore, we are making no changes to the proposal in response to this comment.

Comment: In response to a request for information, APHIS supplied trapping data for only three farms in 1996. There are far more than three farms in Espirito Santo. If this limited data constitutes all of the available data, how can a sound decision be made regarding the importation of papayas from Brazil?

Response: In response to a request for information, APHIS supplied 1994 trapping data for six farms, the total number of farms in Espirito Santo, and 1996 trapping data for three farms. This data, provided by Brazil, indicates the relative fruit fly population density and types of fruit flies in papaya production areas in Espirito Santo. We believe that the trapping data was adequate to enable us to design a systems approach for the importation of papayas from Brazil that is sufficient to prevent the introduction of Medfly and South American fruit fly into the United States.

The regulations will require fruit fly traps to be maintained in papaya production areas in Brazil and Costa Rica beginning at least 1 year before harvest begins and continuing through the completion of harvest. The traps must be placed at the rate of 1 trap per hectare and must be checked for fruit flies at least once a week by plant health officials of the national ministry of agriculture. Records of the fruit fly finds for each trap, updated each time the traps are checked, must be kept and must be made available to APHIS upon request. Prior to the commencement of papaya shipments from any papaya production area in Brazil or Costa Rica, we will review that most current fruit fly trapping information to determine which farms will be eligible to export their papayas to the United States and which farms will have to take mitigation measures to lower the fruit fly population in the area before exporting papayas to the United States.

Comment: The 1996 trapping report for three farms in Espirito Santo, Brazil, did not state the trap density; without this information, we cannot assume that the traps were placed at 1 trap per hectare.

Response: The placement of 1 trap per hectare is a requirement for the shipment of papayas to the United States from Brazil and Costa Rica under the systems approach outlined in this document. It was not a requirement for research; the trapping data mentioned was used to determine the relative fruit fly population density and types of fruit flies present in papaya production areas in Espirito Santo, Brazil. This information helped us decide whether to proceed with rulemaking, and to design a systems approach for the importation of papayas from Brazil. Further, on the farms in Espirito Santo that continue to trap for Medfly and South American fruit fly, traps are placed at a rate of 1 trap per hectare, and we believe that number is adequate to indicate fruit fly populations in those papaya production areas.

Comment: Papaya production areas in Brazil have not met the 1-year trapping requirement.

Response: Brazil has provided USDA with trapping records for 1993–1994 and 1996, and continues to trap for fruit flies in papaya production areas. For shipment of Brazilian papayas to the United States, we are requiring that beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps be maintained in the field where the papayas are grown. The traps must be placed at a rate of 1 trap per hectare and must be checked for fruit flies at least once weekly by plant health officials of the Brazilian Ministry of Agriculture. Therefore, we will not approve the importation of papayas from any production areas in Brazil unless those production areas provide the required current trapping data. At present, two farms in Espirito Santo have met the 1-year requirement for trapping.

Comment: APHIS' description of eligible papayas as ''less than one-half ripe'' is vague, difficult to convey to field personnel in Brazil, and impossible for U.S. inspectors to verify or enforce. The description should be more specific.

Response: In our proposal, we used the phrase ''less than one-half ripe'' to describe the papayas that we proposed for entry into the United States from Espirito Santo, Brazil. However, we specifically stated that when picked, the papayas must appear as follows: ''shell surface no more than one-quarter yellow, surrounded by light green.'' That explanation appears in the regulations and is a detailed and accurate description of quarter-ripe papayas.

For papaya growers, the standard industry practice for harvesting fruit abides by the following system: stage 1 and stage 2 papayas, papayas less than one-half ripe, are harvested for export;

stage 3 papayas, papayas that are one-half ripe, may be harvested for sale in the domestic market of the country or region in which the papaya production field is located; stage 4 and stage 5 papayas, papayas more than one-half ripe, may be used only for local consumption. This industry practice helps ensure that papayas arrive at market with an adequate shelf life. Brazil has successfully exported papayas to the European Union, Canada, and Argentina for many years, and in doing so, Brazilian papaya producers routinely follow the standard industry practice of harvesting papayas that are less than one-half ripe for export.

Because of these factors, we do not expect any confusion about the ripeness of the papayas that will be eligible for importation into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: To require someone on the line in a packing house to accurately determine that a particular papaya's shell surface is no more than one-quarter yellow surrounded by light green as thousands of papayas move along the conveyor belt is asking too much. Even a vigilant and careful inspector could not be expected to find papayas that are one-half or more ripe in that sea of papayas.

Response: The determination of each papaya's ripeness will not be made as the papayas are moving along a conveyor belt; ripeness will be determined in the field as the papayas are picked and again in the packing house as the papayas are placed in cartons for shipment to the United States. In these instances, when individual attention is given to each papaya, a determination of ripeness is easily made.

Further, this method of determining ripeness has proven successful for the importation into the United States of papayas from Costa Rica. Therefore, we believe that it is an effective and reliable way to ensure that only papayas that are less than one-half ripe are imported into the United States from Brazil and Costa Rica.

Comment: A maturity index based on surface color of papayas is not a reliable method for determining the infestability of papayas.

Response: We disagree. The field and cage tests conducted in Brazil and Costa Rica, as discussed earlier, prove that the surface color of papayas is an adequate determinant of the infestability of these papayas.

Comment: Data regarding the levels of benzyl isothiocyanate (BITC) in Brazilian papayas, the correlation between the concentration of this chemical and quantified color stages of Brazilian papayas, or the effects of BITC on South American fruit fly should be presented before papayas from Brazil are allowed to enter the United States.

Response: BITC, a naturally occurring chemical in papayas, has been determined to deter fruit fly oviposition in papayas, and when fruit fly eggs are laid in papayas, to prevent the survival of those eggs. The chemical is most concentrated in green papayas, and gradually dissipates as the papayas mature and ripen.

We do not feel that it is necessary to examine levels of BITC in Brazilian papayas, the correlation between the concentration of this chemical and quantified color stages of Brazilian papayas, or the effects of BITC on South American fruit fly for papayas from Brazil. Our decision to allow papayas from Espirito Santo, Brazil, to be imported, under certain conditions, into the United States was based, in part, on research that demonstrates that papayas of all ripeness stages, using color as an indicator of ripeness, are not preferred hosts for Medfly or South American fruit fly. Further, this research demonstrates that less than one-half ripe papayas are not a host of Medfly or South American fruit fly in Brazil. As discussed earlier, researchers in Brazil tested papayas at all stages of ripeness, where the determinant of the ripeness was the surface color of the papayas. In field tests, no fruit flies were found in any of the papayas, regardless of ripeness. In forced tests, fruit flies only occasionally attacked fully-ripe or overripe papayas (surface color entirely yellow).

Based on this and other research and on the success of the Costa Rican papaya program, we believe that using color as an indicator of ripeness, and therefore of resistance to fruit fly infestation, is sufficient to prevent the introduction of Medfly and South American fruit fly into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: Studies in which objective colorimetric measurements of Brazilian papayas are correlated to natural or forced infestation by Medfly or South American fruit fly should be conducted before papayas from Brazil are allowed to enter the United States.

Response: We do not agree that colorimetric measurements, measurements taken by a machine that looks at a portion of the surface color of the exterior of a commodity and generates a graph to indicate the ripeness of that commodity, are essential to determining whether less than one-half ripe papayas from Brazil are susceptible to infestation by Medfly or South American fruit fly. We believe that visual inspection of the papayas, as used in the research conducted in Brazil, serves the same purpose as colorimetric measurements and, in fact, is more effective because, unlike colorimetric measurements, visual inspection takes into account the range of colors on the entire exterior of the fruit.

The visual ripeness index we are using for papayas from Brazil is the same as the one currently in use for papayas from Costa Rica. The Costa Rican system of determining papaya ripeness has proven to be effective in ensuring that only less than one-half ripe papayas are imported into the United States.

Therefore, we are making no changes to the proposal in response to this comment.

Comment: APHIS should cut open papayas from Brazil arriving in the United States to determine if larvae are present, and the papayas should be inspected for eggs and held for pupal emergence.

Response: As a condition of entry, all fruits and vegetables imported into the United States are subject to inspection for injurious plant pests at the port of first arrival. If the papayas show any signs of pest infestation, including soft spots, bruises, or small holes in the surface, the papayas will be cut open and examined by a USDA inspector. Because of the systems approach that will be required of papayas to be imported from Brazil and Costa Rica, there is no need to examine papayas that do not exhibit any signs of pest infestation, or hold papayas for larval emergence, at the U.S. port of arrival. Therefore, we are making no changes to the proposal in response to this comment.

Comment: Two disease-causing organisms, *Cercospera mamaonis* and *Phomopsis carica-papayae,* are not addressed by the proposed risk mitigation measures. Measures should be taken to reduce the risk of the introduction of these fungi into the United States.

Response: We expect that the proposed hot water treatment, consisting of 20 minutes in water at 49 °C (120.2 °F), will reduce the risk of the introduction into the United States of *Cercospera mamaonis* and *Phomopsis carica-papayae,* as well as any other injurious plant pests that may be associated with the papayas. However, as a condition of entry, all fruits and vegetables imported into the United

States are subject to inspection for injurious plant pests at the port of first arrival. Both *Cercospera mamaonis* and *Phomopsis carica-papayae* are visually detectable by inspection. If inspectors at the U.S. port of arrival determine that a shipment of papayas is infested with pests of concern, including *Cercospera mamaonis* and *Phomopsis carica-papayae,* that shipment will be either treated, destroyed, or re-exported to prevent dissemination of the pests in the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: The proposed hot water treatment will not reduce the likelihood that papayas will introduce injurious plant pests into the United States, and it is certainly not a sufficient treatment to attain probit 9 quarantine security in regard to Medfly larvae in papayas. Twenty minutes at 120.2 degrees Fahrenheit is just one part of a longer 2 stage treatment which APHIS abolished for Hawaiian papayas in 1991 due to its ineffectiveness against larvae of Medfly and Oriental fruit fly. Moreover, that original treatment called for papayas to be one-quarter ripe, not one-half ripe as proposed for Brazilian papaya. Medfly requires a hot water treatment of approximately 48 degrees Celsius for 50 minutes to reach thermal death of eggs and larvae; no information is available regarding the efficacy of hot water treatment on *Anastrepha* species. This proposed requirement should be reconsidered.

Response: As recommended by quarantine specialists with Agriculture Research Services, USDA, the proposed hot water treatment for papayas from Brazil is one component of a systems approach; it is not intended to be a stand-alone treatment for Medfly or South American fruit fly. Taken together, the components of the systems approach are sufficient to mitigate the risk of the introduction of Medfly and South American fruit fly, as well as other injurious plant pests, into the United States.

The hot water treatment that was in effect for the post harvest quarantine treatment of Hawaiian papaya was designed to reduce the risk of the interstate movement of Medfly, Oriental fruit fly, and melon fly to the mainland United States. However, because the treatment proved to be ineffective against Oriental fruit fly in papayas that exhibit blossom end defect, APHIS withdrew the use of the 2-stage hot water treatment for Hawaiian papayas. While Hawaii has a high population of Oriental fruit fly in Hawaii, Oriental fruit fly does not occur in Brazil or Costa Rica. Therefore, we are making no changes to the proposal in response to this comment.

Comment: PPQ's Treatment Manual does not contain an approved hot water treatment for papayas. Additionally, a design for a treatment facility has not been approved, nor a process tested and approved, nor are APHIS personnel required to be present at a hot water treatment facility, in the fields, or in the packing houses. Therefore, we question the efficacy of such a treatment. The proposal does not specify whether facilities that will conduct the hot water treatment for Brazilian papayas will have to be approved by APHIS or will have to meet certain performance standards. We suggest that these facilities either be approved or be required to achieve certain standards prior to the importation into the United States of papayas from Brazil.

Response: Hot water treatment of papayas for export from Brazil is standard industry practice, but it is not a probit 9 stand-alone treatment. We are requiring it as one component of a systems approach to the importation into the United States of papayas from Brazil. Therefore, the hot water treatment need not be approved as a stand-alone treatment would be, nor do the facilities that will conduct the hot water treatment need to be approved. The specifications of the treatment will be in the regulations, and, therefore, do not need to appear in the PPQ Treatment Manual. However, when papayas from Brazil are imported into the United States, the Brazilian Ministry of Agriculture is required to certify that hot water treatment has been conducted, as required. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: What is the probit 9 hot water treatment for South American fruit fly?

Response: We are not aware of a probit 9 hot water treatment for South American fruit fly.

Comment: The proposal does not specify quarantine security measures for packing areas. Such security measures should be considered.

Response: We agree. In response to this comment, we are adding at § 319.56–2w(e) a provision that papayas from Brazil and Costa Rica must be safeguarded from exposure to fruit flies from harvest to export. This would require that from the moment the papaya is picked from the tree to the time that it reaches the United States, including in packing houses in Brazil and Costa Rica, the papaya will be safeguarded from fruit fly infestation. In order to meet this provision, trucks that move papayas from the orchard to the packing house will have to be covered or screened in some manner that prevents access by fruit flies. The packing house will also have to be constructed so as to prevent entry by fruit flies. Finally, the cartons that the papaya is shipped in will have to be fruit fly-proof or covered by fruit fly-proof material. This provision will help reduce the risk of the introduction into the United States of Medfly, South American fruit fly, and other pests that may be associated with papayas from Brazil and Costa Rica.

Comment: Culls and fallen fruit are to be ''removed from the field at least twice a week,'' but there is no provision for the destruction of culls and fallen fruit.

Response: We agree that there should be a requirement for the destruction of culls and fallen fruit. Therefore, we are adding a provision at § 319.56–2w(b) that culls and fallen fruit must be buried, destroyed, or removed from the farm. This provision will help reduce the risk of increased Medfly and South American fruit fly populations in and near papaya production areas in Brazil.

Comment: Does the sanitation procedure described in the proposal apply to backyards? What is the manpower allocated to perform this task?

Response: No, the sanitation procedure does not apply to backyards in Brazil because the conditions set out in the regulations will preclude the eligibility of backyard papayas for importation into the United States.

The manpower assigned to keep commercial papaya production fields clean will be determined by individual papaya producers in Brazil and will vary according to the needs of those producers to achieve the desired results.

Comment: How can APHIS guarantee that all papaya trees in Espirito Santo will be kept free of one-half or more than one-half ripe papayas?

Response: Only commercial papaya production areas in Espirito Santo that grow papayas from importation into the United States will be required to be kept free of one-half or more than one-half ripe papayas. Besides the fact that it is standard industry practice to keep trees in commercial papaya production areas free of fruit that is one-half or more ripe, this program will be supervised by the Brazilian Ministry of Agriculture and monitored by APHIS. Therefore, we are confident that this requirement will be met.

Comment: APHIS should take a more active role in monitoring the harvesting, packing, and shipping of papayas under the proposed protocol, and a trust fund agreement should be established to pay

for U.S. inspectors in the fields, packing houses, and ports in Brazil. The proposed systems approach depends on the full and careful compliance of Brazilian workers who have little or no training or experience in making sure each of the proposed conditions is met. Certain conditions, such as the hot water treatment, require precise monitoring. In addition, Brazilian papaya producers arguably have a conflict of interest in fully enforcing these conditions. Without an established performance history, there is no basis to conclude that Brazilian workers or the Brazilian Ministry of Agriculture will unfailingly meet the requirements of the regulations.

Response: In the initial phases of the Brazilian papaya program, APHIS's International Services (IS) employees will visit the production and packing areas to ensure that the components of the systems approach are being met, and throughout the program, these APHIS employees will act as a ready resource for the Brazilians.

Regarding the compliance of the Brazilians, as discussed earlier, Brazil has been exporting its papayas to the European Union, Canada, and Argentina for many years; therefore, in Brazil, papaya producers and their employees have experience and training in preparing papayas for export. Further, most of the conditions that we are requiring for the importation of papayas from Brazil are standard industry practice; normal commercial practice includes picking papayas for export when the papayas are green or less than half ripe, maintaining a high degree of sanitation in production areas, and treating the fruit with a hot water treatment to inhibit disease. Other conditions, such as trapping measures, have been in use for several years in order to provide data for this action.

We do not agree that meeting the conditions for importation is a conflict of interest for Brazilian workers; Brazilian producers and their employees want to be eligible to export fresh, healthy papayas to the United States that will compete well in the U.S. market. Therefore, deviation from required phytosanitary measures would not be in the self-interest of the Brazilians.

Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: If the Environmental Protection Agency (EPA), in accordance with the Food Quality Protection Act (FQPA), reassesses and subsequently cancels all tolerances for malathion, would that prevent the importation of malathion-treated papayas? If not, how would State and Federal officials contain and eliminate future Medfly outbreaks? Finally, what other pesticides might be used in Brazil and Costa Rica to ensure the same level of safety as malathion and might these pesticides also be subject to FQPA restrictions?

Response: EPA cannot regulate the use of pesticides in other countries; therefore, if EPA cancels all tolerances for malathion for domestic use, the pesticide may still be used in Brazil, Costa Rica, and other countries. Further, even if malathion may no longer be used as a treatment in the United States, malathion-treated papayas would still be permitted to be imported into the United States if the papayas meet all other applicable requirements, including requirements contained in EPA regulations at 40 CFR part 180 concerning pesticide residue tolerances. The EPA regulations would also apply to any other pesticide residues that may be found on the papayas at the U.S. port of first arrival. (Other commenters suggested that abamection, dicofol, endosulfan, tetradifon, and methyl thipphanate may be used on papayas in Brazil.) With respect to the emergency use of malathion for Medfly outbreaks in the United States, we have already started using other methods, including the release of sterile flies, in combination with malathion to contain and eliminate future Medfly outbreaks, and continue to explore alternative strategies.

Comment: Chemicals that are not registered by EPA are routinely applied to papayas in Brazil. Such pesticides include abamectin, dicofol, endosulfan, tetradifon, and methyl thipphanate. At a minimum, APHIS should notify the Food and Drug Administration (FDA) that such pesticides are used on papayas in Brazil so that residue may be checked at U.S. borders. Additionally, APHIS should notify the Brazilian government and industry that such pesticides are not permitted on papayas imported into the United States. Certification that states that these pesticides have not been used on the papayas should accompany the papayas to the United States. APHIS should not endanger the health of the American public by encouraging the importation of products which it knows to have a high probability of containing illegal pesticides.

Response: Based on information obtained from FDA, APHIS believes that the issues concerning pesticide residues found on papayas imported from Brazil are no different than the issues associated with the importation of produce from any other foreign country.

EPA is responsible for registering pesticides for use in the United States. EPA also has the responsibility to establish limits, or tolerances, for pesticide residues in both raw agricultural commodities and processed foods; these tolerances are located at 40 CFR part 180 and apply to both imported and domestically grown foods. EPA-established tolerances are commodity specific and represent the maximum amount of pesticide residue that may legally remain in food. In the absence of a tolerance, any level of pesticide residue is prohibited. Currently, EPA regulations do not list tolerances for pesticide residues of abamectin, dicofol, endosulfan, tetradifon, or methyl thipphanate on papayas. FDA is responsible for enforcing EPA pesticide residue tolerances and for determining whether an imported food violates the Federal Food, Drug, and Cosmetic Act.

FDA collects samples for residue testing early in the marketing chain to afford the greatest opportunity for determining the source of illegal residues (e.g., the grower). This system prevents the flow of further shipments that may contain the same residues. Thus, for imported foods, FDA collects samples directly at the port of entry. FDA sampled shipments are not allowed to be marketed until the results of the FDA testing are known and the shipments are released by the Agency. When illegal pesticide residues are found in an imported food shipment, the shipment is refused entry and required to be destroyed or shipped out of the United States. FDA may also invoke automatic detention of subsequent related shipments.

In 1994, FDA collected and analyzed a total of 11,348 food samples for pesticide residues under its regulatory monitoring programs. Of these, 5,448 samples, or 48 percent, were surveillance samples of imported foods from 101 countries. Overall, no violative residues were found in nearly 96 percent of the import surveillance samples, and 67 percent had no residues detected. Less than 1 percent of the import samples had pesticide residues that exceeded EPA tolerances, a finding that is about the same as the percentage of domestic samples that exceeded tolerances. Approximately 3 percent of import samples were found to contain residues of pesticides for which there is no established U.S. tolerance for the particular pesticide commodity combination.

We believe that the mechanisms that have been established to monitor pesticide residues on imported produce are adequate to detect if residues found

on papayas imported from Brazil are in violation of tolerances established by EPA. Therefore, we are making no changes to the proposed rule in response to this comment.

Comment: What is the harvest interval after spray for each chemical pesticide used in papaya production areas in Espirito Santo, Brazil? Has this work been done according to EPA regulations?

Response: We do not expect liberal pesticide applications to papaya production areas in Brazil; we expect that pesticides will be applied when mitigation measures are required in papaya production areas because of elevated Medfly or South American fruit fly populations. Therefore, we have not established a required harvest interval after chemical spray. Further, standard industry practice, including the required hot water treatment, calls for cleaning the surface of the papayas to remove as much of the pesticide residue as possible before the fruit is exported. Regarding EPA regulations, as discussed earlier, EPA cannot regulate the application of pesticides in foreign countries.

Comment: APHIS' reliance on inspections at the border has been seriously questioned in a very recent report issued by the General Accounting Office (GAO). In its report, GAO estimates that foreign pests are entering the United States at a level that is costing $41 billion annually in lost production and expenses for prevention and control, and that inspectors are ''struggling to keep pace with increased workloads'' (GAO Report GAO/RCED–97–102, May 1997).

Response: We believe it is important to emphasize that the Agricultural Quarantine Inspection (AQI) activities of APHIS are an important, but not the only, component of our system for safeguarding plant and animal resources from exotic pests and diseases. Regarding papayas from Brazil, we have designed a systems approach, with inspection at the U.S. port of arrival as one component, that provides protection against the introduction into the United States of injurious plant pests.

According to the GAO report, USDA estimates that foreign pests are entering the United States at a level that is costing $41 billion annually in lost production and expenses for prevention and control. In terms of imported fruits and vegetables, the greatest risk of plant pest introduction into the United States is non-commercial shipments of imported fruits and vegetables, including those entering the United States in international passenger baggage. Therefore, we do not believe that the conclusions of the study are relevant to the importation of commercial shipments of papayas from Brazil or Costa Rica.

Comment: We are concerned about your proposal to allow papayas from Brazil to be imported into the United States because very recently Florida had to conduct a costly and inconvenient eradication program because of a Medfly outbreak in the State.

Response: The recent Medfly outbreak in Florida is a major concern for us as well, but there is no indication that it was a result of legally imported fruits and vegetables for consumption. Regarding the importation of papaya from Brazil and Costa Rica, as discussed, less than one-half ripe papayas are not a host of Medfly. This final rule imposes requirements on the importation of papayas from Brazil and Costa Rica, in the unlikely event that a Medfly is attracted to a papaya in either country. We are confident that this final rule will allow papayas from Brazil and Costa Rica to be imported into the United States while continuing to provide protection against the introduction of Medfly into the United States.

Comment: The proposal is not in line with the law, which states that APHIS must take action to ''prevent the dissemination into the United States'' of plant pests.

Response: We disagree. We have designed a required set of phytosanitary safeguards, or systems approach, to allow for the importation of papayas from Brazil while preventing the introduction and dissemination of injurious plant pests into the United States.

Comment: Both 7 U.S.C. 159 and 160 require a hearing before APHIS can allow the importation of papayas from Brazil. Until such a hearing is held, APHIS should not finalize this proposal.

Response: Prior to January 8, 1983, 7 U.S.C. 159 and 160 directed the Secretary to hold a public hearing before promulgating a determination to ''restrict'' (7 U.S.C. 159) or ''forbid'' (7 U.S.C. 160) the importation into the United States of plants or plant products that may result in the introduction of injurious plant pests into the United States. However, on January 8, 1983, Public Law 97–432 struck out the provisions in both 7 U.S.C. 159 and 160 directing the Secretary to hold a public hearing before promulgating a determination regarding the restriction or prohibition of a plant or plant product's entry into the United States. We believe the public comment period for this rulemaking provided adequate opportunity for interested persons to comment on the proposed rule. Therefore, we are taking no action in response to this comment.

Comment: An environmental impact assessment should have been performed for this proposed action, particularly because a fruit fly infestation in the United States as a result of imported papayas from Brazil would provoke eradication measures that may include malathion bait sprays over potentially large rural and urban areas.

Response: An environmental assessment and finding of no significant impact have been prepared by APHIS for this action. The environmental assessment provides a basis for our conclusion that the importation into the United States of papayas from Brazil will not present a significant risk of introducing plant pests into the United States or disseminating plant pests within the United States and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

Copies of the environmental assessment and finding of no significant impact are 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 those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies of the environmental assessment and finding of no significant impact may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when ordering copies.

Comment: In the proposed rule under the heading ''Executive Order 12988,'' APHIS maintained that fresh fruit imported into the United States remains in foreign commerce until sold to the ultimate consumer and that, therefore, this rule would preempt State and local laws. It is not true that tropical fruits, and papayas in particular, remain in foreign commerce until the product is sold to the ultimate consumer (i.e., the person who eats the fruit). In fact, the U.S. Customs Service has determined that produce displayed in bins at retail grocery stores do not require labeling as to the country of origin because the retail customer is not the ultimate consumer, the store itself is. Therefore, papayas sitting in the grocery store are

no longer in foreign commerce. As such, State and local laws should not be preempted; they should apply in this case so that a State may restrict the entry of papayas from Brazil because of the pest risk to that State.

Response: It is our position that State and local laws and regulations regarding papayas imported under this rule will be preempted while the papayas are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and are considered to 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 the regulations allow a foreign plant or plant part, in this case papayas, to be imported into a State, that State does not have authority to refuse the plant or plant part entry, either directly from the port of arrival, or from another State. The Federal Government retains jurisdiction over all plants and plant parts while they are in foreign commerce. If the Secretary of Agriculture does not prohibit or restrict the importation of a plant or plant part, any such prohibition or restriction is deemed to be unnecessary. When foreign commerce ceases is a question of fact that must be addressed in each individual case. However, the Department of Agriculture has taken the position that fresh fruits and vegetables imported into the United States for immediate distribution and sale remain in foreign commerce until they are sold to the ultimate consumer. Other questions regarding when foreign commerce ceases must be addressed on a case-by-case basis and will be resolved based on the facts in each particular case.

For these reasons, a State may not legally prohibit the entry of a foreign plant or plant part into the State if the plant or plant part is allowed importation into the State under the regulations. Any State that believes it should or should not be included as a restricted destination in the regulations should present its case to the Administrator of APHIS. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale presented in the May 25, 1997, proposed rule, the September 25, 1997, document, and this final rule, we are adopting the provisions of these documents as a final rule with the changes discussed above.

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. 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 proposed 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.

In accordance with 5 U.S.C. 604, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the economic impact of this final rule on small entities.

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.

This rule amends the regulations governing the importation of fruits and vegetables by allowing papayas from Brazil and Costa Rica to be imported into the United States under specified conditions. The importation of papayas from Brazil had been prohibited because of the risk that they could have introduced injurious plant pests into the United States. This rule also makes changes to the requirements for importing papayas from Costa Rica, but those changes are not expected to have any effect on the volume of papayas exported to the United States from Costa Rica.

The rulemaking pertaining to papayas from Brazil is based on a pest risk assessment conducted by APHIS at the request of the Brazilian Ministry of Agriculture.

In 1995, the United States produced 23,042 metric tons (fresh equivalent) of papayas for human consumption, valued at $18.5 million. In 1993 and 1994, the United States produced 28,939 metric tons and 28,123 metric tons, respectively, of papayas for human consumption.

Imports into the United States of fresh papayas have grown rapidly, to the point where imports now exceed U.S. production levels of papayas for human consumption. In 1995, the United States imported 33,288 metric tons of fresh papayas, a significant increase over the 1993 and 1994 levels (14,198 metric tons and 18,677 metric tons, respectively). The increase in U.S. imports of fresh papayas since 1993 is due almost entirely to increased shipments from Mexico, the source of most U.S. papaya imports. The United States is a net importer of fresh papayas, as exports of the commodity from the United States did not exceed 8,293 metric tons in any of the years between 1993 and 1995.

In 1992, papayas were produced on 519 farms in the United States. It is not known how many of those farms are considered small entities under Small Business Administration standards, since information on their sizes is not available. However, most are probably small, since most U.S. farms whose revenues are derived primarily from the sale of fruits and tree nuts are considered small.

In 1993, Brazil was the world's largest producer of papayas. In that year, Brazil produced an estimated 1,750,000 metric tons of papayas, 30.1 percent of the world's total. No data is available, however, on the volume of potential exports of this commodity from Brazil to the United States.

The alternative to this rule was to make no changes in the regulations. After consideration, we rejected this alternative because there is no biological reason to prohibit the importation into the United States of papayas from Brazil.

In our proposal, we solicited comments on the potential effects of the proposed action on small entities. In particular, we sought data and other information to determine the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received one comment on the Initial Regulatory Flexibility Analysis contained in the proposed rule.

The commenter disagreed with our assessment that the proposed rule would not have a significant impact on small entities in the United States. The commenter argued that the rule has the potential to have a significant adverse impact on the approximately 30 papaya growers located in Florida, all of whom are small in size. The commenter points out that Brazil, because it is the world's largest papaya producer, has the potential to flood the U.S. market, effectively driving Florida's producers out of business. The commenter states that Hawaii and Florida produce all the

papayas that are commercially grown in the United States: Hawaii grows about 2,500 acres of papayas, with a value of $17 million; Florida has 500 acres of papayas, with a value of $3 million. The commenter suggests, however, that Hawaiian producers will not be directly affected by the proposal because Brazilian papayas would not be permitted to move into Hawaii.

We agree that the proposal has the potential to adversely affect papaya producers in Florida. However, to the extent that an adverse impact occurs at all, we are not convinced that it will be significant for most growers.

Growers in Florida and Hawaii could be affected because the proposal has the potential to reduce the prices at which they are able to sell their papayas. Those prices would decline if a large volume of Brazilian papayas were made available in the U.S. market at prices lower than those currently being accepted by domestic producers. The volume of potential papaya imports from Brazil will depend on a variety of factors, such as the extent to which Brazilian imports are price competitive with papayas produced in the United States and with papayas imported into the United States from Mexico and elsewhere. The volume will also depend on the price Brazil receives for its papayas elsewhere, including its existing export markets. The degree to which Brazilian imports are price competitive depends, in turn, on several factors, including production costs in Brazil and the costs of transporting papayas to the U.S. market.

There is, however, the potential for a considerable volume of papaya imports from Brazil. Brazil is the world's leading papaya producer and Espirito Santo, the State within Brazil from which imports would be allowed, accounts for almost half of Brazil's total papaya production. In 1991, the State of Espirito Santo produced 134,800 tons of papayas, 45 percent of Brazil's total papaya production of 299,400 tons. By comparison, production in the United States in 1995 totaled only 23,042 metric tons (utilized, fresh equivalent).

Nevertheless, there are several reasons that this rule may not have a significant adverse impact on a substantial number of Florida growers. First, no more than three or four papaya producers in Florida grow papayas exclusively or as a primary crop; most grow other crops in addition to papayas. In Florida, papayas are typically a temporary crop that is used to fill in the space between rows of newly-planted permanent crops (e.g., mangoes) until such time as the permanent crops mature. Therefore, even if Florida papaya growers are adversely affected by the rule change, the impact on most will not be significant in terms of their overall operations.

Second, Florida's papaya growers are apparently able to remain financially viable in the face of sharply increasing imports from Mexico. This suggests to us that: (1) Florida's growers are able to successfully adapt to the increased competition by switching to alternative crops, or (2) papaya sales are not significant in terms of their overall operations.

Third, the volume of potential imports from Brazil is unknown. Thus, even if it is assumed that most Florida papaya growers do rely heavily on papaya sales, there is no basis to conclude that they will automatically be affected. The commenters speculate that the volume will be large (relative to U.S. production) on the basis of Brazil's status as the world's leading papaya producer. However, that speculation may not be correct, since the volume of imports would depend on more than just production levels in Brazil. Indeed, it may be virtually impossible for Brazilian papayas to compete with Mexican papayas in the U.S. market on the basis of price and quality. Brazilian imports would be severely disadvantaged because of higher transportation costs to the U.S. market.

The commenter also argued that this rule is significant and should have undergone review by the Office of Management and Budget (OMB).

As required by Executive Order 12866, APHIS submitted a description of the proposed and final rules to OMB.

Executive Order 12988

This rule allows papayas to be imported into the United States from Brazil. State and local laws and regulations regarding papayas imported under this rule will be preempted while the fruit is in foreign commerce. Fresh papayas are generally imported for immediate distribution and sale to the consuming public, and will 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of papayas from Brazil will not present a risk of introducing or disseminating plant pests and would 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) (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).

Copies of the environmental assessment and finding of no significant impact are 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**.

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 final rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0128.

List of Subjects in 7 CFR Part 319

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

Accordingly, 7 CFR part 319 is amended as follows:

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 319.56–2w is revised to read as follows:

§ 319.56–2w Administrative instruction; conditions governing the entry of papayas from Brazil and Costa Rica.

The Solo type of papaya may be imported into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands from the State of Espirito Santo, Brazil, and the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica, only under the following conditions:

(a) The papayas were grown and packed for shipment to the United States in the State of Espirito Santo, Brazil, or in the provinces of Guanacaste, San Jose, and Puntarenas, Costa Rica.

(b) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were ½ or more ripe (more than ¼ of the shell surface yellow), and all culled and fallen fruits were buried, destroyed, or removed from the farm at least twice a week.

(c) The papayas were treated with a hot water treatment consisting of 20 minutes in water at 49 °C (120.2 °F).

(d) When packed, the papayas were less than ½ ripe (the shell surface was no more than ¼ yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(e) The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

(f) All cartons in which papayas are packed must be stamped ''Not for importation into or distribution in HI.''

(g) All activities described in paragraphs (a) through (f) of this section were carried out under the supervision and direction of plant health officials of the national Ministry of Agriculture.

(h) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the national Ministry of Agriculture. Fifty percent of the traps were of the McPhail type, and fifty percent of the traps were of the Jackson type. If the average Jackson trap catch was greater than 7 Medflies per trap per week, measures were taken to control the Medfly population in the production area. The national Ministry of Agriculture kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(i) If the average Jackson trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(j) In the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than 7 South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the average McPhail trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

(k) All shipments must be accompanied by a phytosanitary certificate issued by the national Ministry of Agriculture stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

(Approved by the Office of Management and Budget under control number 0579–0128)

Done in Washington, DC, this 10th day of March 1998.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–6536 Filed 3–12–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 966 and 980

[Docket No. FV98–966–1 FR]

Tomatoes Grown in Florida and Imported Tomatoes; Final Rule to Change Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the minimum grade requirements for Florida and imported tomatoes. The grade requirements are changed from U.S. No. 3 to U.S. No. 2. The change in grade requirements will help the Florida tomato industry meet domestic market needs, increase returns to producers, and provide consumers with higher quality tomatoes. Application of the increased grade requirements to imported tomatoes is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: March 30, 1998.

FOR FURTHER INFORMATION CONTACT: Christian Nissen, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 301 Third Street, N.W., Suite 206, Winter Haven, Florida 33881; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 125 and Marketing Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in certain designated counties in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any