DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 99–020–2]

Mexican Hass Avocado Import Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with the Animal and Plant Health Inspection Service. We are also adding requirements regarding the repackaging of the avocados after their entry into the United States. These amendments are necessary to ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and to ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico. These amendments will serve to reinforce the existing safeguards of the avocado import program.

EFFECTIVE DATE: January 5, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (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 plant pests, including fruit flies, that are new to or not widely distributed within the United States.

The regulations in § 319.56–2ff allow fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, to be imported into certain areas of the United States subject to certain conditions. Those conditions, which include pest surveys and pest risk-reducing cultural practices, packinghouse procedures, inspection and shipping procedures, and restrictions on the time of year (November through February) that shipments may enter the United States, are designed to reduce the risk of pest introduction to a negligible level. Further, the regulations in § 319.56–2ff limit the distribution of the avocados to 19 northeastern States and the District of Colombia, where climatic conditions preclude the establishment in the United States of any of the exotic plant pests that may attack avocados in Michoacan, Mexico.

On June 25, 1999, we published in the **Federal Register** (64 FR 34141–34144, Docket No. 99–020–1) a proposal to amend the regulations to require handlers and distributors of Mexican Hass avocados to enter into compliance agreements with the Animal and Plant Health Inspection Service (APHIS). In that same document, we also proposed to amend the stickering requirement for the avocados and add provisions regarding the repackaging of the avocados after their entry into the United States.

We solicited comments concerning our proposal rule for 60 days ending on August 24, 1999. We received 10 comments by that date. They were from two Mexican government officials, two State agricultural agencies, a domestic avocado growers group, an agricultural trade organization, three avocado distributors, and a Mexican avocado grower. Four of the commenters supported the proposed rule, although two of those commenters suggested some changes. The remaining commenters opposed one or more aspects of the proposed rule. The comments are discussed below.

Comment: Unless properly monitored and enforced, the new requirements will not be effective at reducing the incidence of illegal transshipment of Mexican avocados. The Department should provide additional information in the final rule concerning the steps it intends to take to monitor whether the appropriate compliance agreements are in place and describe the communications outreach efforts it will take to ensure that produce handlers and distributors are made aware of the new regulations.

Response: Our efforts to ensure that affected persons are made aware of the requirements of the regulations and to monitor whether the appropriate compliance agreements are in place will be closely related. To ensure that all the requirements of the regulations are known, including those requirements added by this final rule, we have created an industry newsletter in both English and Spanish and will forward press releases to trade newspapers and provide information to market owners during regular market surveys outside of the approved States. We will visit distributors and markets, send out mailings, establish an avocado program information website, and create a toll-free regulatory incident hotline prior to the beginning of the shipping season. We will contact all of the distributors and handlers we are aware of who handle Mexican avocados to arrange compliance agreements and will have the opportunity to contact and arrange compliance agreements with additional handlers or distributors during market visits. Finally, this rule's requirement that permittees and handlers confirm that subsequent handlers have entered into a compliance agreement with APHIS will serve as an additional mechanism to ensure that the necessary compliance agreements are in place.

Comment: The final rule must clarify whether the persons involved in the in-transit movement of Mexican avocados to Canada are required to enter into compliance agreements. Additionally, the final rule must specifically state the conditions that must be observed in order for Mexican avocados shipped in-transit to Canada to be eligible to be reshipped into the United States. Such guidance is needed to remove any question regarding whether the Mexican avocado program requirements extend to such fruit.

Response: This rule's compliance agreement requirement applies to persons involved in the handling and distribution of Mexican Hass avocados imported into the United States in accordance with § 319.56–2ff; the in-transit movement of avocados to Canada is a separate matter that is addressed in § 352.29 of the plant quarantine safeguard regulations (7 CFR part 352). Mexican avocados shipped in-transit to Canada are not eligible for reshipment into the United States, even if they were produced in accordance with the requirements of the Mexican avocado import program in § 319.56–2ff.

Comment: We endorse the aspect of the proposed rule that would deny an import permit or compliance agreement to any person who has repeatedly disregarded or violated the terms of an import permit or compliance agreement. However, we believe that the Department should expand this proposed provision to any person who has been found by a court—either an administrative court or a Federal court—to have violated the requirements of other regulatory programs administered by the Department. Inasmuch as such persons have demonstrated their disregard for the Department's regulations, they

cannot be relied upon or expected to fulfill the requirements of the Mexican avocado import program.

Response: It is the exception, rather than the rule, for our enforcement actions against a regulatory violator to reach the level of an administrative hearing or a Federal court; most often, a person cited for a violation will settle by agreeing to pay a civil or criminal penalty. Given that, it does not appear that the commenter's recommendation would be as useful a mechanism for ensuring compliance as it might seem. Further, expanding the denial provisions described in the proposal to include violations of any of the Department's regulatory programs would have ramifications for those programs as well as for the Mexican avocado import program.

Comment: We do not believe that it is proper for the Animal and Plant Health Inspection Service (APHIS) to use regulatory procedures (i.e., the proposed compliance agreement requirement) as an educational tool, particularly when penalties and restraints on trade may be imposed on parties who are in lawful compliance with the substance of the regulations pertaining to handling and distribution of Mexican Hass avocados.

Response: APHIS would have no reason to impose any kind of penalty on any person who is ''in lawful compliance with the substance of the regulations.'' Further, we believe that it is completely appropriate to use compliance agreements as an educational tool, as they are furnished free of charge, take a minimal amount of time to execute, and provide an excellent opportunity for the APHIS personnel who will be meeting with those persons entering into compliance agreements to provide information and answer questions.

Comment: It is neither proper nor necessary for APHIS to require handlers and distributors to enter into compliance agreements in order to educate them as to the requirements of the regulations and to ensure that they receive copies of the regulations. There are a limited number of persons engaged in the handling and distribution of Mexican Hass avocados, and there are many venues (e.g., industry publications, direct mail, and trade show presentations) available through which APHIS could provide full notice of the import program's requirements. APHIS should not be using the proposed compliance agreement requirement as a substitute for discharging its own responsibilities for making its regulations known to the public and enforcing those regulations.

Response: We have pursued the venues suggested by the commenter in disseminating information about the regulations; press releases explaining the import program were distributed at the time the regulations were established, stories were printed in the popular press and in industry publications, and APHIS personnel have visited large markets and individual firms in an effort to inform avocado handlers about the requirements of the regulations, especially the distribution limitations. Further, those distribution limitations are printed on every box of Mexican Hass avocados. Even with those measures, some distributors and handlers still claim to be unaware that the distribution and sale of Mexican Hass avocados is limited to the approved 19 States and the District of Colombia. The compliance agreement is one more way to spread the word, an attempt to reach each and every one of the ''limited number of persons engaged in the handling and distribution of Mexican Hass avocados'' in order to ensure that they are aware of the requirements of the regulations. Beyond its value as an educational tool, the compliance agreement will make it that much easier to take action against those persons who choose to violate the regulations.

Comment: Private firms are neither empowered nor authorized to ''ensure'' compliance with Federal laws and regulations. That is the duty and responsibility of the Government. The proposed regulations are not enforceable by private firms against another firm, but the penalties would be imposed on the first party for the possible wrongful acts of a second or third party. This is not appropriate.

Response: We are not asking private firms to enforce the regulations; we are simply calling on those firms to themselves observe the regulations, i.e., to not transfer avocados to another party for movement or distribution unless that party possesses a compliance agreement. If you confirm that the person to whom you are transferring avocados for movement or distribution possesses a compliance agreement, you have met your obligations under § 319.56–2ff(k)(2) or (3). What that person subsequently does with the avocados is beyond your control and certainly not your responsibility. In such a situation, it is simply not the case that ''penalties would be imposed on the first party for the possible wrongful acts of a second or third party.''

Comment: It is not proper for APHIS to impose penalties (i.e., the denial of import permits or compliance agreements to repeat violators) on one party for the wrongful acts of secondary and subsequent parties. Each permittee, distributor, or handler should be accountable for its actions directly to the Government. Such regulatory and compliance relations between a regulated firm and APHIS are properly the business of those parties only, and not other parties. It is simply not practicable for a permittee, distributor, or handler to ''ensure that any person to whom he or she released the avocados for movement or distribution . . . has entered into a compliance agreement.''

Response: As discussed in the response to the previous comment, a permittee or subsequent handler who observes the requirements of the regulations is in no danger of having a request for an import permit or compliance agreement denied. We disagree with the commenter's assertion that ensuring that a person has a compliance agreement is ''simply not practicable.'' Meeting that requirement can be accomplished quickly and would add only a relatively small amount of time to a typical transaction between buyer and seller.

Comment: The proposed changes to the Mexican Hass avocado import program are unnecessary. The current regulations contain sufficient safeguards, as is evidenced by the fact that APHIS was able to detect the presence of Mexican Hass avocados that were shipped outside the approved States.

Response: The fact that we were able to detect the presence of Mexican Hass avocados in markets outside the approved States highlights the value of market surveys and the requirement that individual avocados be marked with a sticker, but does not mean that there is no need to amend the existing regulations. For example, some of the Mexican Hass avocados found in markets outside the approved States appear to have been shipped by distributors who were simply unaware of the movement restrictions of the regulations. The compliance agreement requirement will ensure that all distributors are aware of those restrictions, which means that this measure alone will reduce the number of violations. We believe that the other measures included in this rule will prove similarly useful in reinforcing the existing safeguards of the regulations.

Comment: As written, the registration of handlers will negatively impact the marketing of Mexican avocados by creating a barrier that will eliminate many sales from wholesale marketers in the northeastern United States to customers who buy avocados in less

than truckload lots. For example, the operator of a small neighborhood store in New York City may wish to purchase four cartons of avocados on a particular day at the Hunts Point Terminal Market, but will be unable to do so because he is not registered with APHIS. It is not practical to expect purchasers such as the store operator or the owner of an independent restaurant to have to register with APHIS and deliver a copy of the compliance agreement to all potential suppliers in order to have the right to buy Mexican avocados.

Response: The store operator and the restauranteur described by the commenter would not be required to enter into a compliance agreement in order to buy avocados for their store or restaurant, as they will be offering the avocados for sale to consumers. The focus of this rule is on making the requirements of the regulations clear to the operators of businesses that normally buy and sell, move, or distribute commercial lots of avocados, such as grocery chains, wholesalers, and distributors. For example, a grocery chain or a chain's regional distribution centers would have to enter into a compliance agreement with APHIS, while the chain's individual retail store managers would not. To make this clear, we have added a new sentence to § 319.56–2ff(k)(1) in this final rule that states that a compliance agreement will not be required for an individual place of business that only offers the avocados for sale directly to consumers.

Comment: The proposed requirement for the marking of the boxes in which fruit is repackaged in the United States would create additional liabilities for the growers, packers, and exporters of avocados, even though these parties have no control over the fruit during the repacking stage. Additional problems such as microbial contamination from improper handling or commingling with other product may arise even though the listed parties bear no true responsibility for the problem.

Response: The commenter did not elaborate as to what types of ''microbial contamination'' might occur during repackaging, nor did he elaborate as to what sorts of liability might attach to a Mexican grower, packer, or exporter in the event of such contamination. If a repackaged box of fruit was found to be somehow contaminated, it would be obvious from the new box that the fruit had been handled by someone other than the original packer/exporter. Clearly, the assignment of liability in such a situation—if indeed there was a need to assign liability—would be a tenuous proposition. Importers and distributors have little choice when it comes to damaged boxes of fruit. They can repack the fruit in new boxes, or they can leave the fruit in the damaged box; the latter option is not likely to be chosen given the risk of further damage to the fruit, plus the fact that most of their customers would not care to receive damaged produce. Since it is quite likely that an importer or distributor is going to repackage the fruit anyway, this rule's provisions regarding the marking of repackaged fruit are a matter of ensuring that the identifying measures required for the original boxes are maintained, thus preserving the important information regarding the origin and identity of the avocados that those measures provide.

Comment: The proposed compliance agreement requirement is an additional burden that may discourage avocado distributors in the United States from conducting business with Mexican growers altogether, leading them to opt instead for fruit from California or from other countries. If that is the case, the compliance agreement requirement will be acting as a nontariff trade barrier.

Response: The time required on the part of a handler or distributor to enter into a compliance agreement will be minimal. That person will need to write down the name, mailing address, and location of the person or firm entering into the agreement; review the movement and other restrictions that apply; and sign and date the document. We expect that an APHIS inspector would spend about 30 minutes with each handler or distributor explaining the requirements of the regulations and filling out the compliance agreement; the mail or a fax machine may be used when an inspector is unable to make a personal visit. There is no charge or user fee associated with the compliance agreement. In addition, Mexican Hass avocados are typically available to wholesalers at attractive prices that make the minimal effort of entering into a compliance worthwhile. (In one of the comments we received, a wholesaler reported that at the end of the 1998/1999 shipping season, his fill-in supplier quoted a price of $50 to $52 for California Hass avocados and $20 for Mexican Hass avocados.) Thus, we do not believe that the minimal burden of entering into a compliance agreement will be likely to discourage persons in the United States from handling or distributing Mexican Hass avocados.

Comment: The proposed rule would increase the restrictions that apply to the Mexican Hass avocado import program; APHIS' phytosanitary justification for these restrictions has been that Hass avocados from Mexico present a risk of introducing fruit flies into the United States. Because avocados from California and Florida are not subject to such restrictions despite the presence of fruit flies in those States, the restrictions on Mexican Hass avocados constitute discriminatory treatment under article 712.4 of the North American Free Trade Agreement (NAFTA), which states, in part, that ''Each Party shall ensure that a sanitary or phytosanitary measure that it adopts, maintains or applies does not arbitrarily or unjustifiably discriminate between its goods and like goods of another Party . . . where identical or similar conditions prevail.''

Response: Fruit flies are not the only pests of concern addressed by the regulations; there are seed and stem pests as well. However, even if fruit flies were the only pest of concern, we do not believe that our restrictions on the movement of Mexican Hass avocados is in any way discriminatory, as avocados are specifically listed as regulated articles in all three of our domestic fruit fly quarantines in 7 CFR part 301, *i.e.*, Mexican fruit fly (§§ 301.64 through 301.64–10), Mediterranean fruit fly (§§ 301.78 through 301.78–10), and Oriental fruit fly (§§ 301.93 through 301.93–10).

Comment: The proposed rule, which would increase the restrictions that apply to the Mexican Hass avocado import program, is at odds with Mexico's request that APHIS consider expanding both the number of States to which Mexican Hass avocados could be shipped and the length of the shipping season. It has been scientifically and practically demonstrated that the Hass avocado is not a fruit fly host, so APHIS does not have the scientific basis to adopt additional restrictions or even maintain some of its current restrictions (NAFTA article 712.1). In the absence of a scientific basis for their application, those restrictions could be viewed as disguised restrictions on trade (NAFTA articles 712.5 and 713.3).

Response: Although we do consider commercially grown Hass avocados to be a nonpreferred host for fruit flies, and thus a low risk for introducing fruit flies, we do not yet possess conclusive, published evidence that they are a nonhost as asserted by the commenter. We understand that Mexico is working on research in that area, and we would certainly consider conclusive evidence proving the nonhost status of Hass avocados as the grounds for changes to the Mexican avocado import program, as well as to our domestic fruit fly regulations. That being said, however, it is important to remember that fruit flies are not the only pests of concern addressed by the requirements of the

Mexican Hass avocado import regulations. Those regulations also address the risks presented by the avocado seed pests *Heilipus lauri, Conotrachelus aquacatae, C. perseae,* and *Stenoma catenifer,* as well as the stem weevil *Copturus aguacatae.*

Proposed Amendments to Stickering Requirement

In our proposed rule, we had proposed to amend the current fruit-stickering requirement of § 319.56–2ff(c)(3)(vi) of the regulations to require that the stickers not only bear the Sanidad Vegetal registration number of the packinghouse, but that they also bear the letters ''M/US'' after that number, and that those stickers be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. The Mexican Government officials who responded to the proposed rule objected to the proposed limitations on the use of the stickers on the grounds that such limitations are an intrusion on Mexico's sovereignty. Those officials stated that APHIS does not have the authority to restrict Mexican producers from using any particular label on fruit that is distributed within Mexico, arguing that only Mexico can issue regulations affecting its domestic market.

Our intent in proposing those amendments to the stickering requirement was to ensure that the stickers would serve their intended purpose of making it easier to identify Mexican-origin avocados and would further allow us to differentiate between program fruit and nonprogram fruit that may have been smuggled into the United States. We acknowledge, however, that the proposed limitation on the use of the stickers would also have the effect of placing restrictions on domestic commerce within Mexico. Therefore, in deference to the concerns raised by the Mexican Government, we have omitted from this final rule the proposed requirement that the stickers required by § 319.56–2ff(c)(3)(vi) be used only for fruit produced in accordance with § 319.56–2ff for export to the United States. Further, because the inclusion of the letters ''M/US'' on the required sticker would serve no practical purpose in the absence of the proposed limitations on the use of the stickers, we have also omitted that aspect of the proposed rule from this final rule.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This rule amends our regulations governing the importation of Hass avocados from Mexico to require handlers and distributors to enter into compliance agreements with APHIS and adds requirements regarding the repackaging of the avocados after their entry into the United States. These amendments will ensure that distributors and handlers are familiar with the distribution restrictions and other requirements of the regulations and will ensure that any boxes used to repackage the avocados in the United States bear the same information that is required to be displayed on the original boxes in which the fruit was packed in Mexico.

During the first shipping season for Mexican Hass avocados (November 1997 through February 1998), Mexico exported 13.296 million pounds of fresh avocados to the northeastern United States (U.S. Department of Agriculture, Foreign Agricultural Service, GAIN Report No. MX8140, November 24, 1998). During the second shipping season (November 1998 through February 1999), Mexico exported approximately 22 million pounds of fresh avocados to the northeastern United States.

Although it was anticipated that the importation of fresh Hass avocados from Mexico into the northeastern United States would result in lower prices for consumers and losses for domestic avocado producers, there has, to date, been little or no price change. The average wholesale price for avocados in the approved 19 northeastern States and the District of Columbia before the first shipping season began in November 1997 was $1.47 per pound, while after the shipping season began, the average wholesale price was $1.60 per pound. For the nonapproved States, the average wholesale prices were $1.46 before November 1997 and $1.57 after the first shipping season began. (The wholesale prices in the approved States are based on averages in Baltimore, Boston, Chicago, Detroit, New York, and Philadelphia; the wholesale prices for the nonapproved States are based on averages in Atlanta, Dallas, Los Angeles, Miami, San Francisco, and Seattle.) There was no statistically significant difference between the wholesale prices in the approved States and the nonapproved States before or after Mexican Hass avocados entered the domestic market. It should be noted that the average wholesale prices for fresh avocados in Mexico were only about $0.33 and $0.32 per pound in 1997 and 1998, respectively.

Because compliance agreements are available from APHIS free of charge, the only aspect of this rule that may result in additional costs for any U.S. entities, large or small, is the requirement for the marking of new boxes in cases where the avocados are repackaged after their entry into the United States. According to industry sources, the cost of the current identification requirements of the regulations, which includes both box marking and fruit stickering, is approximately $0.06 per pound. This cost is borne at the Mexican production/export end of the Hass avocado export program. If 20 percent of all shipments had to be repackaged following their arrival in the United States due to damage to original shipping boxes or for other reasons, this rule's requirement for the marking of new boxes could result in additional costs to U.S. importers or distributors of approximately $160,000 to $264,000. This estimate was arrived at using 20 percent of the total volume of Mexican Hass avocados shipped to the northeastern United States during the two export seasons of 1997–1998 (13.296 million pounds × $0.06 × 0.2 = $159,552) and 1998–1999 (22 million pounds × $0.06 × 0.2 = $264,000). However, because the $0.06 figure used includes the costs of the required stickering as well as box marking, it is likely that the costs to U.S. importers or distributors of marking new boxes in the United States will actually be less than that estimate. Since, as noted above, the price spread between domestic and Mexican wholesale prices is so large, U.S. importers and distributors may be able to absorb any additional costs resulting from the requirement for marking new boxes without passing those costs on to consumers.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0129.

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

Authority: 7 U.S.C. 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. In § 319.56–2ff, new paragraphs (j) and (k) are added to read as follows:

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

* * * * *

(j) *Repackaging.* If any avocados are removed from their original shipping boxes and repackaged, the stickers required by paragraph (c)(3)(vi) of this section may not be removed or obscured and the new boxes must be clearly marked with all the information required by paragraph (c)(3)(vii) of this section.

(k) *Compliance agreements.* (1) Any person, other than the permittee, who moves or distributes the avocados following their importation into the United States (i.e., a second-party or subsequent handler) must enter into a compliance agreement with APHIS. In the compliance agreement, the person must acknowledge, and agree to observe, the requirements of paragraph (a) and paragraphs (f) through (k) of this section. Compliance agreement forms are available, free of charge, from local offices of Plant Protection and Quarantine, which are listed in local telephone directories. A compliance agreement will not be required for an individual place of business that only offers the avocados for sale directly to consumers.

(2) Before transferring the avocados to any person (i.e., a second-party handler) for movement or distribution, the permittee must confirm that the second-party handler has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the permittee transfers the avocados to a second-party handler who has not entered into a compliance agreement, APHIS may revoke the permittee's import permit for the remainder of the current shipping season.

(3) Any second-party or subsequent handler who transfers the avocados to another person for movement or distribution must confirm that the person receiving the avocados has entered into a compliance agreement with APHIS as required by paragraph (k)(1) of this section. If the second-party or subsequent handler transfers the avocados to a person who has not entered into a compliance agreement, APHIS may revoke the handler's compliance agreement for the remainder of the current shipping season.

(4) *Action on repeat violators.* APHIS may deny an application for an import permit from, or refuse to enter into a compliance agreement with, any person who has had his or her import permit or compliance agreement revoked under paragraph (k)(2) or (k)(3) of this section twice within any 5-year period.

(Approved by the Office of Management and Budget under control number 0579–0129.)

Done in Washington, DC, this 30th day of November 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–31513 Filed 12–3–99; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Waste Confidence Decision Review: Status

AGENCY: Nuclear Regulatory Commission.

ACTION: Status report on the review of the Waste Confidence Decision.

SUMMARY: On September 18, 1990 (55 FR 38474), the Nuclear Regulatory Commission (NRC) issued the results of the first review of its Waste Confidence Decision, originally issued on August 31, 1984 (49 FR 34658). The purpose of the original Waste Confidence Decision was ''to assess the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or offsite storage will be available and to determine whether radioactive waste can be safely stored onsite past the expiration of existing facility licenses until offsite disposal or storage is available.'' (49 FR 34658). In 1984, the Commission concluded that there was reasonable assurance that safe disposal in a geologic repository is technically feasible, one or more repositories would be available by the years 2007–2009, and spent fuel will be managed in a safe manner until sufficient repository capacity is available. The 1990 review of this decision basically affirmed the findings of the original decision and further determined that spent fuel could be safely stored and managed under existing processes through the first quarter of the 21st century and 30 years beyond the licensed life for power reactor operation. In its 1990 review, the Commission stated that its next review of the waste confidence issues would occur in ten years. As the ten year period for review approaches, the Commission is issuing this notice on its intent with regard to further Waste Confidence reviews. The Commission is of the view that experience and developments since 1990 confirm the Commission's 1990 Waste Confidence findings. Thus, the Commission has decided that a comprehensive evaluation of the Waste Confidence Decision at this time is not necessary. The Commission would consider undertaking a comprehensive evaluation when the impending repository development and regulatory activities have run their course or if significant and pertinent unexpected events occur, raising substantial doubt about the continuing validity of the 1990 Waste Confidence findings.

FOR FURTHER INFORMATION CONTACT: Janet Kotra, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 415–6674.

SUPPLEMENTARY INFORMATION:

I. Background

In 1977, the Commission denied a petition for rulemaking wherein the U.S. Nuclear Regulatory Commission (NRC) was asked to determine whether radioactive wastes generated in nuclear power reactors can be disposed of without undue risk to public health and safety and to refrain from granting pending or future requests for reactor operating licenses until such finding of disposal safety was made. The Commission noted in its denial that it '' * * * would not continue to license reactors if it did not have reasonable